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

Tuesday, February 19, 2019 | **6:00 PM** | **Council Chambers, 2nd Floor, Merced Civic Center, 678 W. 18th Street, Merced, CA 95340**

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

NOTICE TO PUBLIC

WELCOME TO THE MEETING OF THE MERCED CITY COUNCIL

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

PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE CITY CLERK

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

INDIVIDUALS WITH DISABILITIES

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

A. CLOSED SESSION ROLL CALL

B. CLOSED SESSION

B.1. 19-047 **SUBJECT:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Manager; Authority: Government Code Section 54957

B.2. 19-013 **SUBJECT:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney; Authority: Government Code Section 54957

C. CALL TO ORDER

C.1. Invocation

C.2. Pledge of Allegiance to the Flag

D. ROLL CALL

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

E. REPORT OUT OF CLOSED SESSION

F. 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. 18-635 **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. 19-060 **SUBJECT:** Information Only-Site Plan Review Committee Minutes of January 17, 2019

RECOMMENDATION
For information only.

H.3. 19-052

SUBJECT: Information Only-Site Plan Review Committee Minutes of December 13, 2018

RECOMMENDATION
For information only.

H.4. 19-059

SUBJECT: Information Only-Planning Commission Minutes of January 9, 2019

RECOMMENDATION
For information only.

H.5. 19-071

SUBJECT: Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of January 22, 2019

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 January 22, 2019.

H.6. 19-088

SUBJECT: Approval to Enter into an Agreement for Legal Services with Amy Oppenheimer for the Not to Exceed Amount of $60,000

REPORT IN BRIEF
Consider engaging the legal services of Amy Oppenheimer for the not to exceed amount of $60,000.

RECOMMENDATION
City Council - Adopt a motion approving an agreement for legal services with Amy Oppenheimer for the not to exceed amount of $60,000 and authorizing the Finance Officer to make any necessary budget adjustments.

H.7. 19-032

SUBJECT: Approval of Purchase and Sale Agreement Between the City of Merced (Seller) and Valley Children's Healthcare (Buyer) for

the 4.54 Acre Parcel Located at 301 W. Yosemite Ave., Merced, CA in the Amount of $2,100,000

REPORT IN BRIEF

Considers approving a Purchase and Sales Agreement for the sale of a City owned 4.54 acre parcel located at 301 W. Yosemite Avenue to Valley Children's Healthcare for the development of a pediatric primary and specialty care medical office building. The Agreement contains escrow instructions for the sale of the property.

RECOMMENDATION

City Council - Adopt a Motion:

A. Approving the purchase and sale agreement between the City of Merced and Valley Children's Healthcare for 301 W. Yosemite Avenue (Assessor's Parcel Number 231-040-021); and,

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

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

H.8. 19-049

SUBJECT: Approval of a 6-Year Agreement with Axon Enterprises Inc. for the Purchase of Additional Body Worn Cameras, Conducted Energy Weapons (Known as "Tasers"), Computer Aided Dispatch / Records Management System (CAD/RMS) Integration and Redaction Assistant Software for the Police Department for a Total Amount of $789,899.50; Approval to Waive the Competitive Bidding Requirement to Allow for the Purchase of Standardized Equipment

REPORT IN BRIEF

Considers the approval of an agreement with Axon Enterprises Inc. for the purchase of additional body worn cameras, Tasers, CAD/RMS Integration, and redaction assistant software agreement for a total amount of $789,899.50 over the six-year contract period. Also considers waiving the competitive bidding requirement pursuant to Merced Municipal Code section 3.04.210 for purchases necessary for standardization of particular types of equipment.

RECOMMENDATION

City Council - Adopt a motion waving the competitive bidding

requirements as stated in Section 3.04.210 of the Merced Municipal Code and approving a 6-year agreement with Axon Enterprises Inc. for the purchase of additional body worn cameras, Tasers, CAD/RMS integration, redaction software and a 6-year licensing, data storage and service plan in the total amount of $789,899.50.

H.9. 19-063

SUBJECT: Approval of Amendment to Agreement with Tyler Technologies for the Purchase of the Citizen Reporting Interface Software Module and Attendant Maintenance Agreement and Purchase of Subscription Services for an Online Citizen Reporting System Through LexisNexis for an Amount Not to Exceed $20,099

REPORT IN BRIEF

Approves an amendment to the City's existing agreement with Tyler Technologies for the purchase of a new software module, which will include increasing the module's maintenance to the existing maintenance agreement with Tyler Technologies and; also approves a subscription service with LexisNexis for the Desk Officer Reporting System which will allow crime reports, tips and other documents to be filed with the Merced Police Department online.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving a 6th Amendment to the original contract with Tyler Technologies for the purchase of a new software module to the existing public safety software package from Tyler Technologies; and,

B. Approving a Software Subscription Agreement with LexisNexis; and,

C. Approving Law Enforcement Agreement with LexisNexis; and,

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

H.10. 19-058

SUBJECT: Award of Bid and Approval of Contract with Hobbs Construction Inc., in the Amount of $2,691,790 for Well 21 Site Improvements, Project No. 113026

REPORT IN BRIEF

Considers awarding a contract in the amount of $2,691,790 to Hobbs Construction, Inc. to perform the pump station construction for the new water supply Well 21 at the intersection of Bellevue Road and G Street.

RECOMMENDATION

City Council - Adopt a motion awarding the bid for Well 21 Site Improvements, Project 113026, to Hobbs Construction, Inc., in the amount of $2,691,790; and, authorizing the City Manager or the Assistant City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

H.11. 19-072

SUBJECT: Approval of Agreement with Union Pacific Railroad in the Not-to-Exceed Amount of $50,000 for Preliminary Engineering Services for the Installation of an Interconnect with a Traffic Signal at Highway 59 and the Railroad Spur, Project No. 114052

REPORT IN BRIEF

Considers an agreement with Union Pacific Railroad for preliminary engineering services for an installation of an interconnect with a traffic signal at Highway 59 and 16th Street.

RECOMMENDATION

City Council - Adopt a motion approving an agreement for preliminary engineering with Union Pacific Railroad in the amount of $50,000 for the traffic signal at Highway 59 and 16th Street; and, authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

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. 19-026

SUBJECT: Continued Public Hearing - Vacation No. 18-03 for the Adoption of Resolutions Ordering the Vacation and Conditional Vacation of a 20-Foot Wide Temporary Access Easement Located on a Portion of 7 Lots within the Summer Creek Subdivision.

REPORT IN BRIEF

Considers approving two Resolutions ordering the vacation and conditional vacation of a 20-foot wide temporary access easement located on a portion of 7 lots within the Summer Creek Subdivision generally located west of McKee Road at Silverstone Drive.

RECOMMENDATION

City Council - Adopt a motion:

A. Adopting **Resolution 2019-07**, a Resolution of the City Council of the City of Merced, California, ordering the vacation of a 20-foot-wide Temporary Emergency Access Easement on Lot 130 within the Summer Creek Phase One Subdivision (Vacation #18-03); and,

B. Adopting **Resolution 2019-08**, a Resolution of the City Council of the City of Merced, California, ordering the conditional vacation of a 20-foot-wide Temporary Emergency Access Easement on Lots 5, 6, 7, 17, 18, and 29 within the Summer Creek, Phase One Subdivision (Vacation #18-03) subject to the easement area on lots 6,7,17,18 and 29 being deeded to the Merced Irrigation District (MID).

I.2. 19-057

SUBJECT: Public Hearing - Adoption of a Categorical Exemption (Environmental Review #19-01) and Introducing an Ordinance Amending Section 20.44.170 "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required" of the Merced Municipal Code

REPORT IN BRIEF

Considers the review of proposed updates to Section 20.44.170 of the Zoning Ordinance, pertaining to modifications and clarifications of the regulations on commercial cannabis business permits, including the addition of a new license for a retail sales dispensary.

RECOMMENDATION

City Council - Adopt a motion approving a Categorical Exemption (Environmental Review #19-01) and introducing **Ordinance 2498**, an Ordinance of the City Council of the City of Merced, California, Amending Section 20.44.170, "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required," of the Merced Municipal Code.

J. REPORTS

J.1. 19-045

SUBJECT: Discussion of Options for Funding the Section 115 Post Employment Benefit Trust Fund and Request for Authorization of Funding, Determination of Preferred Asset Allocation, and Adoption of Investment Guidelines for the Section 115 Post Employment Benefit Trust

REPORT IN BRIEF

Provides direction to staff regarding the funding of the Section 115 Post Employment Benefit Trust, Also requests a determination of asset allocation, and Adoption of investment guidelines for the Section 115 Post Employment Benefit Trust.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving the dissolution of Fund 073 Revenue Stabilization Fund and transferring $3,200,000 into the Section 115 Post Employment Benefit Trust Fund; and,

B. Authorizing a Supplemental Appropriation from the unreserved, unencumbered fund balance in Fund 553-Wastewater System in the amount of $2,000,000 and transferring into the Section 115 Post Employment Benefit Trust Fund; and,

C. Authorizing a Supplemental Appropriation from the unreserved, unencumbered fund balance in Fund 557-Water System in the amount of $1,300,000 and transferring into the Section 115 Post Employment Benefit Trust Fund; and,

D. Directing staff to begin the process for a charter amendment to remove Section 1112 Cash Basis Fund; and,

E. Selecting the Conservative asset allocation for the Trust 115 Post Employment Benefit Trust Fund Investment Portfolio; and,

F. Approving Investment Guidelines to be used for the Trust 115 Post Employment Benefit Trust Fund Investment Portfolio; and,

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

J.2. 19-005

SUBJECT: Mid-Year Budget Review for Fiscal Year 2018-2019 Including Requests for Approval of General Fund Supplemental Appropriations and Budget Amendments in Various Funds Totaling $58,000, Approval of an Additional Administrative Analyst Position in the Public Works Division and the Deletion of an Account Clerk III Position in the Public Works Division

REPORT IN BRIEF

Presents the Fiscal Year 2018-2019 Mid-Year Financial Report and seeks approval for General Fund Supplemental Appropriations and Budget Amendments in Various Funds totaling $58,000, approval to add an additional Administrative Analyst position in the Public Works Division and to delete an Account Clerk III position in the Public Works Division

RECOMMENDATION

City Council - Adopt a motion:

A. Approving a Supplemental Appropriation from the unreserved, unencumbered General Fund balance in the amount of $28,000; and,

B. Approving a Supplemental Appropriation from the unreserved, unencumbered General Fund balance in the amount of $30,000, transferring to Fund 424 Parks and Community Services Capital Improvement Projects and appropriating the same; and,

C. Approving the addition of a Administrative Analyst position in Fund 029 Public Works Administration; and,

D. Approving the deletion of an Account Clerk III position in Fund 029 Public works Administration.

J.3. 19-092

SUBJECT: Chief of Police Annual Department Report

REPORT IN BRIEF

Provides an update to Council on the Police Department's annual report.

RECOMMENDATION

For information only.

K. BUSINESS

K.1. Request to Add Item to Future Agenda

K.2. City Council Comments

L. ADJOURNMENT

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item B.1. Meeting Date: 2/19/2019

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

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item B.2. Meeting Date: 2/19/2019

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

ADMINISTRATIVE REPORT

Agenda Item H.1. Meeting Date: 2/19/2019

SUBJECT: Reading by Title of All Ordinances and Resolutions

REPORT IN BRIEF

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

RECOMMENDATION

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

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.2. Meeting Date: 2/19/2019

Report Prepared by: Stephani Davis, Development Services Tech II, Planning Division

SUBJECT: Information Only-Site Plan Review Committee Minutes of January 17, 2019

RECOMMENDATION
For information only.

ATTACHMENTS
1. SP Minutes 01-17-2019

CITY OF MERCED
Site Plan Review Committee

MINUTES

Planning Conference Room
2nd Floor Civic Center
Thursday, January 17, 2019

Chairperson McBRIDE called the meeting to order at 1:30 p.m.

1. ROLL CALL

Committee Members Present:	Plan Examiner II England (for Chief Building Official Frazier), Land Surveyor Cardoso (for City Engineer) and Director of Development Services McBride
Committee Members Absent:	None
Staff Present:	Planning Manager Espinosa, Economic Development Director Quintero, Police Lieutenant Struble, Public Works Director Elwin, Deputy Fire Chief England (for Item 4.2 only), and Planner/Recording Secretary Mendoza-Gonzalez

2. MINUTES

M/S McBRIDE-CARDOSO, and carried by unanimous voice vote, to approve the Minutes of December 13, 2018, as submitted.

[Secretary's Note: The Planning Department recently received a request to modify SP #329 (from the above minutes of December 13, 2018). This request will be reviewed by the Site Plan Review Committee on January 24, 2019.]

3. COMMUNICATIONS

None.

4. **ITEMS**

4.1 Site Plan Application #430, submitted by Ron Drew, property owner, to modify an existing window manufacturing plant, O'Keefe's, located at 220 S. R Street, within a Light Industrial (I-L) Zone.

Planner MENDOZA-GONZALEZ reviewed the application. Refer to Draft Site Plan Resolution #430 for further information.

The applicant and his engineer were attendance to answer questions from the Committee.

Committee Member CARDOSO recommended modifying Finding G to clarify that the improvements referred to in this section are about public improvements, not private improvements.

The applicant's engineer requested modifying Condition #14 as emergency vehicle access around the building may not be necessary as the site is accessible from the northern portion of the property if an emergency access gate is installed along Parkwest Street.

Chairperson McBRIDE noted that this may be appropriate if approved by the Fire Department during the building permit stage.

The applicant's engineer requested modifying Condition #26 as the site would not have any landscaping or require irrigation lines.

Committee Member CARDOSO noted that installing an irrigation line is optional, and would not be required. He agreed that Condition #26 could be modified.

Committee Member CARDOSO recommended modifying Condition #28 to add language acknowledging that this Project would be reviewed for post-construction standard requirements during the building permit stage.

The applicant's engineer requested modifying Condition #30 as this site has an existing refuse enclosure and system that works well with

the Refuse Department. Therefore, he sees no need to update their refuse enclosure.

Committee Member CARDOSO noted that this may be appropriate if approved by the City Engineer.

M/S CARDOSO - ENGLAND, and carried by the following vote to adopt a Categorical Exemption regarding Environmental Review #18-67, and approve Site Plan Application #430, subject to the Findings and thirty-two (32) conditions set forth in Draft Resolution #430 with modifications to Finding G and Conditions #14, #26, #28, and #30 as follows:

(Note: ~~Strikethrough~~ deleted language, underline added language.)

"G. Due to the cost of some of the public improvements required to bring this site into compliance, the Site Plan Review Committee may allow these improvements to be installed/constructed in phases. A construction schedule shall be submitted by the applicant for approval by the Development Services Director. All improvements shall be installed in accordance with City Standards, the above schedule, and any applicable conditions below.

"14. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access. This includes providing a minimum 22-foot-wide emergency vehicle access roadway around the structures or as otherwise required by the Fire Department.

"26. The Project ~~shall~~ may have a separate Irrigation and Domestic water service line going from the water main to the property line.

"28. The retention basin shall be designed to meet City standards. The basin shall be large enough to accommodate the storm runoff required for this site. During the building permit stage, the application shall be reviewed for compliance with post-construction standard requirements.

"30. The refuse enclosure shall be designed to meet the City's Engineering Standards for refuse enclosures (R-4) or as required by the City Engineer. The applicant shall not install any posts in front of the refuse enclosure. A side gate shall be provided with pedestrian access, as required by the City Engineering Division."

AYES: Committee Members Cardoso, England, and Chairperson McBride
NOES: None
ABSENT: None

4.2 Site Plan Application #431, submitted by Cesar Perez, applicant for Tom E. Lawler, property owner, to construct a 7,500-s.f. shell warehouse, located at 2250 Cessna Way, within a Light Industrial (I-L) Zone.

Planner MENDOZA-GONZALEZ reviewed the application. Refer to Draft Site Plan Resolution #431 for further information.

The applicant's engineer was in attendance to answer questions from the Committee.

The applicant's engineer requested modifying Condition #14 to adjust emergency vehicle access requirements given that the building would meet the Fire Department's 150-foot distance requirements for fire vehicle access. In addition, the applicant's engineer noted that there would be a fire hydrant in front of the building, and that the building would be fully equipped with fire sprinklers.

Deputy Fire Chief ENGLAND noted that given the information provided by the applicant's engineer, there would be no issues modifying Condition #14.

M/S ENGLAND - CARDOSO, and carried by the following vote to adopt a Categorical Exemption regarding Environmental Review #18-70, and approve Site Plan Application #431, subject to the Findings and thirty-five (35) conditions set forth in Draft Resolution #431 with a modification to Condition #14 as follows:

(Note: Strikethrough deleted language, underline added language.)

"14. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access. ~~This includes providing a minimum 22-foot-wide emergency vehicle access roadway around the structures.~~"

AYES: Committee Members Cardoso, England, and Chairperson McBride
NOES: None
ABSENT: None

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

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

6. ADJOURNMENT

There being no further business, Chairperson McBRIDE adjourned the meeting at 2:15 p.m.

Respectfully submitted,

Kim Espinosa, Secretary
Merced City Site Plan Review Committee

APPROVED:

FOR SCOTT MCBRIDE

Scott McBride, Chairperson/
Director of Development Services
Merced City Site Plan Review Committee

CITY OF MERCED
SITE PLAN APPLICATION
RESOLUTION #430

O'Keeffe's, Inc.	Plant expansion with a 7,364-s.f. cold room addition, 30,651-s.f. manufacturing space addition, additional parking, and a new drainage basin.
APPLICANT	PROJECT
220 S. R Street	220 S. R Street
ADDRESS	PROJECT SITE
Merced, CA 95341	059-240-004
CITY/STATE/ZIP	APN
(415) 297-4552	Light Industrial (I-L)
PHONE	ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Site Plan Review Committee reviewed and approved Site Plan Application #430 on January 17, 2019, submitted by Ron Drew, property owner, to modify an existing window manufacturing plant located at 220 S. R Street, within a Light Industrial (I-L) Zone. Said property being more particularly described as Lot 28 as shown on that certain map entitled "Hartley Colony" recorded in Volume 4, Page 41 of Merced County Records; also known as Assessor's Parcel Number (APN) 059-240-004.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA), and is in accordance with Section 15301 (Exhibit F); and,

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

A) The proposal complies with the General Plan designation of Industrial (IND) and the Zoning classification of Light Industrial (I-L).

B) Approval of this use shall be subject to approval from the Airport Land Use Commission or its staff designee (see Condition #23). The City Council may override the Commission's determination.

C) The subject site is currently occupied by O'Keefer's, Inc., a window manufacturer. The existing facility includes a 43,500 square feet facility and associated parking. The applicant is proposing to add 7,764 square feet to the existing cold room, 38,415 square feet to the existing manufacturing building, parking, and a new drainage basin.

D) The parking requirement for a warehouse is 1 parking space per 2,000 square feet of floor area or 1 per 2 employees working during the largest shift, whichever is greater. The number of employees working during the largest

shift would be 60, which would require 30 parking stalls. However, if parking is based on the floor area of the building, the 81,515-square-foot building would require a minimum of 41 parking spaces. Therefore, this site would require a minimum of 41 parking stalls. The site exceeds the parking requirements by having a total of 88 parking stalls.

E) Parking lot trees are not required, but are encouraged to be installed per the City's Parking Lot Landscape Standards. Trees should be a minimum of 15 gallons and be of a type that provides a 30-foot minimum canopy at maturity (trees should be selected from the City's approved tree list). Trees should be installed at a ratio of at least one tree for every six parking spaces. Street trees shall be planted as required by City Standards. Irrigation for all on-site landscaping shall be provided by a drip system or micro-spray system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other State or City mandated water regulations.

F) Because the City street south of the southern most driveway does not meet City Standards, there is no traffic generated by this site in this area, and this section is adjacent to a sub-standard County roadway, the owner is not required to install a curb or a gutter along the frontage of the property in this area. This area may be required to be brought up to City Standards in the future if additional construction or improvements occur on the site.

G) Due to the cost of some of the public improvements required to bring this site into compliance, the Site Plan Review Committee may allow these improvements to be installed/constructed in phases. A construction schedule shall be submitted by the applicant for approval by the Development Services Director. All improvements shall be installed in accordance with City Standards, the above schedule, and any applicable conditions below.

H) The Site Plan Review Committee previously approved the addition of a cold room within the subject site. That resolution, SP #313, included conditions regarding public improvements similar to those shown above at Findings F and G (see Exhibit E and Condition #3).

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Application #430, subject to the following conditions:

1. All conditions contained in Site Plan Approval Resolution #79-1 ("Standard Conditions of Site Plan Approval") shall apply.

2. The proposed project shall be constructed as shown on Exhibit B (site plan), Exhibit C (floor plan), and Exhibit D (elevations).

3. The Project shall comply with all relevant conditions set forth for Site Plan Resolution #313, except as modified by the conditions of approval within this resolution.

4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including, but not limited to, the California Building Code and Fire Codes.

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. Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with Zoning, Building, and all other codes, ordinances, standards, and policies of the City of Merced. This may include adding a hydrant, as required by the Fire Department.

8. All plans and supporting documents submitted for building permits shall meet or exceed the Building Codes in effect at the time of building permit application submittal. Plans shall be drawn by a licensed design professional. The construction work shall be performed by an appropriately licensed Contractor (B-Contractor).

9. An encroachment permit shall be obtained for all work in the public right-of-way and a building permit shall be obtained for all on-site work.

10. All property not occupied by paving or landscaping (i.e., the rear portion of the site) shall be maintained to acceptable standards for health, fire safety, and aesthetic reasons. Grasses and weeds shall be kept to a maximum of six inches in height or as otherwise required by the Fire Department and County Health Department.

11. Slats or other approved screening shall be provided in the chain-link fence along the front of the property. Outdoor storage shall be located in an area that is screened by the slats in the fence or in an area that is not visible from the public right-of-way. The employee parking area shall not be used for storage purposes. All materials or landscaping used for screening shall be properly maintained and kept free of graffiti.

12. All signing for the site shall be approved and a building permit issued prior to installation. No free-standing "A-frame" or "sandwich board" signs shall be allowed.

13. The site shall be maintained free of graffiti. Any graffiti shall be removed immediately and painted over with a color that matches the existing surface color.

14. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access. This includes providing a minimum 22-foot-wide emergency vehicle access roadway around the structures or as otherwise required by the Fire Department.

15. All required Fire Permits shall be obtained from the City of Merced Fire Department. Some of these permits will depend on the operations or functions conducted inside the building, and may be required after obtaining the certificate of occupancy for this development.

16. If the site is to be gated, there must be a minimum 22-foot-wide clearance for emergency vehicles to pass through when the gate is opened. If the gate requires manual operation, the applicant shall provide a Knox padlock. If the gate requires electronic operation, the applicant shall provide a Knox override switch with "Click-to-Enter."

17. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.

18. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repaired if the permit value of the project exceeds $100,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s) so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.

19. All mechanical equipment shall be screened from public view.

20. The applicant shall contact the City's Water Quality Control Division and comply with all requirements for this type of business and obtain all pertinent permits prior to issuance of certificate of occupancy. Said requirements may include, but may not be limited to, utilizing secondary containers and providing spill kits for leaks or spills.

21. All landscaping shall be kept healthy and maintained; any damaged or missing landscaping shall be replaced immediately.

22. The applicant shall submit an Industrial User Survey to the City's Water Quality Control Division during the building permit stage.

23. Approval of this application is subject to approval and/or recommendation by the Airport Land Use Commission, or its staff designee, to determine that the project is consistent with the Airport Land Use Compatibility Plan.

24. Parking lot and building lighting shall be shielded or oriented in a way that does not allow "spillover" onto adjacent lots in compliance with the California Energy Code requirements.

25. A change in use or increase in number of employees working during the largest shift may require additional parking in the future. Details to be worked out with City staff in that instance.

26. The Project may have a separate Irrigation and Domestic water service line going from the water main to the property line.

27. The applicant shall install a curb or fences along the perimeter of the retention basin to ensure vehicles do not drive into the basin.

28. The retention basin shall be designed to meet City standards. The basin shall be large enough to accommodate the storm runoff required for this site. During the building permit stage, the application shall be reviewed for compliance with post-construction standard requirements.

29. During the building permit stage, the applicant shall provide a site plan with a note indicating who will be installing landscaping for this site.

30. The refuse enclosure shall be designed to meet the City's Engineering Standards for refuse enclosures (R-4) or as required by the City Engineer. The applicant shall not install any posts in front of the refuse enclosure. A side gate shall be provided with pedestrian access, as required by the City Engineering Division.

31. The applicant shall work with the City's Refuse Department to determine the best location for the refuse enclosure and to determine if a recycling container would be required. This may include placing the refuse enclosure further from the street to allow the refuse truck to turn around within the subject site instead of out to the street.

32. The Project shall comply with the City's Performance Standards for developments within Industrial Zones as outlined under Merced Municipal Code Section 20.12.030 (C) – Development Standards for Industrial Zoning Districts – Performance Standards (e.g. noise, air quality, odor, etc.).

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

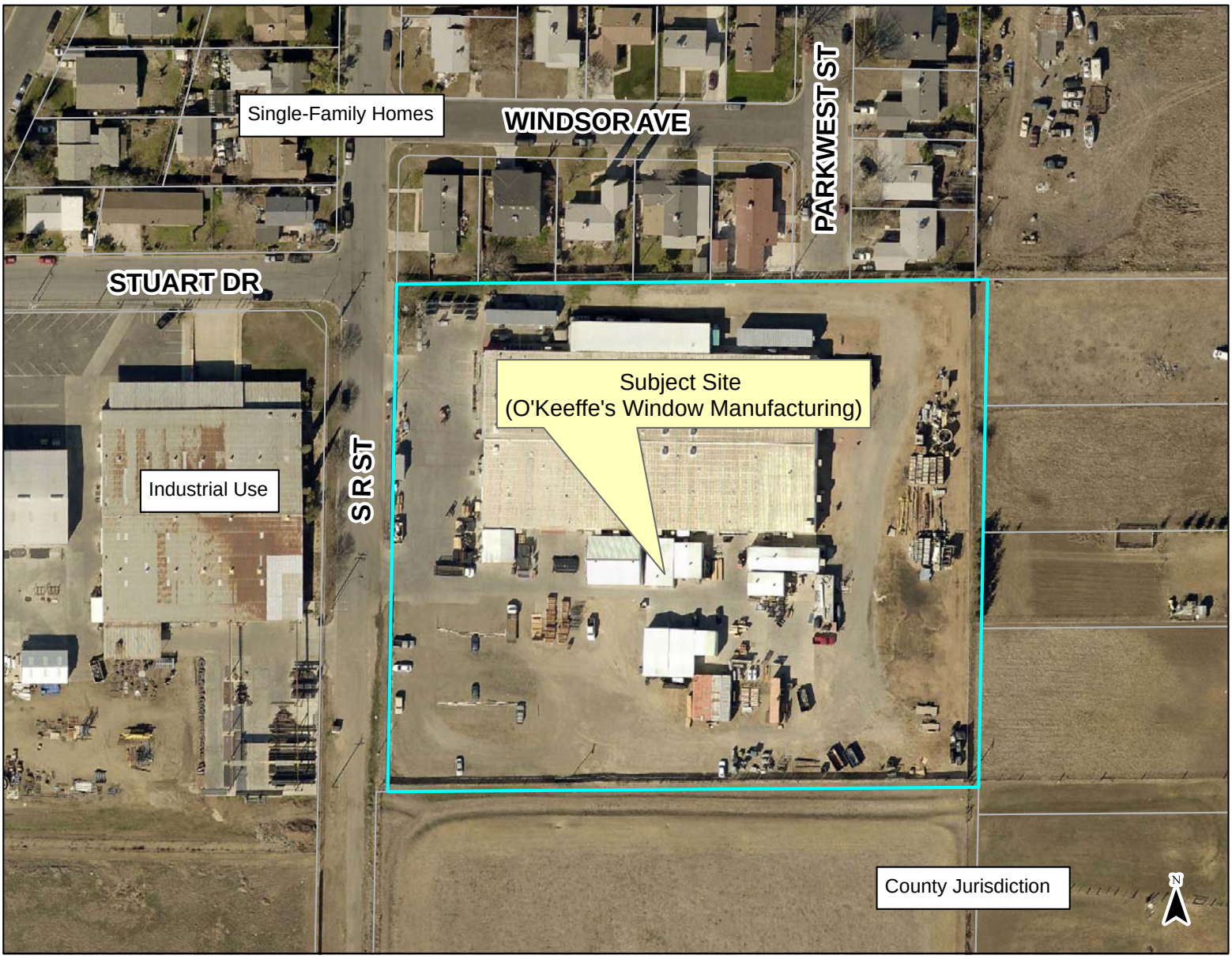
1-17-2019
DATE

SIGNATURE

Planner
TITLE

Exhibits

A) Location Map
B) Site Plan
C) Floor Plan
D) Elevations
E) Resolution for SP #313
F) Categorical Exemption


Single-Family Homes
WINDSOR AVE
PARKWEST ST
STUART DR
Subject Site
(O'Keeffe's Window Manufacturing)
Industrial Use
S R ST
County Jurisdiction
N



VICINITY MAP

SCALE: NONE

PARKING ANALYSIS:

REQUIRED PARKING STALLS:	87,178 TOTAL BUILDING S.F. / 1,000 S.F. = 87 PARKING STALLS
TOTAL PARKING PROPOSED:	88
ACCESSIBLE PARKING STALL:	4 REQUIRED; 4 PROVIDED (1 VAN ACCESSIBLE AND 3 ACCESSIBLE PER 2016 CBC TABLE 11B-208.2)
CLEAN AIR VEHICLE PARKING SPACE: ELECTRICAL VEHICLE CHARGING STATION:	8 REQUIRED; 8 PROVIDED (GREEN CODE: TABLE 5.106.5.2) 5 REQUIRED; 5 PROVIDED INCLUDING 1 VAN ACCESSIBLE, 1 ACCESSIBLE (GREEN CODE: TABLE 5.106.5.3.3 & TABLE 2016 CBC 11B-228.3.2.1)
BICYCLE PARKING SPACE:	4 REQUIRED; 4 PROVIDED (GREEN CODE: 5.106.4.1)

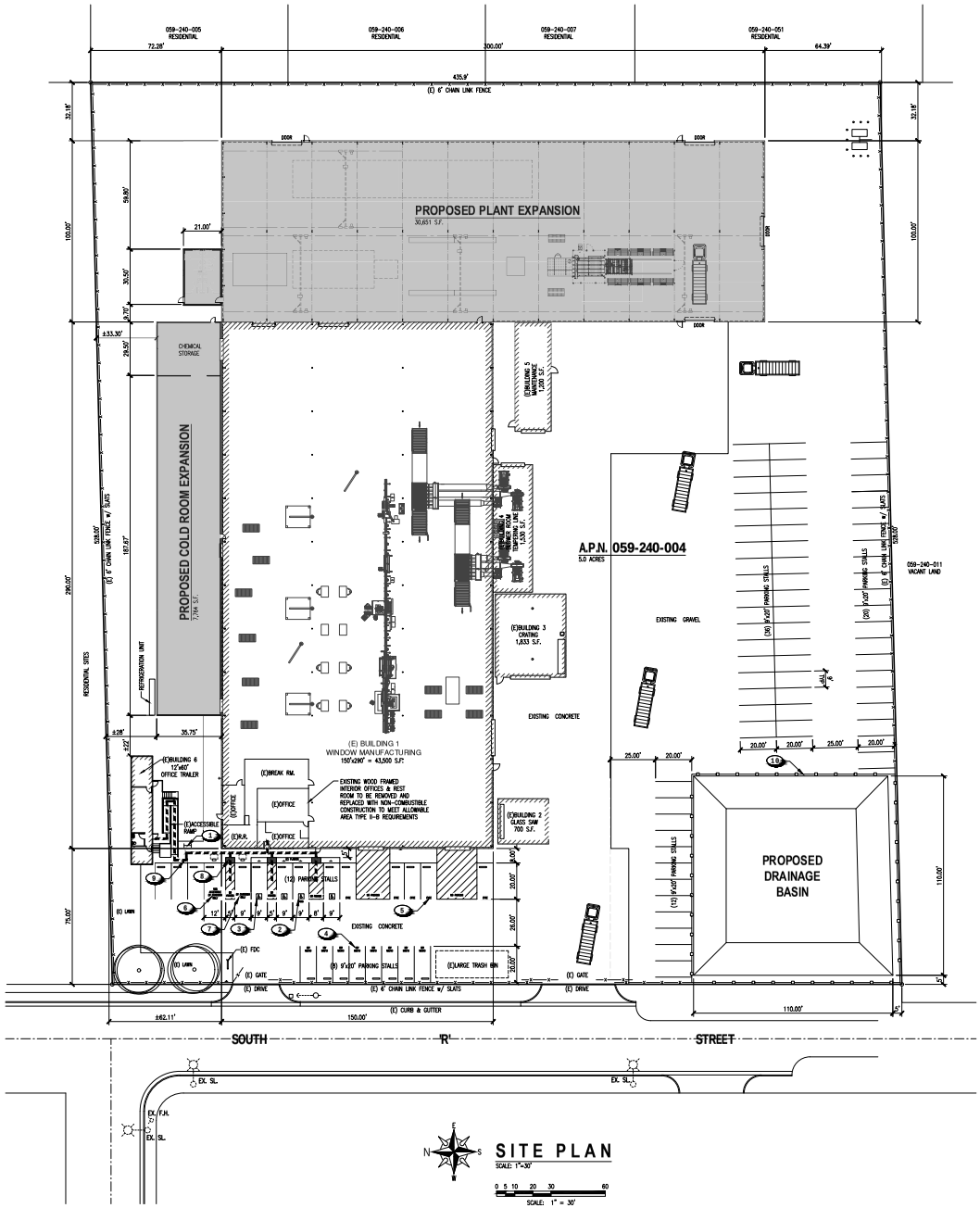
KEY NOTES:

1. (1) 4 BICYCLE CAPACITY RACK
2. VAN ACCESSIBLE PARKING (TYP. OF 1)
3. STANDARD ACCESSIBLE PARKING (TYP. OF 3)
4. CLEAN AIR PARKING STALL (TYP. OF 8)
5. EVCS PARKING STALL
6. EVCS CHARGING ONLY STALL (VAN ACCESSIBLE)
7. EVCS CHARGING ONLY STALL
8. TRUNCATED DOME (TYP. OF 5)
9. ACCESSIBLE PATH OF TRAVEL
10. 6' WROUGHT IRON FENCING AROUND BASIN

PROJECT DATA:

OWNER:	O'KEEFFE'S, INC. 220 S. 'R' STREET MERCED, CA. 95340 RON DREW PH:(415)297-4552
PROJECT:	BUILDING EXPANSION TO EXISTING FACILITY
PROJECT LOCATION:	220 S. 'R' STREET MERCED, CA. 95340
A.P.N. NUMBER:	059-240-004 (5.0 ACRES)
SITE USE:	LIGHT INDUSTRIAL
UTILITIES:	ELECTRIC – M.I.D. ELECTRIC TELEPHONE – A.T. & T. GAS – PACIFIC GAS & ELECTRIC CABLE – COMCAST WATER – CITY OF MERCED SEWER – CITY OF MERCED STORM DRAIN – CITY OF MERCED

APPLICABLE BUILDING CODES:	2016 CBC, CFC, CMC, CPC AND CEC, CAL. ELECTRICAL CODE, 2016 CA. GREEN CODE, CA. ENERGY CODE & THE CITY OF MERCED MUNICIPAL CODE
AUTOMATIC SPRINKLER SYSTEM:	YES
BUILDING AREA: TOTAL:	48,763 S.F. EXISTING + 38,415 S.F. EXPANSION 87,178 S.F.
TYPE OF CONSTRUCTION:	TYPE II-B
FIRE SPRINKLER:	YES
OCCUPANCY GROUP:	F-2 (WINDOW/GLASS MANUFACTURING)
ALLOWABLE BUILDING AREA:	F-2 OCCUPANCY ALLOWED 92,000 S.F. (PER TABLE 506.2)
FLOOD ZONE:	AO+1 A "FLOOD ELEVATION CERTIFICATE FOR POST CONSTRUCTION" CONFIRMING REQUIRED TOP OF BOTTOM FLOOR HEIGHT IS REQUIRED TO BE SUBMITTED PRIOR TO THE FRAME INSPECTION.



SITE PLAN

SCALE: 1"=30'

0 5 10 20 30 60

SCALE: 1" = 30'

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PREPARED BY:

GOLDEN VALLEY
ENGINEERING & SURVEYING
405 West 19th Street 95340
P.O. Box 349
Merced, CA 95341
Ph.: (209) 722-3200
Fax: (209) 722-3254

No.	Date	Description

It is the client's responsibility prior to or during construction to notify the engineer in writing of any design changes made by the client or any other person working on the project or any site conditions that may affect the engineer's design recommendations. Such notification shall be the responsibility of the client whether such changes were made or conditions exist during the engineer's employment or after termination of his services with respect to the project. When notification is received, the engineer will review the changes and site conditions and shall notify the client of any required modifications to his recommendations. The engineer will not be responsible for any claims if construction is done contrary to his advice.

PLANT EXPANSION FOR
O'KEEFFE'S, INC.
220 S. 'R' STREET
A.P.N. 059-240-004

CALIFORNIA

CITY OF MERCED

ENGINEER

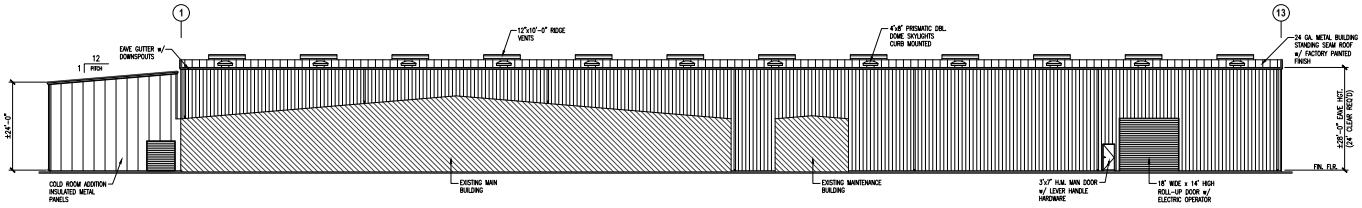
SHEET CONTENTS
SITE PLAN

PREPARED FOR:
O'KEEFFE'S, INC.
220 S. 'R' STREET
MERCED, CA 95340
RON DREW
PH: (415) 297-4552

PROJECT DATA:
Date: 12/03/2018
Checked By: X
Drawn By: JMD
Job No.: 18-265

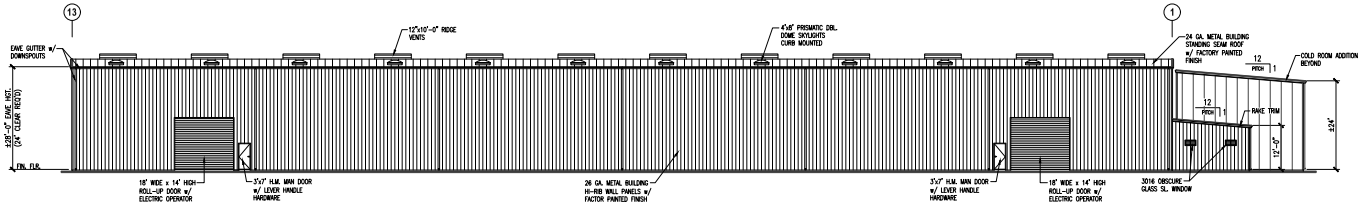
SHEET NUMBER
C1.0

PLANT EXPANSION FOR
O'KEEFFE'S, INC.
220 S. 'R' STREET
A.P.N. 059-240-004
CITY OF MERCED
CALIFORNIA
GOLDEN VALLEY
ENGINEERING & SURVEYING
405 West 11th Street 95340
P.O. Box 349
Merced, CA 95341
Ph: (209) 722-3200
Fax: (209) 722-3254
PREPARED BY:
No. Date Description
OWNER:
SHEET CONTENTS
Floor Plan
PREPARED FOR:
O'KEEFFE'S, INC.
220 S. 'R' STREET
MERCED, CA 95340
RON DREW
PH: (415) 297-4552
PROJECT DATA:
Date: 12/03/2018
Checked By: X
Drawn By: JMD
Job No: 19-205
SHEET NUMBER:
A1.0
FLOOR PLAN
SCALE: 1/16" = 1'-0"
EXISTING WINDOW MANUFACTURING BUILDING
F-2 OCCUPANCY
NEW CHEMICAL STORAGE ROOM
1,000 S.F.
NEW COLD ROOM BUILDING EXPANSION
6,709 S.F.
F-2 OCCUPANCY
NEW WINDOW MANUFACTURING BUILDING EXPANSION
40,000 S.F.
F-2 OCCUPANCY
EXISTING MAINTENANCE BUILDING
CRANE RUNWAY BEAM ABOVE
8 TON 42' SPAN UNDERHUNG BRIDGE CRANE SUPPORTED BY METAL BUILDING
VERTICAL WASHER
POLISHER
GLASS LAMINATING LINE
GLASS RACKS
DOUBLE WASH WASHER
HEGA
BUILDING TO BE DESIGNED TO SUPPORT FUTURE UNDERHUNG BRIDGE CRANE FOR 5 TON
4'x6' PNEUMATIC ROLL-UP DOOR W/ MAN DOOR(S) (TYP. OF 24)
12'x14' +/- MAN DOOR W/ LEVER HANDLE AND 3'x3' LANDING AREA (TYP.)
18' WIDE x 14' HIGH ROLL-UP DOOR W/ MAN DOOR (TYP. OF 3)
(2) ROLL-UP DOOR
(1) ROLL-UP DOOR
12'x14' +/- HIGH OVERHEAD DOOR & DAMPER (TYP. OF 10)
16' WIDE x 14' HIGH ROLL-UP DOOR W/ MAN DOOR (TYP. OF 2)
ELECTRIC OPERATOR
100'-0"
20'-0"
16'-0"
50'-0"
25'-0"
195'-0"
300'-0"
37'-0"
29'-6"
187'-6"
217'-2"
35'-0"
N
S
E
W



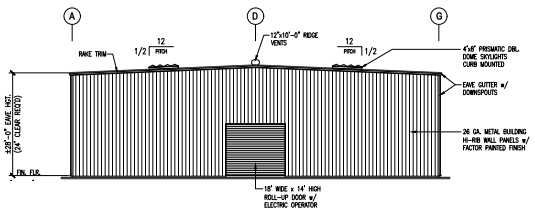
WEST ELEVATION

SCALE: 1/16" = 1'-0"



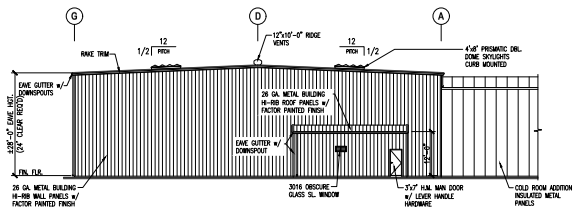
EAST ELEVATION

SCALE: 1/16" = 1'-0"



SOUTH ELEVATION

SCALE: 1/16" = 1'-0"



NORTH ELEVATION

SCALE: 1/16" = 1'-0"

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PREPARED BY:

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ENGINEERING & SURVEYING
405 West 19th Street 95340
P.O. Box 349
Merced, CA 95341
Ph.: (209) 722-3200
Fax: (209) 722-3254

No.	Date	Description

It is the client responsibility prior to or during construction to notify the Engineer in writing of any variation between the conditions shown on these plans and actual conditions encountered on the site in order to allow an opportunity for evaluation and possible revision of these plans prior to proceeding with any affected construction. Failure to notify the Engineer constitutes acceptance of the conditions shown on these plans and relieves the Engineer of responsibility for any claims that may arise.

CALIFORNIA

PLANT EXPANSION FOR O'KEEFFE'S, INC.

220 S. 'R' STREET
A.P.N. 059-240-004

CITY OF MERCED

ENGINEER

SHEET CONTENTS
Elevations

PREPARED FOR:
O'KEEFFE'S, INC.
220 S. 'R' STREET
MERCED, CA 95340
RON DREW
PH: (415) 297-4552

PROJECT DATA:

Date: 12/03/2018
Checked By: X
Drawn By: JMD
Job No.: 18-265

SHEET NUMBER

A2.0

CITY OF MERCED
SITE PLAN APPLICATION
RESOLUTION #313 – FINAL

John Chandler	**Addition of 3,087 s.f. "cold room" for O'Keeffe's, Inc.**
APPLICANT	PROJECT
220 South R St.	**220 South R St.**
ADDRESS	PROJECT SITE
Merced, CA 95341	**059-240-004**
CITY/STATE/ZIP	APN
209-388-9072	**I-L (Light Industrial)**
PHONE	ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Merced City Site Plan Review Committee considered and approved Site Plan Application #313 and Environmental Review #09-41 (Categorical Exemption) on December 3, 2009, submitted by John Chandler, applicant for William O'Keeffe, Trustee, property owner. The approval allows for the construction of a 3,087-square-foot "cold room" addition to the existing building at 220 R St. Said property being more particularly described as Lot 28 as shown on that certain map entitled "Hartley Colony" recorded in Volume 4, Page 41 of Merced County Records; also known as Assessor's Parcel Number (APN) 059-240-004.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA), and is in accordance with Section 15303 (e); and,

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

A. The Site Plan Approval Committee is of the opinion that the requested use of the property does not constitute such magnitude to be a significant policy interpretation, and/or represent substantial special interest to surrounding property owners, or the Planning Commission, to warrant Conditional Use Permit review and amendment.

B. The proposal complies with the City of Merced General Plan designation of Manufacturing/Industrial and the zoning designation of Light Industrial (I-L).

C. The addition already exists and was constructed circa 2005 without proper permit approval (including Site Plan Review). Therefore, this approval, subject to the conditions below, will bring the addition into compliance with the current building and fire codes and zoning regulations.

D. The owner has verbally committed to making other improvements to the building or constructing a new building within the near future. At that time, all required street trees and landscaping shall be installed along with any other improvements needed at that time.

E. Because the city street south of the southern most driveway does not meet City Standards, there is no traffic generated by this site in this area, and this section is adjacent to a sub-standard county roadway, the owner is not required to install curb and gutter along the frontage of the property in this area. This area may be required to be brought up to City Standards in the future if additional construction or improvements occur on the site.

F. Due to the cost of some of the improvements required to bring this site into compliance, the Site Plan Review Committee may allow these improvements to be installed/constructed in phases. A construction schedule shall be submitted by the applicant for approval by the Development Services Director. All improvements shall be installed in accordance with City Standards, the above schedule, and any applicable conditions below.

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Application #313, subject to the following conditions:

1. All conditions contained in Site Plan Approval Resolution #79-1 ("Standard Conditions of Site Plan Approval") shall apply.
2. The proposed project shall be constructed as shown on Exhibit 2 (site plan) and; Exhibit 3 (elevations) (Attachments 2 and 3).
3. Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with zoning, building, and all other codes, ordinances, standards, and policies of the City of Merced.
4. The employee parking area on the south side of the parcel (Exhibit 2) shall be sealed with an approved material to eliminate dust and mud. Approval of material shall be obtained from the City Engineer or Chief Building Official prior to installation. Installation of the approved material shall be in compliance with all applicable City Standards.
5. The parking area in front of the building shall be striped per City Standards to provide at least 6 parking stalls.
6. Any damaged or missing curb and gutter shall be repaired.
7. Commercial driveways shall be installed at both entrances to the site. Driveways shall comply with City Standards.
8. An encroachment permit shall be obtained for all work in the public right-of-way and a building permit shall be obtained for all on-site work.
9. All property not occupied by paving or landscaping (i.e., the rear portion of the site) shall be maintained to acceptable standards for health, fire safety, and

aesthetic reasons. Grasses and weeds shall be kept to a maximum of six inches in height or as otherwise required by the Fire Department and County Health Department.

10. Slats or other approved screening shall be provided in the chain-link fence along the front of the property. Outdoor storage shall be located in an area that is screened by the slats in the fence or in an area that is not visible from the public right-of-way. The employee parking area shall not be used for storage purposes. All materials or landscaping used for screening shall be properly maintained and kept free of graffiti.
11. All signing for the site shall be approved and a building permit issued prior to installation. No free-standing "A-frame" or "sandwich board" signs shall be allowed.
12. The site shall be maintained free of graffiti. Any graffiti shall be removed immediately and painted over with a color that matches the existing surface color.

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

December 3, 2009
DATE

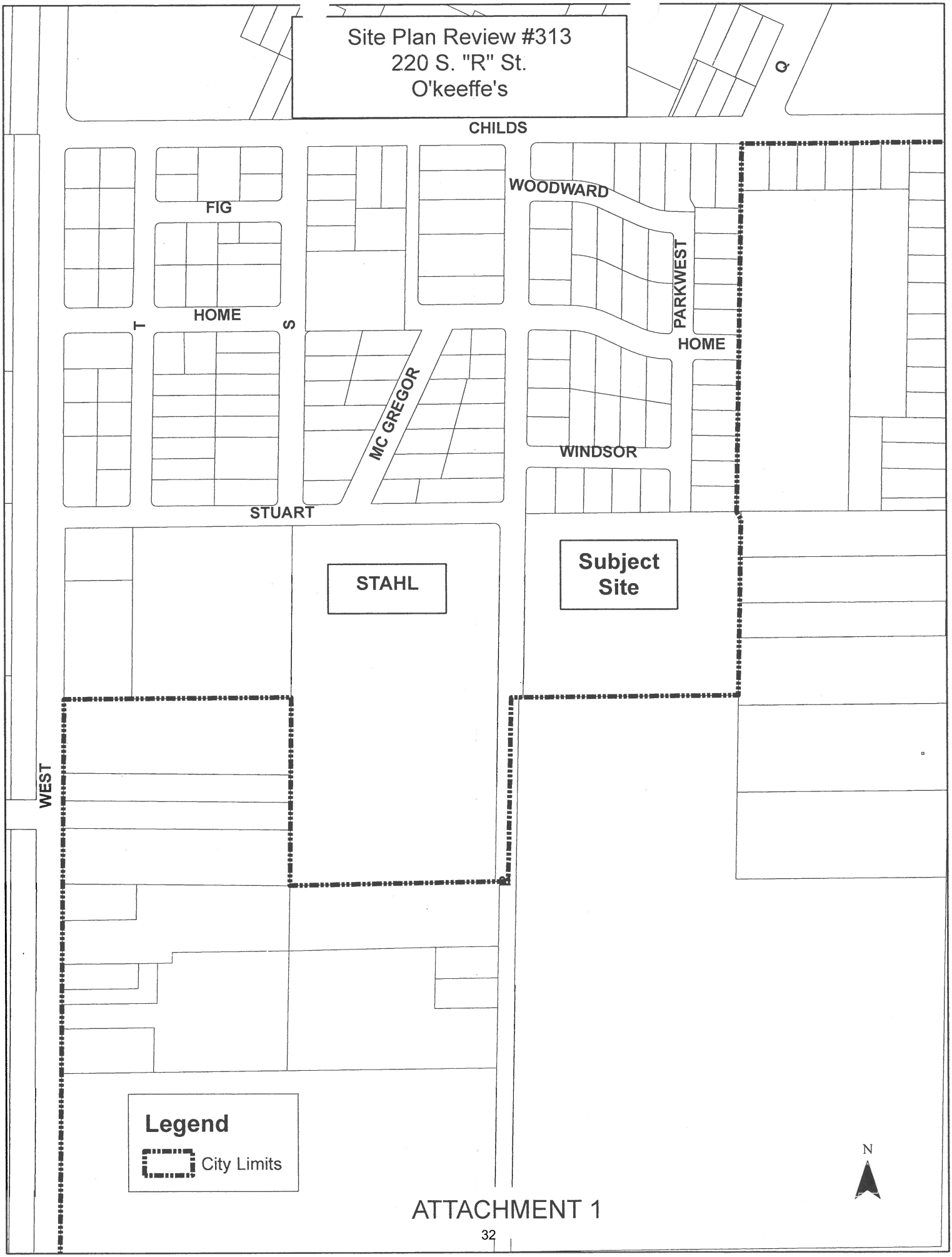
J Nelson
SIGNATURE

Planner
TITLE

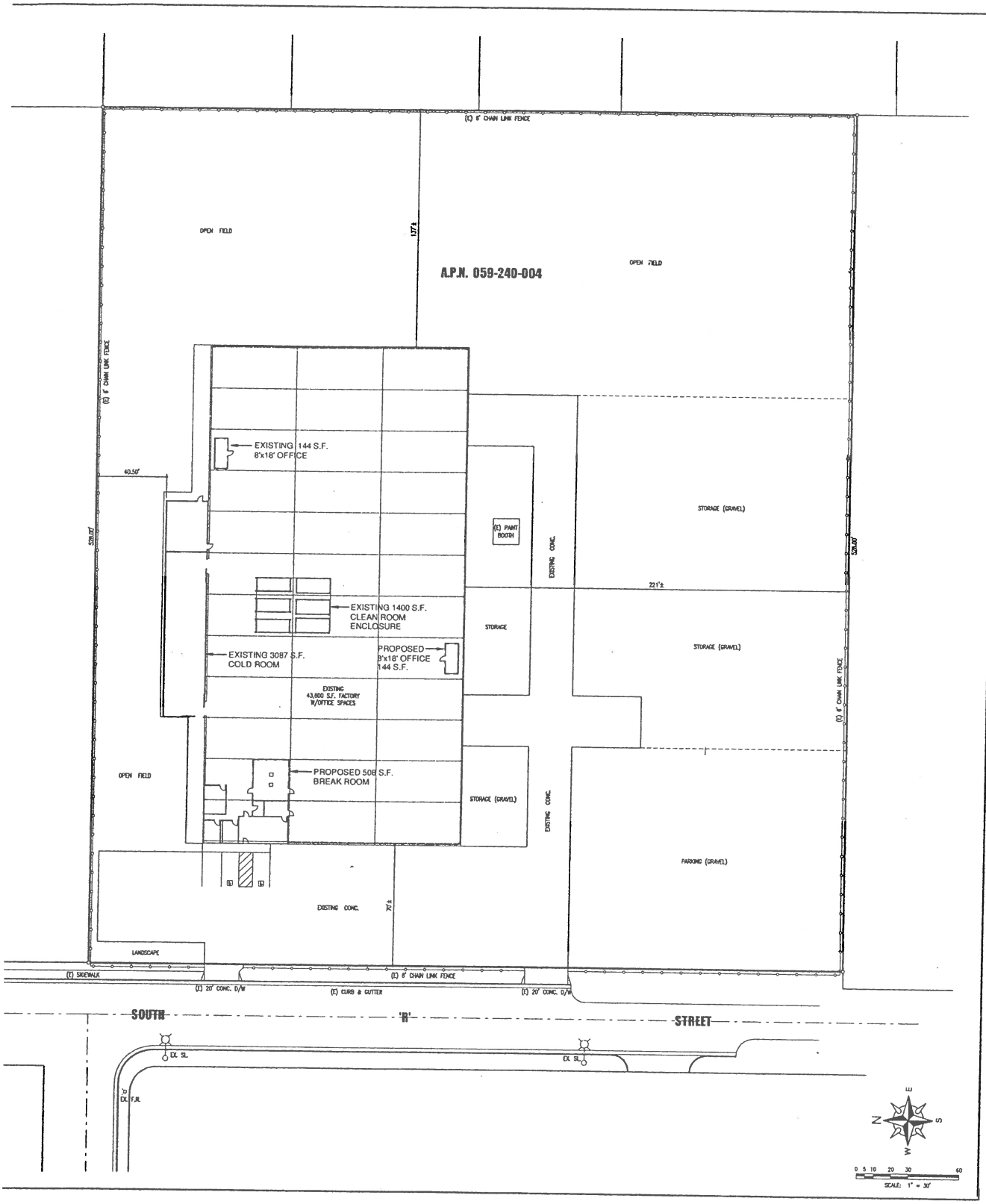
jn:Site Plan/SPA#313

Attachments/Exhibits:

1. Location Map
2. Site Plan
3. Elevations
4. Categorical Exemption



ATTACHMENT 1



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REVISIONS:

GOLDEN VALLEY
ENGINEERING & SURVEYING
405 W. 19th Street • P.O. Box 349 • Merced, CA 95340
Phone (209) 722-3200 • Fax (209) 722-3254

CONSTRUCTION PLANS FOR
O'KEEFFE, Inc.
220 SOUTH 'R' STREET
A.P.N. 059-240-004
MERCED CALIFORNIA

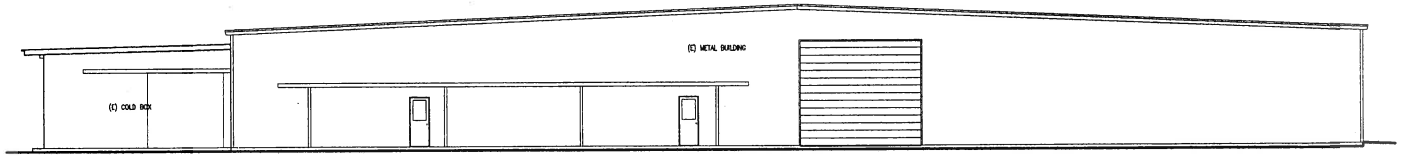
PREPARED FOR:
O'KEEFFE, Inc.
c/o John Chandler
220 South 'R' Street
Merced, CA 95340
Ph.: (209) 388-9072
Fax.: (209) 388-9138

SHEET CONTENTS:
- Site Plan

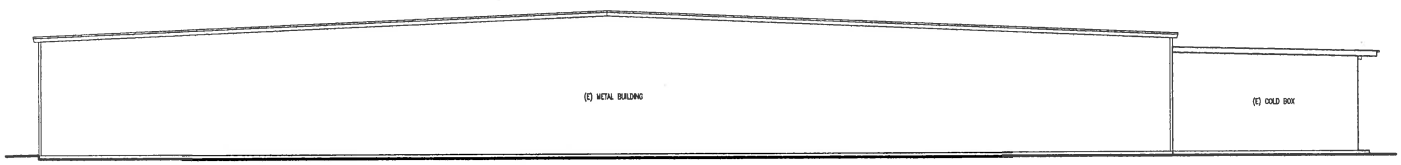
DESIGNED: OKEEFFE, INC.
DRAWN BY: R. ROWLAND
CHECKED: JXU
DATE: SEPTEMBER 2009
JOB NO.: 08-190

SHEET
C1

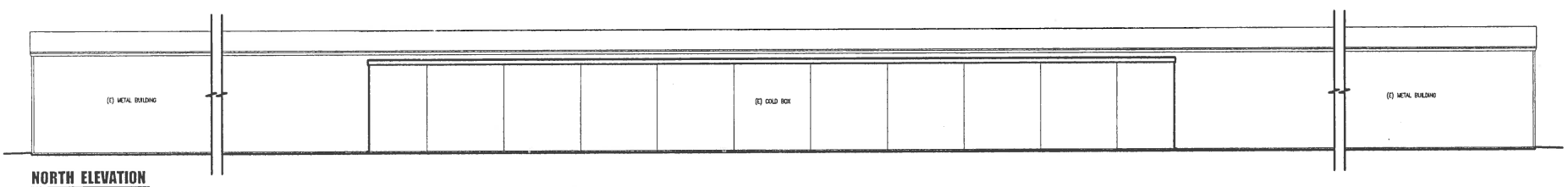
ATTACHMENT 2



WEST ELEVATION
SCALE: 1/8" = 1'-0"



EAST ELEVATION
SCALE: 1/8" = 1'-0"



NORTH ELEVATION
SCALE: 1/8" = 1'-0"

ATTACHMENT 3

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REVISIONS:

GOLDEN VALLEY
ENGINEERING & SURVEYING
1, 19th Street • P.O. Box 349 • Merced, CA 95340
Phone (209) 722-3200 • Fax (209) 722-3254

CONSTRUCTION PLANS FOR
O'KEEFFE'S, Inc.
220 SOUTH 'R' STREET
A.P.N. 059-240-004
MERCED CALIFORNIA

PREPARED FOR:
O'KEEFFE'S, Inc.
c/o John Chandler
220 South 'R' Street
Merced, CA 95340
Ph.: (209) 388-9072
Fax.: (209) 388-9138

SHEET CONTENTS:
- Elevations

DESIGNED: OKEEFFE'S, INC.
DRAWN BY: R. ROWLAND
CHECKED: JXU
DATE: SEPTEMBER 2009
JOB NO.: 08-190

SHEET
A1

NOTICE OF EXEMPTION

Appendix I

To: ____ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: City of Merced
678 West 18th Street
Merced, CA 95340

__X__ County Clerk
County of Merced

Project Title: Site Plan Approval #313

Project Location: 220 South 'R' St. **APN:** 059-240-004

Project Location - City: Merced **Project Location - County:** Merced

Description of Project: The approval allows a 3,087 addition to an existing building, repairs made to existing public improvements, installation of street trees, paving of an existing driveway, and installation of parking lot trees.

Name of Public Agency Approving Project: City of Merced Planning

Name of Person Carrying Out Project: City of Merced Planning

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));
__X__ Categorical Exemption: Class 15301 (c) and (e)
___ Statutory Exemptions

Reasons why Project is Exempt: The project consists of repairs to existing public improvements as exempt under Class 15301 (c), and an addition less than 10,000 s.f. that meets the following criteria for an exemption under CEQA guidelines (Class 15301 (e):

A) Is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan;

B) The area in which the project is located is not environmentally sensitive.

Lead Agency: City of Merced

Contact Person: Julie Nelson, Planner Area Code/Telephone: 209/385-6858

Signature: _____ Date: November 23, 2009
Planner

__X__ Signed by Lead Agency

ATTACHMENT 4

NOTICE OF EXEMPTION

To: ____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

__X__ County Clerk
County of Merced
2222 M Street
Merced, CA 95340

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

Project Title: Site Plan Review #430 (Environmental Review #16-67)

Project Applicant: O'Keeffe's, Inc.

Project Location (Specific): 220 S. R St. **APN:** 059-240-004

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project: Building and parking stall additions.

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: O'Keeffe's, Inc.

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));
__X__ Categorical Exemption. State Type and Section Number: 15301 (a)
___ Statutory Exemptions. State Code Number: _____.
___ General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: As defined under the above referenced Section, the proposed project consists of minor interior and exterior alterations only, such as expanding an existing manufacturing plant and adding parking stalls, which are considered to be exempt under the CEQA Guidelines per Section 15301 (a).

Lead Agency: City of Merced
Contact Person: Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

Signature: _____ **Date:** 01-04-2019 **Title:** Planner

__X__ Signed by Lead Agency

Date Received for Filing at OPR: _____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

CITY OF MERCED
SITE PLAN APPLICATION
RESOLUTION #431

Lawler Excavation & Pipeline	Construct a 7,500-s.f. shell warehouse on a vacant lot.
APPLICANT	PROJECT
405 W. 19th St.	2250 Cessna Way.
ADDRESS	PROJECT SITE
Merced, CA 95341	059-640-006
CITY/STATE/ZIP	APN
(209) 722-3200	Light Industrial (I-L)
PHONE	ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Site Plan Review Committee reviewed and approved Site Plan Application #431 on January 17, 2019, submitted by Cesar Perez, applicant for Tom E. Lawler, property owner, to construct a 7,500-square foot shell warehouse at 2250 Cessna Way, within a Light Industrial (I-L) Zone. Said property being more particularly described as Parcel B as shown on that certain map entitled "Parcel Map for Skyview Industrial Park Phase 1" recorded in Volume 94, Page 16 of Merced County Records; also known as Assessor's Parcel Number (APN) 059-640-006.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA), and is in accordance with Section 15332 (Exhibit D); and,

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

A) The proposal complies with the General Plan designation of Industrial (IND) and the Zoning classification of Light Industrial (I-L).

B) Approval of this use shall be subject to approval from the Airport Land Use Commission or its staff designee (see Condition #27). The City Council may override the Commission's determination.

C) The subject site is a 0.48-acre vacant lot located within a partially developed industrial park with surrounding industrial uses. This Project includes vehicle access from Cessna Way into a parking lot with 9 parking stalls on the western portion of the parcel. The shell warehouse would be 7,500-square foot, 20 feet tall, would include 2 access doors and a roll-up garage door on the east

elevation, and 1 access door on the north elevation. The building design includes a metal panel exterior with stone veneers, fabric awnings (see Condition #34), and skylights. The applicant has yet to find a tenant for the warehouse.

D) The parking requirement for a warehouse is 1 parking space per 2,000 square feet of floor area or 1 space per 2 employees working during the largest shift, whichever is greater. The warehouse tenant has not been identified, so at this moment it is not possible to calculate parking requirements based on the number of employees working during the largest shift. However, the 7,500-square-foot building would require a minimum of 4 parking spaces (see Condition #29) based on the size of the building. This site exceeds parking requirements by having a total of 9 parking stalls.

E) Parking lot trees are not required, but are encouraged to be installed per the City's Parking Lot Landscape Standards. Trees should be a minimum of 15 gallons and be of a type that provides a 30-foot minimum canopy at maturity (trees should be selected from the City's approved tree list). Trees should be installed at a ratio of at least one tree for every six parking spaces. Street trees shall be planted as required by City Standards. Irrigation for all on-site landscaping shall be provided by a drip system or micro-spray system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other State or City mandated water regulations.

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Application #431, subject to the following conditions:

1. All conditions contained in Site Plan Approval Resolution #79-1 ("Standard Conditions of Site Plan Approval") shall apply.

2. The proposed project shall be constructed as shown on Exhibit B (site plan), and Exhibit C (elevations).

3. Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with Zoning, Building, and all other codes, ordinances, standards, and policies of the City of Merced.

4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including, but not limited to, the California Building Code and Fire Codes. This may include adding a hydrant, as required by the Fire Department.

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. All plans and supporting documents submitted for Building Permits shall meet or exceed the building codes in effect at the time of building permit application submittal. Plans shall be drawn by a licensed design professional. The construction work shall be performed by an appropriately licensed Contractor (B-Contractor).

8. Any damaged or missing curb and gutter shall be repaired.

9. An encroachment permit shall be obtained for all work in the public right-of-way and a building permit shall be obtained for all on-site work.

10. All property not occupied by paving or landscaping (i.e., the rear portion of the site) shall be maintained to acceptable standards for health, fire safety, and aesthetic reasons. Grasses and weeds shall be kept to a maximum of six inches in height or as otherwise required by the Fire Department and County Health Department.

11. Slats or other approved screening shall be provided in the chain-link fence along the western and southern property lines. The employee parking area shall not be used for storage purposes. All materials or landscaping used for screening shall be properly maintained and kept free of graffiti.

12. All signing for the site shall be approved and a building permit issued prior to installation. No free-standing "A-frame" or "sandwich board" signs shall be allowed.

13. The site shall be maintained free of graffiti. Any graffiti shall be removed immediately and painted over with a color that matches the existing surface color.

14. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.

15. All required Fire Permits shall be obtained from the City of Merced Fire Department. Some of these permits will depend on the operations or functions conducted inside the warehouse, and may be required after obtaining the certificate of occupancy for this development.

16. If the site is to be gated, there must be a minimum 22-foot-wide clearance for emergency vehicles to pass through when the gate is opened. If the gate requires manual operation, the applicant shall provide a Knox padlock. If the gate requires electronic operation, the applicant shall provide a Knox override switch with "Click-to-Enter."

17. Both short-term and long-term bicycle racks shall be provided at a minimum ratio equal to 8% of the vehicular parking spaces, as required by Merced Municipal Code Table 20.38-4 Required Bicycle Parking Spaces.

18. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.

19. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repaired if the permit value of the project exceeds $100,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s) so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.

20. All mechanical equipment shall be screened from public view.

21. The applicant shall contact the City's Water Quality Control Division and comply with all requirements for this type of business and obtain all pertinent permits prior to issuance of certificate of occupancy. Said requirements may include, but may not be limited to, utilizing secondary containers and providing spill kits for leaks or spills.

22. A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire) per Merced Municipal Code.

23. The developer shall work with the City's Engineering Division to determine the requirements for storm drainage on the site. The developer shall provide all necessary documentation for the City's Engineering Division to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards and State regulations.

24. All landscaping shall be kept healthy and maintained; any damaged or missing landscaping shall be replaced immediately.

25. The applicant shall submit an Industrial User Survey to the City's Water Quality Control Division during the building permit stage.

26. The business owner and their successors-in-interest shall be fully responsible for any Project-related contamination that may be found on the site or away from the site and for any necessary clean-up of such contamination. This includes all types of hazardous materials. The site plan permit may be subject to review and revocation by the City of Merced per the procedures in the Merced Municipal Code.

27. Approval of this application is subject to approval and/or recommendation by the Airport Land Use Commission, or its staff designee, to determine that the project is consistent with the Airport Land Use Compatibility Plan.

28. Parking lot and building lighting shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill over onto adjacent properties.

29. A change in use or increase in number of employees working during the largest shift may require additional parking in the future.

30. The Project shall have a separate Irrigation and Domestic water service line going from the water main to the property line.

31. During the building permit stage, the applicant shall provide a site plan with a note indicating who will be installing landscaping for this site.

32. The refuse enclosure shall be designed to meet the City's Engineering Standards for refuse enclosures (R-4). The applicant shall not install any posts in front of the refuse enclosure. A side gate shall be provided with pedestrian access, as required by the City Engineering Division.

33. The applicant shall work with the City's Refuse Department to determine the best location for the refuse enclosure and to determine if a recycling container would be required. This may include placing the refuse enclosure further from the street to allow the refuse truck to turn around within the subject site instead of out to the street.

34. Instead of providing round fabric awnings, the applicant shall provide flat canopies or overhangs made out of permanent/weather tolerant materials, as determined appropriate by Planning staff during the building permit stage.

35. The Project shall comply with the City's Performance Standards for developments within Industrial Zones as outlined under Merced Municipal Code Section 20.12.030 (C) – Development Standards for Industrial Zoning Districts – Performance Standards (e.g. noise, air quality, odor, etc.)

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

1-17-2019	
DATE	SIGNATURE
	Planner
	TITLE

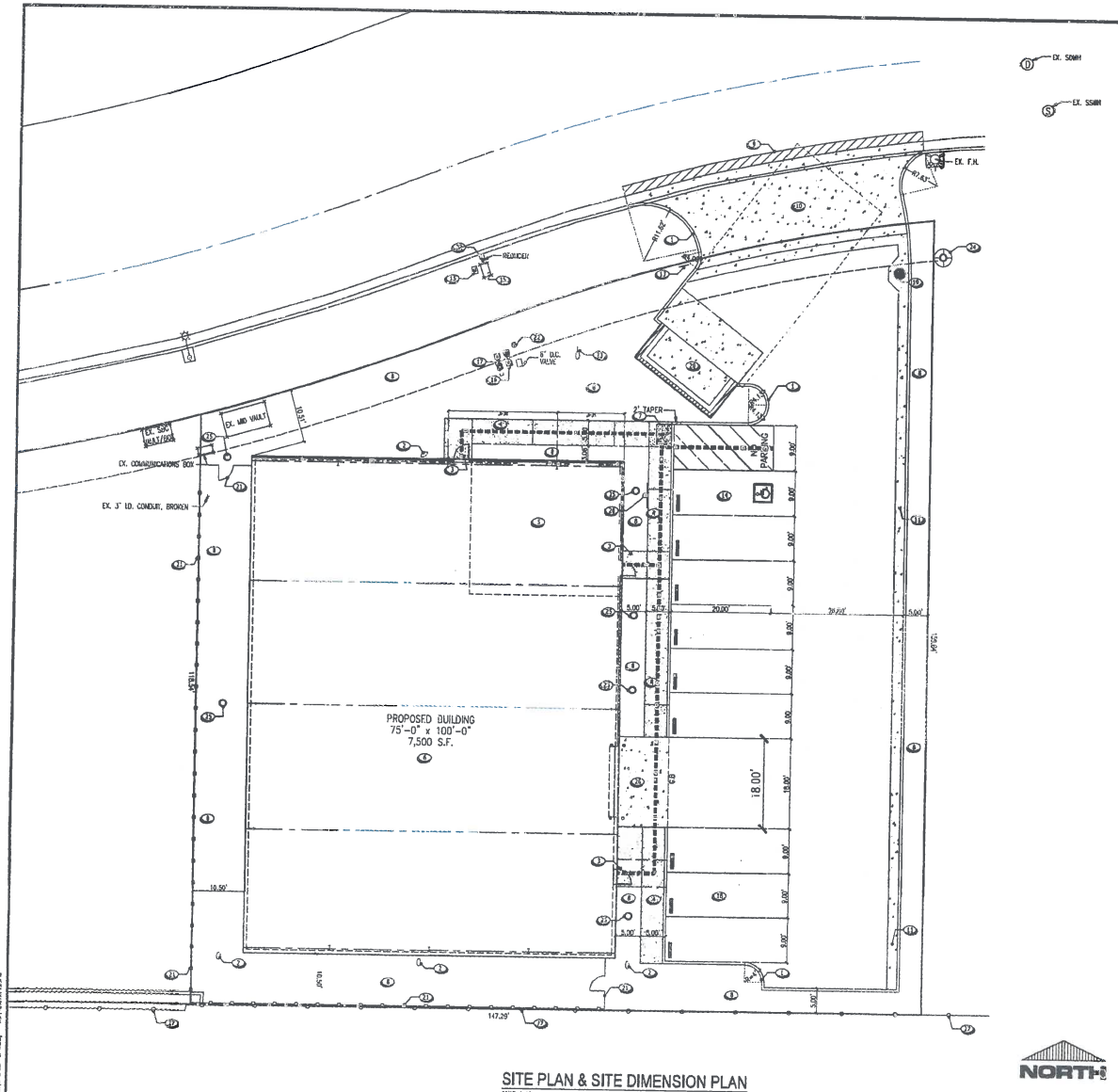
Exhibits

A) Location Map
B) Site Plan
C) Elevations
D) Categorical Exemption


PIPER AVE
CESSNA WAY
CESSNA CT
Subject Site
(Warehouse)
BEECHCRAFT AVE
Industrial Zone
Frito Lay
N

EXHIBIT A

EXHIBIT B



SITE PLAN & SITE DIMENSION PLAN
SCALE: 1=10

KEYNOTE:

1. 6" CONCRETE CURB PER CITY OF MERCED STD. DETAIL SCC-1 ON SHEET C5.0
2. EXTEND NEW 4" SEWER LINE TO BUILDING FROM EXISTING 4" LINE STUBBED TO SITE, INSTALL A 4" CLEAN-OUT TO GRADE AT THE TURN TO THE BUILDING PER DETAIL 5 ON SHEET C5.0. SEE PLUMBING PLANS FOR CONTINUATION.
3. MINIMUM 5'x5' LEVEL CONCRETE LANDING WITH MAXIMUM 2% SLOPE AND 24" MINIMUM CLEAR FROM LATCH SIDE OF DOOR.
4. 5' WIDE CONCRETE SIDE WALK SEE ACCESSIBLE PATH OF TRAVEL NOTES.
5. 748 S.F. OFFICE. SEE ARCHITECTURAL DRAWINGS.
6. PROPOSED 75' X 100' 7,500 SQ. FT. METAL BUILDING, SEE METAL BUILDING PLANS
7. TRUNCATED DOME DETECTABLE WARNINGS AT BOTH ENDS OF ACCESSIBLE PATH OF TRAVEL, LOCATED PER PLAN. MIN. OF 36" IN DIRECTION OF TRAVEL X 5' WIDE, PER DETAIL 10 & 16 ON SHEET ADA-1.
8. PROPOSED LANDSCAPED AREAS.
9. 24" WIDE CONFORM PAVING SECTION TO BE PLACED AFTER NEW DRIVEWAY APPROACH IS INSTALLED, PATCHED AREA INSTALLED TO BE 6" AC OVER 6" AGGREGATE BASE.
10. NEW 25' WIDE CONCRETE DRIVEWAY APPROACH PER CITY OF MERCED STANDARD DETAIL D-7 SHEET C5.0. SEE NOTE 14 OF GENERAL NOTES ON SHEET I1.0.
11. NEW CONCRETE CURB & GUTTER PER CITY OF MERCED STD. DETAIL SCC-1 ON SHT. C5.0.
12. NOT USE
13. PARKING ENTRANCE SIGN & TOW-AWAY SIGN PER DETAIL 13 ON SHEET ADA-1.
14. VAN ACCESSIBLE PARKING STALL PER DETAIL 10 ON SHEET ADA-1 WITH VAN ACCESSIBLE STALL SIGN PER DETAIL 13 ON SHEET ADA-1.
15. EXTEND A NEW 2" WATER LINE FROM EXISTING 2" WATER LINE STUBBED TO SITE TO NEW WATER METER LOCATION PER CITY OF MERCED STANDARDS. TIE 1" AND INSTALL 1" WATER METER FOR IRRIGATION SYSTEM PER CITY OF MERCED STD. W-3 AND A 1 1/2" WATER METER FOR DOMESTIC WATER PER CITY OF MERCED STD. W-4.
16. INSTALL A 1 1/2" REDUCED PRESSURE BACKFLOW PREVENTER FOR DOMESTIC WATER PER CITY OF MERCED STANDARD DETAIL W-9, (FEBCO MODEL 825Y OR APPROVED EQUAL). THE BACKFLOW DEVISE SHALL BE TESTED AND ACCEPTED BY THE CITY OF MERCED PRIOR TO CERTIFICATE OF OCCUPANCY.
17. INSTALL A 1" REDUCED PRESSURE BACKFLOW PREVENTER FOR IRRIGATION WATER PER CITY OF MERCED STANDARD DETAIL W-9, (FEBCO MODEL 825Y OR APPROVED EQUAL). THE BACKFLOW DEVISE SHALL BE TESTED AND ACCEPTED BY THE CITY OF MERCED PRIOR TO CERTIFICATE OF OCCUPANCY.
18. STANDARD 9' x 20' PARKING STALLS PER DETAIL 8 ON SHEET C5.0, TYP. OF 8.
19. INSTALL A TYPE 'B' CATCH BASIN PER DETAIL 2 ON SHT. C5.0 AT END OF ONSITE CURB & GUTTER WITH (2) 3" DIA. CURB DRAIN PIPES TO EXISTING STREET CURB & GUTTER PER CITY OF MERCED STD. DETAIL SD-5 ON SHEET C5.1.
20. INSTALL A DBL. REFUSE CONTAINER ENCLOSURE FOR ANGLED SERVICE PER CITY OF MERCED STD. DETAILS R-2, R-2A, R-4 AND R-4A ON SHEET C5.1.
21. 6' HIGH CHAIN LINK FENCE PER CITY OF MERCED STD. DETAIL F-8 AND DETAIL F-10 FOR SWING GATES ON SHEET C5.0. FENCE & GATES TO BE PROVIDED WITH PRIVACY SLATS.
22. POINT OF CONNECTION FOR WATER SERVICE, FROM EXISTING WATER LINE STUBBED TO PROPERTY.
23. POINT OF CONNECTION FOR SEWER SERVICE, FROM EXISTING SEWER LINE STUBBED TO PROPERTY.
24. INSTALL A STORM DRAIN MANHOLE PER CITY OF MERCED STANDARD DETAIL SD-10 ON SHEET C5.1.
25. INSTALL LANDSCAPE DRAIN: "NDS SQUARE ATRIUM POLYOLEFIN GRATE WITH U.V. INHIBITORS OR AN APPROVED EQUAL (TYPICAL OF 2), CONNECT WITH 6" PVC DRAIN LINE TO 15" STORM DRAIN LINE. SEE SHEET C5.0.
26. NEW 18' WIDE CONCRETE DRIVEWAY TO BUILDING.
27. EXISTING CHAIN LINK FENCE
28. VAN ACCESSIBLE PARKING SIGN W/ IS A & FINE INFO. SEE DET. 13 ON SHEET ADA-1

NOTES:

PROTECT ALL MONUMENTS DURING CONSTRUCTION. IF ANY DISTURBED, A LICENSED SURVEYOR SHALL RESTORE MONUMENTS AND FILE PROPER DOCUMENTS WITH THE COUNTY OF MERCED.

ADA LEGEND AND NOTES

ACCESSIBLE ROUTE

ACCESSIBILITY NOTES:
1. ACCESSIBLE ROUTE SHALL HAVE A MIN. WIDTH OF 48".
2. ACCESSIBLE ROUTE SHALL HAVE A MAX. 2% CROSS SLOPE AND MAX. 5% SLOPE IN THE DIRECTION OF TRAVEL.
3. ACCESSIBLE ROUTE SHALL BE FREE OF GAPS AND JOINTS 1/2" WIDE AND 1/4" DEEP.
4. ACCESSIBLE ROUTE SHALL HAVE ELEVATION CHANGE NO GREATER THAN 1/4" VERTICAL. ELEVATION CHANGE BETWEEN 1/4" ~ 1/2" SHALL HAVE A 2:1 SLOPE.

811 Know what's below. Call before you dig. 1-800-227-2600

These drawings are instruments of service and are the property of Golden Valley Engineering & Surveying, Inc., and shall not be used in whole or in part on any other drawings and is not to be used on any other project and shall not be used otherwise without the express written permission of Golden Valley Engineering & Surveying, Inc.
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PREPARED BY
GOLDEN VALLEY
ENGINEERING & SURVEYING
405 West 16th Street
Merced, CA 95340
P.O. Box 349
Merced, CA 95341
Ph.: (209) 723-3200
Fax: (209) 723-3254

No.	Date	Description

NEW BUILDING FOR
TOM E. LAWLER
CESSNA WAY
APN:059-640-006
CITY OF MERCED, CALIFORNIA

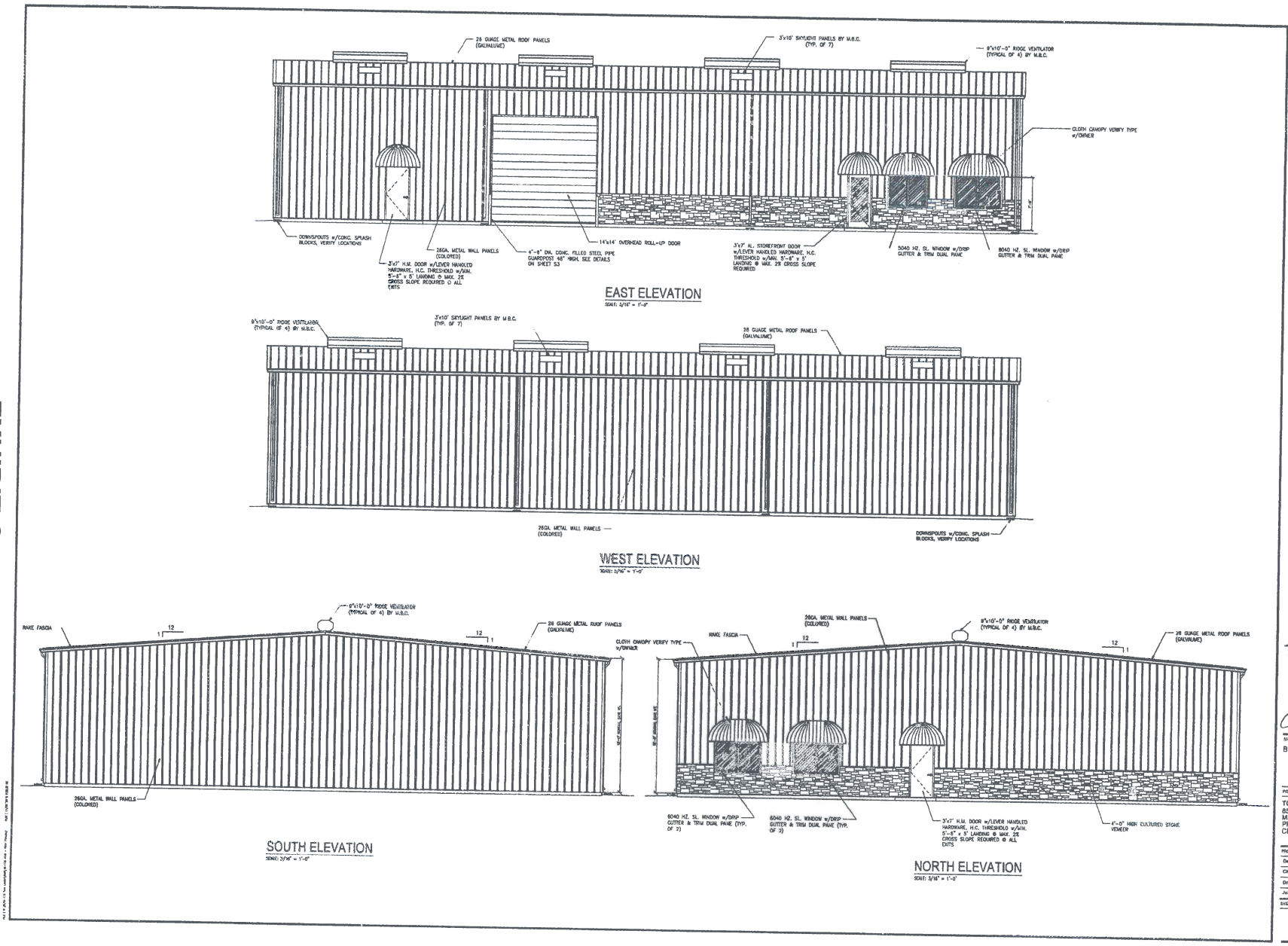
Exp. 6/30/2020

SHEET CONTENTS:
SITE PLAN & SITE DIMENSION PLAN

PREPARED FOR:
TOM E. LAWLER
657 PURDUE CT.
MERCED, CA 95341
PH: (209)384-7174
CELL: (209)993-8497

PROJECT DATA
Date: 8/2/2018
Checked By: CHRISTINE L.
Drawn By: CESAR
Job. No. 18-158
E-MAIL ADDRESS:

C3.0



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PREPARED BY:

GOLDEN VALLEY
ENGINEERING & SURVEYING
405 West 18th Street
Merced, CA 95340
P.O. Box 349
Merced, CA 95341
Ph.: (209) 722-3200
Fax: (209) 722-3254

No.	Date	Description

NEW BUILDING FOR
TOM E. LAWLER
CESSNA WAY
APN:059-640-006
CITY OF MERCED, CALIFORNIA

SHEET CONTENTS
BUILDING ELEVATIONS

PREPARED FOR:
TOM E. LAWLER
857 PURDUE CT.
MERCED, CA 95341
PH: (209)384-7174
CELL: (209)993-8497

PROJECT DATA:
Date: 8/2/2018
Checked By: CHRISTINE L.
Drawn By: CESAR
Job. No. 18-136

SHEET NUMBER
A2.0

EXHIBIT C

NOTICE OF EXEMPTION

To: ____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

__X__ County Clerk
County of Merced
2222 M Street
Merced, CA 95340

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

Project Title: Site Plan Review #431 (Environmental Review #18-70)

Project Applicant: Lawler Excavation & Pipeline

Project Location (Specific): 2250 Cessna Way. **APN:** 059-640-006

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project: 7,500-s.f. warehouse

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: Lawler Excavation & Pipeline

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));
__X__ Categorical Exemption. State Type and Section Number: 15332
___ Statutory Exemptions. State Code Number: _____.
___ General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt:
As defined under the above referenced Section, the proposed project is considered an in-fill Project. The project location is within the City limits on an approximately 0.48-acre parcel surrounded by urban uses. The site can be served by all required utilities and public services, and the project site has no value as habitat for endangered, rare or threatened species. No significant effects resulting from traffic, noise, air quality, or water quality will result from the construction of the building. The project is consistent with the City of Merced General Plan and Zoning regulations.

Lead Agency: City of Merced
Contact Person: Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

Signature: _____ **Date:** 1-4-2019 **Title:** Planner

__X__ Signed by Lead Agency

Date Received for Filing at OPR: _____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

EXHIBIT D

ADMINISTRATIVE REPORT

Agenda Item H.3. Meeting Date: 2/19/2019

Report Prepared by: Stephani Davis, Development Services Tech II, Planning Division

SUBJECT: Information Only-Site Plan Review Committee Minutes of December 13, 2018

RECOMMENDATION
For information only.

ATTACHMENTS
1. SP Minutes 12-13-2018

CITY OF MERCED
Site Plan Review Committee

MINUTES

Planning Conference Room
2nd Floor Civic Center
Thursday, December 13, 2018

Chairperson McBRIDE called the meeting to order at 1:35 p.m.

1. **ROLL CALL**

Committee Members Present: Chief Building Official Frazier, Associate Engineer Svendsen (for City Engineer Son), and Director of Development Services McBride

Committee Members Absent: None

Staff Present: Planning Manager Espinosa, Housing Supervisor Hamilton, Housing Program Specialist Nutt, and Planner/Recording Secretary Mendoza-Gonzalez

2. **MINUTES**

M/S FRAZIER-SVENDSON, and carried by unanimous voice vote, to approve the Minutes of November 29, 2018, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

4.1 Site Plan Application #429, submitted by The Richman Group and Merced County on behalf of Merced County, property owner. This request allows the construction of an apartment complex (119 units) with 100% affordable units at 1137 B Street, within Planned Development (P-D) #6 with a General Plan designation of Office Commercial (CO).

Planner MENDOZA-GONZALEZ reviewed the application. Refer to Draft Site Plan Resolution #429 for further information.

Committee Member SVENDSON recommended modifying Condition #20 and adding Conditions #30, #31, and #32 to address standard Engineering-related requirement.

M/S FRAZIER - SVENDSON, and carried by the following vote to adopt a Categorical Exemption regarding Environmental Review #18-66, and approve Site Plan Application #429, subject to the Findings and twenty-nine (29) conditions set forth in Draft Resolution #429 with a modification to Condition #20 and the addition of Conditions #30, #31, and #32 as follows:

(Note: Strikethrough deleted language, underline added language.)

"20. Storm drainage design shall address all on-site run-off with a biofiltration system or approved California Stormwater Quality Association Best Management Practices before draining to the adjacent basin south of the apartment complex or underground storage. The storm drain shall be designed to meet City Engineering Standards. Storm water shall be metered out from the basin to the nearby Merced Irrigation District (per MID requirements). Storm water shall be retained onsite per City Standards.

"30. The proposed storm drain basin shall be dedicated to the City of Merced (through the lot split process), but maintained by the developer.

"31. The developer shall be responsible for obtaining an agreement with the Merced Irrigation District for storm drainage.

"32. The bus turnout shall be designed per Merced County Association of Governments standards."

AYES: Committee Members Frazier, Svendson, and Chairperson McBride
NOES: None
ABSENT: None

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

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

6. **ADJOURNMENT**

There being no further business, Chairperson McBRIDE adjourned the meeting at 1:55 p.m.

Respectfully submitted,

Kim Espinosa, Secretary
Merced City Site Plan Review Committee

APPROVED:

Scott McBride, Chairperson/
Director of Development Services
Merced City Site Plan Review Committee

City of Merced

MEMORANDUM

DATE: January 17, 2019

TO: City Council

FROM: Francisco Mendoza-Gonzalez, Planner

SUBJECT: Site Plan Resolution #429

Due to a pending amendment to the Resolution regarding Site Plan Application #429, a copy of the finalized resolution will be sent at a later date for your review.

CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item H.4. Meeting Date: 2/19/2019

Report Prepared by: Stephani Davis, Development Services Tech II, Planning Division

SUBJECT: Information Only-Planning Commission Minutes of January 9, 2019

RECOMMENDATION
For information only.

ATTACHMENTS
1. PC Minutes 01-09-2019

CITY OF MERCED
Planning Commission

MINUTES

Merced City Council Chambers
Wednesday, January 9, 2019

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: Planning Manager Espinosa, Principal Planner Hren, Associate Planner Nelson, Interim Deputy City Attorney Flores, and Recording Secretary Davis

1. **APPROVAL OF AGENDA**

   M/S PADILLA-HARRIS, 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 November 7 and 14, 2018, as submitted.

3. **COMMUNICATIONS**

   None.

4. **ITEMS**

4.1 Vesting Tentative Map #1305 ("Bellevue Ranch North, Village 23"), initiated by Benchmark Engineering, applicant for Bellevue North 250, LLC, property owner. This application involves the subdivision of approximately 23.2 acres into 59 single-family lots within a gated community. This property is generally located on the west side of G Street, north of Farmland Avenue, within Planned Development (P-D) #42 with Low Density (LD) General Plan Designation.

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #19-03.

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

Speaker from the Audience in Favor:

RICK MUMMERT, Benchmark Engineering, representative for Applicant, Modesto, CA

Mr. MUMMERT took time to thank City staff for their input and guidance regarding the project and gave a brief overview of the project.

The Commission asked questions regarding minimum square-footage of the homes, and whether or not the developer will be providing incentives to UC Merced staff.

No one spoke in opposition to the project.

Public Testimony was completed at 7:17 p.m.

Commissioner PADILLA and CAMPER acknowledged a trend of gated communities and favored the chosen density of the project.

M/S PADILLA-CAMPER, and carried by the following vote, to find that the previous environmental review [Environmental Impact Report (EIR) for the Bellevue Ranch Master Development (SCH #9212055)]

remains sufficient and no further documentation is required (CEQA Section 15162 Findings), and approve Vesting Tentative Subdivision Map #1305, subject to the Findings and forty-four (44) Conditions set forth in Staff Report #19-03 (RESOLUTION #4012):

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

4.2 Appeal of Zoning Determination #18-01, by WB Pharms. Appellant is appealing the determination of the Director of Development Services regarding the prohibition in the General Commercial zone of all cannabis cultivation facilities, including indoor cultivation utilizing exclusively artificial lighting.

Commissioner PADILLA requested a recess to confer with Counsel at 7:20 p.m. He returned to the dais at 7:21 p.m.

Principal Planner HREN reviewed the report on this item. For further information, refer to Staff Report #19-01.

Commissioner HARRIS asked staff to clarify the comparison of mixed-light versus artificial light cultivation and whether that was a factor in the decision.

Mr. HREN explained that the comparison between mixed-light and artificial light was used interchangeably in the Cannabis Ordinance; he referenced the determination letter written by the Director of Development Services which states that the specific use of light was not addressed when the zoning standards for cultivation were established.

Public testimony was opened at 7:30 p.m.

Speaker from the Audience in Favor (of the appeal):

BYRON BOGARD, CEO WB Pharms, Appellant, Stockton, CA

No one spoke in opposition to the appeal.

Public Testimony was completed at 7:41 p.m.

Commissioner PADILLA recalled that at previous study sessions regarding the drafting of the Cannabis Ordinance, it was the intent of the City not to have cultivation outside the industrial zones.

Commissioner MARTINEZ voiced a concern with the language of the Cannabis Ordinance and with variances with state definitions not being defined clearly in local ordinances.

M/S DREXEL-RASHE, and carried by the following vote, to affirm the decision of the Development Services Director regarding Zoning Determination #18-01 (RESOLUTION #4011):

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

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

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

Commissioner MARTINEZ informed the Commission of his tentative attendance to the January 23rd meeting due to a possible work conflict.

Planning Manager ESPINOSA announced the upcoming League of California Cities Planning Commission Academy in Long Beach in March to the Commission for those interested to attend.

Chairperson DYLINA addressed Planning staff in regards to the displacement of Cinema Café. Development Services Director McBRIDE informed the Chairperson that this particular issue falls between the tenant and the landlord. He added that the owner of Cinema Café has discussed options of new locations with the City Economic Development Department, but has not found a new location at this time.

6. ADJOURNMENT

There being no further business, Chairperson DYLINA adjourned the meeting at 7:53 p.m.

Respectfully submitted,

KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:

ROBERT DYLINA, Chairperson
Merced City Planning Commission

CITY OF MERCED
Planning Commission

Resolution #4011

WHEREAS, the Merced City Planning Commission at its regular meeting of January 9, 2019, held a public hearing and considered an **Appeal to Zoning Determination #18-01,** by WB Pharms. Appellant is appealing the determination of the Director of Development Services regarding the prohibition in the General Commercial zone of all cannabis cultivation facilities, including indoor cultivation utilizing exclusively artificial lighting; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through C of Staff Report #19-01; and,

NOW THEREFORE, after discussing all the issues, the Merced City Planning Commission does resolve to hereby affirm the decision of the Development Services Director regarding Zoning Determination #18-01.

Upon motion by Commissioner DREXEL, seconded by Commissioner RASHE, and carried by the following vote:

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

Adopted this 9th day of January 2019

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

CITY OF MERCED
Planning Commission

Resolution #4012

WHEREAS, the Merced City Planning Commission at its regular meeting of January 9, 2019, held a public hearing and considered **Tentative Subdivision Map #1305 ("Bellevue Ranch North, Village 23")**, initiated by Benchmark Engineering, applicant for Bellevue North 250, LLC, property owner. This application involves the subdivision of approximately 23.2 acres into 59 single-family lots within a gated community. This property is generally located on the west side of G Street, north of Farmland Avenue, within Planned Development (P-D) #42 with a Low Density (LD) General Plan Designation; also known as Assessor's Parcel Number (APN) 052-230-086; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through I of Staff Report #19-03; and,

NOW THEREFORE, 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 find that the previous environmental review [Environmental Impact Report (EIR) for the Bellevue Ranch Master Development Plan (SCH #9212055)] remains sufficient and no further documentation is required (CEQA Section 15162 Findings), and approve Vesting Tentative Subdivision Map #1305, 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 CAMPER, and carried by the following vote:

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

Adopted this 9th day of January 2019

Chairperson, Planning Commission of the City of Merced, California

ATTEST:

Secretary

Attachment:
Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:TSM #1305

Conditions of Approval
Planning Commission Resolution #4012
Vesting Tentative Subdivision Map # 1305

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (Vesting Tentative Subdivision Map for Bellevue Ranch Village 23).
2. All conditions contained in Resolution #1175-Amended ("Standard Tentative Subdivision Map Conditions") 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. All previously adopted conditions, mitigation measures, and guiding principles contained in Appendices D, E, and F of the Bellevue Ranch Master Development Plan (BRMDP) adopted by the Merced City Council on May 15, 1995, which are applicable to this project, shall apply to this tentative map and all subsequent final maps, improvement plans, building permits, and discretionary approvals.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in

the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

8. Should any conflicts arise between the tentative map conditions contained herein and those conditions, mitigation measures, and guiding principles contained in the BRMDP, Appendices D, E, and F, or any other pertinent Sections/Appendices of the BRMDP, said conditions, mitigation measures, guiding principles, and sections/appendices shall take precedence.

9. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before Final Map approval. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the Development Services Director to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

10. Per the BRMDP, all exterior building materials shall consist of stucco, masonry, or architectural grade wood siding, and roofing materials shall consist of tile, wood shake (with acceptable fire rating), and architectural composition shingles.

11. All dwellings shall be designed to include fire sprinklers as required by the California Fire Code.

12. All garages shall have a minimum setback of 20 feet measured from the property line or back of sidewalk, whichever is closest to the front of the garage. Per the BRMDP, the setback for the living area portion of the house may be reduced to 15 feet and shall be measured from the property line, whichever is closest to the living area portion of the house. Lot coverage shall not exceed 55% for all lots.

13. The building facades shall be of high quality design providing varied elevations and color schemes. All designs shall be consistent with the requirements of the BRMDP and Planned Development (P-D) #42 and shall be approved by Planning Staff at the building permit stage.

14. All mechanical equipment shall be screened from public view.

15. Each lot within the subdivision shall be provided with one driveway. No residential driveways shall front on any arterial or collector street.

16. The project shall comply with all requirements of the California Building Code and all flood requirements of the Federal Emergency Management Agency (FEMA), as well as the requirements for the California Urban Level of Flood Protection (CA 200-year flood).

17. All necessary documentation related to the construction of the residential uses shall be provided at the building permit stage.

18. The project shall comply with all the Post Construction Standards required to comply with state requirements for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).

19. All landscaping within the public right-of-way shall comply with state and local requirements for water conservation. All irrigation provided to street trees or other landscaping shall be provided with a drip irrigation or micro-spray system and shall comply with the City's Water Efficient Landscape Ordinance (MMC Section 20.36.030).

20. Prior to final inspection of any home, all front yards and side yards exposed to public view shall be provided with landscaping to include, ground cover, trees, shrubs, and irrigation in accordance with Merced Municipal Code Section 20.36.050. Irrigation for all on-site landscaping shall be provided by a drip system or micro-spray system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or City mandated water regulations dealing with the current drought conditions. All landscaping shall comply with the City's Water Efficient Landscape Ordinance (MMC Section 20.36.030).

21. A 6-foot-tall masonry wall shall be installed along G Street and Farmland Avenue. The 28-foot-wide "park strip" as shown on the tentative map, including landscaping, shall be installed on Farmland Avenue with the first phase of construction. A minimum 15-foot-wide landscape strip shall be installed G Street. The landscaping on G Street for Phase A shall

commence prior to the issuance of the 30th building permit. The remainder of the landscaping on G Street would be installed prior to the first Certificate of Occupancy for Phase B.

22. At the building permit stage, the site plans for each lot shall include a minimum 3-foot by 6-foot concrete pad located in the side yard or backyard for the storage of 3 refuse containers.

23. Developer shall construct full public improvements on Farmland Avenue, east of the entry road (including, but not limited to, curb and gutter, pavement, sidewalk, street lights, landscaping, and utilities) with the first phase of construction. Farmland Avenue, west of the entry road shall be completed with a future phase per Table 6.1 of the BRMDP.

24. All cul-de-sac bulbs shall have a minimum diameter of 96 feet and shall be posted as "no parking" in compliance with Fire Department Standards adopted by Merced Municipal Code Section 17.32.

25. All streets within the subdivision shall be private streets and shall be privately maintained. An easement for utilities and access shall be granted to the City of Merced with the Final Map.

26. Any work done by the City of Merced to maintain utilities shall be restored to City Standards. Any decorative treatments shall be the responsibility of the Homeowner's Association (HOA) to repair/replace.

27. The gates at the entrances shall be setback a minimum of 20 feet from the roadway to allow stacking room for at least two vehicles. The gates shall be provided with a "click-to-enter" access and controls shall be provided to the City of Merced Police, Fire, and Public Works Departments. The device used shall be approved by the City prior to installation.

28. According to Table 6.1 of the Bellevue Ranch Master Development Plan (BRMDP), complete improvements to G Street are required with the construction of Village 26. A subsequent General Plan Amendment may move the responsibility for these improvements to another Village due to biological issues with Village 26.

29. If the G Street access is not constructed with the construction of Phase A, an emergency vehicle access (EVA) shall be provided for this Phase. The location of the EVA shall be approved by the City Fire Department and City Engineer. The EVA shall be constructed to Fire Department standards.

30. Village 23 shall provide the necessary improvements for the entrance off of G Street for the subdivision, including required landscaping with the construction of Phase B.

31. The necessary right-of-way along G Street shall be dedicated with the final map to provide for ½ the width of a 128-foot major arterial and additional 15-foot landscape area on each side of the street. Some of the right-of-way has been previously dedicated, but may need to be modified to make sure the right-of-way is in the correct location. The project engineer shall work with the City Engineer to determine the areas to be dedicated or modified.

32. Fire hydrants shall be installed along street frontages to provide fire protection to the area. The hydrants shall meet all City of Merced standards and shall comply with all requirements of the City of Merced Fire Department. Final location of the fire hydrants shall be determined by the Fire Department.

33. Traffic control signs, street markings, and striping shall be as directed by the City Engineer.

34. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.

35. Provide all utility services to each lot, including sanitary sewer, water, electric power, gas, telephone, and cable television. All new utilities are to be undergrounded.

36. Install appropriate street name signs and traffic control signs with locations, names, and types approved by the City Engineer.

37. Developer shall provide construction plans and calculations for all landscaping and public maintenance improvements. All such plans shall conform to City standards and meet approval of the City Engineer.

38. The developer shall establish a Homeowner's Association (HOA) (or approved alternative) governing this project. The HOA shall be responsible for the maintenance of all streets and landscaping within the development as well as sweeping/cleaning of all interior streets. Prior to the Final Map approval, the HOA and any Conditions, Covenants and Restrictions (CC&R's) shall be reviewed and approved by the City Attorney.

39. If the final map for this small lot subdivision is not recorded prior to the Large Lot subdivision map for Bellevue Ranch North (VTSM #1280), then VTSM #1280 shall be modified to reflect the change to Village 23 that is approved with this map (VTSM #1305).

40. Dedication by Final Map of all necessary easements will be made as shown on Vesting Tentative Subdivision Map #1305 and as needed for irrigation, utilities, drainage, landscaping, open space, and access.

41. All entryway and subdivision signs shall be administratively approved by Planning Staff prior to the issuance of a building permit.

42. Landscaping and irrigation details shall be provided by the applicant with final maps for each phase and are subject to approval by the City.

43. Should the Tentative Map trigger any improvements/alternations to any water way, the applicant shall have completed all Federal and State permitting requirements for such phase. Documentation of such permits shall be provided to the City prior to approval of a final map.

44. Should the Federal and/or State permitting process relative to wetlands and/or waters of the United States cause the design of the Tentative map to be modified, the applicant shall reconcile the modification(s) with the City of Merced through an amended tentative map process.

N:\SHARED\PLANNING\PC RESOLUTIONS\RESOLUTIONS\ Exhibit A VTSM #1305.docx

ADMINISTRATIVE REPORT

Agenda Item H.5. Meeting Date: 2/19/2019

SUBJECT: Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of January 22, 2019

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 January 22, 2019.

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

ATTACHMENTS
1. Minutes of January 22, 2019

CITY OF MERCED

Minutes

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

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

Tuesday, January 22, 2019 **6:00 PM**

A. CLOSED SESSION ROLL CALL

Present: 4 - Mayor Pro Tempore Anthony Martinez, Council Member Kevin Blake, Council Member Delray Shelton, and Council Member Fernando Echevarria

Absent: 3 - Mayor Mike Murphy, Council Member Jill McLeod, and Council Member Matthew Serratto

B. CLOSED SESSION

Mayor Pro Tempore MARTINEZ called the Closed Session to order at 5:01 PM.

Clerk's Note: Council Member SERRATTO arrived at 5:02 PM.

Clerk's Note: Council Member MCLEOD arrived at 5:36 PM.

B.1. **SUBJECT:** CONFERENCE WITH LABOR NEGOTIATORS - Agency Designated Representative: City Manager Steve Carrigan; Employee Organizations: Merced Police Officers' Association (MPOA); Merced Association of Police Sergeants. AUTHORITY: Government Code Section 54957.6

B.2. **SUBJECT:** CONFERENCE WITH REAL PROPERTY NEGOTIATORS - Property: City of Merced Property Mansionette Drive and Yosemite Avenue, Merced, CA APN 231-040-021; Agency Negotiator: Frank Quintero, Director, Economic Development; Negotiating Parties: Jessie Hudgins and Ted Waldron Representing Valley Children's Hospital and City of Merced and; Under Negotiation: Price and Terms of Payment

B.3. **SUBJECT:** CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant Exposure to Litigation pursuant to Government Code section 54956.9(d)(2): (1) case

Clerk's Note: Council adjourned from Closed Session at 5:50 PM.

C. CALL TO ORDER

Mayor Pro Tempore MARTINEZ called the Regular Meeting to order at 6:01 PM.

C.1. Invocation - David Sherrill, Merced Cowboy Church

The invocation was delivered by David SHERRILL from Merced Cowboy Church.

C.2. Pledge of Allegiance to the Flag

Mayor Pro Tempore MARTINEZ led the Pledge of Allegiance to the Flag.

D. ROLL CALL

Present: 6 - Mayor Pro Tempore Anthony Martinez, Council Member Kevin Blake, Council Member Jill McLeod, Council Member Matthew Serratto, Council Member Delray Shelton, and Council Member Fernando Echevarria

Absent: 1 - Mayor Mike Murphy

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

E. REPORT OUT OF CLOSED SESSION

There was no report.

F. WRITTEN PETITIONS AND COMMUNICATIONS

There were none.

G. ORAL COMMUNICATIONS

Steve GOMES and Nancy BERGMAN, Merced - spoke on the Arts and Outdoor Education event.

H. CONSENT CALENDAR

Items H.5. Approval of a Professional Service Agreement with LPA, Inc. in the Amount of $165,850 for a Needs Assessment of the Future Police Headquarters Facility (Project #116040) and a Transfer of Funds in the Amount of $165,850 to Support the Agreement, H.6. Approval of Three-Year Lease Agreement with Seth Rossow for 24.5 Acres Located at Mission Avenue and Tyler Road (CP-42) in the Amount of $730.00 Per Year, H.8. Approval of the Creation of a Capital Improvement Project for Main Street from M Street to N Street to Include Pavement Reconstruction

and Storm Drain Line Improvements, and H.9. Ratification of Grant Application for Three Congestion Mitigation and Air Quality Improvement Program Projects for a Total Amount of $1,661,529.27; were pulled for separate consideration.

Approval of the Consent Agenda

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

Aye: 6 - Mayor Pro Tempore Martinez, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

No: 0

Absent: 1 - Mayor Murphy

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

REPORT IN BRIEF

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

RECOMMENDATION

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

This Consent Item was approved.

H.2. **SUBJECT:** Information Only - Traffic Committee Meeting Minutes of September 11, 2018

RECOMMENDATION

For information only.

This Consent Item was approved.

H.3. **SUBJECT:** Information Only - Recreation & Parks Commission Minutes of July 23, 2018, August 27, 2018, and September 24, 2018.

RECOMMENDATION

For information only.

This Consent Item was approved.

H.4.

SUBJECT: Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of December 17, 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 December 17, 2018.

This Consent Item was approved.

H.7.

SUBJECT: Approval of First Amendment to the Agreement for Legal Services With Sloan, Sakai, Yeung & Wong, LLP for the Not to Exceed Amount of $85,000

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.

This Consent Item was approved.

H.10.

SUBJECT: Award of Bid and Approval of Agreement with FBD Vanguard Construction in the Amount of $331,434.65 for City Project No. 118028 - CDBG John Muir Sidewalks on 25th Street, from I to K Streets

REPORT IN BRIEF

Considers awarding a bid and approving an agreement in the amount of $331,434.65 with FBD Vanguard Construction for the Community Development Block Grant (CDBG) John Muir Sidewalks on 25th Street, from I to K Streets.

RECOMMENDATION

City Council - Adopt a motion:

A. Awarding a bid and approving an agreement with FBD Vanguard Construction in the amount of $331,434.65 for the Community Development Block Grant (CDBG) John Muir Sidewalks on 25th Street, from I to K Streets, Project No. 118028; and,

B. Approving change orders not to exceed $33,143.47 (10% of the project cost); and,

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

This Consent Item was approved.

H.5.

SUBJECT: Approval of a Professional Service Agreement with LPA, Inc. in the Amount of $165,850 for a Needs Assessment of the Future Police Headquarters Facility (Project #116040) and a Transfer of Funds in the Amount of $165,850 to Support the Agreement

REPORT IN BRIEF

Approval of a professional service agreement with LPA, Inc. in the amount of $165,850 for a Needs Assessment of the Future Police Headquarters facility and transfers a total of $165,850 in funds to support the agreement.

RECOMMENDATION

City Council - Adopt a Motion:

A. Approving a transfer of $82,925 from Fund 047 - Facilities-Police and a transfer of $82,925 from Fund 057 Facilities-Police (Developer) and appropriate the same to Project 116040 (Fund 449-1001-627-65-00) Police Headquarters #2; and,

B. Approving Professional Services Agreement with LPA, Inc. in the amount of $165,850; and,

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

Mayor Pro Tempore MARTINEZ pulled this item to ask for clarification.

Economic Development Director Frank QUINTERO explained LPA, Inc.'s scope of service.

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

Aye: 6 - Mayor Pro Tempore Martinez, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

No: 0

Absent: 1 - Mayor Murphy

H.6.

SUBJECT: Approval of Three-Year Lease Agreement with Seth Rossow for 24.5 Acres Located at Mission Avenue and Tyler Road (CP-42) in the Amount of $730.00 Per Year

REPORT IN BRIEF

Considers approving a three-year lease agreement with Seth Rossow for 24.5 acres located at Mission Avenue and Tyler Road (CP-42) for $730.00 per year.

RECOMMENDATION

City Council - Adopt a motion approving the lease agreement with Seth Rossow; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents.

Mayor Pro Tempore MARTINEZ pulled this item to ask about the long term goal for this property.

Council and Director of Recreation and Parks Joey CHAVEZ discussed building a well, the future of the property, and the terms and cost of the current lease.

Council Member ECHEVARRIA expressed concern for the dollar amount of the lease.

A motion was made by Mayor Pro Tempore Martinez, seconded by Council Member McLeod, that this agenda item be approved. The motion carried by

the following vote:

Aye: 5 - Mayor Pro Tempore Martinez, Council Member Blake, Council Member McLeod, Council Member Serratto, and Council Member Shelton

No: 1 - Council Member Echevarria

Absent: 1 - Mayor Murphy

H.8. **SUBJECT:** Approval of the Creation of a Capital Improvement Project for Main Street from M Street to N Street to Include Pavement Reconstruction and Storm Drain Line Improvements

REPORT IN BRIEF

Considers approving the creation of a new Capital Improvement Project on Main Street from M Street to N Street to include pavement reconstruction and storm drain line improvements. It is estimated that the improvements will cost approximately $300,000 and anticipated that the improvements will be paid for with Measure V funds.

RECOMMENDATION

City Council - Adopt a motion authorizing staff to create a Capital Improvement Project for Main Street from M Street to N Street to include pavement reconstruction and storm drain line improvements.

Council Member SERRATTO pulled this item to suggest making the project area more unique.

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

Aye: 5 - Mayor Pro Tempore Martinez, Council Member Blake, Council Member McLeod, Council Member Serratto, and Council Member Shelton

No: 1 - Council Member Echevarria

Absent: 1 - Mayor Murphy

H.9. **SUBJECT:** Ratification of Grant Application for Three Congestion Mitigation and Air Quality Improvement Program Projects for a Total Amount of $1,661,529.27

REPORT IN BRIEF

Ratify grant application for three (3) Congestion Mitigation and Air Quality Improvement Program (CMAQ) projects at various locations within the City limits of Merced for a total amount of $1,661,529.27.

RECOMMENDATION

City Council - Adopt a motion ratifying the grant application for three Congestion Mitigation and Air Quality Improvement Program (CMAQ) projects grants at various locations within the City.

Council Member SERRATTO pulled this item to highlight this project.

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

Aye: 6 - Mayor Pro Tempore Martinez, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

No: 0

Absent: 1 - Mayor Murphy

I. REPORTS

I.1.

SUBJECT: Policy Direction Regarding Parking and Owner Occupancy Requirements for Accessory Dwelling Units

REPORT IN BRIEF

The City Council will be asked to provide further policy direction regarding parking and occupancy requirements for accessory dwelling units (ADU's) in preparation for amendments to the Zoning Ordinance to meet recent State law changes.

RECOMMENDATION

The City Council should provide policy direction to staff regarding parking and owner occupancy requirements for accessory dwelling units.

Planning Manager Kim ESPINOSA gave a slide show presentation on the Policy Direction regarding Parking and Owner Occupancy Requirements for Accessory Dwelling Units.

Council, Ms. ESPINOSA, and City Manager Steve CARRIGAN discussed if the owner of the property should be required to live onsite, parking requirements, and counting the driveway as part of the parking space.

Gloria CONLIN, Merced - spoke on requiring the owner to live onsite and increasing Code Enforcement to enforce the requirements.

Clerk's Note: No formal vote was taken.

J. BUSINESS

J.1. Request to Add Item to Future Agenda

Mayor Pro Tempore MARTINEZ requested to add an item to discuss awarding graduation awards to students.

J.2. City Council Comments

Council Member SERRATTO reported on attending the Martin Luther King Jr. event and a Cioppino Fundraiser dinner.

Council Member MCLEOD reported on attending the Martin Luther King Jr. event.

Council Member SHELTON reported on attending the Martin Luther King Jr. event.

Council Member ECHEVARRIA reported on attending the NAACP President Installation, the Martin Luther King Jr. event, and meeting with Congressman Jim COSTA.

Mayor Pro Tempore MARTINEZ reported on attending the Lions Club Fundraiser event, the Merced Art Hop, and the Martin Luther King Jr. event.

K. ADJOURNMENT

Clerk's Note: The Regular Meeting adjourned at 7:19 PM.

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

Aye: 6 - Mayor Pro Tempore Martinez, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

No: 0

Absent: 1 - Mayor Murphy

ADMINISTRATIVE REPORT

Agenda Item H.6. Meeting Date: 2/19/2019

Report Prepared by: Deneen Proctor, Director of Support Services

SUBJECT: Approval to Enter into an Agreement for Legal Services with Amy Oppenheimer for the Not to Exceed Amount of $60,000

REPORT IN BRIEF
Consider engaging the legal services of Amy Oppenheimer for the not to exceed amount of $60,000.

RECOMMENDATION
City Council - Adopt a motion approving an agreement for legal services with Amy Oppenheimer for the not to exceed amount of $60,000 and 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.

DISCUSSION
The City of Merced has a need, from time to time, to engage the services of attorney's for personnel related matters. One of the attorneys the City has engaged to perform those services is Amy Oppenheimer. The City Manager or designee has the authority to enter into agreements that do not exceed $30,000. However, once the cost of the services exceeds that threshold, Council approval is required. The cost of the services that have been performed by Ms. Oppenheimer have exceeded the delegated authority of $30,000. Therefore, Council approval is required to enter into the agreement in the not to exceed amount of $60,000.

IMPACT ON CITY RESOURCES
Funding is available within the Personnel Department's Fiscal Year 2018-19 approved budget.

ADMINISTRATIVE REPORT

Agenda Item H.7. Meeting Date: 2/19/2019

Report Prepared by: Frank Quintero, Director of Economic Development

SUBJECT: Approval of Purchase and Sale Agreement Between the City of Merced (Seller) and Valley Children's Healthcare (Buyer) for the 4.54 Acre Parcel Located at 301 W. Yosemite Ave., Merced, CA in the Amount of $2,100,000

REPORT IN BRIEF

Considers approving a Purchase and Sales Agreement for the sale of a City owned 4.54 acre parcel located at 301 W. Yosemite Avenue to Valley Children's Healthcare for the development of a pediatric primary and specialty care medical office building. The Agreement contains escrow instructions for the sale of the property.

RECOMMENDATION

City Council - Adopt a Motion:

A. Approving the purchase and sale agreement between the City of Merced and Valley Children's Healthcare for 301 W. Yosemite Avenue (Assessor's Parcel Number 231-040-021); and,

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

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

ALTERNATIVES

1. Approve as recommended by staff; or
2. Approve, subject to conditions as specified by the City Council; or
3. Deny the request; or,
4. Refer back to staff for reconsideration of specific items as requested by the Council; or
5. Defer action until a specified date

AUTHORITY

Charter of the City of Merced, 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

Valley Children's Healthcare is in agreement with the terms contained in the Purchase Sale Agreement for the transaction of a 4.54-acre parcel located at 301 E. Yosemite Avenue (ATTACHMENTS 1 & 2). Council selected Valley Children's Healthcare as the successful bidder for the subject site at the City Council meeting of October 15, 2018. The subject site is the former location for the future Police Department Headquarters. The site was originally purchased from the Estate of Spaulding Wathen for $1,090,135.00 on March 1, 2010. Valley Children's Healthcare bid to purchase the subject site for $2,100,000.00.

Project Description

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.

Valley Children's Hospital anticipates that at full-buildout, the value of the project will range from $20 to $30 million generating 50 to 60 full-time equivalent employees. Salary and benefits are expected to be from $4 million to $5 million at full-buildout.

Anticipated services to be provided at the Merced Specialty Care Center include:

Endocrinology	Gastrointestinal (GI)
Neurology	Cardiology & Cardiac Testing
Pulmonology	Urology
Orthopedics	Imaging Services
Maternal Fetal Medicine	Other services as warranted

Valley Children's Healthcare intends to construct a medical office building which may be licensed as a Hospital-based licensed clinic. The facility will be an outpatient building providing primary and specialty care to children, and will not be a licensed hospital or offering emergency services.

Each year, more than 14,000 children from Merced County are cared for by Valley Children's Healthcare. Since 1989, Valley Children's Healthcare has operated an outpatient specialty care center on Olivewood Drive at Meadows Avenue in Merced. The new facility means more children get care closer to home.

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.)

Proposed Terms

Key proposed sales terms include the following:

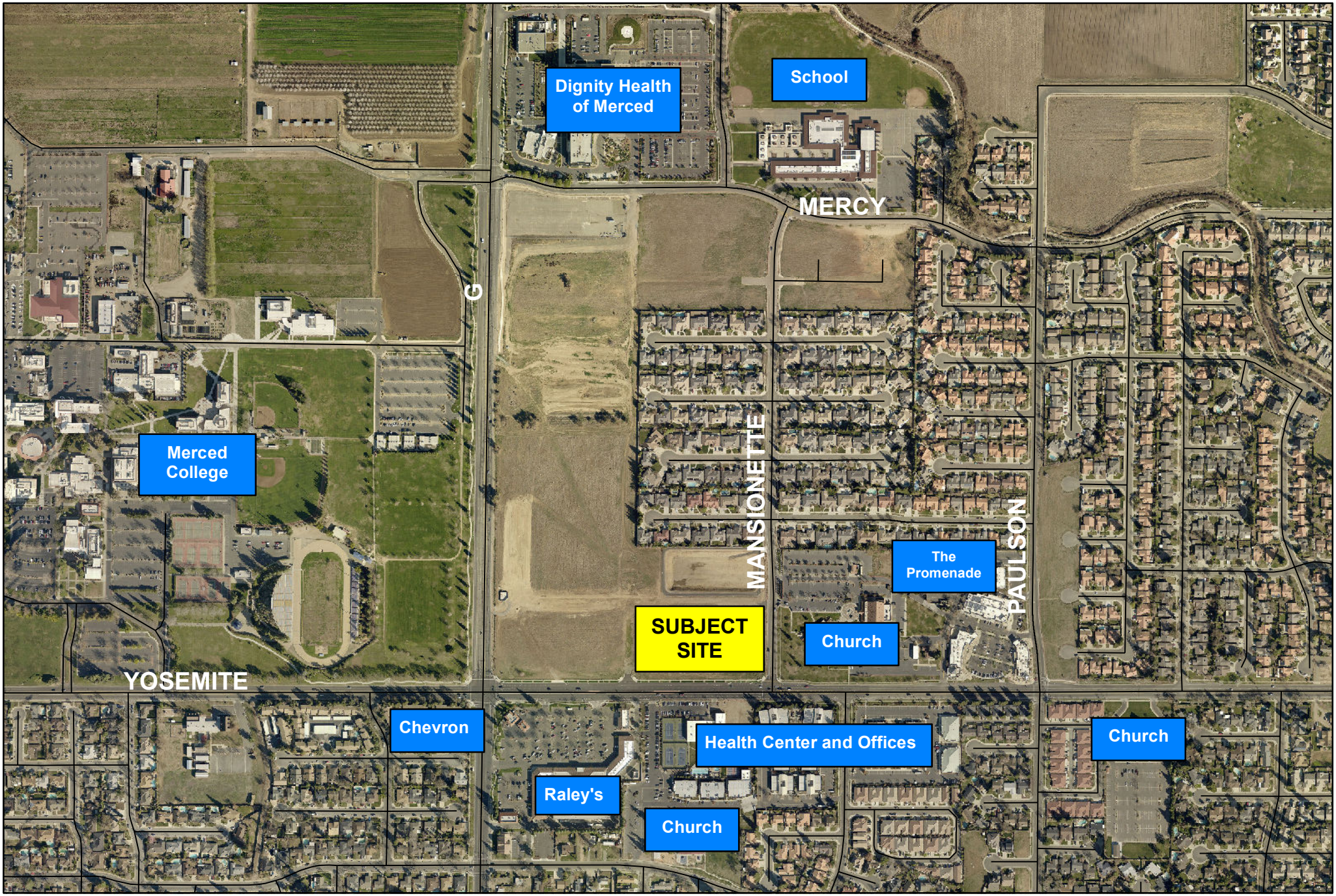
Purchase Price:	$2.1 Million (sharing closing costs)
Land Size:	4.54-acres
Terms:	Cash, no financing
Deposit:	$25,000.00
Escrow:	Opens after Agreement is approved and fully executed
Due Diligence:	180 days from escrow opening
Development Pre-Application:	Submit prior to end of due diligence period
Site Plan Review Application:	90 days from Development Pre-Application review
Escrow Closes:	30 days from Site Plan Application Hearing
Broker Commission:	3% of Purchase Price
Buy Back Clause:	Not constructed, City re-purchases minus Broker Commission

IMPACT ON CITY RESOURCES

Closing costs and broker's commission will be paid from the land sale proceeds. The remaining proceeds will be used to fund Police Department Headquarters project 116040.

ATTACHMENTS

1. Location Map
2. Proposed Purchase and Sale Agreement
3. VCH - Clovis Facility



MERCED
Inventing California's Future

ATTACHMENT 1
Former Police HQ Site
Location Map

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2019 (the "Effective Date"), by and between the City of Merced, a California Charter Municipal Corporation ("Seller") and Valley Children's Healthcare, a California Non-Profit Public Benefit Corporation, whose address of record is 9300 Valley Children's Place, Madera, California 93636 ("Buyer").

WHEREAS, Seller owns the real property identified as 301 E. Yosemite Avenue, City of Merced, California (Assessor's Parcel Number 231-040-021) and more fully described in Attachment "A" and shown on the map provided as Attachment "B," which are incorporated herein by these references, (hereinafter the "Subject Property"); and,

WHEREAS, Buyer desires to purchase the Subject Property to construct a Valley Children's Medical Group Medical Office (hereafter, the "Project"); and,

WHEREAS, City is willing to sell the Subject Property to the Buyer for construction of the Project.

WHEREAS, City declared Subject Property surplus on May 15, 2017, and the development and construction of the Project on the Subject Property will enhance the local economy and medical care in the City of Merced.

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the Buyer and Seller do agree as follows:

SECTION 1. PURCHASE & SALE. Seller agrees to sell and Buyer agrees to purchase the Subject Property for the Project pursuant to the terms of this Agreement.

SECTION 2. PURCHASE PRICE. The purchase price for the Subject Property shall be Two Million One Hundred Thousand Dollars ($2,100,000.00) for

approximately 4.54± acres (the "Purchase Price"). Buyer is acquiring the Subject Property in "as-is" condition.

a. Deposit by Buyer: Within five (5) days from the opening of escrow, Buyer shall place a deposit of Twenty-Five Thousand Dollars ($25,000) into escrow (the "Initial Deposit").

b. Deposit of Additional Funds By Close of Escrow: At or before the close of escrow, Buyer shall deposit the sum of Two Million Seventy-Five Thousand Dollars ($2,075,000) into escrow to be allocated against the Purchase Price at the close of escrow.

c. Independent Consideration. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, One Hundred and No/100 Dollars ($100.00) of the Initial Deposit shall serve as independent consideration for Seller's performance under this Agreement ("Independent Consideration"). The Independent Consideration is independent of any other consideration provided hereunder, shall be fully earned by Seller and released to Seller by escrow agent upon the Effective Date hereof, and is not refundable under any circumstances.

SECTION 3. ESCROW. Escrow shall open on the Property within ten (10) days of the full execution of this Agreement at a title company selected by Seller, and shall close no later than thirty (30) days after the Site Plan and Interface Review Approval subject to the terms and conditions of this Agreement. Closing costs, including escrow costs, title insurance and transfer tax, shall be evenly split between Buyer and Seller.

a. Escrow shall be opened with Chicago Title, 7330 North Palm Avenue, Suite 101, Fresno, California 93711, (Barbie Clothier/Sue Ford), following the full execution of this Agreement.

b. Fourteen (14) days after the closing date, Buyer shall receive a recorded copy of the grant deed conveying fee simple title of the Property to Buyer. Seller may present the grant deed prior to the closing date.

c. All closing, escrow, recording and title insurance costs shall be shared as is customary in Merced County. Real estate taxes, if applicable, will be pro-rated at close of escrow.

d. At all times after permitted exceptions have been determined, title company must be ready, willing, and able to issue, upon payment of title company's regularly scheduled premium, a California Land Title Association (CLTA) owner's policy of title insurance showing title to the Subject Property vested in Buyer subject only to the permitted exceptions ("Title Policy") in the face amount of the Purchase Price, with such endorsements as Buyer may require ("Endorsements"), subject only to the lien of real property taxes for the current fiscal year not yet due or payable, and the standard preprinted exceptions and stipulations of the Title Policy. Buyer may, at its option, require that the Title Policy be a 2006 ALTA extended coverage policy instead of a CLTA standard coverage policy and/or request title insurance endorsements as long as the title company is committed to issue such ALTA extended coverage and/or such endorsements within thirty (30) days of the Close of Escrow. Buyer shall pay the additional cost therefor including the cost of any ALTA survey required by title company.

SECTION 4. CONDITIONS. Close of escrow and Buyer's and Seller's obligations shall be subject to the satisfaction of the following conditions:

a. Within ten (10) days of escrow opening, Seller shall deliver to Buyer a current title report, with copies of all underlying documents referenced or described therein. Buyer shall have thirty (30) days from receipt of said document to review and approve or disapprove same at Buyer's sole and absolute discretion.

b. Within ten (10) days of escrow opening, Seller shall provide Buyer with any and all documents in Seller's possession regarding the Subject Property. Buyer shall have thirty (30) days from receipt of such documents to review and satisfy itself with regards to the Subject Property.

c. Buyer shall have one hundred eighty (180) days from opening of escrow to conduct any and all due diligence including physical, economic and environmental evaluations that may include, but are not limited to, physical inspections, soil and ground water tests, other engineering feasibility studies, review of any and all governmental regulations and on- and off-site improvement obligations to Buyer's satisfaction.

d. Buyer to investigate the location and capacity of all utilities available to the Property to their satisfaction.

e. Buyer shall have one hundred eighty (180) days from opening of escrow to investigate and satisfy itself with regards to toxic or hazardous

contamination on the subject property during the due diligence period as specified in item 4b above.

f. Buyer shall be granted right of entry upon Property for the purposes of conducting soil tests and any other engineering studies Buyer deems necessary.

g. Buyer and Seller shall agree on the location and scope of any easements or restrictions on the Subject Property by the end of the one hundred eighty (180) day period following the opening of escrow.

In the event any of the foregoing conditions are not satisfied or waived by Buyer prior to the prescribed time frame herein, then all rights, obligations, and liabilities of Seller and Buyer shall terminate, and any deposited funds and any interest earned shall be returned to Buyer.

SECTION 5. RIGHT TO REPURCHASE. In the event Buyer does not develop and construct the Project as agreed upon in the specific time frame identified in Section 10, or otherwise agreed to by the parties, the Seller may re-purchase the Subject Property at the sales price set forth in Section 2, minus the cost of the broker's commission with Buyer assuming all other of its out-of-pocket development costs.

SECTION 6. APPROVAL OF TITLE REPORT. Within ten (10) days of escrow opening, Seller shall provide a preliminary title report to Buyer. Buyer shall have thirty (30) days thereafter in which to approve the preliminary title report. If Buyer does not approve one or more of the exceptions of the preliminary title report and Seller refuses to remove said exception(s), then either Buyer or Seller shall have the right to terminate escrow and this Agreement.

SECTION 7. ASSIGNMENT. Neither this Agreement nor any part thereof shall be assignable; provided that, Buyer may assign this Agreement and the right to take title to the Subject Property to Valley Children's Medical Group, a California nonprofit public benefit corporation ("Medical Group"), a wholly-owned subsidiary of Buyer.

SECTION 8. SUBJECT TO OTHER OBLIGATIONS. This Agreement is conditioned upon Buyer's compliance with the requirements of the Merced Site Plan Approval Committee and/or the Merced Planning Commission. At the close of this transaction, Buyer will be issued a Grant Deed containing

restrictions and easements, including the Seller's right to repurchase the Subject Property pursuant to Section 5 and 10 of this Agreement.

SECTION 9. ZONING AND PERMITTED USES. The Subject Property is currently zoned Planned Development (P-D). The proposed Project (as described in Attachment "C" attached) is a permitted use within the Neighborhood Commercial (C-N) land use district of the City of Merced.

a. Prior to the expiration of the contingency period, Buyer will submit a Preliminary Development Application to the City for a Site Plan Review and Interface Review. Within ninety (90) days of the Preliminary Development Application review by the Development Review Committee, Buyer shall make full application for Site Plan Review and Interface Review. The full application shall be subject to consideration by the Merced Planning Commission. Buyer's deposit will be non-refundable except if they are denied their Site Plan Review and Interface Review. If the application is denied, all deposits will be returned to Buyer and neither Buyer nor Seller shall have any obligations to the other.

SECTION 10. COMMENCEMENT OF CONSTRUCTION, SCHEDULE, AND SELLER'S RIGHT TO REPURCHASE SUBJECT PROPERTY. Buyer agrees to obtain all necessary building permits and commence construction of the Project as described in Attachment "C" within twelve (12) months of the close of escrow and to thereafter diligently pursue construction to completion. It is hereby agreed that failure of Buyer to commence construction of the Project within said twelve (12) month period shall give Seller the right and option to repurchase the Subject Property. For purposes of this Agreement, the term "commence construction" shall mean that the notice to proceed has been issued for construction to the design builder for the Project. The purchase price for Seller's repurchase of the Subject Property shall be the repurchase price set forth in Section 5, without interest, appreciation, or reimbursement for any improvements, costs, expenses, or City, County, or other taxes or assessments levied or assessed against the Subject Property. Prior to completion of the main building structure(s) required for the Project, on the Subject Property, Buyer agrees not to transfer title to the Subject Property to another person or entity without Seller's prior written consent, which may be withheld at Seller's sole and complete discretion; provided that, Seller hereby consents to Buyer's transfer of title or assignment of the Agreement and the right to title by Buyer to Medical Group prior to closing.

SECTION 11. NOTICE. All notices required or available to be sent pursuant to this Agreement shall be delivered by either first-class certified mail, return receipt requested, and properly addressed with correct postage fully paid thereon or by personal delivery to the individuals designated above at the address designated below. All mailed notices shall be deemed delivered within three (3) business days of deposit in the U.S. Mail and personal delivery shall be deemed delivered upon actual delivery thereof at the addresses set forth below:

SELLER:	Office of the Economic Development City of Merced 678 West 18th Street Merced, California 95340
With a copy to:	City Attorney City of Merced 678 West 18th Street Merced, California 95340
BUYER:	Valley Children's Healthcare Attn: Todd A. Santrupak, President and Chief Executive Officer 9300 Valley Children's Place Madera, California 93636
With a copy to:	Valley Children's Healthcare Attn: William E. Chaltraw, Jr., Senior Vice-President and Chief Legal Officer 9300 Valley Children's Place Madera, California 93636

SECTION 12. INTERPRETATION. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the Sections and Subsections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

SECTION 13. NO PRESUMPTION RE DRAFTER. The parties hereto acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

SECTION 14. RELATIONSHIP OF PARTIES. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Seller and Buyer or their agents, employees or contractors. Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the other party to any obligation.

SECTION 15. NO THIRD PARTY BENEFICIARIES. The parties hereto intend not to create rights in, or to grant to any third party as a beneficiary of the Agreement or of any duty, covenant, obligation, or undertaking established herein.

SECTION 16. ENTIRE AGREEMENT. This Agreement is a fully integrated agreement that contains the complete, final, entire, and exclusive expression of the agreement and understanding of the parties hereto. This Agreement supersedes and replaces all negotiations, and all proposed agreements, whether oral or written, between the parties hereto regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the other, or their attorneys or its representatives, other than as expressly set forth within this Agreement.

SECTION 17. AMENDMENTS IN WRITING. This Agreement may be amended or modified only by a written agreement executed by or on behalf of each of the parties hereto and approved and adopted as required by law. Any attempted amendment not in compliance with the provisions of this Section shall be null and void.

SECTION 18. WAIVER. Any waiver by either party of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by either party to take action on any breach or default of the

other party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to either party to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligation under this Agreement. Consent by either party to any act or omission by the other party shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the other party's written consent to future waivers.

SECTION 19. COUNTERPARTS. This Agreement may be executed in counterparts and when each party has signed and delivered at least one such counterpart to the other parties hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same agreement, which will be binding and effective as to the Seller and Buyer. 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.

SECTION 20. 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 governmental or business 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.

SECTION 21. REAL ESTATE COMMISSION. Buyer has retained the services of Ted Waldron of Fortune Associates Commercial Real Estate Services in its proposed acquisition of the Subject Property from Seller. Seller shall be responsible to pay a real estate commission of three percent (3%) of the Purchase Price to Fortune Associates upon close of escrow of the Subject Property. .

SECTION 22. 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.

SECTION 23. USE OF LOCAL CONTRACTORS FOR CONSTRUCTION AND LOCAL RESIDENTS AS EMPLOYEES. Buyer agrees to use its best efforts to use local contractors for the construction of Project/improvements on the Subject Property. In addition, Buyer agrees to use it best efforts to hire local residents for the jobs that will be created once the Project is completed.

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

SELLER:
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: _____ 2-12-19
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Office

BUYER:
VALLEY CHILDREN'S HEALTHCARE,
a California Non-Profit Benefit Corporation

BY:_____
Signature

_____
Print Name

_____
Title

TELEPHONE:_____
E-MAIL:_____

BY:_____
Signature

_____
Print Name

_____
Title

TELEPHONE:_____
E-MAIL:_____

Taxpayer I.D. No._____

ADDRESS: 9300 Valley Children's Place
Madera, CA 93636

Attachment A
Legal Description of Subject Property

EXHIBIT A

A parcel of land situated in the South West Quarter (SW 1/4) of Section 8, Township 7 South Range 14 East, M .D.B. & M, City of Merced, County of Merced, State of California, said parcel of land being a portion of Remainder D, as Remainder D is delineated on that certain map entitled, "FINAL MAP OF MANSIONETTE ESTATES UNIT 2", recorded in Volume 55, of Official Plats, at Pages 12-14, Merced County Records, said parcel of land also being portion of that certain real property described in Grant Deed to the City of Merced, recorded on April 22, 2010 as Document Number 2010-015020, Merced County Records, said parcel of land being more particularly described as follows:

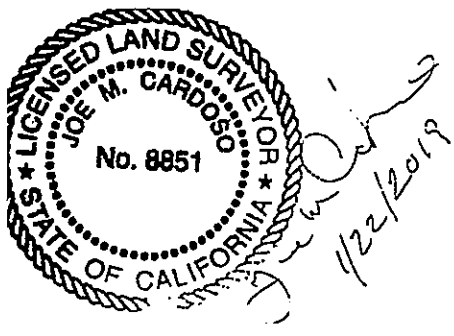
COMMENCING at the northwest corner of said Remainder D, thence S00°42'36"W, for 283.54 feet along the west line of said Remainder D to **TRUE POINT OF BEGINNING;** thence N89°56'09"E, for 612.97 feet parallel with the north line of said Remainder D to the east line of said Remainder D; thence S00°42'17"W, for 352.11 feet along the said east line of Remainder D; thence along a curve concave to the northwest through a central angle of 89°13'31", having a radius of 15.00 feet, and whose long chord bears S45°19'03" W, for 21.07 feet to the south line of said Remainder D; thence S89°55' 48"W, for
583.00 feet along said south line of Remainder D; thence N44°40'48" W, for 21.36 feet along the southwest line of said Remainder D; thence N00°42'36"E for 351.77 feet along the west line of Remainder D to the **TRUE POINT OFBEGINNING.**

SUBJECT TO the Road Dedication Grant Deed to the City of Merced, recorded on April 22, 2010 as Document Number 2010-015019, Merced County Records.

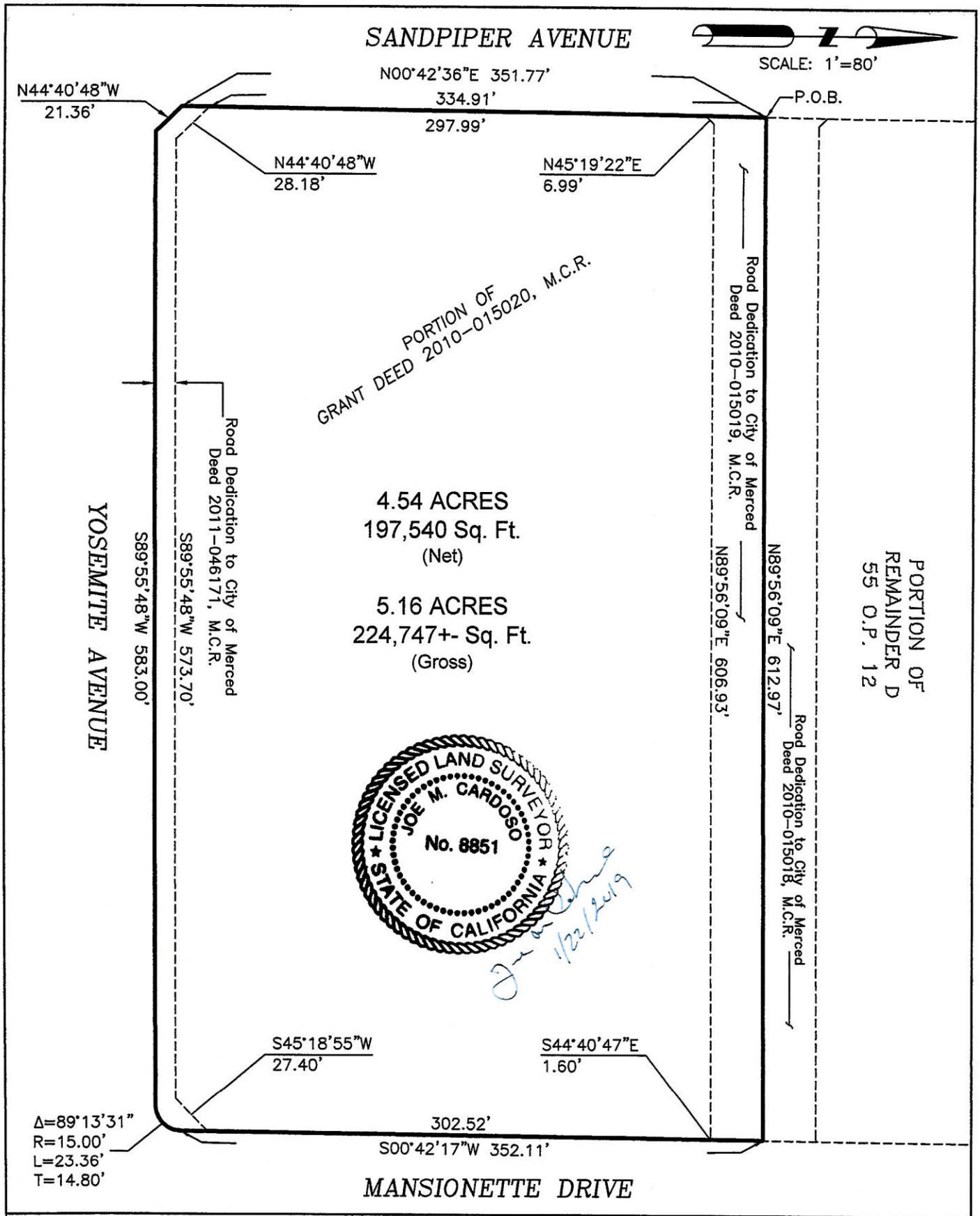
ALSO SUBJECT TO the Road Dedication Grant Deed to the City of Merced, recorded on December 22, 2011 as Document Number 2011-046171, Merced County Records.

The above-described parcel of land is delineated on Exhibit B, attached hereto, and made a part thereof.

The above-descri bed parcel of land contains 224,747 Sq. Ft., more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.



Attachment B
Site Map



City of Merced
"Gateway to Yosemite"
DEVELOPMENT SERVICES
ENGINEERING PROJECTS AND STANDARDS
678 W. 18th Street (209) 385-6846

EXHIBIT B

DR. BY:	CARDOSO
DATE:	1/18/19
CH. BY:	
DATE:	
File No.	
SCALE:	1"=80'

Attachment C
Project Description

EXHIBIT C

PROJECT DESCRIPTION

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 Medical Group'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.

Project Value:	$20 to $30 million at full build-out.
Job Creation:	50 to 60 full-time equivalent employees at full build-out.

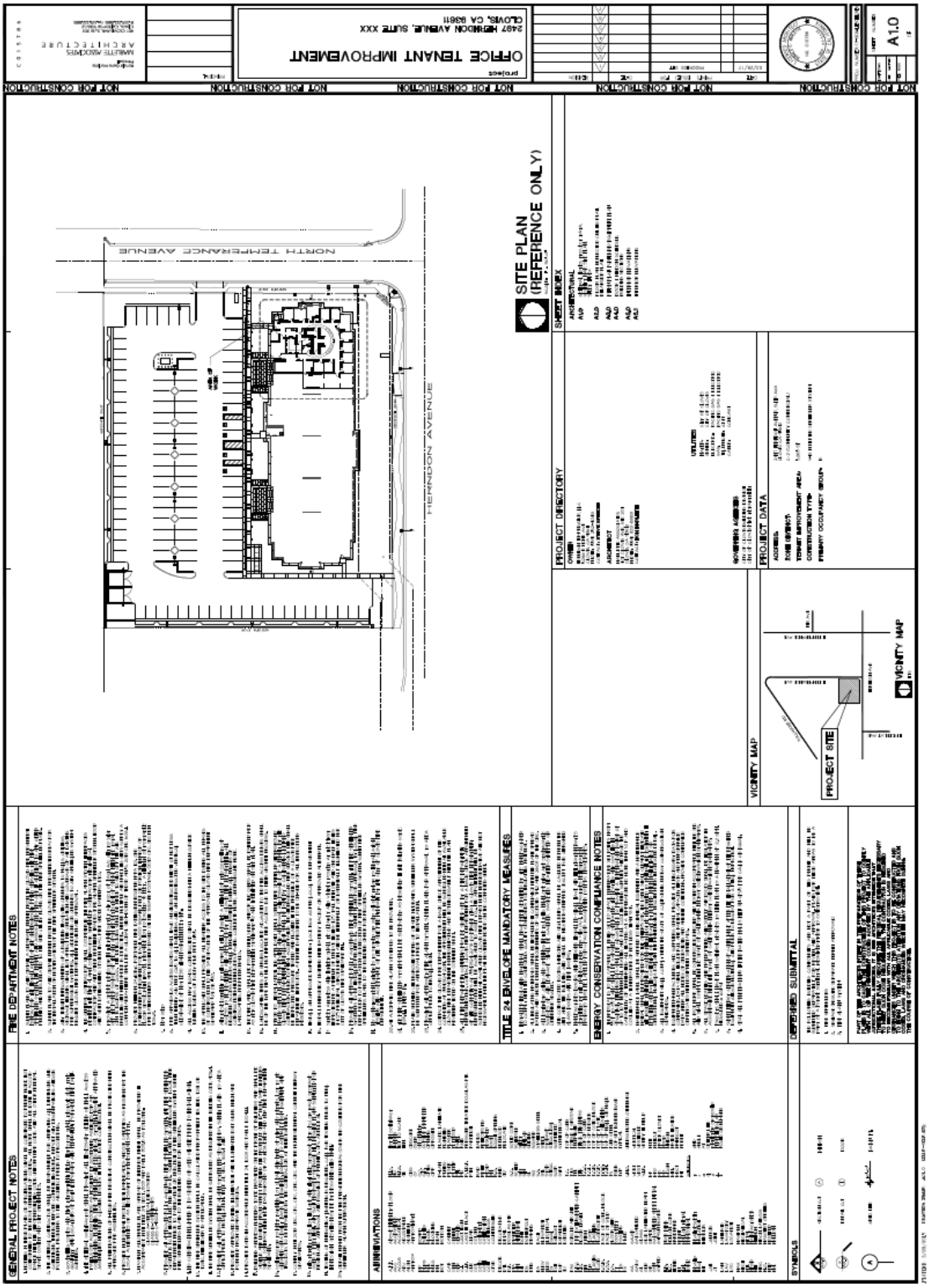
Construction Time: 15 to 18 months from commencement of construction.

Conceptual Site Plan:	To be reviewed by City staff as part of the Site Plan Review Application.
Salary and Benefits:	$4 million to $5 million at full-build out.
Property	VCH is a tax-exempt organization.
Taxes : Sales	Medical services provided by Valley Children's Medical Group are not subject to sales taxes.
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, Valley Children's Healthcareestimates serving 12,000 patients from outside Merced.

Valley Children's Healthcare

Clovis Site Plan



VALLEY CHILDREN'S HEALTHCARE
SAMPLE ELEVATION
CLOVIS, CA



ADMINISTRATIVE REPORT

Agenda Item H.8. Meeting Date: 2/19/2019

Report Prepared by: Jacob Struble, Lieutenant, Police Department

SUBJECT: Approval of a 6-Year Agreement with Axon Enterprises Inc. for the Purchase of Additional Body Worn Cameras, Conducted Energy Weapons (Known as "Tasers"), Computer Aided Dispatch / Records Management System (CAD/RMS) Integration and Redaction Assistant Software for the Police Department for a Total Amount of $789,899.50; Approval to Waive the Competitive Bidding Requirement to Allow for the Purchase of Standardized Equipment

REPORT IN BRIEF

Considers the approval of an agreement with Axon Enterprises Inc. for the purchase of additional body worn cameras, Tasers, CAD/RMS Integration, and redaction assistant software agreement for a total amount of $789,899.50 over the six-year contract period. Also considers waiving the competitive bidding requirement pursuant to Merced Municipal Code section 3.04.210 for purchases necessary for standardization of particular types of equipment.

RECOMMENDATION

City Council - Adopt a motion waving the competitive bidding requirements as stated in Section 3.04.210 of the Merced Municipal Code and approving a 6-year agreement with Axon Enterprises Inc. for the purchase of additional body worn cameras, Tasers, CAD/RMS integration, redaction software and a 6-year licensing, data storage and service plan in the total amount of $789,899.50.

ALTERNATIVES

1. Approve as recommended by staff; or
2. Refer back to staff with direction; or
3. Continue to a subsequent meeting; or
4. Take no action

AUTHORITY

Article III of Title 3, Chapter 3.04, of the Merced Municipal Code relating to purchases over Twenty-Five Thousand Dollars.

CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget

DISCUSSION

Currently the City of Merced is in a contract with Taser International for body worn cameras and

Tasers. The contract started October 1, 2016 and is for a 5-year term. The contract provides sixty-seven (67) body worn cameras and Tasers. Sixty-seven (67) units is not adequate to outfit all Merced Police Department personnel with the necessary equipment.

In April 2017, Taser International changed its name to Axon Enterprises. Accordingly, the proposed new contract will be with Axon Enterprises.

The City of Merced Police Department is budgeted (2018-2019) for ninety-eight (98) sworn positions and forty (40) non-sworn positions. Of the ninety-eight (98) sworn positions, seven (7) positions are administrative positions. There are five (5) non-sworn personnel that are issued Tasers as part of their equipment.

Given the shortage of equipment and advancements in technology, the department has worked closely with Axon Enterprises to come up with a new contract that will better fit the needs of the police department.

The first year of the proposed new contract would provide eighty-four (84) body worn cameras. In addition, the new contract increases the number of body worn cameras annually by three (3). At the end of the six-year contract, the department would be equipped with ninety-nine (99) body worn cameras.

The newly proposed contract also includes twenty (20) additional Tasers, bringing the total number of Tasers to eighty seven (87.) The additional Tasers must be added in the first year based upon the purchasing process of Axon Enterprises. The Tasers are financed through the first five years of the six-year contract.

A CAD/RMS integration option and redaction assistant software are included in the proposed new contract. The CAD/RMS integration allows the Axon system to detect all officer(s) on a call for service and automatically tag and link the videos together in the evidence.com system. This eliminates officers having to individually tag their body worn camera videos.

The CAD/RMS feature will assist with locating existing videos for subpoenas, discovery requests and Public Records Act Requests.

With the recent enactment of SB 1421 and AB 748, absent an exception, body worn camera videos may be released to the public. Prior to release, some of the body worn camera videos will require redaction to protect the privacy interests of those appearing in the videos. . Axon currently has redaction software built into their storage location at evidence.com, but this redaction software is very time consuming for the user. For example, it can take an officer one and a half hours to redact just four (4) minutes of video. With the redaction assistant feature added under the proposed agreement, the user can click on tabs that will automatically locate faces, license plates and screens (MDT) very quickly. This software will greatly decrease the number of hours and resources spent redacting body worn camera video.

There will be new costs associated with the addition of the new body worn cameras, Tasers, CAD/RMS integration and Redaction Assistant software. Currently the 2018/2019 budget for the

police department includes $81,468.00 dollars for the current Taser International contract. Under the proposed new contract, the cost would increase by $58,780.50 for a total of $140,248.50 in fiscal year 2018/2019. The increase is due to adding the additional body worn cameras, Tasers, CAD/RMS Integration, Redaction Assistant Software and miscellaneous hardware.

The payment breakdown for the proposed new contract is as follows:

March 2019	$140,248.50 ($81,468.00 budgeted)
March 2020	$142,586.00
March 2021	$146,306.00
March 2022	$121,082.00
March 2023	$128,893.00
March 2024	$110,784.00
TOTAL	$789,899.50

The decrease in cost at year four (2022) is due to the current sixty-seven (67) Taser devices from the City's existing contract being paid off.

The Merced Police Department currently uses Axon body worn cameras and Tasers. Axon Enterprises stores all of the digital evidence from the body worn cameras on their server and would continue to do so if this contract is approved. Axon Enterprises would also store all redacted videos on their server. Since the Merced Police Department and the City already uses Axon Enterprises, the department is requesting the competitive bid process be waived to allow for the purchase of standardized equipment. At this time, there are several years of video evidence already stored on the Axon Enterprises server.

The current contract with Taser International will be terminated upon the execution of the new proposed 6 year contract with Axon Enterprises.

IMPACT ON CITY RESOURCES

The 2018/2019 Police Budget includes $81,468.00 dollars for costs associated with the current Taser International/Axon contract. The existing funds are located in account 061-1026-522-17.00. With the proposed new contract there will be a shortage of $58,780.50 dollars. The Department is expecting to use existing salary savings to cover the shortage.

ATTACHMENTS

1. Axon Enterprises Quote

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

Q-177157-43495.141CM

Issued: 01/30/2019

Quote Expiration: 03/14/2019

Account Number: 112159

Start Date: 03/15/2019
Payment Terms: Net 30
Delivery Method: Fedex - Ground

SHIP TO
Jacob Struble
Merced Police Dept. - CA
611 W. 22nd Street
Merced, CA 95340
US

BILL TO
Merced Police Dept. - CA
611 W. 22nd Street
Merced, CA 95340
US

SALES REPRESENTATIVE
Chris Morton
Phone:
Email: cmorton@axon.com
Fax:

PRIMARY CONTACT
Jacob Struble
Phone: (209) 385-4739
Email: strublej@cityofmerced.org

Year 1- New Users (Est. Ship Date 2/15/2019)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80075	OSP BWC & CEW BUNDLE: YEAR 1 PAYMENT	13	1,188.00	742.50	9,652.50
85110	EVIDENCE.COM INCLUDED STORAGE	520	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	3	336.00	336.00	1,008.00
80082	UNLIMITED BWC BUNDLE: YEAR 1 PAYMENT	4	948.00	948.00	3,792.00
85110	EVIDENCE.COM INCLUDED STORAGE	160	0.00	0.00	0.00
80052	CAD/RMS SERVICE ADD-ON: YEAR 1 PAYMENT	17	180.00	180.00	3,060.00
Hardware					
11528	FLEX 2 CAMERA, (ONLINE)	13	449.00	0.00	0.00
11532	FLEX 2 CONTROLLER	13	250.00	0.00	0.00
11509	BELT CLIP, RAPIDLOCK	13	0.00	0.00	0.00
11534	USB SYNC CABLE, FLEX 2	13	0.00	0.00	0.00
11545	COLLAR MOUNT, FLEX 2	13	0.00	0.00	0.00
11547	BALLCAP MOUNT, FLEX 2	13	0.00	0.00	0.00
80108	5 YEAR OFFICER SAFETY PLAN FLEX 2 CAMERA	13	0.00	0.00	0.00
80117	FIVE YEAR OFFICER SAFETY PLAN FLEX 2 CONTROLLER	13	0.00	0.00	0.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	3	42.00	42.00	126.00
11537	DOCK, FLEX 2, 6-BAY + CORE	3	1,495.00	1,495.00	4,485.00
80111	5 YEAR DOCK 2 OFFICER SAFETY PLAN SIX BAY + HUB DOCK 2	3	0.00	0.00	0.00

Year 1- New Users (Est. Ship Date 2/15/2019) (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware (Continued)					
11002	BLACK X26P CEW, HANDLE	13	0.00	0.00	0.00
11004	WARRANTY, 4 YEAR, X26P	13	0.00	0.00	0.00
70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2/X26P	13	0.00	0.00	0.00
22013	KIT, DATAPORT DOWNLOAD, USB, X2/X26P	6	188.00	188.00	1,128.00
11501	RIGHT-HAND HOLSTER, X26P, BLACKHAWK	11	0.00	0.00	0.00
11504	LEFT-HAND HOLSTER, X26P, BLACKHAWK	2	0.00	0.00	0.00
11528	FLEX 2 CAMERA, (ONLINE)	4	449.00	449.00	1,796.00
11532	FLEX 2 CONTROLLER	4	250.00	250.00	1,000.00
11509	BELT CLIP, RAPIDLOCK	4	0.00	0.00	0.00
11534	USB SYNC CABLE, FLEX 2	4	0.00	0.00	0.00
11545	COLLAR MOUNT, FLEX 2	4	0.00	0.00	0.00
80106	5 YEAR TASER ASSURANCE PLAN AXON FLEX 2 CAMERA	4	0.00	0.00	0.00
80115	5 YEAR TASER ASSURANCE PLAN AXON FLEX 2 CONTROLLER	4	0.00	0.00	0.00
11537	DOCK, FLEX 2, 6-BAY + CORE	3	1,495.00	1,495.00	4,485.00
80110	5 YEAR TASER ASSURANCE PLAN AXON SIX BAY + HUB DOCK FLEX2	3	0.00	0.00	0.00
11547	BALLCAP MOUNT, FLEX 2	4	0.00	0.00	0.00
Other					
73490	REDACTION ASSISTANT 51-150 SWORN AGENCY-WIDE LICENSE: 5 YEAR	1	0.00	0.00	0.00
73493	REDACTION ASSISTANT 51-150 SWORN ANNUAL PAYMENT	1	14,400.00	12,000.00	12,000.00
				Subtotal	42,532.50
				Estimated Shipping	0.00
				Estimated Tax	0.00
				Total	42,532.50

Year 1- Existing OSP Users (Est. Ship Date 2/15/2019)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80075	OSP BWC & CEW BUNDLE: YEAR 1 PAYMENT	67	1,188.00	1,188.00	79,596.00
85110	EVIDENCE.COM INCLUDED STORAGE	2,680	0.00	0.00	0.00
80022	PRO EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	4	468.00	468.00	1,872.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00

Year 1- Existing OSP Users (Est. Ship Date 2/15/2019) (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages (Continued)					
80052	CAD/RMS SERVICE ADD-ON: YEAR 1 PAYMENT	67	180.00	180.00	12,060.00
				Subtotal	93,528.00
				Estimated Tax	0.00
				Total	93,528.00

Year 1- T-60 (Est. Ship Date 2/15/2019)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85181	TASER 60 YEAR 1 PAYMENT: X26P BASIC	20	280.00	200.00	4,000.00
Hardware					
22013	KIT, DATAPORT DOWNLOAD, USB, X2/X26P	1	188.00	188.00	188.00
11002	BLACK X26P CEW, HANDLE	20	0.00	0.00	0.00
11501	RIGHT-HAND HOLSTER, X26P, BLACKHAWK	17	0.00	0.00	0.00
11504	LEFT-HAND HOLSTER, X26P, BLACKHAWK	3	0.00	0.00	0.00
70116	SPPM, SIGNAL CONNECTED BATTERY PACK, X2/X26P	20	0.00	0.00	0.00
44203	CARTRIDGE - 25' HYBRID	40	0.00	0.00	0.00
				Subtotal	4,188.00
				Estimated Tax	0.00
				Total	4,188.00

Year 2- New Users (Est. Ship Date 2/15/2020)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80076	OSP BWC & CEW BUNDLE: YEAR 2 PAYMENT	13	1,188.00	1,188.00	15,444.00
85110	EVIDENCE.COM INCLUDED STORAGE	520	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	3	336.00	336.00	1,008.00
80083	UNLIMITED BWC BUNDLE: YEAR 2 PAYMENT	4	948.00	948.00	3,792.00
85110	EVIDENCE.COM INCLUDED STORAGE	160	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
80082	UNLIMITED BWC BUNDLE: YEAR 1 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80053	CAD/RMS SERVICE ADD-ON: YEAR 2 PAYMENT	20	180.00	180.00	3,600.00
Hardware					
11528	FLEX 2 CAMERA, (ONLINE)	3	449.00	449.00	1,347.00
11532	FLEX 2 CONTROLLER	3	250.00	250.00	750.00
11509	BELT CLIP, RAPIDLOCK	3	0.00	0.00	0.00

Year 2- New Users (Est. Ship Date 2/15/2020) (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware (Continued)					
11534	USB SYNC CABLE, FLEX 2	3	0.00	0.00	0.00
11545	COLLAR MOUNT, FLEX 2	3	0.00	0.00	0.00
11547	BALLCAP MOUNT, FLEX 2	3	0.00	0.00	0.00
80106	5 YEAR TASER ASSURANCE PLAN AXON FLEX 2 CAMERA	3	0.00	0.00	0.00
80115	5 YEAR TASER ASSURANCE PLAN AXON FLEX 2 CONTROLLER	3	0.00	0.00	0.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	1	42.00	42.00	42.00
11537	DOCK, FLEX 2, 6-BAY + CORE	1	1,495.00	1,495.00	1,495.00
80110	5 YEAR TASER ASSURANCE PLAN AXON SIX BAY + HUB DOCK FLEX2	1	0.00	0.00	0.00
Other					
73493	REDACTION ASSISTANT 51-150 SWORN ANNUAL PAYMENT	1	14,400.00	14,400.00	14,400.00
				Subtotal	45,058.00
				Estimated Tax	0.00
				Total	45,058.00

Year 2- Existing OSP Users

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80076	OSP BWC & CEW BUNDLE: YEAR 2 PAYMENT	67	1,188.00	1,188.00	79,596.00
85110	EVIDENCE.COM INCLUDED STORAGE	2,680	0.00	0.00	0.00
80023	PRO EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	4	468.00	468.00	1,872.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80053	CAD/RMS SERVICE ADD-ON: YEAR 2 PAYMENT	67	180.00	180.00	12,060.00
				Subtotal	93,528.00
				Estimated Tax	0.00
				Total	93,528.00

Year 2- T-60 (Est. Ship Date 2/15/2020)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85182	TASER 60 YEAR 2 PAYMENT: X26P BASIC	20	280.00	200.00	4,000.00
				Subtotal	4,000.00
				Estimated Tax	0.00
				Total	4,000.00

Year 3- New Users (Est. Ship Date 2/15/2021)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80077	OSP BWC & CEW BUNDLE: YEAR 3 PAYMENT	13	1,188.00	1,188.00	15,444.00
85110	EVIDENCE.COM INCLUDED STORAGE	520	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	3	336.00	336.00	1,008.00
80084	UNLIMITED BWC BUNDLE: YEAR 3 PAYMENT	4	948.00	948.00	3,792.00
85110	EVIDENCE.COM INCLUDED STORAGE	160	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
80083	UNLIMITED BWC BUNDLE: YEAR 2 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
80082	UNLIMITED BWC BUNDLE: YEAR 1 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80054	CAD/RMS SERVICE ADD-ON: YEAR 3 PAYMENT	23	180.00	180.00	4,140.00
Hardware					
11528	FLEX 2 CAMERA, (ONLINE)	3	449.00	449.00	1,347.00
11532	FLEX 2 CONTROLLER	3	250.00	250.00	750.00
11509	BELT CLIP, RAPIDLOCK	3	0.00	0.00	0.00
11534	USB SYNC CABLE, FLEX 2	3	0.00	0.00	0.00
11545	COLLAR MOUNT, FLEX 2	3	0.00	0.00	0.00
11547	BALLCAP MOUNT, FLEX 2	3	0.00	0.00	0.00
80107	3 YEAR TASER ASSURANCE PLAN AXON FLEX 2 CAMERA	3	0.00	0.00	0.00
80116	3 YEAR TASER ASSURANCE PLAN AXON FLEX 2 CONTROLLER	3	0.00	0.00	0.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	1	42.00	42.00	42.00
11537	DOCK, FLEX 2, 6-BAY + CORE	1	1,495.00	1,495.00	1,495.00
80109	3 YEAR TASER ASSURANCE PLAN AXON SIX BAY + HUB DOCK FLEX2	1	0.00	0.00	0.00

Year 3- New Users (Est. Ship Date 2/15/2021) (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other					
73493	REDACTION ASSISTANT 51-150 SWORN ANNUAL PAYMENT	1	14,400.00	14,400.00	14,400.00
				Subtotal	48,778.00
				Estimated Tax	0.00
				Total	48,778.00

Year 3- Existing OSP Users

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80077	OSP BWC & CEW BUNDLE: YEAR 3 PAYMENT	67	1,188.00	1,188.00	79,596.00
85110	EVIDENCE.COM INCLUDED STORAGE	2,680	0.00	0.00	0.00
80024	PRO EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	4	468.00	468.00	1,872.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80054	CAD/RMS SERVICE ADD-ON: YEAR 3 PAYMENT	67	180.00	180.00	12,060.00
				Subtotal	93,528.00
				Estimated Tax	0.00
				Total	93,528.00

Year 3- T-60

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85183	TASER 60 YEAR 3 PAYMENT: X26P BASIC	20	280.00	200.00	4,000.00
				Subtotal	4,000.00
				Estimated Tax	0.00
				Total	4,000.00

Year 4- New Users (Est. Ship Date 2/15/2022)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80078	OSP BWC & CEW BUNDLE: YEAR 4 PAYMENT	13	1,188.00	1,188.00	15,444.00
85110	EVIDENCE.COM INCLUDED STORAGE	520	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	3	336.00	336.00	1,008.00
80085	UNLIMITED BWC BUNDLE: YEAR 4 PAYMENT	4	948.00	948.00	3,792.00
85110	EVIDENCE.COM INCLUDED STORAGE	160	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00

Year 4- New Users (Est. Ship Date 2/15/2022) (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages (Continued)					
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
80083	UNLIMITED BWC BUNDLE: YEAR 2 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80084	UNLIMITED BWC BUNDLE: YEAR 3 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80055	CAD/RMS SERVICE ADD-ON: YEAR 4 PAYMENT	26	180.00	180.00	4,680.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
80082	UNLIMITED BWC BUNDLE: YEAR 1 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
Hardware					
11528	FLEX 2 CAMERA, (ONLINE)	3	449.00	449.00	1,347.00
11532	FLEX 2 CONTROLLER	3	250.00	250.00	750.00
11509	BELT CLIP, RAPIDLOCK	3	0.00	0.00	0.00
11534	USB SYNC CABLE, FLEX 2	3	0.00	0.00	0.00
11545	COLLAR MOUNT, FLEX 2	3	0.00	0.00	0.00
11547	BALLCAP MOUNT, FLEX 2	3	0.00	0.00	0.00
80107	3 YEAR TASER ASSURANCE PLAN AXON FLEX 2 CAMERA	3	0.00	0.00	0.00
80116	3 YEAR TASER ASSURANCE PLAN AXON FLEX 2 CONTROLLER	3	0.00	0.00	0.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	1	42.00	42.00	42.00
11537	DOCK, FLEX 2, 6-BAY + CORE	1	1,495.00	1,495.00	1,495.00
80109	3 YEAR TASER ASSURANCE PLAN AXON SIX BAY + HUB DOCK FLEX2	1	0.00	0.00	0.00
Other					
73493	REDACTION ASSISTANT 51-150 SWORN ANNUAL PAYMENT	1	14,400.00	14,400.00	14,400.00
				Subtotal	52,498.00
				Estimated Tax	0.00
				Total	52,498.00

Year 4- Existing OSP Users to Pro (2/15/2022)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80026	PRO EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	4	468.00	468.00	1,872.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00

Year 4- Existing OSP Users to Pro (2/15/2022) (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages (Continued)					
80022	PRO EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	67	468.00	468.00	31,356.00
85110	EVIDENCE.COM INCLUDED STORAGE	2,010	0.00	0.00	0.00
80123	EVIDENCE.COM STORAGE, UNLIMITED	67	288.00	288.00	19,296.00
80055	CAD/RMS SERVICE ADD-ON: YEAR 4 PAYMENT	67	180.00	180.00	12,060.00
				Subtotal	64,584.00
				Estimated Tax	0.00
				Total	64,584.00

Year 4- T-60

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85184	TASER 60 YEAR 4 PAYMENT: X26P BASIC	20	280.00	200.00	4,000.00
				Subtotal	4,000.00
				Estimated Tax	0.00
				Total	4,000.00

Year 5- New Users (Est. Ship Date 2/15/2023)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80079	OSP BWC & CEW BUNDLE: YEAR 5 PAYMENT	13	1,188.00	1,188.00	15,444.00
85110	EVIDENCE.COM INCLUDED STORAGE	520	0.00	0.00	0.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	3	336.00	336.00	1,008.00
80086	UNLIMITED BWC BUNDLE: YEAR 5 PAYMENT	4	948.00	948.00	3,792.00
85110	EVIDENCE.COM INCLUDED STORAGE	160	0.00	0.00	0.00
80025	PRO EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	7	468.00	468.00	3,276.00
85110	EVIDENCE.COM INCLUDED STORAGE	210	0.00	0.00	0.00
80123	EVIDENCE.COM STORAGE, UNLIMITED	7	288.00	288.00	2,016.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
80084	UNLIMITED BWC BUNDLE: YEAR 3 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80085	UNLIMITED BWC BUNDLE: YEAR 4 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80056	CAD/RMS SERVICE ADD-ON: YEAR 5 PAYMENT	33	180.00	180.00	5,940.00

Year 5- New Users (Est. Ship Date 2/15/2023) (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages (Continued)					
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
80083	UNLIMITED BWC BUNDLE: YEAR 2 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
Hardware					
11528	FLEX 2 CAMERA, (ONLINE)	7	449.00	449.00	3,143.00
11532	FLEX 2 CONTROLLER	7	250.00	250.00	1,750.00
11509	BELT CLIP, RAPIDLOCK	7	0.00	0.00	0.00
11534	USB SYNC CABLE, FLEX 2	7	0.00	0.00	0.00
11545	COLLAR MOUNT, FLEX 2	7	0.00	0.00	0.00
11546	EPAULETTE MOUNT, FLEX 2	7	0.00	0.00	0.00
Other					
73493	REDACTION ASSISTANT 51-150 SWORN ANNUAL PAYMENT	1	14,400.00	14,400.00	14,400.00
				Subtotal	60,309.00
				Estimated Tax	0.00
				Total	60,309.00

Year 5- Existing OSP Users to Pro

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80022	PRO EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	67	468.00	468.00	31,356.00
85110	EVIDENCE.COM INCLUDED STORAGE	2,010	0.00	0.00	0.00
80123	EVIDENCE.COM STORAGE, UNLIMITED	67	288.00	288.00	19,296.00
80026	PRO EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	4	468.00	468.00	1,872.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80056	CAD/RMS SERVICE ADD-ON: YEAR 5 PAYMENT	67	180.00	180.00	12,060.00
				Subtotal	64,584.00
				Estimated Tax	0.00
				Total	64,584.00

Year 5- T-60

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85185	TASER 60 YEAR 5 PAYMENT: X26P BASIC	20	280.00	200.00	4,000.00
				Subtotal	4,000.00
				Estimated Tax	0.00
				Total	4,000.00

Year 6- New Users

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	1	336.00	336.00	336.00
80084	UNLIMITED BWC BUNDLE: YEAR 3 PAYMENT	3	948.00	948.00	2,844.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80026	PRO EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	30	468.00	468.00	14,040.00
85110	EVIDENCE.COM INCLUDED STORAGE	900	0.00	0.00	0.00
80056	CAD/RMS SERVICE ADD-ON: YEAR 5 PAYMENT	33	180.00	180.00	5,940.00
80123	EVIDENCE.COM STORAGE, UNLIMITED	30	288.00	288.00	8,640.00
Other					
73493	REDACTION ASSISTANT 51-150 SWORN ANNUAL PAYMENT	1	14,400.00	14,400.00	14,400.00
				Subtotal	46,200.00
				Estimated Tax	0.00
				Total	46,200.00

Year 6- Existing Users

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80056	CAD/RMS SERVICE ADD-ON: YEAR 5 PAYMENT	67	180.00	180.00	12,060.00
80026	PRO EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	4	468.00	468.00	1,872.00
85110	EVIDENCE.COM INCLUDED STORAGE	120	0.00	0.00	0.00
80026	PRO EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	67	468.00	468.00	31,356.00
85110	EVIDENCE.COM INCLUDED STORAGE	2,010	0.00	0.00	0.00
80123	EVIDENCE.COM STORAGE, UNLIMITED	67	288.00	288.00	19,296.00
				Subtotal	64,584.00
				Estimated Tax	0.00
				Total	64,584.00

Grand Total	**789,899.50**

Discounts (USD)

Quote Expiration: 03/14/2019

List Amount	815,178.00
Discounts	25,278.50
Total	**789,899.50**

Total excludes applicable taxes and shipping

Summary of Payments

Payment	Amount (USD)
Year 1- New Users (Est. Ship Date 2/15/2019)	42,532.50
Year 1- Existing OSP Users (Est. Ship Date 2/15/2019)	93,528.00
Year 1- T-60 (Est. Ship Date 2/15/2019)	4,188.00
Year 2- New Users (Est. Ship Date 2/15/2020)	45,058.00
Year 2- Existing OSP Users	93,528.00
Year 2- T-60 (Est. Ship Date 2/15/2020)	4,000.00
Year 3- New Users (Est. Ship Date 2/15/2021)	48,778.00
Year 3- Existing OSP Users	93,528.00
Year 3- T-60	4,000.00
Year 4- New Users (Est. Ship Date 2/15/2022)	52,498.00

Summary of Payments (Continued)

Payment	Amount (USD)
Year 4- Existing OSP Users to Pro (2/15/2022)	64,584.00
Year 4- T-60	4,000.00
Year 5- New Users (Est. Ship Date 2/15/2023)	60,309.00
Year 5- Existing OSP Users to Pro	64,584.00
Year 5- T-60	4,000.00
Year 6- New Users	46,200.00
Year 6- Existing Users	64,584.00
Grand Total	**789,899.50**

Notes

This quote will terminate contract 8986 executed by quote (Q-52485) and all obligations pertaining to that contract upon execution of this agreement and will start a new 6 year agreement with Axon.

Years 1-4 will carry the OSP licensing from contract 8986 executed by quote (Q-52485) through their original end date of 3/14/2022. Starting 3/15/2022 those licenses will be switched to Pro + Unlimited storage which will run through the end of this contract (12/31/2025).

The 67 BWC and 6 associated docks from (Q-52485) will receive two TAP refreshes, one in Year 2 of this quote and one in Year 4 of this quote.

The 17 BWC hardware units Deployed in "Year 1- New Users (Est. Ship Date 2/15/2019)" group will also receive 2 TAP refreshes, one at the 30 month mark and one at the 60 month mark of this quote.

The 3 BWC hardware units and 1 associated docks deployed in each year, Year 2 and 3, will receive 1 TAP replacement at the 60 month mark of this contract.

The 3 BWC hardware units and 1 associated docks deployed in Year 4 will receive 1 TAP replacement at the 72 month mark of this contract.

The 7 BWC and hardware units in year 5 and associated docking stations deployed in Year 5 of this quote will not be covered under the Taser Assurance Plan.

Officer Safety Plan Includes:
-Evidence.com Pro License
-Upgrades to your purchased AXON cameras and Docks at years 2.5 and 5 under TAP
-Extended warranties on AXON cameras and Docks for the duration of the Plan
-Unlimited Storage for your AXON devices and data from the Evidence Mobile App
-One TASER CEW of your choice with a 4 year extended warranty (5 years total of warranty coverage)
-One CEW holster and battery pack of your choice
-40 GB of included storage for other digital media
-Additional terms apply. Please refer to the Evidence.com Master Service Agreement for a full list of terms and conditions for the Officer Safety Plan.

Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

PO# (Or write N/A): _____

Please sign and email to Chris Morton at cmorton@axon.com or fax to

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

Quote: Q-177157-43495.141CM

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ADMINISTRATIVE REPORT

Agenda Item H.9. Meeting Date: 2/19/2019

Report Prepared by: Marvin Dillsaver, Communications Supervisor, Merced Police Department

SUBJECT: Approval of Amendment to Agreement with Tyler Technologies for the Purchase of the Citizen Reporting Interface Software Module and Attendant Maintenance Agreement and Purchase of Subscription Services for an Online Citizen Reporting System Through LexisNexis for an Amount Not to Exceed $20,099

REPORT IN BRIEF

Approves an amendment to the City's existing agreement with Tyler Technologies for the purchase of a new software module, which will include increasing the module's maintenance to the existing maintenance agreement with Tyler Technologies and; also approves a subscription service with LexisNexis for the Desk Officer Reporting System which will allow crime reports, tips and other documents to be filed with the Merced Police Department online.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving a 6th Amendment to the original contract with Tyler Technologies for the purchase of a new software module to the existing public safety software package from Tyler Technologies; and,

B. Approving a Software Subscription Agreement with LexisNexis; and,

C. Approving Law Enforcement Agreement with LexisNexis; and,

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

ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Refer back to staff for reconsideration of specific items as requested by Council; or,
3. Take no action.

AUTHORITY

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

Chapter 3.04, Section 3.14.110B, of the Merced Municipal Code requiring council approval for contracts involving professional services exceeding $30,000 dollars.

CITY COUNCIL PRIORITIES

Enhance the efficiency and productivity of public safety staff by using technology to operate in a more resourceful manner.

DISCUSSION

The Police Department would like to purchase additional Tyler Technology software and subscription services to allow for additional opportunities for the community to file reports. This additional module will allow an automated connection between the LexisNexis online reporting secured hosted software subscription. The LexisNexis software subscription will allow for the Police Department to allow additional community members the ability to process reports online.

The Police Department currently utilizes custom-made software created by the Information Technology Department to take in online crime reports. The Police Department has outgrown the software and needs more complex automation to increase the department's operational efficiency as more citizens look to take advantage of online crime reporting.

With the addition of the LexisNexis subscription, the additional Tyler Technology software module will allow the online reports to be filed online. Once approved, similar to our handwritten reports, the online report will be processed automatically and loaded into our RMS system. This can speed the processing of the reports and make them available to the community and insurance companies faster. These online reports can be made available to the reporting party or insurance companies through a secure online connection similar to what we use currently for our accident reports. The faster we turn a report around the faster the insurance company can obtain the report and can start the claim process for the insured. This new addition will make processing of reports more efficient and save time and money.

The cost of the Citizen Reporting Interface software includes a one-time license investment of $11,700 and a fixed installation service fee of $2,320 and an annual maintenance fee of $2,457.

The maintenance for this module will be added to our existing maintenance contract dated July 1, 2013. The maintenance for Citizen Reporting Interface will be broken down as follows (which are estimates based on a March contract execution):

March 1, 2019-June 30, 2019 (Pro-rated based on contract signature date)	$ 819.00
July 1, 2019 - June 30, 2020 (Contract ends)	$ 2,457.00

The LexisNexis Software subscription ($1,315.00/month for two years):

March 1, 2019 - June 30, 2019	$ 5,260.00

The total cost to implement the Citizen Online Reporting system for the remaining of this fiscal year including all maintenance, subscription, and support fees will be $20,099.00. Police salary savings from FY2018-19 budget will be transferred to account 001-1006-522-22-00 to fund this project.

IMPACT ON CITY RESOURCES

Police Department salary savings from FY2018-19 will be used to fund the Citizen Online Reporting Software implementation for FY2018-19. The software subscription and maintenance costs for FY2019-20 will be included in the annual budget process.

ATTACHMENTS

1. Tyler amendment for Citizens Reporting Interface
2. LexisNexis Subscription Agreement
3. LexisNexis Law Enforcement Agreement
4. Tyler Technologies-Original Contract

AMENDMENT

This amendment ("Amendment") is effective as of the date of signature of the last party to sign as indicated below ("Amendment Effective Date"), by and between Tyler Technologies, Inc., a Delaware corporation with offices at 840 West Long Lake Road, Troy, MI 48098 ("Tyler") and the City of Merced, with offices at 611 W 22nd St, Merced, CA 95349-3737 ("Client").

WHEREAS, Tyler and the Client are parties to a License Agreement with an effective date of August 10, 1994 (the "Agreement");

WHEREAS, Tyler and Client now desire to amend the Agreement;

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, Tyler and the Client agree as follows:

1. The software and/or services set forth in Exhibit 1 to this Amendment are hereby added to the Agreement.

2. The following payment terms, as applicable, shall apply:

    a. Additional software fees will be invoiced 100% on the Amendment Effective Date.
    b. Associated maintenance and support fees will be invoiced on a pro rata basis beginning on the first day of the month following the Amendment Effective Date, and thereafter in a lump sum amount together with Client's then-current maintenance and support fees for previously licensed software.
    c. Fixed price services are invoiced upon complete delivery of the service.

3. This Amendment shall be governed by and construed in accordance with the terms and conditions of the Agreement.

4. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Amendment as of the date of signature of the last party to sign as indicated below.

Tyler Technologies, Inc.	City of Merced, CA
By: _____	By: _____
Name: Greg Sebastian	Name: _____
Title: President, Public Safety Division	Title: _____
Date: _____	Date: _____

Exhibit 1
Amendment Investment Summary

The following Amendment Investment Summary details the software, products, and services to be delivered by us to you under the Agreement. This Amendment Investment Summary is effective as of the Amendment Effective Date

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new world
a tyler public safety solution

Date:	12/21/2018
Quote Expiration:	2/28/2019
Quote Name:	City of Merced Police - Citizens Reporting Interface (supports COP LOGIC)
Quote Number:	2018-25548-2
Quote Description:	Citizens Reporting Interface (supports COP LOGIC)

Sales Quotation For
City of Merced Police Department
611 W 22nd St
Merced , CA 95340-3737
Phone: 2093854701

Tyler Software and Related Services

Description		License	Impl Hours	Impl Cost	Module Total	Year One Maintenance
Law Enforcement Records Management System						
Citizen Reporting Interface		$18,000	0	$0	$18,000	$2,457
	Sub-Total:	*$18,000*		*$0*	*$18,000*	*$2,457*
	Less Discount:	*$6,300*		*$0*	*$6,300*	*$0*
	TOTAL:	**$11,700**	**0**	**$0**	**$11,700**	**$2,457**

Services

Description		Quantity	Unit Price	Unit Discount	Extended Price
Citizen Reporting Interface Installation Fee		1	$2,320	$0	$2,320
	TOTAL:				**$2,320**

Summary	**One Time Fees**	**Recurring Fees**
Total Tyler Software	$11,700	$2,457
Total Tyler Services	$2,320	
Total Other Costs	$0	
Total Third Party Hardware, Software and Services	$0	$0
Travel and Living Expenses	$0	
Summary Total	**$14,020**	**$2,457**

Tyler Discount Detail

Description		License	License Discount	License Net	Maintenance
Law Enforcement Records Management System					
Citizen Reporting Interface		$18,000	$6,300	$11,700	$2,457
	Sub-Total:	*$18,000*	*$6,300*	*$11,700*	*$2,457*
		$18,000	**$6,300**	**$11,700**	**$2,457**

Assumptions

Personal Computers must meet the minimum hardware requirements for New World products. Microsoft Windows 7/8.1/10 32/64 bit or later is required for all client machines. Windows Server 2012/2016 and SQL Server 2012/2014/2016 are required for the Application and Database Server(s).

New World product requires Microsoft Windows Server 2012/2016 and SQL Server 2012/2016, including required Client Access Licenses (CALs) for applicable Microsoft products. Servers must meet minimum hardware requirements provided by Tyler. The supported Microsoft operating system and SQL versions are specific to Tyler's release versions.

New World product requires Microsoft Excel or Windows Search 4.0 for document searching functionality; Microsoft Word is required on the application server for report formatting.

Tyler recommends a 100/1000MB (GB) Ethernet network for the local area network. Wide area network requirements vary based on system configuration, Tyler will provide further consultation for this environment.

Does not include servers, workstations, or any required third-party hardware or software unless specified in this Investment Summary. Customer is responsible for any third-party support.

Licensed Software, and third-party software embedded therein, if any, will be delivered in a machine readable form to Customer via an agreed upon network connection. Any taxes or fees imposed are the responsibility of the purchaser and will be remitted when imposed.

Tyler's GIS implementation services are to assist the Customer in preparing the required GIS data for use with the Licensed New World Software. Depending upon the Licensed Software the Customer at a minimum will be required to provide an accurate street centerline layer and the appropriate polygon layers needed for Unit Recommendations and Run Cards in an industry standard Esri file format (Personal Geodatabase, File Geodatabase, Shape Files). Customer is responsible for having clearly defined boundaries for Police Beats, EMS Districts and Fire Quadrants. If necessary Tyler will assist Customer in creating the necessary polygon layers (Police Beats, EMS Districts and Fire Quadrants) for Unit Recommendations and Run Cards. Tyler is not responsible for the accuracy of or any ongoing maintenance of the GIS data used within the Licensed New World Software.

Client is responsible for any ongoing annual maintenance on third-party products, and is advised to contact the third-party vendor to ensure understanding of and compliance with all maintenance requirements

All Tyler Clients are required to use Esri's ArcGIS Suite to maintain GIS data. All maintenance, training and ongoing support of this product will be contracted with and conducted by Esri. Maintenance for Esri's ArcGIS suite of products that are used for maintaining Client's GIS data will be contracted by Client separately with Esri.

CAD Maintenance includes 24/7 Support.

When Custom interface is included, Custom interface will be operational with existing third-party software. Any subsequent changes to third-party applications may require additional services.

When State/NCIC is included, Client is responsible for obtaining the necessary State approval and any non-Tyler hardware and software. Includes state-specific standard forms developed by Tyler. Additional forms can be provided for an additional fee.

Associated Maintenance and Support fees will be added to the Client's current Maintenance and Support Agreement and will be invoiced on a pro rata basis beginning on the first day of the month following Amendment Effective Date, and thereafter in a lump sum amount together with Client's then-current maintenance and support fees for previously licensed software.

LexisNexis® | Coplogic™ Solutions

Order No. 1
LexisNexis® Desk Officer Reporting System (DORS)

This Order No. 1 ("Order") is entered into this _____ day of _____, 2019 ("Order Effective Date") between City of Merced ("Agency") and LexisNexis Coplogic Solutions Inc., on behalf of itself and its Affiliates ("Provider") and subject to the terms and conditions of the Law Enforcement Agreement effective _____("Agreement") between the Parties.

1. TERMS AND CONDITIONS.

All of the terms and conditions contained in the Agreement shall remain in full force and effect and shall apply to the extent applicable to this Order except as expressly modified herein. To the extent that the terms and conditions of this Order are in conflict with the terms and conditions of the Agreement, or any other incorporated item, this Order shall control. Capitalized terms used herein but not defined shall have the same meaning as set forth in the Agreement.

2. DESCRIPTION OF SERVICES.

Provider, as part of its business has developed and makes available to law enforcement entities an online citizen reporting system called LexisNexis® Desk Officer Reporting System ("DORS") enabling individuals, retail companies and other organizations to file reports, crime tips and other forms online to law enforcement.

3. SCOPE OF SERVICES.

Provider agrees to provide the following Services to Agency subject to the provisions of this Order. Any change to the Services as set forth in this Order that occur after the Order Effective Date must be made by amendment to this Order, signed by both Parties. Provider will provide the following Services described below subject to Agency's technology capabilities, processes, and work-flow functionality.

3.1. Services. DORS uses the J2EE standard. DORS is designed to gather information on incidents from a member of the general public (user) via an SSL connection. DORS will issue a temporary report number to the user and place the temporary report into an administrative holding area for review and modification by appropriate Agency administrator. An email is generated to the user that the report has been submitted. The Agency administrator logs in via an SSL connection and approves, rejects, edits or prints reports as appropriate. Rejecting a report deletes it from the DORS system and sends an appropriate email to the user. Approving the report issues a number, places it in a queue to be exported (as determined during implementation), and sends an appropriate email to the user. The Agency administrator and user can download the approved report and/or print the approved report out. Provider shall provide Report retention and distribution services as set forth in in Section 3 of the Agreement, including an on-line Report distribution website.

3.2. Setup and Access.

Agency Responsibilities.

a) Coordinate with Provider to establish dates for deployment within the DORS implementation schedule tab;
b) Provide images for (i) website header image (ii) temporary citizen report image and (iii) final printed PDF report image;
c) Load provided HTML pages onto Agency website which links to Provider's servers for the Services;
d) Provide Provider with the schema for the desired file format and/or database schema;
e) Enable Provider read /write access and test environment with current configuration
f) Enable Provider VPN access to the exporter, RMS application(s), and other information required for report bridge installation;
g) Provide timely responses to Provider's questions, which may arise during the setup and configuration process.

Provider Responsibilities.

a) Coordinate with Agency to establish schedule for deployment within the DORS implementation schedule tab.

b) Register Agency within Provider's network and load Agency provided images into Agency's implementation of DORS.
c) Provide Agency with administrator password and credentials for the Services.
d) Provide Agency with sample operational directives, deployment strategies and sample press release.
e) Provide Agency with suggestions for the successful deployment of the Services.
f) Provide Agency with instructions on the easy setup of a kiosk for Agency's headquarters lobby, etc.

Completion Criteria.
This task is considered complete after Provider has delivered listed materials.

3.3. Configuration.

Agency Responsibilities.

a) Coordinate with Provider for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
b) Using the administrator account, login in and configure the code tables, crime types, user account, and dynamic content for Agency.
c) Test the optional interface with the RMS application.
d) Review resulting files with Provider, document any problems, and collaborate with Provider on a plan for corrective action(s).
e) Provide necessary files for RMS integration.

Provider Responsibilities

a) Coordinate with Agency for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
b) Configure export routine for the optional RMS Interface with information provided.
c) Review resulting files with Agency, document any problems, and collaborate with Agency on a plan for corrective action(s).

Completion Criteria
This task is considered complete when the DORS is accessible on Provider's web server and reports can be filed and interfaced into the RMS (optional).

3.4. Support and Maintenance. Provider will provide Support and Maintenance Services in accordance with the terms and conditions set forth in Section 4 of the Agreement.

4. TERM AND TERMINATION.

This Order shall commence upon the Order Effective Date and shall continue for an initial term of twenty-four (24) months ("Initial Term"), whereupon this Order shall automatically renew for additional twelve (12) month periods ("Renewal Term") unless either Party provides written notice to the other Party, at least forty five (45) days prior to the expiration of the Renewal Term.

5. FEES AND PRICE ADJUSTMENTS.

The Fees for the Services shall be subject to the terms set forth in Section 5 of the Agreement.

5.1. Provider shall not sell Reports pursuant to this Order.

5.2. Monthly Services Fees. Agency shall pay a monthly license Fee for the Services which includes Support and Maintenance Services. Fees for the Services for the Initial Term shall be One Thousand Three Hundred Fifteen and 00/100 Dollars ($1,315.00) per month. All Fees shall be invoiced monthly by Provider beginning on the Order Effective Date.

IN WITNESS WHEREOF, the Parties have caused this Order to be executed by their respective authorized representatives as of the Effective Date.

Agency: City of Merced	Provider: LexisNexis Coplogic Solutions Inc.
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

APPROVED AS TO FORM:

Kelly C. Fincher

KELLY C. FINCHER
Chief Deputy City Attorney

LAW ENFORCEMENT AGREEMENT

This Law Enforcement Agreement ("Agreement") is dated _____ ("Effective Date") by and between LexisNexis Coplogic Solutions Inc., on behalf of itself and its Affiliates with its principal place of business at 1000 Alderman Drive, Alpharetta, Georgia 30005 ("Provider"), and City of Merced, with its principal place of operations at 611 W. 22nd Street, Merced, California 95340 ("Agency"). Provider and Agency may be referred to herein individually as a "Party" and collectively referred to as "Parties". "Affiliate" means any corporation, firm, partnership or other entity that directly or indirectly controls, or is controlled by, or is under common control with Provider.

1. SCOPE.

Provider as part of its business has developed several comprehensive products and services for law enforcement. Subject to the terms and conditions of this Agreement, Agency desires to order and Provider agrees to provide the various products and services contained herein (collectively referred to as the "Services") as described in an applicable order to this Agreement ("Order"). The Parties acknowledge Agency is a law enforcement entity with responsibility for the documentation, retention, and management of information and reporting related to vehicle accidents, citations, and incidents occurring within its jurisdiction (as used within this Agreement, each documented event is a "Report"). "Report" shall also include any associated or supplemental information provided with the Report including Agency name, images and upload date, as applicable.

2. LICENSE AND RESTRICTIONS.

2.1 License Grant and License Restrictions. Upon execution of an applicable Order, Provider hereby grants to Agency a restricted, limited, revocable license to use the Services only as set forth in this Agreement and any applicable Order, and for no other purposes, subject to the restrictions and limitations set forth below:

a. Agency shall not use the Services for marketing or commercial solicitation purposes, resell, or broker the Services to any third-party or otherwise use the Services for any personal (non-law enforcement) purposes; and

b. Agency shall not access or use Services from outside the United States without Provider's prior written approval; and

c. Agency shall not use the Services to create a competing product or provide data processing services to third parties; and

d. Agency's use of the Services hereunder will not knowingly violate any agreements to which Agency is bound; and

e. Agency shall not harvest, post, transmit, copy, modify, create derivative works from, tamper, distribute the Services, or in any way circumvent the navigational structure of the Services, including to upload or transmit any computer viruses, Trojan Horses, worms or anything else designed to interfere with, interrupt or disrupt the normal operating procedures of Services; and

f. Agency may not use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy rights or otherwise infringe on the rights of others; and

g. Agency shall not reveal any user accounts or passwords for the Services to any third parties (third parties shall not include Agency's employees who have a need to know such information); and

h. Agency shall not permit any third party (third parties shall not include Agency's employees who have a need to know such information) to view or use the Services, even if such third party is under contract to provide services to Agency; and

i. Agency shall comply with all laws, regulations, and rules which govern the use of the Services.

2.2 Other Restrictions. In addition Provider may, at any time, impose restrictions and/or prohibitions on the Agency's use of the Services, or certain data or no longer offer certain functionalities or features that may be the result of a modification in Provider policy, a modification of third-party agreements, a modification in industry standards, a Security Event (defined below), a change in law or regulation, or the interpretation thereof. Upon written notification by Provider of such restrictions, Agency agrees to comply with such restrictions or, in the event that Agency is unable to comply, it shall notify Provider in writing of its inability to comply within ten (10) days after receipt of Provider's written notification. In that event, either Party may immediately terminate this Agreement by providing written notice thereof to the other Party

without such termination constituting a breach of this Agreement. Provider shall be Agency's designated preferred provider of such Services as are mutually agreed to and defined hereunder, related to the handling of Agency's Reports.

2.3 Violation of License Terms and / or Restrictions. Agency agrees that, if Provider determines or reasonably suspects that: (i) Agency is violating any license terms, restrictions, or other material provision of the Agreement; or (ii) Agency has experienced a Security Event (as herein defined), Provider may, at its sole option, take immediate action up to and including, without further obligation or liability of any kind, terminating Agency's account and the license to use the Services.

3. RETENTION / DISTRIBUTION.

For all Services provided hereunder that involve Reports, Provider will maintain a copy of each Report for a period of no less than seven (7) years from the date of the Report. Provider will distribute Reports and/or specific data extracted from the Report to individuals or legal entities ("Authorized Requestors") and other authorized law enforcement entities ("Agency Requestors") in accordance with an applicable Order and all applicable laws and regulations.

4. SUPPORT AND MAINTENANCE.

4.1. Ongoing Maintenance. Provider will, from time-to-time issue and/or provide maintenance including bug fixes, enhancements, new features, or new functionality that are generally made available to customers along with any corresponding changes to documentation ("Maintenance"). Maintenance does not include work to custom code, customized configurations, or to unauthorized modifications of the Services. Any Provider assistance beyond standard Maintenance will be billed at Provider's then current pricing schedule, as agreed upon in advance by the Parties. Additionally, upon Agency's written notice of new or revised legislation, statutes, or ordinances requiring any Services to be updated, Provider shall update or modify the Services or particular form consistent with such new regulation within a reasonable time.

4.2. Support Services. Provider will provide ongoing support services for problems, queries or requests for assistance ("Support") provided that all requests for Support must be made to Provider Monday through Friday from 8:00 AM ET to 8:00 PM ET at 1-888-949-3835. Provider will also provide limited after hours Support including the ability to leave a message and receive a call back the following business day or sooner, if critical. In order to provide Support, Agency will provide all information reasonably required by Provider to identify the issue, including: an Agency point of contact (familiar with the Services and issue), description of issue, screenshots, the impact, and assist in Provider's efforts to reproduce the problem (as applicable). Provider will work to resolve problem with reasonable promptness for issues that are application or Services related (Provider is not responsible for resolving issues caused by Agency hardware). The Agency agrees to provide Provider with data transfers, as requested, remote access to the Services system, and with sufficient test time on the Agency's computer system to duplicate the problem, to certify that the problem is with the Services, and to certify that the problem has been corrected. If the problem cannot readily be resolved, Provider will attempt to identify a work around. Upon resolution of any issue, Provider shall notify the Agency of such resolution via email. The Parties agree that Provider is not obligated to ensure that its Services are compatible with outdated (exceeding 4 years from date of initial release) hardware, computer operating services or database engines.

4.3. On Site Support. In response to written Agency requests for Provider to provide on-site routine non-emergency support, Provider shall produce a written estimate of the time required to provide the requested support and state any requirements, such as the presence of Agency staff or other resources or materials. Any on-site support provided by Provider shall only be invoiced by Provider or paid by Agency if the problem arose due to something other than a defect in the Services. The Agency shall reimburse Provider at the rate of two thousand five hundred ($2,500.00) dollars per day for each Provider employee who provides any on-site support, and such fees will not include any reimbursement for Provider travel time or travel expenses.

5. FEES.

5.1. Fees due to Provider. Any fees due to Provider for Services hereunder shall be specified in an Order ("Fees"). For any Order where Fees are specified, Provider will issue an invoice to Agency pursuant to the terms in the Order. Invoices shall be paid in full by Agency within thirty (30) days from invoice date. Provider may increase or decrease the Fee following the Initial Term (as defined in an applicable Order) in an Order by providing Agency no less than sixty (60) days written notice prior to the effective date of such pricing change. In the event Agency has a good faith dispute on all or a portion of an unpaid invoice ("Dispute"), Agency shall notify Provider in writing and follow the procedures set forth below. To the extent an interface or other technological development is required to enable an Agency designated third party (i.e., RMS Vendor) to receive Reports from Provider at Agency's request or to enable Provider to intake Agency Data, such cost shall not be

borne by Provider. If any invoice (or undisputed portion thereof) remains unpaid and not subject to a Dispute after sixty (60) days from the invoice date, Provider shall have the right to terminate this Agreement (including all Services) or the right to discontinue the applicable Service immediately, without such action constituting a breach or incurring any liability herein. All Fees not properly disputed or paid shall accrue interest at the rate of eighteen percent (18%) per annum. All Fees are calculated for payment made via ACH, Wire, or Agency check. Agency agrees that Fees exclude taxes (if applicable) or other cost incurred by Agency's RMS Vendor or other third parties and agrees such costs shall be passed on to Agency . Provider shall not be required to enter into a third-party relationship to obtain payment for the Service provided to Agency; however, should Provider elect to do so, Provider reserves the right to charge Agency additional fees for such accommodation.

5.2. Fees due to Agency. All Reports requested by Agency Requestors shall be provided free of charge. Provider will collect a fee as set forth in an applicable Order ("Agency Fee(s)") on behalf of Agency for Report requests by an Authorized Requestor. Provider will remit any Agency Fees to Agency using the process as herein defined. For clarity, if a fee is not charged to an Authorized Requestor for the Report, no Agency Fee shall be collected or paid to Agency. In connection with this Section, on a monthly basis, Provider will electronically transfer to Agency's designated account, the total amount of applicable Agency Fees collected by Provider during the previous month. Provider will provide a monthly report to Agency identifying the number of Reports provided on its behalf.

5.3. Fees retained by Provider. Where permitted by law, Provider will charge a convenience fee for each Report provided to an Authorized Requestor ("Convenience Fee") which shall be retained by Provider. The Convenience Fee shall be established by Provider at its discretion, but in no event shall exceed the amount a provider may legally charge an Authorized Requestor.

6. TERMS AND TERMINATION.

6.1. Term. This Agreement shall commence upon the Effective Date and shall continue until terminated in accordance with this Agreement. Each Order shall set forth the specified term for the particular Service.

6.2. Termination.

6.2.1. Either Party may terminate this Agreement or any Order for cause if the other Party breaches a material obligation under the terms of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice thereof from the non-breaching Party, provided, however, that if such material breach is of a nature that it cannot be cured, immediate termination shall be allowed. Failure to pay by either Party shall be considered a material default.

6.2.2. Either Party may elect to terminate this Agreement or any Order by providing written notice to the other of such intent, at least ninety (90) days prior to the end of the applicable Order term.

6.2.3. Provider may, upon six (6) months written notice to Agency, terminate any Service that will no longer be supported or offered by Provider. Provider will make reasonable efforts to transition Agency to a similar Service, if available. Further, Provider may at any time cease to provide Agency access to any portions of features of the Services thereof which Provider is no longer legally or contractually permitted to provide.

6.3. Effect of Termination. Upon termination of this Agreement, each Party shall be liable for payment to the other Party of all amounts due and payable for Services provided through the effective date of such termination. Upon receipt of Agency's written request after termination, Provider shall provide Agency with access to Reports provided by Agency under this Agreement and/or data provided through provision of the Services by Agency under an applicable Order so Agency may download and/or copy such information. Provider shall not be obligated to delete from its databases (or from other storage media) and/or return to Agency, Reports already provided to Provider by Agency, and shall be permitted to continue to maintain and distribute the Reports already in its possession to Authorized Requestors in compliance with applicable laws and regulations.

7. RELEVANT LAWS.

Each Party shall comply with all applicable federal, state, and local laws and regulations related to its performance hereunder, including:

7.1. Driver's Privacy Protection Act. Agency acknowledges that certain Services provided under this Agreement may include the provision of certain personal information from a motor vehicle record obtained by Provider from state Departments of Motor Vehicles as those terms are defined by the Federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 et seq., ("DPPA") and its state analogues ("DMV Data"), and that Agency is required to comply with the DPPA or its state analogues, as applicable. Agency agrees that it may be required to certify its permissible use of DPPA or DMV Data at the time it requests information in connection with certain Services and will recertify upon request by Provider.

7.2. Fair Credit Reporting Act. The Services provided pursuant to this Agreement are not provided by "consumer reporting agencies" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.) ("FCRA") and do not constitute "consumer reports" as that term is defined in the FCRA. Agency certifies that it will not use any of the information it receives through the Services in whole or in part as a factor in determining eligibility for credit, insurance, or employment or for any other eligibility purpose that would qualify the information in as a consumer report

7.3. Protected Health Information. Unless otherwise contemplated by an applicable Business Associate Agreement executed by the Parties, Agency will not provide Provider with any Protected Health Information (as that term is defined in 45 C.F.R. Sec. 160.103) or with Electronic Health Records or Patient Health Records (as those terms are defined in 42 U.S.C. Sec. 17921(5), and 42 U.S.C. Sec. 17921(11), respectively) or with information from such records without the execution of a separate agreement between the Parties.

7.4. Social Security Numbers. Social Security Numbers may be available hereunder as part of Reports and/or related data provided from certain states. However, Agency shall not provide Social Security Numbers to Provider under any circumstance under this Agreement. Should Agency require more information on Social Security Numbers or its obligations in relation thereto, Agency should contact Provider Agency Service at 1-866-215-2771 for assistance.

7.5. Privacy Principles. Agency shall comply with the "Provider Data Privacy Principles" available at http://www.lexisnexis.com/privacy/data-privacy-principles.aspx, as updated from time to time. Provider shall notify Agency in writing in the event that material changes are made to the Provider Data Privacy Principles.

7.6. Security. Agency agrees to protect against the misuse and/or unauthorized access of the Services provided to Agency in accordance with this Agreement and as set forth in Exhibit A, attached hereto.

8. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY OWNERSHIP.

8.1. Definition. "Confidential Information" means all non-public information provided by the disclosing Party to the receiving Party hereunder, including, without limitation, the terms of this Agreement, all information related to technical, financial, strategies and related information, business information, computer programs, algorithms, know-how, processes, databases, systems, ideas, inventions (whether patentable or not), schematics, Trade Secrets (as defined by applicable law) and other information (whether written or oral). Confidential Information does not include Reports and information related thereto. Confidential Information does not include information that was, at the time of the disclosure: (a) or becomes (through no improper action or inaction by the recipient) generally known to the public; (b) lawfully disclosed to recipient by a third-party and received in good faith and without any duty of confidentiality by the recipient or the third-party; (c) in recipient's possession or known to it prior to receipt from discloser; or (d) independently developed by recipient; provided in each case that such forgoing information was not delivered to or obtained by recipient as a result of any breach of this Agreement.

8.2. Treatment of Confidential Information. Each Party agrees to protect the Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature, but not less than a reasonable standard of care and not to use the other Party's Confidential Information other than as necessary to perform its obligations or as permitted under this Agreement. A Party shall not remove or destroy any proprietary or confidential legends or markings placed upon or contained within any Confidential Information.

8.3. Intellectual Property Ownership. Each Party retains all right, title, and interest under applicable contractual, copyright and related laws to their respective Confidential Information, including the right to use such information for all purposes permissible by applicable laws, rules, and regulations. Provider retains all rights (other than the limited license granted herein), title, interest, ownership and all intellectual property rights in the Services including any improvements or modifications thereto, and Agency shall use such information consistent with such right, title and interest and notify Provider of any threatened or actual infringement thereof. Agency shall not remove or obscure any copyright or other notices from the Services or materials provided hereunder.

8.4. Exception for Subpoenas and Court Orders. A Party may disclose Confidential Information solely to the extent required by subpoena, court order or other governmental authority, provided that the receiving Party provides the disclosing Party prompt written notice of such subpoena, court order or other governmental authority so as to allow the disclosing Party an opportunity to obtain a protective order to prohibit or limit such disclosure at its sole cost and expense. Confidential Information disclosed pursuant to subpoena, court order or other governmental authority shall otherwise remain subject to the terms applicable to Confidential Information.

8.5. Duration. Each Party's obligations with respect to Confidential Information shall continue for the term of this Agreement and for a period of five (5) years after termination of this Agreement, provided however, that with respect to Trade Secrets, each Party's obligations shall continue for so long as such Confidential Information continues to constitute a Trade Secret.

8.6. Return of Confidential Information. Upon the written request of a Party (and except as otherwise specifically set forth in an applicable Order), each Party shall return or destroy (and certify such destruction in a signed writing) any of the other Party's Confidential Information unless retention of such information is required by law, regulation, court order, or other similar mandate.

8.7. Injunctive Relief. In the event of a breach or a threatened breach of the confidentiality or privacy provisions of this Agreement, the non-breaching Party may have no adequate remedy in monetary damages and, accordingly, may seek an injunction against the breaching Party.

8.8. Other. During the term of this Agreement and subject to approval by Agency, Agency agrees to serve as a reference for the Services, which may include (i) reference calls with mutually acceptable prospects; (ii) a published "success story" describing the partnership with Provider; (iii) the use of Agency's name in Provider marketing activities; or (iv) a favorable reference of Provider to an industry analyst or at an industry conference.

9. PROVIDER AUDIT RIGHTS.

Agency understands and agrees that, in order to ensure Agency's compliance with the Agreement, as well as with applicable laws, regulations and rules, Provider's obligations under its contracts with its data providers, and Provider's internal policies, Provider may conduct periodic reviews of Agency's use of the Services and may, upon reasonable notice, audit Agency's records, processes and procedures related to Agency's use, storage and disposal of the Services and information received therefrom. Agency agrees to cooperate fully with any and all audits and to respond to any such audit inquiry within ten (10) business days, unless an expedited response is required. Violations discovered in any review and/or audit by Provider will be subject to immediate action including, but not limited to, invoicing for any applicable Fees (if Services are based on number of users and Agency's use exceeds licenses granted), suspension or termination of the license to use the Services, legal action, and/or referral to federal or state regulatory agencies.

10. REPRESENTATIONS AND WARRANTIES.

Agency represents and warrants to Provider that Agency is fully authorized to disclose Reports, information, and related data or images to Provider in accordance with this Agreement and to grant Provider the rights to provide the Services as described herein. Where redaction of Reports is required prior to provision to Provider, Agency represents and warrants it will redact applicable Reports consistent with all laws and regulations. In performing their respective obligations under this Agreement, each Party agrees to use any data and provide any services, in strict conformance with applicable laws and regulations, and further, to comply with all applicable binding orders of any court or regulatory entity and consistent with the terms of this Agreement.

11. LIMITATION OF WARRANTY.

For purposes of this section, "Provider" includes Provider and its Affiliates, subsidiaries, parent companies, and data providers. THE SERVICES PROVIDED BY PROVIDER ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING ITS ACCURACY OR PERFORMANCE INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, ORIGINALITY, OR OTHERWISE, OF ANY SERVICES, SYSTEMS, EQUIPMENT OR MATERIALS PROVIDED HEREUNDER.

12. LIMITATION OF LIABILITY.

To the extent permitted by applicable law, Provider's entire liability for any claims(s) resulting from its acts or omissions, including, but not limited to negligence claims under this Agreement shall not exceed the total amount of Fees actually received by Provider from Agency (excluding pass through or out of pocket expenses) for the specific Services from which liability arises during the twelve (12) month period immediately preceding the event first giving rise to such liability, and if not yet in the twelfth (12th) month of this Agreement, for the period leading up to such event. To the extent the relevant Services are made available at no cost to Agency, than in no event shall Provider's liability to Agency under this Agreement exceed One Hundred dollars ($100.00) in the aggregate. This limitation of liability will not apply to any claims, actions, damages, liabilities or fines relating to or arising from Provider's gross negligence or willful misconduct. In no event shall Provider be liable for any indirect, special, incidental, or consequential damages in connection with this Agreement or the performance or failure to perform hereunder, even if advised of the possibility of such damages.

13. INDEMNIFICATION.

To the extent permitted under applicable law, each Party shall defend, indemnify, and hold harmless the other Party, its Affiliates, and their officers, directors, employees, and Agents (the "Indemnified Parties") against and from any and all losses, liabilities,

damages, actions, claims, demands, settlements, judgments, and any other expenses (including reasonable attorneys' fees), which are asserted against the Indemnified Parties by a third party, but only to the extent caused by (i) violation of law in the performance of its obligations under this Agreement by the indemnifying party, its Affiliates, or the officers, Agents or employees of such party (the "Indemnifying Parties"); (ii) the gross negligence or willful misconduct of the Indemnifying Parties during the term of this Agreement; (iii) violation, infringement or misappropriation of any U.S. patent, copyright, trade secret or other intellectual property right; or (iv) with respect to Agency, violation of any of the license terms or restrictions contained in this Agreement. The indemnities in this section are subject to the Indemnified Parties promptly notifying the Indemnifying Parties in writing of any claims or suits.

14. FORCE MAJEURE.

Neither Party will be liable for any delay or failure to perform its obligations hereunder due to causes beyond its reasonable control, including but not limited to natural disaster, pandemic, casualty, act of God or public enemy, riot, terrorism, or governmental act; provided, however, that such Party will not have contributed in any way to such event. If the delay or failure continues beyond thirty (30) calendar days, either Party may terminate this Agreement or any impacted Order with no further liability, except that Agency will be obligated to pay Provider for the Services provided under this Agreement prior to the effective date of such termination.

15. NOTICES.

All notices, requests, demands or other communications under this Agreement shall be in writing to the address set forth in the opening paragraph and shall be deemed to have been duly given: (i) on the date of service if served personally on the Party to whom notice is to be given; (ii) on the day after delivery to a commercial or postal overnight carrier service; or (iii) on the fifth day after mailing, if mailed to the Party to whom such notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed. Any Party hereto may change its address for the purpose of this section by giving the other Party timely, written notice of its new address in the manner set forth above.

16. MISCELLANEOUS.

16.1 Affiliates. Agency understands and agrees that certain Services furnished under this Agreement may actually be provided by one or more of Provider' Affiliates.

16.2 Independent Contractor/No Agency. Each Party acknowledges that it has no authority to bind or otherwise obligate the other Party.

16.3 Assignment. Neither Party shall assign this Agreement in whole or in part without the prior written consent of the other Party, and any such attempted assignment contrary to the foregoing shall be void. Notwithstanding the foregoing, an assignment by operation of law, as a result of a merger or consolidation of a Party, does not require the consent of the other Party. This Agreement will be binding upon the Parties' respective successors and assigns.

16.4 Headings, Interpretation, and Severability. The headings in this Agreement are inserted for reference only and are not intended to affect the meaning or interpretation of this Agreement. The language of this Agreement shall not be construed against either Party. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16.5 Waiver; Remedies Non-Exclusive. No failure or delay on the part of any Party in exercising any right or remedy provided in this Agreement will operate as a waiver thereof. Unless otherwise provided herein, any remedy will be cumulative to any other right or remedy available at law or in equity.

16.6 Survival. Sections 2-4, 7-12, and 15 shall survive the termination or rescission of this Agreement.

16.7 Provider Shared Facilities. Provider may utilize facilities located outside the United States to provide support or the Services under this Agreement, and if such centers are utilized they shall be under the control of Provider and subject to all Provider policies that govern data access, protection and transport in the United States.

16.8 Entire Agreement. This Agreement represents the entire agreement of the Parties and supersedes all previous and contemporaneous communications or agreements regarding the subject matter hereto. Agency by its signature below hereby certifies that Agency agrees to be bound by the terms and conditions of this Agreement including those terms and conditions posted on web pages specifically set forth herein or contained with any software provided under this Agreement, as may be updated from time to time. Any additional terms or conditions contained in purchase orders or other forms are expressly rejected by Provider and shall not be binding. Acceptance or non-rejection of purchase orders or other forms containing such terms; Provider's continuation of providing Products or Services; or any other inaction by Provider shall not constitute Provider's consent to or acceptance of any additional or different terms from that stated in this Agreement. This Agreement may only be modified by a written document signed by both Parties.

16.9 Governing Law. The Agreement will be governed by and construed under the laws of the State of California, excluding its conflict of law rules.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives as of the Effective Date.

Agency: **City of Merced**	Provider: **LexisNexis Coplogic Solutions Inc.**
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

APPROVED AS TO FORM:

Kelly C. Fincher

KELLY C. FINCHER
Chief Deputy City Attorney

EXHIBIT A - SECURITY AND NOTIFICATION REQUIREMENTS

1. Data Protection.

Agency shall take appropriate measures to protect against the misuse and unauthorized access through or to Agency's (i) credentials ("Account IDs") used to access the Services; or (ii) corresponding passwords, whether by Agency or any third party; or (iii) the Services and/or information derived therefrom. Agency shall manage identification, use, and access control to all Account IDs in an appropriately secure manner and shall promptly deactivate any Account IDs when no longer needed or where access presents a security risk. Agency shall implement its own appropriate program for Account ID management and shall use commercially reasonable efforts to follow the policies and procedures for account maintenance as may be communicated to Agency by Provider from time to time in writing.

2. Agency's Information Security Program.

Agency shall implement and document appropriate policies and procedures covering the administrative, physical and technical safeguards in place and relevant to the access, use, storage, destruction, and control of information which are measured against objective standards and controls ("Agency's Information Security Program"). Agency's Information Security Program shall: (1) account for known and reasonably anticipated threats and Agency shall monitor for new threats on an ongoing basis; and (2) meet or exceed industry best practices. Agency will promptly remediate any deficiencies identified in Agency's Information Security Program. Agency shall not allow the transfer of any personally identifiable information received from Provider across any national borders outside the United States without the prior written consent of Provider.

3. Agency Security Event.

In the event Agency learns or has reason to believe that Account IDs, the Services, or any information related thereto have been misused, disclosed, or accessed in an unauthorized manner or by an unauthorized person (an "Agency Security Event") Agency shall:

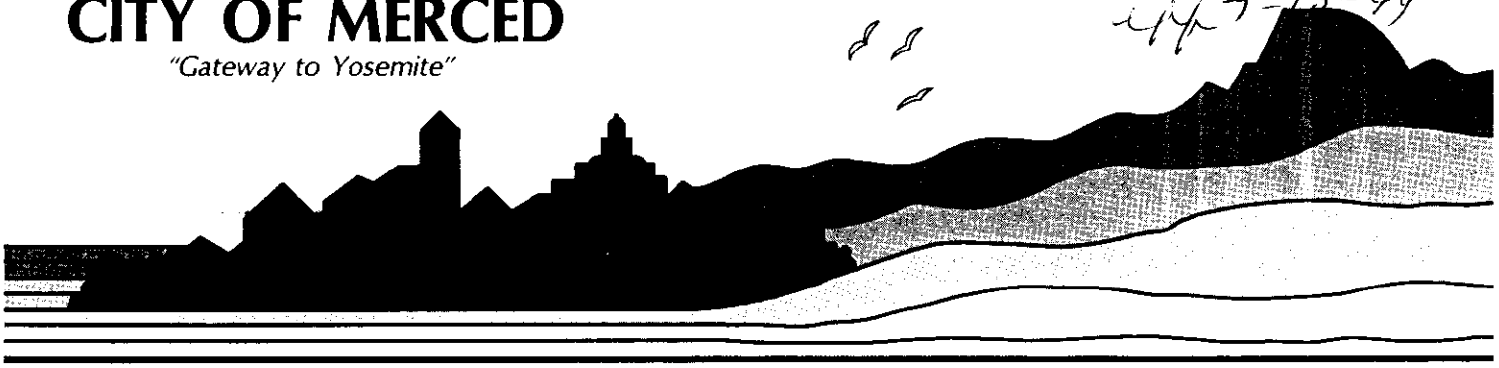
- **(i)** provide immediate written notice to:
  - **a)** the Information Security and Compliance Organization at 1000 Alderman Drive, Alpharetta, Georgia 30005; or
  - **b)** via email to (security.investigations@lexisnexis.com); or
  - **c)** by phone at (1-888-872-5375) with a written notification to follow within twenty four (24) hours; and
- **(ii)** promptly investigate the situation; and
- **(iii)** obtain written consent from Provider, not to be unreasonably withheld, prior to disclosing Provider or the Services to any third party in connection with the Agency Security Event; and
- **(iv)** if required by law, or in Provider' discretion, Agency shall:
  - **a)** notify the individuals whose information was disclosed that an Agency Security Event has occurred; and
  - **b)** be responsible for all legal and regulatory obligations including any associated costs which may arise in connection with the Agency Security Event; and
- **(v)** remain solely liable for all costs and claims that may arise from the Agency Security Event, including, but not limited to: litigation (including attorney's fees); reimbursement sought by individuals (including costs for credit monitoring and other losses alleged to be in connection with such Agency Security Event); and
- **(vi)** provide all proposed third party notification materials to Provider for review and approval prior to distribution.

In the event of an Agency Security Event, Provider may, in its sole discretion, take immediate action, including suspension or termination of Agency's account, without further obligation or liability of any kind.

1994-8-34
1001-94-59
4447-13-94

CITY OF MERCED

"Gateway to Yosemite"



August 11, 1994

Attn: Cindy Dobson
New World Systems
3270 West Big Beaver Road, Suite 300
Troy, Michigan 48084

Dear Ms. Dobson:

Enclosed is a duly executed copy of a software license and services agreement, dated July 13, 1994, with the City of Merced for the Merced Police Department.

Sincerely,

Carol Brigaman

Carol Brigaman
Records Clerk

cc: City Attorney
Police Department
Information Systems
Finance (2)
Purchasing
w/Enclosure

NEW WORLD SYSTEMS
Public Sector Software
3270 West Big Beaver Road, Suite 300 Troy, MI 48084-2901 (810) 649-7100

July 12, 1994

STANDARD SOFTWARE LICENSE AND SERVICES AGREEMENT

This *Standard Software License and Services Agreement* which includes the attached Exhibits ("this **Agreement**") is between **New World Systems Corporation ("New World")**, a Michigan Corporation and **the City of Merced, California ("Customer")**. This **Agreement** sets forth the terms and conditions under which **New World** will furnish the Licensed Products and will provide certain services described herein to **Customer**.

The attached Exhibits include:

Exhibit A . . . . . LICENSED STANDARD SOFTWARE AND FEES
Exhibit B . . . . . INSTALLATION AND TRAINING SUPPORT SERVICES AND FEES
Exhibit C . . . . . STANDARD SOFTWARE MAINTENANCE AGREEMENT
Exhibit D . . . . . NON-DISCLOSURE AND SECURITY AGREEMENT FOR THIRD PARTIES
Exhibit E . . . . . DEMONSTRATION SITE DISCOUNT

By signing below, each of us agrees to the terms and conditions of this Agreement together with the attached Exhibits. This Agreement contains the complete and exclusive statement of the agreement between us relating to the matters referenced herein and replaces any prior oral or written representations or communications between us. Each individual signing below represents that (s)he has the requisite authority to execute this Agreement on behalf of the organization for which (s)he represents and that all the necessary formalities have been met.

ACKNOWLEDGED AND AGREED TO BY:

NEW WORLD SYSTEMS CORPORATION
(New World)

By: Larry D. Leinweber
Larry D. Leinweber, President

Date: 7-13-94

CITY OF MERCED, CALIFORNIA
(Customer)

By: James G. Marshall
Authorized Signature, **Title**
James G. Marshall, City Manager

By:
Authorized Signature, **Title**
Steven F. Nord, City Attorney

Date:

This Agreement is effective upon the last date as shown on this cover page.

940054
#360000 FUNDS/ACCOUNTS VERIFIED
FINANCE OFFICE 8/16/94 DATE
Annual maintenance fees subject to appropriation by City Council.

I. DEFINITIONS. The following terms as defined below are used throughout this Agreement:

1. *"Licensed Standard Software":*
   The current version of **New World** standard and development application software package(s) (in machine readable code and, if applicable, the related source code) listed on Exhibit A. "**Development Software**" is standard application software currently under development by **New World** which, if applicable, will be completed and delivered to **Customer** as Licensed Standard Software during the term of this **Agreement**.
2. *"Upgrades":*
   Any enhanced and/or improved versions of the Licensed Standard Software provided as Licensed Standard Software under Exhibit C of this **Agreement** and released after the execution of this **Agreement**.
3. *"Licensed Custom Software":*
   Any software (programs or portions of programs) developed by **New World** specifically for **Customer**'s own use.
4. *"Licensed Software":*
   The Licensed Standard Software (including any Development Software), Upgrades, and Licensed Custom Software provided under this **Agreement**.
5. *"Licensed Documentation":*
   New World User Manuals which includes the current specifications for the Licensed Standard Software and other written instructions relating to the Licensed Software (such as Product Bulletins, installation instructions, and training materials).
6. *"Authorized Copies":*
   Except as provided in Section II, subparagraph 1.3, the only authorized copies of the Licensed Software and Licensed Documentation are the copies of each application software package defined in this Paragraph. They are:
   (i) the single copy of the Licensed Software and the related Licensed Documentation delivered by **New World** under this **Agreement**; and
   (ii) any additional copies made by **Customer** as authorized in Section II, subparagraph 1.2.
7. *"Licensed Products":*
   The Licensed Software, the related Licensed Documentation, and the Authorized Copies of the foregoing.
8. *"Customer Liaison":*
   A **Customer** employee assigned to act as liaison between **Customer** and **New World** for the duration of this **Agreement**. Within ten (10) days of execution of this **Agreement**, **Customer** shall notify **New World** of the name of the Customer Liaison.
9. *"SSMA":*
   The **New World** Standard Software Maintenance Agreement as set forth in Exhibit C.
10. *"Computer":*
    The single IBM AS/400 model 300-2041 processor, to be located at:
    City of Merced
    678 West 18th Street
    Merced, CA 95340
    Customer shall identify in writing the serial number of the Computer within ten (10) days of receipt of the Computer or within ten (10) days of execution of this **Agreement**, whichever is later. If the Computer is to be relocated, **Customer** shall notify **New World** of the new location in writing prior to the relocation.
11. *"Confidential Information":*
    Information disclosed or obtained by one party in connection with, and during the term of, this **Agreement** and designated as "Confidential" by the party claiming confidentiality at the time of disclosure. Confidential Information does not include any information which was previously known to the other party without obligation of confidence or without breach of this **Agreement**, is publicly disclosed either prior or subsequent to the other party's receipt of such information, or is rightfully received by the other party from a third party without obligation of confidence.

II. GENERAL TERMS AND CONDITIONS

1.0 *SINGLE USE LICENSE.*

1.1 In consideration of **Customer**'s payment of the license fees specified in Exhibit A and the applicable custom software fees, if any, **New World** grants **Customer** a nontransferable and nonexclusive license to use the Licensed Software only on the Computer and only for its internal processing needs. Once **Customer** has fully paid the license fees for the Licensed Software, **Customer** shall have the right and license to use, enhance, or modify the Licensed Software only for **Customer**'s own use and only on the Computer. In accordance with the payment plan(s) on the attached Exhibits, **New World** will deliver to **Customer** one copy of each application of the Licensed Software (in machine readable form compatible with the specified operating environment) on storage media supplied by **Customer** and one copy of the related Licensed Documentation.

1.2 In order to assist **Customer** in the event of an emergency, **Customer** is permitted to make up to two (2) back up copies on magnetic media of each application of the Licensed Software and one back up copy of the related Licensed Documentation. These Authorized Copies may be stored off-site away from **Customer**'s premises as specified in the Definitions so long as they are kept in a location secure from unauthorized use. **Customer** or anyone obtaining access through **Customer** shall not copy, distribute, disseminate, or otherwise disclose to any third party the Licensed Products or copies thereof in whole or in part, in any form or media. This restriction on making and distributing the Licensed Products or copies of any Licensed Product, includes without

limitation, copies of the following:

(i) Program libraries, either source or object code;
(ii) Operating control language;
(iii) Test Data, sample files, or file lay outs;
(iv) Program Listings; and
(v) Licensed Documentation.

1.3 Upon written request by **Customer**, and with written permission by **New World**, additional Authorized Copies may be made for **Customer**'s internal use only.

2.0 *OWNERSHIP.*

2.1 The Licensed Products and all copyright, trade secrets and other proprietary rights, title and interest therein, remain the sole property of **New World** or its licensors, and **Customer** shall obtain no right, title or interest in the Licensed Products by virtue of this **Agreement** other than the nonexclusive, nontransferable license to use the Licensed Products as restricted herein.

2.2 The license to use any Licensed Custom Software provided under this **Agreement**, if any, is included in this license. **New World** shall have the right to use any data processing ideas, techniques, concepts, and/or know-how acquired by it in the performance of services under this **Agreement** including the development of Licensed Custom Software for the advancement of its own technical expertise and the performance of other Software License and Service Agreements or any other applicable agreements. **New World** shall have, without restriction, the right to use all programs, procedures, information, and techniques that are publicly available, obtained or obtainable from third parties and/or developed independently by **New World** without specific reference to **Customer**'s organization.

3.0 *CORRECTION AND SOFTWARE MAINTENANCE ON STANDARD SOFTWARE*

3.1 As a part of this **Agreement**, **Customer** is also obtaining an SSMA (see Exhibit C). **New World** provides software correction service and maintenance for the Licensed Standard Software via the SSMA. See Exhibit C for a description of the services available, the applicable fees and procedures, and the SSMA start date.

4.0 *WARRANTIES*

4.1 **New World** warrants that the Licensed Standard Software will perform as specified in its user manuals based on the then-current release of the Licensed Standard Software.

4.2 **New World** warrants that it possesses the necessary intellectual rights to license to **Customer** the Licensed Software provided hereunder.

The foregoing warranties do not apply if the Licensed Product(s) have been modified by any party other than **New World**. **New World** does not warrant that the features or functions of the Licensed Software will meet **Customer**'s requirements or in any combination or use **Customer** selects. EXCEPT AS SPECIFICALLY PROVIDED IN THIS PARAGRAPH 4.0, NEW WORLD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE LICENSED PRODUCTS' CONDITION, ITS MERCHANTABILITY, ITS FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

5.0 *INSTALLATION AND TRAINING SUPPORT SERVICES*

5.1 As provided for in Exhibit B and concurrent with timely payments, **New World** shall make available to **Customer** qualified representative(s) who will provide installation and training support services for each application of the Licensed Software delivered. See Exhibit B for a description of the services provided and the applicable fees and procedures.

6.0 CUSTOMER LIAISON AND CUSTOMER RESPONSIBILITIES

The successful implementation of the Licensed Products into **Customer**'s environment requires **Customer**'s commitment to and cooperation in the implementation process. Accordingly, **Customer** hereby agrees to the following:

6.1 **Customer** understands that the Licensed Software is designed to run in a specified operating environment which includes hardware, software and related equipment not provided by **New World**.

Customer is responsible for assuring that the appropriate hardware equipment, the related components and all cabling are installed timely and are suitable for the successful installation of the Licensed Software.

6.2 **Customer** agrees to provide the management interface and support necessary to successfully complete the implementation of the Licensed Software. This support includes upper level priority setting and timely involvement during and after a change in **Customer**'s organization, **Customer's** operations and/or after changes in **Customer's** internal policies or procedures which directly affect the software implementation.

6.3 **Customer** shall assign an upper level employee to serve as the Customer Liaison for the duration of the Licensed Software implementation. If **Customer** must replace the Customer Liaison for reasons beyond its control, **Customer** will assign a new Customer Liaison as soon as reasonably possible. **New World** is not responsible for any delay caused directly or indirectly by the reassignment of the Customer Liaison. In addition to other duties and responsibilities, the Customer Liaison shall:

(i) provide timely answers to **New World**'s requests for information;

(ii) coordinate a mutually agreeable training schedule;

(iii) have authority to sign for and obligate **Customer** to any matters relating to service requests, design documents, performance test documents and/or delivery and service dates;

(iv) in situations where **Customer** participation is required, provide timely input for systems definition, detail design, and use of the software system.

6.4 **Customer** is responsible for creating and maintaining its master files, tables and the like which includes accurate data entry, accurate file editing and overall file control to assure successful systems performance.

6.5 **Customer** shall provide qualified personnel with sufficient back up to be trained to use the Licensed Software and to interpret the output. Applying the output information in **Customer's** environment is **Customer**'s sole responsibility.

7.0 *BILLING AND AS/400 MODEL UPGRADE CHARGES*

7.1 The attached Exhibits set forth the manner in which fees and payments shall be allocated and made under this **Agreement**. Past due amounts are subject to a service charge of 1.5% per month, which charge **Customer** agrees to pay. To the extent **Customer** imposes additional requirements on **New World** for services other than those expressly provided in this **Agreement**, **New World** retains the right to make additional price adjustments and/or any other adjustments which may be necessitated. Before performing these additional services, **New World** will notify **Customer** that the services are subject to additional charge.

7.2 If **Customer** upgrades the computer model of its AS/400 Computer, at the time of the upgrade, **Customer** agrees to pay the difference between the standard software charges for the present AS/400 model (see Section I, definition number 10) and the then-current standard software charges for the upgraded AS/400 model. SSMA fees shall be increased according to the upgraded AS/400 charges on the next annual billing date after the upgrade occurs. With said payments, the license provided in Section II, Paragraph 1.0 transfers to permit **Customer**'s use of the Licensed Software on the upgraded AS/400 model.

7.3 **Customer** shall notify **New World** when AS/400 models will be upgraded and will pay the upgrade fees promptly when invoiced.

8.0 *NON-RECRUITMENT OF PERSONNEL*

8.1 During the term of this **Agreement** and for twenty-four (24) months thereafter, each party agrees not to solicit or hire current or former employees of the other without the other's prior written consent.

9.0 *CONFIDENTIAL INFORMATION/NON-DISCLOSURE AGREEMENT*

9.1 Subject to the requirements of the Freedom of Information Act (FOIA) and/or other comparable applicable state law, each party shall hold all Confidential Information in trust and confidence for the party claiming confidentiality and not use such Confidential Information other than for the benefit of that party. The other party agrees not to disclose any such Confidential Information, by publication or otherwise, to any other person or organization.

9.2 **Customer** hereby acknowledges and agrees that all Licensed Products are Confidential Information and proprietary to **New World**. In addition to the other restrictions set forth elsewhere in this **Agreement** or otherwise agreed to in writing, **Customer** agrees to implement all reasonable measures to safeguard **New World's** proprietary rights in the Licensed Products, including without limitation the following measures:

(i) **Customer** shall only permit access to the Licensed Products to those employees who require access and only to the extent necessary to perform **Customer**'s internal processing needs.

(ii) With respect to agents or third parties, **Customer** shall permit access to the Licensed Products only after **New World** has received, approved and returned a fully executed Non-Disclosure Agreement to **Customer** (see Exhibit D). **New World** reserves the right to reasonably refuse access to a third party after it has evaluated the request. **Customer** agrees to provide information reasonably requested by **New World** to assist **New World** in evaluating **Customer**'s request to permit third party access to the Licensed Products. In addition to any other remedies, **New World** may recover from **Customer** all damages and legal fees incurred in the enforcement of this provision on third party access;

(iii) **Customer** shall cooperate with **New World** in the enforcement of the conditions set forth in the attached Non-Disclosure Agreement or any other reasonable restrictions **New World** may specify in writing in order to permit access;

(iv) **Customer** shall not permit removal of copyright or confidentiality labels or notifications from its proprietary materials; and

(v) **Customer** shall not attempt to disassemble, decompile or reverse engineer the Licensed Software.

9.3 **Customer** agrees that in addition to any other remedies that may be available at law, equity or otherwise, **New World** shall be entitled to seek and obtain a temporary restraining order, injunctive relief, or other equitable relief against the continuance of a breach or threatened breach of this paragraph 9.0 on Confidentiality and Non-Disclosure without the requirement of posting a bond or proof of injury as a condition for the relief sought.

10.0 *LIMITATION OF LIABILITY AND RECOVERABLE DAMAGES*

New World's entire liability and **Customer**'s exclusive remedies are set forth below:

10.1 For any claim relating to the non-conformance or imperfection of any licensed software provided under this **Agreement, New World** will correct the defect so that it conforms to the warranties set forth in Section II, subparagraph 4.1; or if after repeated attempts to correct the non-conformity, **New World** is unable to correct the non-conformity, then **Customer** may recover its actual damages subject to the limits set forth in subparagraph 10.2 below. For any other claim arising under or in connection with this **Agreement, Customer** may recover its actual damages subject to the limits set forth in subparagraph 10.2 below.

10.2 **New World**'s liability for damages, regardless of form of action, is limited to the recovery of direct damages up to the Exhibit A Licensed Standard Software fees paid to **New World.**

10.3 In no event shall **New World** be liable for any damages relating to **Customer**'s failure to perform its responsibilities or for loss of use, revenue or profits, or for any incidental or consequential damages, even if **New World** has been advised of the possibility of such damages. If it is determined that a limitation of liability or a remedy contained herein fails of its essential purpose, then the parties agree that the exclusion of incidental and/or consequential damages is still effective.

11.0 *INTEGRATION WITH U.S. COPYRIGHT ACT*

11.1 In addition to all other provisions provided under this **Agreement**, **Customer** agrees to be bound by and to comply with any and all provisions of the U.S. Copyright Act (*The Copyright Act of 1976, U.S.C. Sections 101-810 (1976) as amended by 17 U.S. C. Sections 101-810 (1982)*). If a provision of the U.S. Copyright Act and this **Agreement** conflict, the more restrictive of the two applies. If it cannot be determined which is the more restrictive, then the provision within this **Agreement** shall apply.

12.0 *INDEPENDENT CONTRACTOR*

12.1 **New World** is an independent contractor. The personnel of one party shall not in any way be considered agents or employees of the other. To the extent provided for by law, each party shall be responsible for the acts of its own employees.

12.2 Each party shall be responsible for Workers' Compensation coverage for its own personnel.

13.0 *INSURANCE REQUIREMENTS*

New World shall not commence work under this **Agreement** until it has obtained the insurance required under this paragraph.

13.1 **Workers' Compensation Insurance: New World** shall procure and maintain during the term of this **Agreement**, Workers' Compensation Insurance for all of its employees who engage in the work to be performed.

13.2 **Liability and Property Insurance--Comprehensive Form: New World** shall procure and maintain during the term of this **Agreement**, Liability and Property Damage Insurance in an amount not less than $1,000,000 on account of each accident; and in an amount not less than $1,000,000 for each accident for damage to property.

13.3 **Automobile Liability Insurance: New World** will procure and maintain during the term of this **Agreement**, Hired and Non-Ownership Motor Vehicle Bodily Injury and Property Damage Insurance in an amount not less than $500,000 for injuries, including accidental death, to each person; and, subject to the same limit for each person, in an amount not less than $500,000 for each accident; and in an amount not less than $500,000 on account for each accident for damage to property.

14.0 *DISPUTE RESOLUTION BY ARBITRATION*

14.1 Except for matters in which the dispute relates to unpaid license or service fees, or a breach of the provisions set forth in Section II, Paragraphs 8.0 (employee non-recruitment) or 9.0 (non-disclosure or confidentiality), any controversy or claim arising out of or relating to this **Agreement**, or breach thereof, shall be settled in arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

14.2 Before a demand for arbitration may be filed by either party, the management of both parties shall have met at least two times in face-to-face meetings in an effort to resolve any dispute or controversy through normal business management practices. Unless otherwise agreed to in writing, a minimum of one meeting shall take place at each party's home office location.

14.3 The arbitrators shall have no power or authority to add to or detract from this **Agreement** of the parties. The arbitrators shall have no authority to award damages over and above those provided for in this Agreement and in any event shall not exceed the limitations set forth in Section II, subparagraph 10.2, even if the remedy or limitation of liability provisions set forth in this Agreement shall for any reason whatsoever be held unenforceable or inapplicable.

14.4 Neither party nor the arbitrators may disclose the existence or results of any arbitration hereunder, except if the arbitration results in a Court imposed judgment, the non-disclosure restriction shall not be effective to the extent the matter becomes a public record.

14.5 Each party shall bear its own costs in preparing for and conducting arbitration, except that the joint costs, if any, of the actual arbitration proceeding shall be shared equally by the parties.

15.0 *TERMINATION*

15.1 **By Customer**: If **New World** fails to provide the Licensed Software as warranted in accordance with the terms of this **Agreement, Customer** may at its option terminate this **Agreement** with ninety (90) days written notice as follows:

(i) The termination notice shall provide a detailed description (with examples) of any warranty defects claimed;

(ii) **New World** shall have ninety (90) days from receipt of said notice to correct any warranty

defects in order to satisfy the terms of this **Agreement**;

(iii) During the ninety day cure period, **Customer** shall apply sound management practices and use its best efforts to resolve any issues or obstacles -- including cooperating with **New World** and reassigning personnel if necessary to improve the working relationship;

(iv) At the end of ninety (90) days unless the termination has been revoked in writing by **Customer**, the **Agreement** terminates.

15.2 **By New World**: If **Customer** fails to make prompt payments to **New World** when invoiced, or if **Customer** fails to fulfill its responsibilities outlined in Section II, Paragraph 6.0, then **New World** may at its option terminate this **Agreement** with written notice as follows:

(i) The termination notice shall define the reason for termination;

(ii) If the cited reason for termination is **Customer**'s failure to make prompt payment, **Customer** shall have ten (10) days from receipt of said notice to make payment in full for all outstanding invoiced payments due;

(iii) If the cited reason for termination is **Customer**'s failure to fulfill its responsibilities, **Customer** shall have ninety (90) days from receipt of said notice to correct any actual deficiencies in order to satisfy the terms of this **Agreement**;

(iv) During the applicable cure period, **New World** will use sound management practices and its best efforts to resolve any issues or obstacles -- including the reassignment of personnel if necessary to improve the working relationship;

(v) At the end of the applicable cure period, unless the termination has been revoked in writing by **New World**, the **Agreement** terminates.

15.3 In the event of termination by either party, **New World** shall continue to provide its services, as previously scheduled, through the termination date and the **Customer** shall continue to pay all fees and charges incurred through the termination date as provided in the attached Exhibits.

15.4 In the event neither party terminates this **Agreement** under subparagraphs 15.1 or 15.2 above, it naturally terminates unless it is renewed at the end of the initial SSMA term as set forth in Exhibit C, except that the restricted license to use the Licensed Software on the Computer as provided hereunder is perpetual so long as all Exhibit A license fees and applicable Custom Software fees have been paid in full.

15.5 Upon termination, **Customer** shall return to **New World** all copies of each application of Licensed Software and related Licensed Documentation provided to **Customer** under this **Agreement** for which the Exhibit A license fees and applicable Custom Software fees have not been paid in full.

15.6 Nothing in this paragraph on termination is intended to infer that either party has or does not have a claim for damages.

15.7 The Terms and Conditions relating to non-disclosure, confidentiality and non-recruitment of personnel survive termination.

16.0 *PATENT AND TRADEMARK INDEMNIFICATION*

New World agrees to indemnify and save the **Customer** harmless from and against any and all judgments, suits, costs, and expenses subject to the limits set forth in this **Agreement** resulting from any alleged infringement of any patent or copyright arising from the licensing of the Licensed Standard Software pursuant to this **Agreement**, provided that **Customer** has notified **New World** in writing of such allegation within thirty (30) days of the date upon which the **Customer** first receives notice thereof. **New World's** obligation to indemnify and save **Customer** harmless under this paragraph is void if the claim of infringement arises out of or in connection with any modification made to the Licensed Standard Software or any use of the Licensed Standard Software not specifically authorized in writing by **New World**.

17.0 *NOTICES*

17.1 Notices to **Customer** shall be deemed effective when sent by Registered or Certified U.S. Mail to the business address of the **Customer**.

17.2 Notices to **New World** shall be deemed effective when sent by Registered or Certified U.S. Mail to the following address (or to any other address so specified by **New World**):

New World Systems Corporation
3270 West Big Beaver, Suite 300
Troy, Michigan 48084-2901
Attention: President

18.0 *GENERAL*

18.1 This **Agreement** is the entire agreement between the parties superseding all other communications, written or oral, between the parties relating to the subject matter of this **Agreement. This Agreement may be amended or modified only in writing signed by both parties.**

18.2 This **Agreement** is governed by the laws of the State of California and it shall be binding on the successors and assigns of the parties.

18.3 Failure to enforce any provision of this **Agreement** shall not be deemed a waiver of that provision or any other provision of this **Agreement**.

18.4 No action, regardless of form, arising out of the services performed or Licensed Products delivered hereunder, may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for non-payment of fees may be brought within two (2) years of the date of the payment was due.

18.5 The paragraph headings which appear herein are included solely for convenience and shall not be used in the interpretation of this **Agreement**. Any provision of this **Agreement** determined to be invalid or otherwise unenforceable shall not affect the other provisions, which other provisions remain in full force and effect.

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EXHIBIT A
FOR LICENSED STANDARD SOFTWARE AND FEES

A. License Fee for LICENSED STANDARD SOFTWARE and DOCUMENTATION selected by CUSTOMER:

Application Package	Cost
1. Combined Police/Fire/EMS CAD (Multi-jurisdiction) - Unit Status Monitors and Unit Recommendations - Geo-File Verification and Location Alerts - Note Pads and Tone Alerts - Hazardous Alerts - Interface to Records - Run Cards	$48,000
2. Law Enforcement Records Software Base Package (Multi-jurisdiction) - Incident Tracking Module - Case Processing Module - Arrest Module - Property Module - Personnel/Education Module - Computer Aided Investigations Module - UCR (Federal Requirements) Module - Wants and Warrants Module - Traffic Tickets and Citations Module - Accidents Module - Business Registry Module - AS/400 Word Processing Interface	30,000
3. Additional Law Enforcement Records Software	
- Field Investigations Module	5,000
- Gun Permits Module	5,000
- Case Management Module	5,000
- Bicycles Module	5,000
- Pawn Shops Module	5,000
- Alarms Tracking and Billing Module	6,000
- Bookings Module	6,000
- Index Cards Module	6,000
- Career Criminal Apprehension Module	6,000
4. State Compliance Software	
- State of California Law Enforcement Records Compliance Module; includes: - BCS Magnetic Reporting - State of California Accident Reporting	6,000*

* Will be available for installation and testing in the 4th quarter of 1994.

LICENSE FEE TOTAL:	$133,000
LESS CREDIT FOR S/38 SOFTWARE PREVIOUSLY LICENSED:	(109,000)
TOTAL LICENSE FEES:	**$24,000**

B. License Fee Payment Schedule for Licensed Standard Software and Documentation

1.	DOWN PAYMENT (40% of the total Exhibit A Cost -- Invoiced upon receipt of signed *Standard Software License and Services Agreement*)	$9,600
2.	DELIVERY PAYMENT (50% of each application cost -- Invoiced as each Exhibit A Licensed Standard Software package is delivered to **Customer)**	$12,000
3.	FINAL PAYMENT (10% of each application cost -- Invoiced 90 days after delivery of each Licensed Standard Software package	$2,400
	TOTAL LICENSED STANDARD SOFTWARE PAYMENTS DUE	**$24,000**

ALL PAYMENTS ARE DUE WITHIN THIRTY (30) DAYS FROM RECEIPT OF INVOICE

PRICING VALID THRU AUGUST 15, 1994

EXHIBIT B
INSTALLATION AND TRAINING SUPPORT SERVICES AND FEES

1. **Training and Installation Support Hours Recommended**

Allocating adequate support service hours for each application of Licensed Standard Software listed on Exhibit A is not only recommended but also is critical for a successful installation of and training on each application package. Based on the Licensed Standard Software listed on Exhibit A, we suggest that at least **100** hours of **New World** installation and training support services be scheduled. **Actual usage may be higher or lower based on Customer's requirements and use of these support services.** Avoiding or minimizing custom or modified features will aid in keeping the support costs to the scheduled minimum. The recommended installation and training support hours include:

(a) Project management assistance;
(b) Installation of each package of Licensed Standard Software; and
(c) **Customer** training on each package of Licensed Standard Software.

The installation and training support services are typically performed at **Customer**'s premises but, at **Customer**'s option, may be provided at **New World** national headquarters in Troy, Michigan. (Other support services often involve services performed at **New World**'s national headquarters.) **New World** reserves the right to make cost adjustments for support trips canceled by **Customer** less than ten (10) business days before the scheduled start date to cover **New World's** out of pocket costs and lost revenues.

2. **Training and Installation Support Service Fees Estimate**

The recommended hours cited above and any additional support services are available at the rate of **$75.00** per hour. This rate is protected for one year from the date **New World** executes this Agreement. After one year, **Customer** shall pay the then-current hourly rate for all Exhibit B support services rendered.

Based on the hours listed above, the training and installation support service cost is estimated at $7,500. (Plus all actual and reasonable travel expenses incurred by **New World** divided proportionately between all **New World** Customers visited on a single trip, and actual employee travel time up to but not exceeding four (4) hours per **Customer** visit. Travel shall not exceed $4,500 without prior written approval of **Customer**.)

3. **Additional Services Available**

Other **New World** services may be required or requested for the following:

(a) File conversion assistance;
(b) Consulting with **New World** technical staff;
(c) Modifying the Licensed Standard Software;
(d) Designing and programming Custom Software;
(e) Maintaining modified Licensed Standard Software and/or Custom Software;
(f) **New World** Consultation with other vendors or third parties;
(g) Software testing; and/or
(h) Assistance as Customer is going "live".

Customer may request these additional services in writing using **New World's** Request For Service (RFS) procedure (or other appropriate procedure mutually agreed upon by **Customer** and **New World**).

4. **Payments for Services and Travel Costs**

All hours for services and travel costs will be billed weekly for the previous calendar week. **Payments are due within thirty (30) days from receipt of invoice.**

EXHIBIT C
STANDARD SOFTWARE MAINTENANCE AGREEMENT

This Standard Software Maintenance Agreement (SSMA) between New World Systems Corporation (**New World**) and City of Merced, California (**Customer**) sets forth the standard software maintenance support services provided by **New World**.

1. **Service Period**

This SSMA shall remain in effect for a period of five (5) years beginning on the date of installation of the Licensed Standard Software to **Customer** (the start date) and ending on the same calendar date five (5) years after the start date. Upon software delivery, Licensed Standard Software installation shall not be delayed more than 30 days from computer's availability for use.

2. **Services Included**

The following services or features are available under this SSMA:

(a) Upgrades, including new releases, to the Licensed Standard Software (prior releases of Licensed Standard Software application packages are supported no longer than nine (9) months after a new release is announced by **New World**);
(b) Temporary fixes to Licensed Standard Software (see paragraph 6 below);
(c) Revisions to Licensed Documentation;
(d) Reasonable telephone support for Licensed Standard Software on Monday through Friday from 8:00 a.m. to 8:00 p.m. (Eastern Time Zone); and
(e) Invitation to and participation in user group meetings.

Items a, b, and c above will be distributed to **Customer** on magnetic media or other means, as appropriate. After installation, **Customer** shall return any magnetic media to **New World.**

Additional support services are available as requested by **Customer** using the then-current hourly rates or applicable fees. Exhibit B has a description of support services available.

3. **Maintenance for Modified Licensed Standard Software and Custom Software**

Customer is advised that if it requests or makes changes or modifications to the Licensed Standard Software, these changes or modifications (no matter who makes them) make the modified Licensed Standard Software more difficult to maintain. If **New World** agrees to provide maintenance support for Custom Software or Licensed Standard Software modified at **Customer's** request, then the additional **New World** maintenance or support services provided shall be billed at the then-current Exhibit B hourly fees plus reasonable expenses.

4. **Billing**

Maintenance costs will be billed annually, beginning on the date of installation of the Licensed Standard Software and on the same date each year thereafter for the term of the SSMA. (Any Exhibit B support or service hours and travel costs incurred are billed weekly for the previous calendar week.)

5. **Additions of Software to Maintenance Agreement**

Additional Licensed Standard Software licensed from **New World** will be added to the SSMA on the date it is installed at **Customer's** location. Costs for the maintenance for the additional software will be billed to **Customer** on a pro rata basis for the remainder of the maintenance year and on a full year basis thereafter.

6. Requests for Software Correction on Licensed Standard Software

At any time during the SSMA period, if **Customer** believes that the Licensed Standard Software does not conform to the current specifications set forth in the user manuals, **Customer** must notify **New World** in writing that there is a claimed defect and specify which feature and/or report it believes to be defective. Before any notice is sent to **New World,** it must be reviewed and approved by the Customer Liaison. Documented examples of the claimed defect must accompany each notice. **New World** will review the documented notice and when a feature or report does not conform to the published specifications, **New World** will provide software correction service at no charge. (See paragraph 4.0 of the General Terms and Conditions of this Agreement for the **New World** warranties provided). A non-warranty request is handled as a billable Request for Service (RFS) (see Exhibit B).

The no charge software correction service does not apply to any of the following:

(a) situations where the Licensed Standard Software has been changed by anyone other than **New World** personnel;

(b) situations where **Customer**'s use or operations error causes incorrect information or reports to be generated; and

(c) requests that go beyond the scope of the specifications set forth in the current User Manuals.

7. Maintenance Costs for Licensed Standard Software Packages Covered for IBM AS/400 Model 300-2041

New World agrees to provide software maintenance at the costs listed below for the following **New World** Licensed Standard Software packages installed at **Customer**'s location:

Application Package	Number of Modules
1. Combined Police/Fire/EMS CAD	6
2. Law Enforcement Records Software Base Package	12
3. Additional Law Enforcement Records Software	9
4. State Compliance Software	1

TOTAL LIST COST: $ 133,000

ANNUAL MAINTENANCE COST: $13,300*
(5-Year Plan, billed annually)

* The Year One cost will be $3,400. This reflects a credit of $9,900 for the SSMA payment made for 07-01-93 through 06-30-94. All subsequent annual payments for the term of the SSMA shall be $13,300, unless additional applications are added or the AS/400 Model is upgraded. If additional applications are added or the AS/400 Model is upgraded, the annual SSMA percentage cost shall remain at 10% of the then Total List Cost of the Licensed Software for the term of the SSMA.

ALL PAYMENTS ARE DUE THIRTY (30) DAYS FROM RECEIPT OF INVOICE.

EXHIBIT D
NEW WORLD SYSTEMS CORPORATION
NON-DISCLOSURE AND SECURITY AGREEMENT FOR THIRD PARTIES

This Agreement, when accepted and executed by New World, grants the undersigned the permission to use and/or have limited access to certain New World Systems Corporation (**New World**) proprietary and/or confidential information

Installed at: CITY OF MERCED, CALIFORNIA (Customer Name) Located at: 678 West 18th Street, Merced, CA 95340

Authorized Signature of Customer:

Name (Please Print or Type)	**Title**	**Signature**

In exchange for the permission to use or have access to **New World** proprietary and/or confidential information, including without limitation, **New World** software and/or documentation, the organization and individual whose names appear below, agree to the following:

1. No copies in any form will be made of **New World** proprietary or confidential information without the expressed written consent of **New World**' President, including without limitation, the following:
   - Program Libraries, whether source code or object code;
   - Operating Control Language;
   - Test or Sample Files;
   - Program Listings;
   - Record Layouts;
   - All written confidential or proprietary information originating from **New World** including without limitation, documentation, such as user manuals and/or system manuals; and/or
   - All **New World** Product Bulletins and/or other **New World** Product related materials.

2. **New World** software, **New World** documentation, or other proprietary or confidential information shall not be used for any purpose other than processing the records of the Customer identified above as permitted in the Customer's *Standard Software License and Services Agreement* with **New World**.

3. The undersigned agree(s) that this Agreement may be enforced by injunction in addition to any other appropriate remedies available to **New World**. If it is determined that the money damages caused by the undersigned's failure to comply with the foregoing terms are difficult to ascertain, they are hereby estimated at liquidated damages of no less than three times the then-current License Fees for the License Software provided to **Customer** under the *Standard Software License and Service Agreement* between **Customer** and **New World**.

Agreed and Accepted by Third Party (Organization)

Organization: _____

By: _____

Title: _____

Date: _____

Agreed and Accepted by Third Party (Individual)

Individual: _____

By: _____

Title: _____

Date: _____

Accepted and Approved By New World Systems Corp.

By: _____

Title: _____

Date: _____

[MERCED.EXS - 5GW]

CONFIDENTIAL

EXHIBIT E
DEMONSTRATION SITE DISCOUNT

New World has provided **Customer** a significant discount in exchange for the privilege of using **Customer's** site for demonstration purposes. Accordingly, after the Licensed Software has been delivered and installed, **Customer** agrees to act as a demonstration site for prospective **New World** customers. **Customer** also agrees to serve as a reference or remote demonstration site on the telephone for prospective **New World** customers. By agreeing to be a demonstration site, **Customer** is not necessarily endorsing the **New World** software and **Customer** will not actively participate in any type of marketing and advertising campaign for or on behalf of **New World**.

Demonstrations will be coordinated with the appropriate **Customer** personnel and will be scheduled to minimize the interruption to **Customer's** operations. **New World** will provide **Customer** reasonable notice for preparation. The number of demo's shall not exceed twelve (12) annually without written concent of Customer.

NEW WORLD SYSTEMS
Public Sector Software
3270 West Big Beaver Road, Suite 300 Troy, MI 48084-2901 (810) 649-7100

July 12, 1994

STANDARD SOFTWARE LICENSE AND SERVICES AGREEMENT

This *Standard Software License and Services Agreement* which includes the attached Exhibits ("this **Agreement**") is between **New World Systems Corporation ("New World")**, a Michigan Corporation and **the City of Merced, California ("Customer")**. This **Agreement** sets forth the terms and conditions under which **New World** will furnish the Licensed Products and will provide certain services described herein to **Customer**.

The attached Exhibits include:

Exhibit A . . . . . LICENSED STANDARD SOFTWARE AND FEES
Exhibit B . . . . . INSTALLATION AND TRAINING SUPPORT SERVICES AND FEES
Exhibit C . . . . . STANDARD SOFTWARE MAINTENANCE AGREEMENT
Exhibit D . . . . . NON-DISCLOSURE AND SECURITY AGREEMENT FOR THIRD PARTIES
Exhibit E . . . . . DEMONSTRATION SITE DISCOUNT

By signing below, each of us agrees to the terms and conditions of this Agreement together with the attached Exhibits. This Agreement contains the complete and exclusive statement of the agreement between us relating to the matters referenced herein and replaces any prior oral or written representations or communications between us. Each individual signing below represents that (s)he has the requisite authority to execute this Agreement on behalf of the organization for which (s)he represents and that all the necessary formalities have been met.

ACKNOWLEDGED AND AGREED TO BY:

NEW WORLD SYSTEMS CORPORATION
(New World)

By: Larry D. Leinweber
Larry D. Leinweber, President

Date: 7-13-94

CITY OF MERCED, CALIFORNIA
(Customer)

By: James G. Marshall
Authorized Signature, **Title**
James G. Marshall, City Manager

By:
Authorized Signature, **Title**
Steven F. Nord, City Attorney

Date:

This Agreement is effective upon the last date as shown on this cover page.

94-0059
FUNDS/ACCOUNTS VERIFIED
$36,000
FINANCE OFFICE 8/10/94 DATE

Annual maintenance fees subject to appropriation by Council

I. DEFINITIONS. The following terms as defined below are used throughout this Agreement:

1. *"Licensed Standard Software":*
   The current version of **New World** standard and development application software package(s) (in machine readable code and, if applicable, the related source code) listed on Exhibit A. **"Development Software"** is standard application software currently under development by **New World** which, if applicable, will be completed and delivered to **Customer** as Licensed Standard Software during the term of this **Agreement**.
2. *"Upgrades":*
   Any enhanced and/or improved versions of the Licensed Standard Software provided as Licensed Standard Software under Exhibit C of this **Agreement** and released after the execution of this **Agreement**.
3. *"Licensed Custom Software":*
   Any software (programs or portions of programs) developed by **New World** specifically for **Customer**'s own use.
4. *"Licensed Software":*
   The Licensed Standard Software (including any Development Software), Upgrades, and Licensed Custom Software provided under this **Agreement**.
5. *"Licensed Documentation":*
   New World User Manuals which includes the current specifications for the Licensed Standard Software and other written instructions relating to the Licensed Software (such as Product Bulletins, installation instructions, and training materials).
6. *"Authorized Copies":*
   Except as provided in Section II, subparagraph 1.3, the only authorized copies of the Licensed Software and Licensed Documentation are the copies of each application software package defined in this Paragraph. They are:
   (i) the single copy of the Licensed Software and the related Licensed Documentation delivered by **New World** under this **Agreement**; and
   (ii) any additional copies made by **Customer** as authorized in Section II, subparagraph 1.2.
7. *"Licensed Products":*
   The Licensed Software, the related Licensed Documentation, and the Authorized Copies of the foregoing.
8. *"Customer Liaison":*
   A **Customer** employee assigned to act as liaison between **Customer** and **New World** for the duration of this **Agreement**. Within ten (10) days of execution of this **Agreement**, **Customer** shall notify **New World** of the name of the Customer Liaison.
9. *"SSMA":*
   The **New World** Standard Software Maintenance Agreement as set forth in Exhibit C.
10. *"Computer":*
    The single IBM AS/400 model 300-2041 processor, to be located at:
    City of Merced
    678 West 18th Street
    Merced, CA 95340
    Customer shall identify in writing the serial number of the Computer within ten (10) days of receipt of the Computer or within ten (10) days of execution of this **Agreement**, whichever is later. If the Computer is to be relocated, **Customer** shall notify **New World** of the new location in writing prior to the relocation.
11. *"Confidential Information":*
    Information disclosed or obtained by one party in connection with, and during the term of, this **Agreement** and designated as "Confidential" by the party claiming confidentiality at the time of disclosure. Confidential Information does not include any information which was previously known to the other party without obligation of confidence or without breach of this **Agreement**, is publicly disclosed either prior or subsequent to the other party's receipt of such information, or is rightfully received by the other party from a third party without obligation of confidence.

II. GENERAL TERMS AND CONDITIONS

1.0 *SINGLE USE LICENSE.*

1.1 In consideration of **Customer**'s payment of the license fees specified in Exhibit A and the applicable custom software fees, if any, **New World** grants **Customer** a nontransferable and nonexclusive license to use the Licensed Software only on the Computer and only for its internal processing needs. Once **Customer** has fully paid the license fees for the Licensed Software, **Customer** shall have the right and license to use, enhance, or modify the Licensed Software only for **Customer**'s own use and only on the Computer. In accordance with the payment plan(s) on the attached Exhibits, **New World** will deliver to **Customer** one copy of each application of the Licensed Software (in machine readable form compatible with the specified operating environment) on storage media supplied by **Customer** and one copy of the related Licensed Documentation.

1.2 In order to assist **Customer** in the event of an emergency, **Customer** is permitted to make up to two (2) back up copies on magnetic media of each application of the Licensed Software and one back up copy of the related Licensed Documentation. These Authorized Copies may be stored off-site away from **Customer**'s premises as specified in the Definitions so long as they are kept in a location secure from unauthorized use. **Customer** or anyone obtaining access through **Customer** shall not copy, distribute, disseminate, or otherwise disclose to any third party the Licensed Products or copies thereof in whole or in part, in any form or media. This restriction on making and distributing the Licensed Products or copies of any Licensed Product, includes without

limitation, copies of the following:

(i) Program libraries, either source or object code;
(ii) Operating control language;
(iii) Test Data, sample files, or file lay outs;
(iv) Program Listings; and
(v) Licensed Documentation.

1.3 Upon written request by **Customer**, and with written permission by **New World**, additional Authorized Copies may be made for **Customer**'s internal use only.

2.0 *OWNERSHIP.*

2.1 The Licensed Products and all copyright, trade secrets and other proprietary rights, title and interest therein, remain the sole property of **New World** or its licensors, and **Customer** shall obtain no right, title or interest in the Licensed Products by virtue of this **Agreement** other than the nonexclusive, nontransferable license to use the Licensed Products as restricted herein.

2.2 The license to use any Licensed Custom Software provided under this **Agreement**, if any, is included in this license. **New World** shall have the right to use any data processing ideas, techniques, concepts, and/or know-how acquired by it in the performance of services under this **Agreement** including the development of Licensed Custom Software for the advancement of its own technical expertise and the performance of other Software License and Service Agreements or any other applicable agreements. **New World** shall have, without restriction, the right to use all programs, procedures, information, and techniques that are publicly available, obtained or obtainable from third parties and/or developed independently by **New World** without specific reference to **Customer**'s organization.

3.0 *CORRECTION AND SOFTWARE MAINTENANCE ON STANDARD SOFTWARE*

3.1 As a part of this **Agreement**, **Customer** is also obtaining an SSMA (see Exhibit C). **New World** provides software correction service and maintenance for the Licensed Standard Software via the SSMA. See Exhibit C for a description of the services available, the applicable fees and procedures, and the SSMA start date.

4.0 *WARRANTIES*

4.1 **New World** warrants that the Licensed Standard Software will perform as specified in its user manuals based on the then-current release of the Licensed Standard Software.

4.2 **New World** warrants that it possesses the necessary intellectual rights to license to **Customer** the Licensed Software provided hereunder.

The foregoing warranties do not apply if the Licensed Product(s) have been modified by any party other than **New World**. **New World** does not warrant that the features or functions of the Licensed Software will meet **Customer**'s requirements or in any combination or use **Customer** selects. EXCEPT AS SPECIFICALLY PROVIDED IN THIS PARAGRAPH 4.0, NEW WORLD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE LICENSED PRODUCTS' CONDITION, ITS MERCHANTABILITY, ITS FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

5.0 *INSTALLATION AND TRAINING SUPPORT SERVICES*

5.1 As provided for in Exhibit B and concurrent with timely payments, **New World** shall make available to **Customer** qualified representative(s) who will provide installation and training support services for each application of the Licensed Software delivered. See Exhibit B for a description of the services provided and the applicable fees and procedures.

6.0 CUSTOMER LIAISON AND CUSTOMER RESPONSIBILITIES

The successful implementation of the Licensed Products into **Customer**'s environment requires **Customer**'s commitment to and cooperation in the implementation process. Accordingly, **Customer** hereby agrees to the following:

6.1 **Customer** understands that the Licensed Software is designed to run in a specified operating environment which includes hardware, software and related equipment not provided by **New World**.

Customer is responsible for assuring that the appropriate hardware equipment, the related components and all cabling are installed timely and are suitable for the successful installation of the Licensed Software.

6.2 **Customer** agrees to provide the management interface and support necessary to successfully complete the implementation of the Licensed Software. This support includes upper level priority setting and timely involvement during and after a change in **Customer**'s organization, **Customer's** operations and/or after changes in **Customer's** internal policies or procedures which directly affect the software implementation.

6.3 **Customer** shall assign an upper level employee to serve as the Customer Liaison for the duration of the Licensed Software implementation. If **Customer** must replace the Customer Liaison for reasons beyond its control, **Customer** will assign a new Customer Liaison as soon as reasonably possible. **New World** is not responsible for any delay caused directly or indirectly by the reassignment of the Customer Liaison. In addition to other duties and responsibilities, the Customer Liaison shall:

(i) provide timely answers to **New World**'s requests for information;

(ii) coordinate a mutually agreeable training schedule;

(iii) have authority to sign for and obligate **Customer** to any matters relating to service requests, design documents, performance test documents and/or delivery and service dates;

(iv) in situations where **Customer** participation is required, provide timely input for systems definition, detail design, and use of the software system.

6.4 **Customer** is responsible for creating and maintaining its master files, tables and the like which includes accurate data entry, accurate file editing and overall file control to assure successful systems performance.

6.5 **Customer** shall provide qualified personnel with sufficient back up to be trained to use the Licensed Software and to interpret the output. Applying the output information in **Customer's** environment is **Customer's** sole responsibility.

7.0 *BILLING AND AS/400 MODEL UPGRADE CHARGES*

7.1 The attached Exhibits set forth the manner in which fees and payments shall be allocated and made under this **Agreement**. Past due amounts are subject to a service charge of 1.5% per month, which charge **Customer** agrees to pay. To the extent **Customer** imposes additional requirements on **New World** for services other than those expressly provided in this **Agreement**, **New World** retains the right to make additional price adjustments and/or any other adjustments which may be necessitated. Before performing these additional services, **New World** will notify **Customer** that the services are subject to additional charge.

7.2 If **Customer** upgrades the computer model of its AS/400 Computer, at the time of the upgrade, **Customer** agrees to pay the difference between the standard software charges for the present AS/400 model (see Section I, definition number 10) and the then-current standard software charges for the upgraded AS/400 model. SSMA fees shall be increased according to the upgraded AS/400 charges on the next annual billing date after the upgrade occurs. With said payments, the license provided in Section II, Paragraph 1.0 transfers to permit **Customer**'s use of the Licensed Software on the upgraded AS/400 model.

7.3 **Customer** shall notify **New World** when AS/400 models will be upgraded and will pay the upgrade fees promptly when invoiced.

8.0 *NON-RECRUITMENT OF PERSONNEL*

8.1 During the term of this **Agreement** and for twenty-four (24) months thereafter, each party agrees not to solicit or hire current or former employees of the other without the other's prior written consent.

9.0 *CONFIDENTIAL INFORMATION/NON-DISCLOSURE AGREEMENT*

9.1 Subject to the requirements of the Freedom of Information Act (FOIA) and/or other comparable applicable state law, each party shall hold all Confidential Information in trust and confidence for the party claiming confidentiality and not use such Confidential Information other than for the benefit of that party. The other party agrees not to disclose any such Confidential Information, by publication or otherwise, to any other person or organization.

9.2 **Customer** hereby acknowledges and agrees that all Licensed Products are Confidential Information and proprietary to **New World**. In addition to the other restrictions set forth elsewhere in this **Agreement** or otherwise agreed to in writing, **Customer** agrees to implement all reasonable measures to safeguard **New World's** proprietary rights in the Licensed Products, including without limitation the following measures:

(i) **Customer** shall only permit access to the Licensed Products to those employees who require access and only to the extent necessary to perform **Customer's** internal processing needs.

(ii) With respect to agents or third parties, **Customer** shall permit access to the Licensed Products only after **New World** has received, approved and returned a fully executed Non-Disclosure Agreement to **Customer** (see Exhibit D). **New World** reserves the right to reasonably refuse access to a third party after it has evaluated the request. **Customer** agrees to provide information reasonably requested by **New World** to assist **New World** in evaluating **Customer's** request to permit third party access to the Licensed Products. In addition to any other remedies, **New World** may recover from **Customer** all damages and legal fees incurred in the enforcement of this provision on third party access;

(iii) **Customer** shall cooperate with **New World** in the enforcement of the conditions set forth in the attached Non-Disclosure Agreement or any other reasonable restrictions **New World** may specify in writing in order to permit access;

(iv) **Customer** shall not permit removal of copyright or confidentiality labels or notifications from its proprietary materials; and

(v) **Customer** shall not attempt to disassemble, decompile or reverse engineer the Licensed Software.

9.3 **Customer** agrees that in addition to any other remedies that may be available at law, equity or otherwise, **New World** shall be entitled to seek and obtain a temporary restraining order, injunctive relief, or other equitable relief against the continuance of a breach or threatened breach of this paragraph 9.0 on Confidentiality and Non-Disclosure without the requirement of posting a bond or proof of injury as a condition for the relief sought.

10.0 *LIMITATION OF LIABILITY AND RECOVERABLE DAMAGES*

New World's entire liability and **Customer's** exclusive remedies are set forth below:

10.1 For any claim relating to the non-conformance or imperfection of any licensed software provided under this **Agreement**, **New World** will correct the defect so that it conforms to the warranties set forth in Section II, subparagraph 4.1; or if after repeated attempts to correct the non-conformity, **New World** is unable to correct the non-conformity, then **Customer** may recover its actual damages subject to the limits set forth in subparagraph 10.2 below. For any other claim arising under or in connection with this **Agreement**, **Customer** may recover its actual damages subject to the limits set forth in subparagraph 10.2 below.

10.2 **New World's** liability for damages, regardless of form of action, is limited to the recovery of direct damages up to the Exhibit A Licensed Standard Software fees paid to **New World**.

10.3 In no event shall **New World** be liable for any damages relating to **Customer's** failure to perform its responsibilities or for loss of use, revenue or profits, or for any incidental or consequential damages, even if **New World** has been advised of the possibility of such damages. If it is determined that a limitation of liability or a remedy contained herein fails of its essential purpose, then the parties agree that the exclusion of incidental and/or consequential damages is still effective.

11.0 *INTEGRATION WITH U.S. COPYRIGHT ACT*

11.1 In addition to all other provisions provided under this **Agreement**, **Customer** agrees to be bound by and to comply with any and all provisions of the U.S. Copyright Act (*The Copyright Act of 1976, U.S.C. Sections 101-810 (1976) as amended by 17 U.S. C. Sections 101-810 (1982)*). If a provision of the U.S. Copyright Act and this **Agreement** conflict, the more restrictive of the two applies. If it cannot be determined which is the more restrictive, then the provision within this **Agreement** shall apply.

12.0 *INDEPENDENT CONTRACTOR*

12.1 **New World** is an independent contractor. The personnel of one party shall not in any way be considered agents or employees of the other. To the extent provided for by law, each party shall be responsible for the acts of its own employees.

12.2 Each party shall be responsible for Workers' Compensation coverage for its own personnel.

13.0 *INSURANCE REQUIREMENTS*

New World shall not commence work under this **Agreement** until it has obtained the insurance required under this paragraph.

13.1 **Workers' Compensation Insurance: New World** shall procure and maintain during the term of this **Agreement**, Workers' Compensation Insurance for all of its employees who engage in the work to be performed.

13.2 **Liability and Property Insurance--Comprehensive Form: New World** shall procure and maintain during the term of this **Agreement**, Liability and Property Damage Insurance in an amount not less than $1,000,000 on account of each accident; and in an amount not less than $1,000,000 for each accident for damage to property.

13.3 **Automobile Liability Insurance: New World** will procure and maintain during the term of this **Agreement**, Hired and Non-Ownership Motor Vehicle Bodily Injury and Property Damage Insurance in an amount not less than $500,000 for injuries, including accidental death, to each person; and, subject to the same limit for each person, in an amount not less than $500,000 for each accident; and in an amount not less than $500,000 on account for each accident for damage to property.

14.0 *DISPUTE RESOLUTION BY ARBITRATION*

14.1 Except for matters in which the dispute relates to unpaid license or service fees, or a breach of the provisions set forth in Section II, Paragraphs 8.0 (employee non-recruitment) or 9.0 (non-disclosure or confidentiality), any controversy or claim arising out of or relating to this **Agreement**, or breach thereof, shall be settled in arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

14.2 Before a demand for arbitration may be filed by either party, the management of both parties shall have met at least two times in face-to-face meetings in an effort to resolve any dispute or controversy through normal business management practices. Unless otherwise agreed to in writing, a minimum of one meeting shall take place at each party's home office location.

14.3 The arbitrators shall have no power or authority to add to or detract from this **Agreement** of the parties. The arbitrators shall have no authority to award damages over and above those provided for in this Agreement and in any event shall not exceed the limitations set forth in Section II, subparagraph 10.2, even if the remedy or limitation of liability provisions set forth in this Agreement shall for any reason whatsoever be held unenforceable or inapplicable.

14.4 Neither party nor the arbitrators may disclose the existence or results of any arbitration hereunder, except if the arbitration results in a Court imposed judgment, the non-disclosure restriction shall not be effective to the extent the matter becomes a public record.

14.5 Each party shall bear its own costs in preparing for and conducting arbitration, except that the joint costs, if any, of the actual arbitration proceeding shall be shared equally by the parties.

15.0 *TERMINATION*

15.1 **By Customer**: If **New World** fails to provide the Licensed Software as warranted in accordance with the terms of this **Agreement**, **Customer** may at its option terminate this **Agreement** with ninety (90) days written notice as follows:

(i) The termination notice shall provide a detailed description (with examples) of any warranty defects claimed;

(ii) **New World** shall have ninety (90) days from receipt of said notice to correct any warranty

defects in order to satisfy the terms of this **Agreement**;

(iii) During the ninety day cure period, **Customer** shall apply sound management practices and use its best efforts to resolve any issues or obstacles -- including cooperating with **New World** and reassigning personnel if necessary to improve the working relationship;

(iv) At the end of ninety (90) days unless the termination has been revoked in writing by **Customer**, the **Agreement** terminates.

15.2 **By New World**: If **Customer** fails to make prompt payments to **New World** when invoiced, or if **Customer** fails to fulfill its responsibilities outlined in Section II, Paragraph 6.0, then **New World** may at its option terminate this **Agreement** with written notice as follows:

(i) The termination notice shall define the reason for termination;

(ii) If the cited reason for termination is **Customer**'s failure to make prompt payment, **Customer** shall have ten (10) days from receipt of said notice to make payment in full for all outstanding invoiced payments due;

(iii) If the cited reason for termination is **Customer**'s failure to fulfill its responsibilities, **Customer** shall have ninety (90) days from receipt of said notice to correct any actual deficiencies in order to satisfy the terms of this **Agreement**;

(iv) During the applicable cure period, **New World** will use sound management practices and its best efforts to resolve any issues or obstacles -- including the reassignment of personnel if necessary to improve the working relationship;

(v) At the end of the applicable cure period, unless the termination has been revoked in writing by **New World**, the **Agreement** terminates.

15.3 In the event of termination by either party, **New World** shall continue to provide its services, as previously scheduled, through the termination date and the **Customer** shall continue to pay all fees and charges incurred through the termination date as provided in the attached Exhibits.

15.4 In the event neither party terminates this **Agreement** under subparagraphs 15.1 or 15.2 above, it naturally terminates unless it is renewed at the end of the initial SSMA term as set forth in Exhibit C, except that the restricted license to use the Licensed Software on the Computer as provided hereunder is perpetual so long as all Exhibit A license fees and applicable Custom Software fees have been paid in full.

15.5 Upon termination, **Customer** shall return to **New World** all copies of each application of Licensed Software and related Licensed Documentation provided to **Customer** under this **Agreement** for which the Exhibit A license fees and applicable Custom Software fees have not been paid in full.

15.6 Nothing in this paragraph on termination is intended to infer that either party has or does not have a claim for damages.

15.7 The Terms and Conditions relating to non-disclosure, confidentiality and non-recruitment of personnel survive termination.

16.0 *PATENT AND TRADEMARK INDEMNIFICATION*

New World agrees to indemnify and save the **Customer** harmless from and against any and all judgments, suits, costs, and expenses subject to the limits set forth in this **Agreement** resulting from any alleged infringement of any patent or copyright arising from the licensing of the Licensed Standard Software pursuant to this **Agreement**, provided that **Customer** has notified **New World** in writing of such allegation within thirty (30) days of the date upon which the **Customer** first receives notice thereof. **New World's** obligation to indemnify and save **Customer** harmless under this paragraph is void if the claim of infringement arises out of or in connection with any modification made to the Licensed Standard Software or any use of the Licensed Standard Software not specifically authorized in writing by **New World**.

17.0 *NOTICES*

17.1 Notices to **Customer** shall be deemed effective when sent by Registered or Certified U.S. Mail to the business address of the **Customer**.

17.2 Notices to **New World** shall be deemed effective when sent by Registered or Certified U.S. Mail to the following address (or to any other address so specified by **New World**):

New World Systems Corporation
3270 West Big Beaver, Suite 300
Troy, Michigan 48084-2901
Attention: President

18.0 *GENERAL*

18.1 This **Agreement** is the entire agreement between the parties superseding all other communications, written or oral, between the parties relating to the subject matter of this **Agreement. This Agreement may be amended or modified only in writing signed by both parties.**

18.2 This **Agreement** is governed by the laws of the State of California and it shall be binding on the successors and assigns of the parties.

18.3 Failure to enforce any provision of this **Agreement** shall not be deemed a waiver of that provision or any other provision of this **Agreement.**

18.4 No action, regardless of form, arising out of the services performed or Licensed Products delivered hereunder, may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for non-payment of fees may be brought within two (2) years of the date of the payment was due.

18.5 The paragraph headings which appear herein are included solely for convenience and shall not be used in the interpretation of this **Agreement.** Any provision of this **Agreement** determined to be invalid or otherwise unenforceable shall not affect the other provisions, which other provisions remain in full force and effect.

[MERCED.CON - 5GW]

EXHIBIT A
FOR LICENSED STANDARD SOFTWARE AND FEES

A. License Fee for LICENSED STANDARD SOFTWARE and DOCUMENTATION selected by CUSTOMER:

Application Package	Cost
1. Combined Police/Fire/EMS CAD (Multi-jurisdiction) - Unit Status Monitors and Unit Recommendations - Geo-File Verification and Location Alerts - Note Pads and Tone Alerts - Hazardous Alerts - Interface to Records - Run Cards	$48,000
2. Law Enforcement Records Software Base Package (Multi-jurisdiction) - Incident Tracking Module - Case Processing Module - Arrest Module - Property Module - Personnel/Education Module - Computer Aided Investigations Module - UCR (Federal Requirements) Module - Wants and Warrants Module - Traffic Tickets and Citations Module - Accidents Module - Business Registry Module - AS/400 Word Processing Interface	30,000
3. Additional Law Enforcement Records Software	
- Field Investigations Module	5,000
- Gun Permits Module	5,000
- Case Management Module	5,000
- Bicycles Module	5,000
- Pawn Shops Module	5,000
- Alarms Tracking and Billing Module	6,000
- Bookings Module	6,000
- Index Cards Module	6,000
- Career Criminal Apprehension Module	6,000
4. State Compliance Software	
- State of California Law Enforcement Records Compliance Module; includes: - BCS Magnetic Reporting - State of California Accident Reporting	6,000*

* Will be available for installation and testing in the 4th quarter of 1994.

LICENSE FEE TOTAL:	$133,000
LESS CREDIT FOR S/38 SOFTWARE PREVIOUSLY LICENSED:	(109,000)
TOTAL LICENSE FEES:	**$24,000**

B. License Fee Payment Schedule for Licensed Standard Software and Documentation

1.	DOWN PAYMENT (40% of the total Exhibit A Cost -- Invoiced upon receipt of signed *Standard Software License and Services Agreement*)	$9,600
2.	DELIVERY PAYMENT (50% of each application cost -- Invoiced as each Exhibit A Licensed Standard Software package is delivered to **Customer)**	$12,000
3.	FINAL PAYMENT (10% of each application cost -- Invoiced 90 days after delivery of each Licensed Standard Software package	$2,400
	TOTAL LICENSED STANDARD SOFTWARE PAYMENTS DUE	**$24,000**

ALL PAYMENTS ARE DUE WITHIN THIRTY (30) DAYS FROM RECEIPT OF INVOICE

PRICING VALID THRU AUGUST 15, 1994

EXHIBIT B
INSTALLATION AND TRAINING SUPPORT SERVICES AND FEES

1. **Training and Installation Support Hours Recommended**

Allocating adequate support service hours for each application of Licensed Standard Software listed on Exhibit A is not only recommended but also is critical for a successful installation of and training on each application package. Based on the Licensed Standard Software listed on Exhibit A, we suggest that at least **100** hours of **New World** installation and training support services be scheduled. **Actual usage may be higher or lower based on Customer's requirements and use of these support services.** Avoiding or minimizing custom or modified features will aid in keeping the support costs to the scheduled minimum. The recommended installation and training support hours include:

(a) Project management assistance;
(b) Installation of each package of Licensed Standard Software; and
(c) **Customer** training on each package of Licensed Standard Software.

The installation and training support services are typically performed at **Customer**'s premises but, at **Customer**'s option, may be provided at **New World** national headquarters in Troy, Michigan. (Other support services often involve services performed at **New World**'s national headquarters.) **New World** reserves the right to make cost adjustments for support trips canceled by **Customer** less than ten (10) business days before the scheduled start date to cover **New World's** out of pocket costs and lost revenues.

2. **Training and Installation Support Service Fees Estimate**

The recommended hours cited above and any additional support services are available at the rate of **$75.00** per hour. This rate is protected for one year from the date **New World** executes this Agreement. After one year, **Customer** shall pay the then-current hourly rate for all Exhibit B support services rendered.

Based on the hours listed above, the training and installation support service cost is estimated at $7,500. (Plus all actual and reasonable travel expenses incurred by **New World** divided proportionately between all **New World** Customers visited on a single trip, and actual employee travel time up to but not exceeding four (4) hours per **Customer** visit. Travel shall not exceed $4,500 without prior written approval of **Customer**.)

3. **Additional Services Available**

Other **New World** services may be required or requested for the following:

(a) File conversion assistance;
(b) Consulting with **New World** technical staff;
(c) Modifying the Licensed Standard Software;
(d) Designing and programming Custom Software;
(e) Maintaining modified Licensed Standard Software and/or Custom Software;
(f) **New World** Consultation with other vendors or third parties;
(g) Software testing; and/or
(h) Assistance as Customer is going "live".

Customer may request these additional services in writing using **New World's** Request For Service (RFS) procedure (or other appropriate procedure mutually agreed upon by **Customer** and **New World**).

4. **Payments for Services and Travel Costs**

All hours for services and travel costs will be billed weekly for the previous calendar week. **Payments are due within thirty (30) days from receipt of invoice.**

EXHIBIT C
STANDARD SOFTWARE MAINTENANCE AGREEMENT

This Standard Software Maintenance Agreement (SSMA) between New World Systems Corporation (**New World**) and City of Merced, California (**Customer**) sets forth the standard software maintenance support services provided by **New World**.

1. **Service Period**

This SSMA shall remain in effect for a period of five (5) years beginning on the date of installation of the Licensed Standard Software to **Customer** (the start date) and ending on the same calendar date five (5) years after the start date. Upon software delivery, Licensed Standard Software installation shall not be delayed more than 30 days from computer's availability for use.

2. **Services Included**

The following services or features are available under this SSMA:

(a) Upgrades, including new releases, to the Licensed Standard Software (prior releases of Licensed Standard Software application packages are supported no longer than nine (9) months after a new release is announced by **New World**);
(b) Temporary fixes to Licensed Standard Software (see paragraph 6 below);
(c) Revisions to Licensed Documentation;
(d) Reasonable telephone support for Licensed Standard Software on Monday through Friday from 8:00 a.m. to 8:00 p.m. (Eastern Time Zone); and
(e) Invitation to and participation in user group meetings.

Items a, b, and c above will be distributed to **Customer** on magnetic media or other means, as appropriate. After installation, **Customer** shall return any magnetic media to **New World.**

Additional support services are available as requested by **Customer** using the then-current hourly rates or applicable fees. Exhibit B has a description of support services available.

3. **Maintenance for Modified Licensed Standard Software and Custom Software**

Customer is advised that if it requests or makes changes or modifications to the Licensed Standard Software, these changes or modifications (no matter who makes them) make the modified Licensed Standard Software more difficult to maintain. If **New World** agrees to provide maintenance support for Custom Software or Licensed Standard Software modified at **Customer**'s request, then the additional **New World** maintenance or support services provided shall be billed at the then-current Exhibit B hourly fees plus reasonable expenses.

4. **Billing**

Maintenance costs will be billed annually, beginning on the date of installation of the Licensed Standard Software and on the same date each year thereafter for the term of the SSMA. (Any Exhibit B support or service hours and travel costs incurred are billed weekly for the previous calendar week.)

5. **Additions of Software to Maintenance Agreement**

Additional Licensed Standard Software licensed from **New World** will be added to the SSMA on the date it is installed at **Customer**'s location. Costs for the maintenance for the additional software will be billed to **Customer** on a pro rata basis for the remainder of the maintenance year and on a full year basis thereafter.

6. Requests for Software Correction on Licensed Standard Software

At any time during the SSMA period, if **Customer** believes that the Licensed Standard Software does not conform to the current specifications set forth in the user manuals, **Customer** must notify **New World** in writing that there is a claimed defect and specify which feature and/or report it believes to be defective. Before any notice is sent to **New World,** it must be reviewed and approved by the Customer Liaison. Documented examples of the claimed defect must accompany each notice. **New World** will review the documented notice and when a feature or report does not conform to the published specifications, **New World** will provide software correction service at no charge. (See paragraph 4.0 of the General Terms and Conditions of this Agreement for the **New World** warranties provided). A non-warranty request is handled as a billable Request for Service (RFS) (see Exhibit B).

The no charge software correction service does not apply to any of the following:

(a) situations where the Licensed Standard Software has been changed by anyone other than **New World** personnel;

(b) situations where **Customer**'s use or operations error causes incorrect information or reports to be generated; and

(c) requests that go beyond the scope of the specifications set forth in the current User Manuals.

7. Maintenance Costs for Licensed Standard Software Packages Covered for IBM AS/400 Model 300-2041

New World agrees to provide software maintenance at the costs listed below for the following **New World** Licensed Standard Software packages installed at **Customer**'s location:

Application Package	**Number of Modules**
1. Combined Police/Fire/EMS CAD	6
2. Law Enforcement Records Software Base Package	12
3. Additional Law Enforcement Records Software	9
4. State Compliance Software	1

TOTAL LIST COST: $ 133,000

ANNUAL MAINTENANCE COST: $13,300*
(5-Year Plan, billed annually)

* The Year One cost will be $3,400. This reflects a credit of $9,900 for the SSMA payment made for 07-01-93 through 06-30-94. All subsequent annual payments for the term of the SSMA shall be $13,300, unless additional applications are added or the AS/400 Model is upgraded. If additional applications are added or the AS/400 Model is upgraded, the annual SSMA percentage cost shall remain at 10% of the then Total List Cost of the Licensed Software for the term of the SSMA.

ALL PAYMENTS ARE DUE THIRTY (30) DAYS FROM RECEIPT OF INVOICE.

EXHIBIT D
NEW WORLD SYSTEMS CORPORATION
NON-DISCLOSURE AND SECURITY AGREEMENT FOR THIRD PARTIES

This Agreement, when accepted and executed by New World, grants the undersigned the permission to use and/or have limited access to certain New World Systems Corporation (**New World**) proprietary and/or confidential information

Installed at: CITY OF MERCED, CALIFORNIA
Customer Name

Located at: 678 West 18th Street
Merced, CA 95340

Authorized Signature of Customer:

Name (Please Print or Type)	**Title**	**Signature**

In exchange for the permission to use or have access to **New World** proprietary and/or confidential information, including without limitation, **New World** software and/or documentation, the organization and individual whose names appear below, agree to the following:

1. No copies in any form will be made of **New World** proprietary or confidential information without the expressed written consent of **New World**' President, including without limitation, the following:
   - Program Libraries, whether source code or object code;
   - Operating Control Language;
   - Test or Sample Files;
   - Program Listings;
   - Record Layouts;
   - All written confidential or proprietary information originating from **New World** including without limitation, documentation, such as user manuals and/or system manuals; and/or
   - All **New World** Product Bulletins and/or other **New World** Product related materials.

2. **New World** software, **New World** documentation, or other proprietary or confidential information shall not be used for any purpose other than processing the records of the Customer identified above as permitted in the Customer's *Standard Software License and Services Agreement* with **New World**.

3. The undersigned agree(s) that this Agreement may be enforced by injunction in addition to any other appropriate remedies available to **New World**. If it is determined that the money damages caused by the undersigned's failure to comply with the foregoing terms are difficult to ascertain, they are hereby estimated at liquidated damages of no less than three times the then-current License Fees for the License Software provided to **Customer** under the *Standard Software License and Service Agreement* between **Customer** and **New World**.

Agreed and Accepted by Third Party (Organization)

Organization: _____

By: _____

Title: _____

Date: _____

Agreed and Accepted by Third Party (Individual)

Individual: _____

By: _____

Title: _____

Date: _____

Accepted and Approved By New World Systems Corp.

By: _____

Title: _____

Date: _____

[MERCED.EXS - 5GW]

CONFIDENTIAL

EXHIBIT E
DEMONSTRATION SITE DISCOUNT

New World has provided **Customer** a significant discount in exchange for the privilege of using **Customer's** site for demonstration purposes. Accordingly, after the Licensed Software has been delivered and installed, **Customer** agrees to act as a demonstration site for prospective **New World** customers. **Customer** also agrees to serve as a reference or remote demonstration site on the telephone for prospective **New World** customers. By agreeing to be a demonstration site, **Customer** is not necessarily endorsing the **New World** software and **Customer** will not actively participate in any type of marketing and advertising campaign for or on behalf of **New World**.

Demonstrations will be coordinated with the appropriate **Customer** personnel and will be scheduled to minimize the interruption to **Customer's** operations. **New World** will provide **Customer** reasonable notice for preparation. The number of demo's shall not exceed twelve (12) annually without written concent of Customer.

NEW WORLD SYSTEMS®
Public Sector Software
3270 W. Big Beaver Rd. Suite 300 Troy, MI 48084-2901 (313) 649-7100

MEMO

TO: **Ron Ringstrom, City of Merced Police Department**

FROM: **Cindy Dobson, New World Systems**

DATE: **July 13, 1994**

RE: **License Agreements**

Enclosed please find two originals of the New World Standard Software License and Services Agreement which have been executed by our president, Larry Leinweber. They contain the final changes which you and I discussed this week.

Please have both copies signed and then return one to New World for our files. We're very happy to have the City of Merced Police Department migrating to the new versions of the software on the AS/400. Let me know if I can be of any additional assistance.

7-13-94

CITY OF MERCED
INTER-OFFICE MEMORANDUM

TO: City Attorney, Finance, Purchasing, Police Dept., Info. Sys.
DATE: Feb. 7, 2001
FROM: Carol Brigaman, Deputy City Clerk
FILE:
SUBJECT: Modification to Software License Agreement

Attached is a copy of a duly executed amendment to a software license agreement with New World Systems for the IBM AS/400 processor upgrade. The amendment was approved by Council on January 16, 2001. The original agreement was dated July 13, 1994.

2001-1-17-1
1001-1994-54
eff 1-16-01
orig eff 7-13-94

New World Systems™
The Public Sector Software Company

August 9, 2000

MODIFICATION TO SOFTWARE LICENSE AGREEMENT FOR CISC to RISC IBM AS/400 PROCESSOR UPGRADE

Mr. Ron Ringstrom
Merced Police Department
611 West 22nd Street
Merced, CA 95340

Dear Mr. Ringstrom:

Per the terms of our Software License Agreement dated August 1, 1994, the License Agreement is modified to provide Customer the ability to use the Licensed Software on an IBM AS/400 RISC model 720 processor, the new processor serving as a replacement for the current AS/400 CISC model 300-2041 processor in use.

Also per the terms of the August 1, 1994 Agreement, the attached Exhibit A describes the software license upgrade charge and the change to the annual maintenance charge. Exhibit E describes the support services required to assure that your current CISC version of software has a RISC version that is consistent with the way you use the current Licensed Software.

All other Terms and Conditions from the August 1, 1994 Agreement will continue to apply.

Please acknowledge the change in AS/400 processors and our understanding on the processor upgrade fee and services by the appropriate signature below.

Sincerely,

NEW WORLD SYSTEMS CORPORATION

AGREED AND ACCEPTED:

NEW WORLD SYSTEMS CORPORATION	**MERCED POLICE DEPARTMENT, CA**
By: Larry D. Lawrence	**By:** Jmarshall
Title: President	**Title:** James G. Marshall, City Manager
Date: 01-29-01	**Date:** 1-22-01

Each individual signing above represents that (s)he has the requisite authority to execute this Agreement on behalf of the organization for which (s)he represents and that all the necessary formalities have been met.

Atch 1, cy 2

210147 PO # 52016

FINANCE/ACCOUNTS VERIFIED

FINANCE OFFICE _____ DATE

672-0403-513 43-00

funds available 1/19/01 pkp

City Attorney

EXHIBIT A
LICENSED STANDARD SOFTWARE UPGRADE FEES

MERCED POLICE DEPARTMENT

FOR TRANSFER OF THE CURRENT SINGLE USE LICENSE FROM AN AS/400 MODEL 300-2041 TO AN IBM AS/400 MODEL 720

A. LICENSED STANDARD SOFTWARE

Application Package	Cost
1. License Fees on AS/400 Model 720:	$241,500
Less License Fees on AS/400 Model 300-2041:	(228,500)
Less Demonstration Site Discount:	(9,000)
APPLICATION SOFTWARE UPGRADE FEE:	**$4,000**

THE ABOVE LICENSE FEE UPGRADE CHARGES ARE VALID THROUGH OCTOBER 14, 2000

Note: *Based on the AS/400 Model 720 license fees of $241,500, the Standard Software Maintenance Fee will remain the same, as defined in the current SSMA Agreement.*

B. PAYMENT SCHEDULE

1.	APPLICATION SOFTWARE UPGRADE FEE (100% of the total Exhibit A cost)	$4,000
	TOTAL LICENSED STANDARD SOFTWARE PAYMENTS DUE	**$4,000**

ALL PAYMENTS ARE DUE WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF INVOICE

EXHIBIT E
SERVICE AGREEMENT FOR
IBM AS/400 CISC-TO-RISC SOFTWARE MIGRATION

1. **Migration Support Services and Deliverables**

New World Systems will provide the following services to migrate New World Systems' current in-use Licensed Standard Software from an IBM AS/400 CISC environment to a new AS/400 RISC environment. **Customer** agrees to provide complete CISC program libraries (on acceptable media) to **New World** no later than five (5) weeks prior to the installation of their RISC processor. **New World** will then:

(a) Restore Customer's CISC library for evaluation on New World's equipment.
(b) Evaluate the applicable PTFs.
(c) Load the RISC version of Customer's Licensed Standard Software.
(d) Merge the RISC version of Licensed Standard Software with the RISC PTFs (e.g., create a converted RISC Library).
(e) Validate the Converted RISC Library and return it to **Customer**.

These support services will be performed at **New World's** national headquarters in Troy, Michigan. The services include **New World**'s computer usage and time spent by **New World**'s technical staff. Other support services may be required at **Customer's** site and will be provided if used as described below.

The deliverables provided to **Customer** will be:

- a converted RISC Library (on acceptable media) including documentation to **Customer** on how to install the RISC version of Licensed Standard Software.

2. **Migration Services Fee**

The cost for performing the above listed services is **$4,000.** $4,000 will be billed upon signing of this agreement. All payments for services provided within this Agreement are due within fifteen (15) days from receipt of invoice. The RISC version of software will not be returned until the payment has been made.

3. **Additional On-Site Support Services**

Some **Customer** situations may require on-site support services due to unique **Customer's** needs (e.g., interfaces, custom software, testing, networking, staff experience, etc.). In these situations, **New World** will charge for all on-site time at the rate of $ 110 per hour. (Plus all actual and reasonable travel expenses incurred by **New World** divided proportionately between all **New World** Customers visited on a single trip and actual employee travel time for Installation and Training up to but not exceeding four (4) hours per **Customer** visit.)

Memorandum

To: New World Systems

To Whom It May Concern

From: Larry Labendeira L.L.

Information Systems Manager

Date: 12/21/00

Re: Decline of NWS Migration Services

This is to inform you that the City of Merced will be declining the Exhibit E attachment specifying CISC-to-RISC conversion services for the hardware upgrade we will be performing in January, 2001. I understand that we will be assuming this responsibility and that migration assistance is available from New World Systems at your current hourly rate, should we request it.

1

Attachment 2

ADMINISTRATIVE REPORT

AGENDA ITEM: I-1-f

MTG. DATE: 1-16-01

TO: CITY MANAGER

FROM: Ron Ringstrom, Police Services Manager

DATE: January 5, 2001

SUBJECT: Modification To Police Department's AS/400 Software License Agreement

RECOMMENDATION: **ACCEPT FOR INFORMATION ONLY**

AUTHORITY: Chapter 3.04, Article III, of the Merced Municipal Code, relating to purchases of $15,000 or less.

DISCUSSION:

The Police Department's existing AS/400 computer is scheduled for replacement in February, 2001. The computer replacement also requires an update to our application software at a cost of $4,000. The existing software version will not work on the new machine.

The cost of the updated application software was not included as a part of the hardware acquisition and is being purchased separately. Funding for the software upgrade is in account # 672-0403-513-43-00.

Attached are copies of the documents needed to modify to our existing license agreement (Attachment 1) and a memo (Attachment 2) from the City's Information Systems Department declining optional services suggested by New World Systems in Exhibit E. The Information Systems Department will provide the optional services locally to reduce project costs.

Submitted by: Ron Ringstrom, Police Services Manager

Reviewed and Approved By: Mark A. Dossetti, Chief of Police

Reviewed and Approved by: James G. Marshall, City Manager

Attachments:
1. License Modification Agreement
2. Information Systems Memo

Contract/Agreement

Council Date 2/19/2008

Council Item # L-19

Vendor Name New World Systems

Project/Service Upgrade of Existing Software Agreement from AS400 to Microsoft Windows Based Software (MSP Upgrade)

Comments -Mailed to vendor for signature 2/26/08.
-emailed to follow-up 3/6/08.
Rec'd - Memo sent 3/14/08

City Clerk's Date 2/8/2008

City Attorney's Date 2/12/2008

Finance's Date 2/12/2008

City Manager's Date 2/20/2008

Deputy City Clerk Date N/A

Mailed Date 2/26/08

Please sign and return to Emily S. in Records x.6838.

Clerk Review Date: 2/12/2008

FEB 20 2008

City of Merced
TRANSMITTAL FOR CONTRACT/AGREEMENT APPROVAL

Contract No.: _____ *(# will be assigned by City Clerk's Office after all documentation has been obtained)*
Distribution: Original Contract – Filed in the City Clerk's Office
Duplicate Originals/Copies – Originating Department

Date Submitted: 2/8/08 Submitting Dept.: Police

Date of Council Meeting *(If applicable)*: 2/19/08 Date Item(s) Required: _____

Funds available in the Budget?: ☒ Yes ☐ No ☐ Does Not Require Budget Funds
Account No(s): _____ If No: ☐ Dept. Prepared Budget Transfer Form *(copy attached)*
☒ Admin. Report Appropriating Funds *(copy attached)*

New Contract ☐ Amendment: 1st ☒ 2nd ☐ 3rd ☐ Change Order No.: _____

Note: *The following require City Council approval:*
- Non-Public Works Contracts in Excess of $20,000 or Public Work Contracts in Excess of $5,000; or
- Amendments Exceeding the Accumulated Contract Amount of 25% or More

Contractor/Vendor Name: New World Systems Misc. Receivable Acct. No.: _____

Verification of Business License: ☐ Business License No.: _____

Purpose of the Contract: Upgrade of Existing Software Agreement

Original Contract Amount: $_____ 1st Amendment: $ _____

Date of Original Contract: _____ 2nd Amendment: $ _____
(Council Meeting date if requires Council approval.)

3rd Amendment: $ _____

Beginning Date: _____ Expiration Date: _____

Required Attachments:
☐ Certificate of Insurance ☐ Labor & Material Bond ☐ Warranty Bond
☐ W-9 (or substitution) ☐ Faithful Performance Bond ☐ Admin. Report *(if applicable)*
☐ Other: _____

Note: *Please be sure all blanks have been filled in, all exhibits are attached, and the contract has been signed by the contractor/vendor and City Attorney's Office before submitting to the City Clerk's Office for routing.*

Department Head Signature: Tony Mora Date: 2/8/08

☒ **City Attorney's Office Signature** *(approved as to form)*

City Clerk's Office Checklist:
☑ *Dept. Head Signature on Form* ☑ *Admin. Report Attached* ☑ *Applicable Bond(s)*
☑ *Contractor/Vendor Signature* ☑ *Finance Dept. Signature* ☑ *City Manager's Signature*
☑ *City Attorney's Dept. Signature* ☑ *Insurance Certificate(s)* ☑ *Deputy City Clerk Signature*
☑ *Logged into Databases* ☑ *Council Approval Verification* ☐ *Image & File Contract*

Memo

Date: March 14, 2008

To: Marvin Dillsaver, Police

From: Emily Shuping, Records

RE: Upgrade of Existing Software Agreement from AS400 to Microsoft Windows Based Software (MSP Upgrade)

The City Clerk's Office is in receipt of the duly executed agreement with New World Systems for Upgrade of Existing Software Agreement from AS400 to Microsoft Windows Based Software (MSP Upgrade). Attached please find a copy for your records.

cc: Finance

New World Systems
The Public Sector Software Company

February 6, 2008

ADDITIONAL SOFTWARE LICENSE AGREEMENT
For an Aegis 400 to Aegis MSP Upgrade

Mr. Marvin Dillsaver
Communications Supervisor
Merced Police Department
611 W. 22nd Street
Merced, CA 95340

Dear Mr. Dillsaver:

New World Systems is pleased to license you additional software and provide implementation services for the upgrade of your AS/400 licensed standard software to the New World Aegis MSP Licensed Standard Software.

The attached forms (Exhibits A, B, C, F and Appendix 1) are to be reviewed and approved by you and/or your authorized representative. They describe the additional software and services you have requested along with the related fees.

Other than for the purposes of internal review, we ask that you treat our fees as confidential information. This is due to the competitive nature of our business.

The General Terms and Conditions from our original License Agreement with the Merced, California are incorporated and continue to apply. Any taxes or fees imposed from the course of this Agreement are the responsibility of the Customer. Upon completion of the upgrade to Aegis MSP standard software, the definition of COMPUTER from the (August 1, 1994) Agreement will be the MSP server(s) in use, and not the IBM AS/400.

Please acknowledge the change and your understanding on the services by the appropriate signature below.

ACKNOWLEDGED AND AGREED TO BY:

NEW WORLD SYSTEMS® CORPORATION
(New World)

By: Larry D. Leinweber
Larry D. Leinweber, President

Date: 02-27-08

MERCED POLICE DEPARTMENT, CA
(Customer)

By: J Marshall
Authorized Signature **Title**
James G. Marshall, City Manager

By: _____
Authorized Signature **Title**

Date: 2/20/08

Each individual signing above represents that (s)he has the requisite authority to execute this Agreement on behalf of the organization for which (s)he represents and that all the necessary formalities have been met. The "Effective Date" of this Agreement is the latter of the two dates in the above signature block.

Account Number: **001-1006-522.22-00 208007**

Amount: **$213,000.00**

VERIFIED

BY: Hallbrecht
Finance Officer

FINANCE ENTRY	
Contract No:	194059
Vendor Number:	495
P.O. Number:	87086
Funds Available:	YES. MRO 2/13/08

Services Fee Pg 7	$ 148,500.00
Data Conversion Pg 12	20,000.00
GIS Software Pg 14	12,500.00
Travel	32,000.00
New World Systems Proposed Fee	$ 213,000.00

EXHIBIT A
LICENSED STANDARD SOFTWARE AND FEES

1. License Fee for Licensed Standard Software And Documentation Selected By Customer:

Application Package — Cost

A.	STANDARD APPLICATION SOFTWARE [1,2,3]	
ITEM	**DESCRIPTION**	**INVESTMENT**
CAD	**(Users included in CAD Base - 6)**	
1.	**Aegis/MSP Combined Multi-Jurisdiction LE/Fire/EMS CAD** - Call Entry - Call Control Panel - Unit Recommendations - Unit Status and Control Panel - Call Stacking - CAD Messaging - Call Scheduling - Dispatch Questionnaire - Geo-File Verification - Hazard and Location Alerts - Hydrant Inventory - Access to Aegis/MSP LE Records - Access to Aegis/MSP Fire Records - Note Pads - Rip-N-Run Remote Printing - Run Cards - Tone Alerts	$70,000
2.	**Aegis/MSP Third Party CAD Interface Software[4]**	
	- E-911 Interface[5]	8,000
	- Encoder Interface (supports Zetron Models 25, 26)	8,000
	- Fire Records Interface (supports Firehouse, Sunpro, Alpine)	14,000
	SUB-TOTAL CAD MODULES	**100,000**

LAW ENFORCEMENT RECORDS **(Users included in LE Records Base - 18)**

3. Aegis/MSP Multi-Jurisdictional Base Law Enforcement Records	48,000
- Accidents	
- Arrest	
- Business Registry	
- Case Processing	
- Computer Aided Investigations	
- Federal Reports (UCR/IBR)	
- Geo-File Verification	
- Impounded Vehicles	
- Incident Tracking	
- Jacket Processing	
- Personnel/Education	
- Property	
- Traffic Tickets and Citations	
- Wants and Warrants	
4. Aegis/MSP Federal and State Compliance Reporting for LE Records	12,000
- Federal UCR/IBR	
5. Additional Aegis/MSP Software for Law Enforcement Records	
- Activity Reporting and Scheduling	6,000
- Bicycle Registration	6,000
- Bookings	10,000
- Career Criminal Registry (parolee, sex offender)	6,000
- Case Management	6,000
- Field Investigations	6,000
- Gun Permits and Registrations	6,000
- Index Cards	6,000
- Pawn Shops	6,000
SUB-TOTAL RECORDS MODULES	**118,000**

ADDITIONAL PUBLIC SAFETY SOFTWARE

6. Aegis/MSP Public Safety State/NCIC Interface Software[6]	
- Aegis/MSP State/NCIC Interface	11,000
Includes 12 - 15 screens	
On-Line Modules - Includes 4 state inquiry screens	
- On-Line CAD Interface to State/NCIC	7,000
- On-Line Wants and Warrants Interface to State/NCIC	7,000

7.	**Aegis/MSP Data Analysis/Crime Mapping/Management Reporting**	
	- Base with Two Applications	25,000
	SUB-TOTAL ADDITIONAL PUBLIC SAFETY SOFTWARE MODULES	**50,000**
	NEW WORLD STANDARD SOFTWARE LICENSE FEE	**268,000**
	LESS CUSTOMER LOYALTY SOFTWARE CREDIT	**(79,700)**
	LESS CUSTOMER LOYALTY SOFTWARE DISCOUNT	**(188,300)**
	TOTAL SOFTWARE LICENSE FEE [7,8]	**$0**

ENDNOTES

1 *Personal Computers must meet the minimum hardware requirements for New World Systems' MSP product. Microsoft Windows 2000 or XP is the required operating system for all client machines. Windows 2003 Server and SQL Server 2000/2005 are required for the Application and Database Server(s).*

2 *New World Systems MSP product requires Microsoft Windows 2003 Server and SQL Server 2000/2005 including required Client Access Licenses (CALs) for applicable Microsoft products. Servers must meet minimum hardware requirements provided by New World Systems.*

3 *Suggested minimum: 100MB Ethernet Network. 10MB CAT5 Ethernet Network may have less than adequate response time. Further consultation would be required to assess your network.*

4 *Does not include any required third party hardware or software unless specified in Section C of this proposal.*

5 *May require a "Serial-to-Ethernet" converter for multiple PSAPs (not included in this proposal).*

6 *Customer is responsible for obtaining the necessary State approval and any non-New World hardware and software.*

7 *Prices assume that all software is licensed.*

8 *Any taxes or fees imposed are the responsibility of the purchaser and will be remitted when imposed.*

PRICING VALID THROUGH FEBRUARY 29, 2008

EXHIBIT B
PROJECT MANAGEMENT, INSTALLATION AND TRAINING SUPPORT SERVICES AND FEES

1. Project Management Services

New World shall act as Project Manager to assist **Customer's** management in implementing the Exhibit A software. This responsibility will include documenting, coordinating and managing the overall Implementation Plan with **Customer's** management and the Customer Liaison. Project Management Services include:

a) a summary level Implementation Plan;
b) a detail level Implementation Plan;
c) revised Implementation Plans (if required);
d) monthly project status reports; and
e) project status meetings
- a project review (kickoff) meeting at **Customer's** location
- progress status meeting(s) will occur during implementation via telephone conference or at **Customer's** location; and
- a project close-out meeting at **Customer's** location to conclude the project.

To implement the Exhibit A applications, the Project Management fee will be **$40,120.**

2. Implementation and Training Support Hours Recommended

It is recommended that appropriate support hours are allocated for all Licensed Standard Software listed in Exhibit A to insure successful implementation of and training on each application package. Based on the Licensed Standard Software listed on Exhibit A, **517** hours of **New World** implementation and training support services have been allocated. Avoiding or minimizing custom or modified features will aid in keeping the support costs to the amount allocated. **Customer** agrees to reimburse **New World** for support trips canceled by **Customer** less than ten (10) days before the scheduled start date to cover **New World's** out-of-pocket costs and lost revenues. The recommended implementation and training support services include:

a) implementation of each package of Licensed Standard Software; and
b) **Customer** training and/or assistance in testing for each package of Licensed Standard Software.

The project management, implementation and training support services are performed at **Customer's** premises and/or at **New World** national headquarters in Troy, Michigan (e.g., portions of project management are performed in Troy).

3. Interface Installation Service Fees

A flat rate fee is charged for the installation of selected interfaces on Exhibit A. This fee does not include hardware and/or third party product costs. Whenever possible, this work will be done remotely, resulting in savings in travel costs. If on-site installation and training is required, **Customer** will be responsible for the actual travel costs. Installation includes the following interfaces with these corresponding fees.

Exhibit B / PROJECT MANAGEMENT, INSTALLATION AND TRAINING SUPPORT SERVICES AND FEES

a)	911 Interface	$4,000
b)	Encoder Interface	5,000
c)	Fire Records Interface	6,000
d)	State/NCIC	6,000
e)	Geo File Implementation	8,000
	TOTAL INTERFACE INSTALLATION SERVICE FEES	**$29,000**

New World's GIS implementation services are to assist and train **Customer** in preparing their GIS mapping data for use with the Licensed Standard Software. **Customer** must provide an accurate GIS street centerline layer in an industry standard file format (ESRI Shape Files). **Customer** is responsible for having clearly defined boundaries for Police Beats, EMS Districts and Fire Quadrants. **New World** will assist **Customer** to create and/or import map layers representing the Police/EMS/Fire boundaries. **New World** is not responsible for GIS data corrections, cleansing or accuracy.

4. Other Installation Service Fees

A flat rate fee is charged for quality assurance of the **Customer's** existing Aegis/MSP Server(s). This fee does not include hardware and/or third-party product costs. Whenever possible, this work will be done remotely, resulting in savings in travel costs. If an on-site installation review is required, **Customer** will be responsible for the actual travel costs.

a)	Hardware Quality Assurance Fee	$7,000
	TOTAL QUALITY ASSURANCE SERVICE FEES	**$7,000**

5. Support Service Fees Estimate

The **517** hours of installation and training support services cost has been calculated using a rate of **$140** per hour. Additional services are also available at the rate of **$140** per hour. This rate is protected for one year from the date **New World** executes this **Agreement**. After one year, **Customer** shall pay the then-current hourly rate for all Exhibit B support services rendered.

Based on the services suggested above, the Project Management ($40,120), Installation and Training Support Services ($72,380), Interface Installation Services ($29,000) and Quality Assurance Services ($7,000) costs will be a total of **$148,500**. (Plus all actual and reasonable travel expenses incurred by **New World** divided proportionately between all **New World** customers visited on a single trip and actual employee travel time for Installation and Training up to but not exceeding four (4) hours per **Customer** visit.)

6. Additional Services Available

Other **New World** services may be required or requested for the following:

a) additional software training;
b) tailoring of Licensed Standard Software by **New World** technical staff and/or consultation with **New World** technical staff;

c) **New World** consultation with other vendors or third parties;
d) modifying the Licensed Standard Software;
e) designing and programming Licensed Custom Software; and
f) maintaining modified Licensed Standard Software and/or custom software.

Customer may request these additional services in writing using **New World's** Request For Service (RFS) procedure (or other appropriate procedures mutually agreed upon by **Customer** and **New World**).

7. Payments for Exhibit B Services

Exhibit B Services will be billed as follows:

a)	Upon **Agreement** execution	$74,250
b)	90 days after the Effective Date	29,700
c)	180 days after the Effective Date	29,700
d)	Upon project completion or 365 days after the Effective Date, whichever comes first.	14,850
	TOTAL EXHIBIT B SERVICES FEE	**$148,500**

8. Payments for Travel Costs

All travel costs will be billed weekly for services provided in the previous calendar week.

Note: Any taxes imposed from the course of this **Agreement** are the responsibility of the **Customer** and **Customer** agrees to remit when imposed. If an exemption is claimed by the **Customer**, an exemption certificate must be submitted to **New World**.

ALL PAYMENTS ARE DUE WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF INVOICE.

EXHIBIT C
STANDARD SOFTWARE MAINTENANCE AGREEMENT

This Standard Software Maintenance Agreement (SSMA) between **New World Systems Corporation** (**New World**) and **Merced Police Department, California** (**Customer**) sets forth the standard software maintenance support services provided by **New World**.

1. Service Period

This SSMA shall remain in effect for a period of five (5) years (the SSMA term) beginning on July 1, 2008 and ending on June 30, 2013. **New World** has provided a customer upgrade discount on Exhibit A. In consideration for this discount, **Customer** agrees to pay full amount of annual payments due **New World** under Exhibit C. If **Customer** fails to pay all the SSMA amounts as specified, **Customer** shall forfeit the license to use the Aegis MSP licensed product and shall return all copies of the licensed product to **New World**. No cancellation of Exhibit A software modules and related fees will be allowed during the service period.

2. Services Included

The following services or features are available under this SSMA:

a) upgrades, including new releases, to the Licensed Standard Software (prior releases of Licensed Standard Software application packages are supported no longer than nine (9) months after a new release is announced by **New World**);

b) temporary fixes to Licensed Standard Software (see paragraph 6 below);

c) revisions to Licensed Documentation;

d) reasonable telephone support for Licensed Standard Software on Monday through Friday from 8:00 a.m. to 8:00 p.m. (Eastern Time Zone); and

e) invitation to and participation in user group meetings.

f) Emergency 24-hour per day telephone support, for *Aegis* CAD only, seven (7) days per week for Licensed Standard Software. Normal service is available from 8:00 a.m. to 8:00 p.m. (Eastern Time Zone). After 8:00 p.m., the *Aegis* CAD phone support will be provided via beeper and a **New World** support representative will respond to CAD service calls within 30 minutes of call initiation.

g) Includes integration of the ESRI software that is a component of the Exhibit A Licensed Standard Software.

Items a, b, and c above will be distributed to **Customer** on appropriate media or other means.

Additional support services are available as requested by **Customer** using the then-current hourly rates or applicable fees. Exhibit B has a description of support services available.

3. Maintenance for Modified Licensed Standard Software and Custom Software

Customer is advised that if it requests or makes changes or modifications to the Licensed Standard Software, these changes or modifications (no matter who makes them) make the modified Licensed Standard Software more difficult to maintain. If **New World** agrees to provide maintenance support for Custom Software or Licensed Standard Software modified at **Customer's** request, or for prior releases of **New World's** software, then the additional **New World** maintenance or support services provided shall be billed at the then-current Exhibit B hourly fees plus reasonable expenses.

4. Billing

Maintenance costs will be billed annually, beginning on the start date and on the same day each year thereafter for the term of the SSMA. (Any Exhibit B support or service hours and travel costs incurred are billed weekly for the previous calendar week.)

5. Additions of Software to Maintenance Agreement

Additional Licensed Standard Software licensed from **New World** will be added to the SSMA ninety (90) days after delivery. Costs for the maintenance for the additional software will be billed to **Customer** on a pro rata basis for the remainder of the maintenance year and on a full year basis thereafter.

6. Requests for Software Correction on Licensed Standard Software

At any time during the SSMA period, if **Customer** believes that the Licensed Standard Software does not conform to the current specifications set forth in the user manuals, **Customer** must notify **New World** in writing that there is a claimed defect and specify which feature and/or report it believes to be defective. Before any notice is sent to **New World**, it must be reviewed and approved by the Customer Liaison. Documented examples of the claimed defect must accompany each notice. **New World** will review the documented notice and when a feature or report does not conform to the published specifications, **New World** will provide software correction service at no charge. (See paragraph 4.0 of the General Terms and Conditions of this **Agreement** for the **New World** warranties provided). A non-warranty request is handled as a billable Request For Service (RFS) (see Exhibit B).

The no-charge software correction service does not apply to any of the following:

a) situations where the Licensed Standard Software has been changed by anyone other than **New World** personnel;
b) situations where **Customer's** use or operations error causes incorrect information or reports to be generated; and
c) requests that go beyond the scope of the specifications set forth in the current User Manuals.

7. Maintenance Costs for Licensed Standard Software Packages Covered for MSP Server(s)

New World agrees to provide software maintenance at the costs listed below for the following **New World** Licensed Standard Software packages installed at **Customer's** location:

	Application Packages	Number of Modules
1)	*Aegis/MSP* Combined Multi-Jurisdiction LE/Fire/EMS CAD	17
2)	*Aegis/MSP* Third Party CAD Interface Software	3
3)	*Aegis/MSP* Multi-Jurisdictional Base Law Enforcement Records	14
4)	*Aegis/MSP* Federal and State Compliance Reporting for LE Records	1
5)	*Aegis/MSP* Additional Aegis/MSP Software for Law Enforcement Records	9
6)	*Aegis/MSP* Public Safety State/NCIC Interface Software	3
7)	*Aegis/MSP* Data Analysis/Crime Mapping/Management Reporting	1
8)	*Aegis/MSP* Mobile Software on the RS6000*	2
9)	*Aegis/MSP* Mobile Client Laptop Software*	3
10)	*Aegis/MSP* Mobile Software on the iSeries 400 or MSP server*	1

*** Licensed on Prior Contract**

Annual Maintenance Cost (5-Year Plan, Billed annually)

Year 1	for period	July 1, 2008 – June 30, 2009	$97,151
Year 2	for period	July 1, 2009 – June 30, 2010	8% increase over previous year
Year 3	for period	July 1, 2010 – June 30, 2011	8% increase over previous year
Year 4	for period	July 1, 2011 – June 30, 2012	8% increase over previous year
Year 5	for period	July 1, 2012 – June 30, 2013	8% increase over previous year

ALL PAYMENTS ARE DUE WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF INVOICE.

EXHIBIT F
DATA FILE CONVERSION ASSISTANCE

New World will provide conversion assistance to **Customer** to help convert the existing data files specified below. If additional files are identified after contract execution, estimates will be provided to **Customer** prior to New World beginning work on those newly identified files.

General

1. This conversion effort includes data coming from one unique database or source, not multiple sources.

2. No data cleansing, consolidation of records, or editing of data will be part of the data conversion effort. Any data cleansing, removal of duplicate records, or editing must take place by **Customer** prior to providing the data to **New World**.

New World Responsibilities

1. **New World** will provide the data conversion programs to convert **Customers** data from a single data source to the **New World Licensed Standard Software** for the specified files that contain 500 or more records.

2. **New World** will provide **Customer** up to 2 test sets of the converted data. Additional test sets requested may/will require additional conversion costs.

3. As provided in the approved project plan for conversions, **New World** will schedule a conversion analysis trip and a separate data conversion testing trip to **Customer's** location. The conversion testing trip will be part of delivering the conversion programs to **Customer**.

4. **New World** will create and provide **Customer** with a conversion design document for signoff prior to beginning development work on the data conversion. No conversion programming by **New World** will commence until **Customer** approves this document.

Customer Responsibilities

1. Data files from **Customer's** current Aegis database are included in this conversion. **Customer** will provide a list of discrete data files with descriptions of fields or data elements in each file.

2. Data will be submitted to **New World** in EBCDIC or ASCII format with a fixed field, fixed record length and fixed block format, with coma delimiters on the following media types: DVD, CD, 3 ½ inch disk, or 8 mm tape.

3. Data files submitted must include an accurate count of records contained in the file. **Customer** understands that files or tables containing less than 500 records or table entries will not be converted.

4. As provided in the project plan for conversions, **Customer** will provide a dedicated resource in each application area to focus on conversion mapping and testing. This includes dedicating a support person(s) whenever **New World** staff is on site regarding conversions. Roughly a one to one ratio exists for **Customer** commitment and the **New World** commitment. **Customer** understands that thorough and timely testing of the converted data by **Customer** personnel is a key part of a successful data conversion.

5. **Customer** agrees to promptly review and signoff on both the conversion design document, and on the final conversions after appropriate review.

Customer Investment

The cost for the Data File Conversion services is **$20,000** and is to be paid as follows:

a)	DOWN PAYMENT (50% - due upon execution of **Agreement**)	$10,000
b)	ANALYSIS PAYMENT (30% - due upon delivery of conversion design document to **Customer**)	$6,000
c)	FINAL PAYMENT (20% - due 30 days after initial delivery of converted data)	$4,000
	TOTAL PAYMENTS DUE FOR DATA FILE CONVERSION (Exhibit F)	**$20,000**

Note: Where applicable, travel costs for **New World** employees to complete the tasks for Exhibit F services are billed under the provisions of Exhibit B services. All travel to be mutually agreed upon by **Customer** and **New World**.



New World Systems

APPENDIX 1
AGREEMENT AND AUTHORIZATION FOR PROCUREMENT OF THIRD PARTY PRODUCTS AND SERVICES

February 6, 2008

This agreement **(Agreement)** between **Merced Police Department, California (Customer)** and **New World Systems® Corporation, (New World)** is to cover the procurement of Third Party products and services by **New World** for **Customer**.

The attached configuration (Exhibit 1) describes the Third Party products and services that **Customer** will be obtaining through **New World**. By their written approval below, **Customer** authorizes **New World** to order the Exhibit 1 products for delivery to:

Mr. Marvin Dillsaver
Communications Supervisor
Merced Police Department
611 W. 22nd Street
Merced, CA 95340

Upon execution of this **Agreement**, a down payment of 50% of the Exhibit 1 cost is due. The balance is due upon delivery of the Third Party products. **Customer** agrees that failure to pay the amount billed within fifteen (15) days will result in a daily finance charge equal to .1% (.001) of the Exhibit 1 cost. If applicable, the finance charge will be computed and invoiced separately based on the receipt of **Customer's** payment to **New World** for Exhibit 1 amounts due. **Customer** agrees to pay all applicable finance charges (if any) promptly.

Customer is responsible for the site preparation and related costs to install the Exhibit 1 products. **Customer** is responsible for any returned product charges, including re-stocking and shipping fees, for all Third Party products ordered by **New World** on the **Customer's** behalf. Actual and reasonable travel expenses incurred by **New World** and actual employee travel time up to but not to exceed four (4) hours per **Customer** visit, are in addition to the Exhibit 1 cost and will be billed weekly as incurred.

Any taxes or fees imposed from the course of this **Agreement** are the responsibility of the **Customer** and **Customer** agrees to remit when imposed. If an exemption is claimed by the **Customer**, an exemption certificate must be submitted to **New World**.

After execution of this **Agreement**, the Exhibit 1 components and cost may be changed by mutual agreement of both parties. If a change order in the configuration requires additional costs, **New World** shall notify **Customer** of the additional costs and with **Customer's** approval these costs shall be borne by **Customer**. Without such approval, the change order will not be processed.

Customer shall or may be required to execute selected Agreements with vendors and **New World** shall not confirm the ordering of any Exhibit 1 products without **Customer's** authorized signature on the Agreements. **Customer** shall receive the benefit of all warranties, services, etc. provided for in the Agreements.

AGREEMENT AND AUTHORIZATION FOR PROCUREMENT OF THIRD PARTY PRODUCTS AND SERVICES

EXHIBIT 1
CONFIGURATION

C. THIRD PARTY COSTS			
ITEM	**DESCRIPTION**		**INVESTMENT**
1.	**GIS Software**		$12,500
	ESRI	$12,500	
	TOTAL THIRD PARTY COSTS		**$12,500**

ESRI Notes

1) All Aegis/MSP Customers are required to use ESRI's ArcGIS suite of products to maintain GIS data. All maintenance, training and on-going support of this product will be contracted with and conducted by ESRI. Maintenance for ESRI's ArcGIS suite of products that are used for maintaining **Customer's** GIS data will be contracted by **Customer** separately with ESRI.
2) The on-going **New World** SSMA cost is required for any Aegis software changes related to integration with ESRI software.
3) If a new release of ArcGIS is incorporated into the Aegis software, an associated upgrade fee may be required for the new ESRI software, depending on the potential cost from ESRI; and/or on the scope of effort required to integrate the new ESRI release with Aegis software.
4) **Customer** will restrict use of the ESRI Software to executable code (used with the Aegis Licensed Standard Software).
5) **Customer** will prohibit (a) transfer of the ESRI Software except for temporary transfer in the event of computer malfunction; (b) assignment, time-sharing, lend or lease, or rental of the ESRI Software or use for commercial network services or interactive cable or remote processing services; and (c) title to the ESRI Software from passing to any other party.
6) **Customer** will prohibit the reverse engineering, disassembly, or decompilation of the ESRI Software and prohibit duplication of the ESRI Software except for a single archival copy; reasonable Sublicensee backup copies are permitted.
7) **Customer** will disclaim, to the extent permitted by applicable law, ESRI's liability for any damages, or loss of any kind, whether special, direct, indirect, incidental, or consequential, arising from the use of the ESRI Software.
8) At the termination of their Agreement (Sublicense) with **New World, Customer** will certify in writing to **New World** that it has discontinued use and has destroyed or will return to **New World** all copies of the ESRI Software and documentation.
9) **Customer** will comply fully with all relevant export laws and regulations of the United States to assure that the ESRI Software, or any direct product thereof, is not exported, directly or indirectly, in violation of United States law.
10) **Customer** will prohibit the removal or obscuring of any copyright, trademark notice, or restrictive legend.
11) If **New World** grants a Sublicense to the United States Government, the ESRI Software shall be provided with "Restricted Rights".

ADMINISTRATIVE REPORT

AGENDA ITEM: _____

MTG DATE: _____

TO: James Marshall, CITY MANAGER

FROM: Marvin Dillsaver, Communications Supervisor

DATE: February 8, 2008

SUBJECT: Upgrade of New World Systems AS/400 software to a Microsoft Widows based software and purchase of required hardware per IT Department requirements.

RECOMMENDATION:

A. Adopt a motion to approve the sole source agreement with New World Systems for upgrading the Police Departments AS/400 Software to the newer Microsoft (windows based) software, and;

B. Adopt a motion waiving the competitive bid requirements by participating in cooperative purchasing in conjunction with the State Of California (WSCAII) program for all hardware needed for this project, and;

C. Adopt a motion to transfer the remaining balance of $53,927 in Project #198060 Fund 451 and appropriate to Fund 001 for the upgrade, and;

B. Authorize the City Manager to execute all necessary documents.

POSSIBLE CITY COUNCIL ACTIONS:

(1) Approve as recommended by staff; or,

(2) Deny the request; or,

ADMINISTRATIVE REPORT

AGENDA ITEM: _____

MTG DATE: _____

(3) Refer back to staff for further study

AUTHORITY:

Article III of Title 3, Chapter 3.04, of Merced Municipal Code relating to purchases over twenty five thousand dollars. Section 3.04.210 exemptions from competitive bidding.

DISCUSSION:

The Merced Police department has been looking into upgrading its CAD "Computer Aided Dispatch" and RMS "Records Management System" from its existing platform to a new windows based platform. This new Windows platform is the latest technology that New World Systems has to offer. This will allow the Police Department to keep pace with the current technology that is available and allow for continued growth. This conversion can be done with significant savings provided by New World Systems running on the Windows platform.

The benefits of upgrading with New World Systems are that it is compatible with our current mobile solution, would retain existing interfaces to other City systems including the ability to continue viewing map data in the patrol cars from Remote Access software. The upgrade would be a simple amendment to our existing contract, the city would not be impacted by redundant maintenance contracts by converting to another vendor, data migration would be simple with no finger pointing and through New World Systems Customer Loyalty Program they will provide the upgrade to the city with no additional license fees. In totality, these benefits provide significant savings to the City of approximately $500,00.00 dollars excluding hardware costs.

Another important benefit is that New World Systems has already completed several dozens of these conversions with other customers of theirs. New World Systems has been growing it's cliental in the California area and currently, Manteca and Merced are the only customers at this point that are still on the AS/400 platform.

ADMINISTRATIVE REPORT

AGENDA ITEM: _____

MTG DATE: _____

The City of Merced for the past 20 or so years has been running the Police Department's computer systems on an IBM AS/400 server. Over these years the system has been very dependable and trustworthy. Unfortunately, this platform is not the platform of choice for CAD and RMS systems of today.

Technology has come a long way in the past 20 years and the IBM AS/400 server and the applications running on it have not been able to keep pace with the newer technologies in the public safety arena. The newer public safety technologies that are available today are moving away from the IBM AS/400 servers towards the Microsoft based Platform. New World Systems is among those that have been moving their customers from the AS/400 systems to the Windows Platform over the past couple of years. New World Systems has stated that the Windows platform is where they will be focusing their research and development efforts for new enhancements and will not be investing the same about of resources to new enhancements with their AS/400 public safety software.

The Police Department's IBM AS/400 has served its life span and at this point has exceeded its replacement cycle. The IBM AS/400 was up for replacement in June of 2006 and the replacement funds for the AS/400 are sufficient to replace the current server with the Windows Platform servers. The cost of the new hardware is approximately $99,487.00. This has been confirmed by the IT Department.

Due to the current promotions that New World Systems is offering to their AS/400 customers to assist with the implementation to the newer and more user-friendly MSP platform, the costs have been reduced drastically. The cost of the complete upgrade including a 10% buffer is $343,735.70 for the complete upgrade. This includes the following, $99,487.00 hardware cost, $213,000.00 in professional service fees to complete the upgrade from New World Systems and 10% buffer of $31,248.70. This will cover all hardware, professional services costs associated with the upgrade and conversion of all of the police departments existing data, project management and travel costs associated with the project.

The costs outlined above are very reasonable compared to moving to another vendor. Recent similar purchases in Davis and Fremont are two to three times

higher respectively. Also, if the City does not act soon, it risks losing this promotion. The base price from New World Systems for this proposal if Merced were a new customer would be $734,487.00. If the city was to move to another vendor we would have to replace existing software and hardware that could easily run to total purchase price over 1 million dollars.

FUNDING:

Funding for the purchase of this upgrade will come from several sources as outlined below.

Account number	**Description**	**Amount**
451-1023-627-65-00	Project 198060 MDT computers balance	$ 53,926.72
673-0403-513.43-00	AS/400 Replacement funds	$100,000.00
001-1006-521-01-00	Salary Savings	$137,298.00
001-1007-521-10-20	Earned Benefit Savings	$ 15,000.00
001-1003-521-03-00	Temporary Help Savings	$ 18,000.00
001-1003-521-10-20	Earned Benefit Savings	$ 19,510.98
	Total Funds	$343,735.70

Conclusion/Recommendation:

It is our recommendation that we move forward with the upgrade promotion in place from New World Systems and take advantage of the benefits and savings offered. New World Systems like other CAD/RMS vendors are continuing to move their applications to a more user-friendly window based application that also takes advantage of advancements to in-field communications. New World Systems has been devoting much of their new applications and development towards the MSP platform and if we don't move forward we may lose this opportunity to take advantage of these savings.

Staff recommends City Council adopt a motion waiving competitive bid requirements as stated in Section 3.02.210 of the Merced Municipal Code and; adopt a motion to approve the sole source agreement with New World Systems for

ADMINISTRATIVE REPORT

AGENDA ITEM: _____

MTG DATE: _____

upgrading the Police Departments AS/400 Software to the newer Microsoft (windows based) software and; adopt a motion waiving the competitive bid requirements by participating in cooperative purchasing in conjunction with the State Of California (WSCAII) program for all hardware needed for this project and; adopt a motion to transfer the remaining balance of $53,927 in Project #198060 Fund 451 and appropriate to Fund 001 for the upgrade and; authorize the City Manager to execute all necessary documents.

RESPECTFULLY SUBMITTED:

Marvin Dillsaver
Communications Supervisor

RESPECTFULLY SUBMITTED:

Lee Smith
IT Manager

REVIEWED:

Russ Thomas
Chief of Police

REVIEWED:

Jeff Lewis
IT Director

REVIEWED AND APPROVED:

JAMES G. MARSHALL
CITY MANAGER

ADMINISTRATIVE REPORT

AGENDA ITEM: _____

MTG DATE: _____

QUESTIONS AND ANSWERS:

1. Why move to a windows based environment?

   The windows based product is a more user-friendly system and allows the police department to continue to grow its technology. The new system will allow for additional data to be stored on the system to include, pictures, audio files, etc.

2. Isn't the windows based environment more apt to get virus?

   There is a perception that the Microsoft platform is not as stable as an AS/400 platform, however this is an old perception and per our IT staff the city has not had any viruses or computer crashes on the Microsoft Servers over the past 7 years.

3. Why move from the AS/400 server to the Microsoft Server?

   The largest reason to move would be that the AS/400 server is outdated and in need of replacement. Due to the fact that it is in need of replacement it makes economical sense to move now due to the fact that there is a severe cost savings in doing so. If we were to replace with another AS/400 now it would be another 4 years before the replacement monies would be available again. It is unknown how long the New World Systems offer will be available. It is also to the cities advantage to use the offers available from New World Systems and move now due to the fact that it is unknown how much longer New World Systems will be upgrading their AS/400 software.

I hereby request approval of the following budget adjustment:

Transfer from	Credit	Transfer to	Debit
001-1006-521-01-00	$ 137,298.00	001-1006-522-22-00 208007	$ 189,809.00
001-1007-521-10-20	$ 15,000.00		
001-1003-521-03-00	$ 18,000.00		
001-1003-521-10-20	$ 19,511.00		

needs to attach a project #
Lisa 2/20 #

	Credit	Debit
Totals	***$ 189,809.00***	***$ 189,809.00***

JUSTIFICATION: Funding necessary for project #208007, New World Systems upgrade.

Date: _____ Department Head By: _____

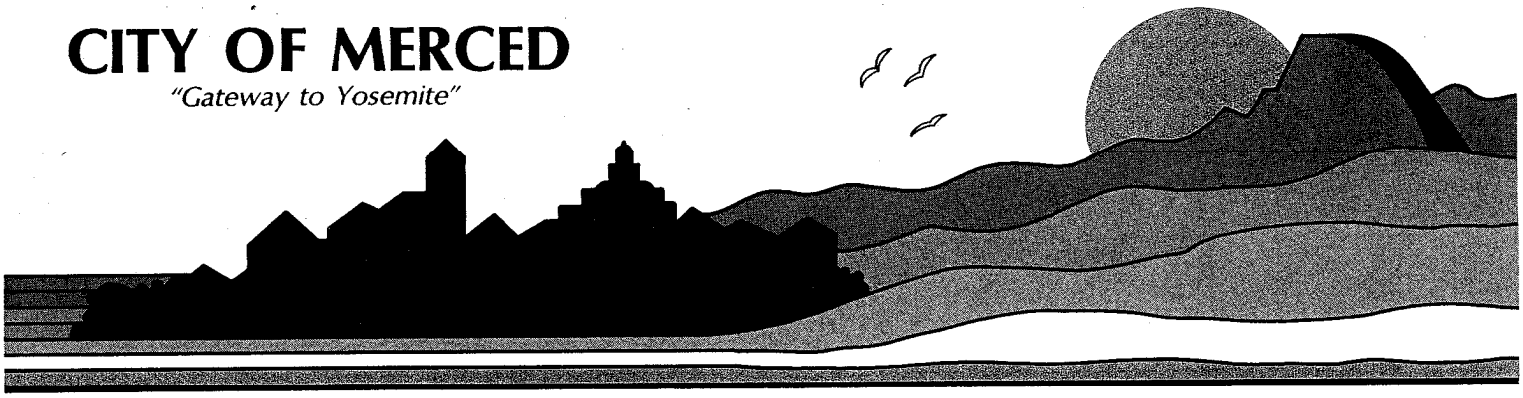
148,500 pg 7
20,000 pg 12
12500 pg 14

181,000
32,000 travel

213,000 NW Propos
30,736 10% Contengency (Do not encu

CITY OF MERCED

"Gateway to Yosemite"



February 26, 2008

Larry D. Leinweber, President
New World Systems
888 West Big Beaver Rd, Ste. 600
Troy, MI 48084-4749

Dear Mr. Leinweber:

Enclosed please find two original software license agreements, which have been executed by the City Manager of the City of Merced, for an Aegis 400 to Aegis MSP Upgrade. When executed by the appropriate official, please return one fully executed agreement to my attention in the Merced City Clerk's office, retaining one original for your records.

Thank you in advance for your time and consideration regarding this matter.

Sincerely,

Emily Shuping

Emily Shuping
Records Clerk
(209) 385-6838

Contract/Agreement

Council Date	
Council Item #	
Vendor Name	New World Systems
Project/Service	Additional Software License Agreement, Amendment to MSP Upgrade
Comments	Mailed via Fed Ex 9/30/08 for vendor signature

City Clerk's Date	9/22/2008
City Attorney's Date	9/22/2008
940059 **Finance's Date**	9/26/08
City Manager's Date	9/30/08
Deputy City Clerk Date	N/A
Mailed Date	9/30/08

Please sign and return to Emily in Records x.6838.

Clerk Review Date: 9/22/2008

SEP 30 2008

City of Merced
TRANSMITTAL FOR CONTRACT/AGREEMENT APPROVAL

Contract No.: _____ *(# will be assigned by City Clerk's Office after all documentation has been obtained)*
Distribution: Original Contract – Filed in the City Clerk's Office
Duplicate Originals/Copies – Originating Department

Date Submitted: 9-22-08 Submitting Dept.: _____

Date of Council Meeting *(If applicable)*: _____ Date Item(s) Required: _____

Funds available in the Budget?: ☐ Yes ☐ No ☒ Does Not Require Budget Funds
Account No(s): _____ If No: ☐ Dept. Prepared Budget Transfer Form *(copy attached)*
☐ Admin. Report Appropriating Funds *(copy attached)*

New Contract ☐ Amendment: 1st ☒ 2nd ☐ 3rd ☐ Change Order No.: _____

Note: *The following require City Council approval:*
- Non-Public Works Contracts in Excess of $20,000 or Public Work Contracts in Excess of $5,000; or
- Amendments Exceeding the Accumulated Contract Amount of 25% or More

Contractor/Vendor Name: New World Systems Misc. Receivable Acct. No.: _____

Verification of Business License: ☐ Business License No.: _____

Purpose of the Contract: additional software license agreement

Original Contract Amount: $ 213,000 1st Amendment: $ Ø

Date of Original Contract: Feb 6, 2008 2nd Amendment: $ _____
(Council Meeting date if requires Council approval.)

3rd Amendment: $ _____

Beginning Date: _____ Expiration Date: _____

Required Attachments:
☐ Certificate of Insurance ☐ Labor & Material Bond ☐ Warranty Bond
☐ W-9 (or substitution) ☐ Faithful Performance Bond ☐ Admin. Report *(if applicable)*
☐ Other: _____

Note: *Please be sure all blanks have been filled in, all exhibits are attached, and the contract has been signed by the contractor/vendor and City Attorney's Office before submitting to the City Clerk's Office for routing.*

Department Head Signature: Tony DeMora Date: 9-22-08

☐ **City Attorney's Office Signature** *(approved as to form)*

City Clerk's Office Checklist:

~~☐ Dept. Head Signature on Form~~	☒ *Admin. Report Attached*	☒ *Applicable Bond(s)*
☐ *Contractor/Vendor Signature*	☐ *Finance Dept. Signature*	☐ *City Manager's Signature*
☐ *City Attorney's Dept. Signature*	☒ *Insurance Certificate(s)*	☒ *Deputy City Clerk Signature*
☒ *Logged into Databases*	☒ *Council Approval Verification*	☐ *Image & File Contract*

FedEx Express US Airbill

FedEx Tracking Number 8664 2247 8238

Form ID No. 0200 Sender's Copy

1 From *Please print and press hard.*

Date 9/30/08 Sender's FedEx Account Number 178642863 SENDER'S FEDEX ACCOUNT NUMBER ONLY

Sender's Name Emily Shuping Phone (209) 385-6838

Company City of Merced

Address 678 W. 18th St. Dept./Floor/Suite/Room

City Merced State Ca ZIP 95340

2 Your Internal Billing Reference OPTIONAL
First 24 characters will appear on invoice.

3 To

Recipient's Name Larry D. Leinweber Phone (248) 269-1000

Company New World Systems Corp.

Recipient's Address 888 W. Big Beaver Road, Ste. 600
We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept./Floor/Suite/Room

Address
To request a package be held at a specific FedEx location, print FedEx address here.

City Troy State MI ZIP 48084-4749

Ship and track packages at fedex.com
Simplify your shipping. Manage your account. Access all the tools you need.

4a Express Package Service *Packages up to 150 lbs.*

- [X] FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.
- [ ] FedEx First Overnight — Earliest next business morning delivery to select locations.* Saturday Delivery NOT available.
- [ ] FedEx 2Day — Second business day.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

FedEx Envelope rate not available. Minimum charge: One-pound rate. * To most locations.

4b Express Freight Service *Packages over 150 lbs.*

- [ ] FedEx 1Day Freight* — Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx 2Day Freight — Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx 3Day Freight — Third business day.** Saturday Delivery NOT available.

* Call for Confirmation: ** To most locations.

5 Packaging

- [X] FedEx Envelope*
- [ ] FedEx Pak* — Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.
- [ ] FedEx Box
- [ ] FedEx Tube
- [ ] Other

* Declared value limit $500.

6 Special Handling Include FedEx address in Section 3.

- [ ] **SATURDAY Delivery** NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
- [ ] **HOLD Weekday** at FedEx Location NOT Available for FedEx First Overnight.
- [ ] **HOLD Saturday** at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods? One box must be checked.

- [X] No
- [ ] Yes — As per attached Shipper's Declaration.
- [ ] Yes — Shipper's Declaration not required.
- [ ] Dry Ice — Dry ice, 9, UN 1845 ____ x ____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

- [ ] Cargo Aircraft Only

7 Payment *Bill to:* Enter FedEx Acct. No. or Credit Card No. below.

- [X] Sender — Acct. No. in Section 1 will be billed.
- [ ] Recipient
- [ ] Third Party
- [ ] Credit Card
- [ ] Cash/Check

FedEx Acct. No. / Credit Card No. Exp. Date

Total Packages	Total Weight	Total Declared Value†
1	1 lb	$ 0.00

†Our liability is limited to $100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

8 Residential Delivery Signature Options If you require a signature, check Direct or Indirect.

- [ ] No Signature Required — Package may be left without obtaining a signature for delivery.
- [ ] Direct Signature — Someone at recipient's address may sign for delivery. *Fee applies.*
- [ ] Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. *Fee applies.*

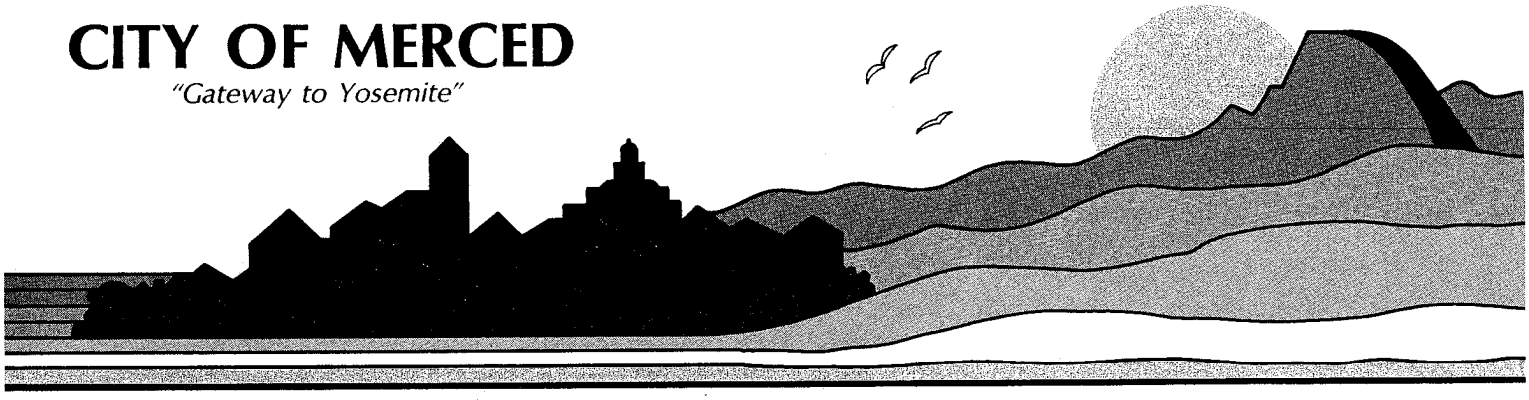
520

Rev. Date 10/06•Part #158281•©1994–2006 FedEx•PRINTED IN U.S.A. SRY

RETAIN THIS COPY FOR YOUR RECORDS.

CITY OF MERCED

"Gateway to Yosemite"



September 30, 2008

Larry D. Leinweber, President
New World Systems Corporation
888 W. Big Beaver Road, Suite 600
Troy, MI 48084-4749

Dear Mr. Leinweber:

Enclosed please find two original agreements, which have been executed by the City Manager of the City of Merced, for additional software licensing. When executed by the appropriate official, please return one fully executed original agreement to my attention in the Merced City Clerk's office, retaining one original for your records.

Thank you in advance for your time and consideration regarding this matter.

Sincerely,

Emily Shuping
Records Clerk
(209) 385-6838

cc: Marvin Dillsaver, Police

New World Systems®
The Public Sector Software Company

September 22, 2008

ADDITIONAL SOFTWARE LICENSE AGREEMENT

Mr. Marvin Dillsaver
Communications Supervisor
Merced Police Department
611 W. 22nd Street
Merced, CA 95340

Dear Mr. Dillsaver:

New World Systems is pleased to license you additional software per your request.

The attached form (Exhibit A) is to be reviewed and approved by you and/or your authorized representative. It describes the additional software and services you have requested along with the related fees.

Other than for the purposes of internal review, we ask that you treat our fees as confidential information. This is due to the competitive nature of our business.

The General Terms and Conditions from our original License Agreement are incorporated and continue to apply. Any taxes or fees imposed from the course of this Agreement are the responsibility of the Customer.

We thank you for your continued business with New World Systems. We look forward to working on this project with you.

ACKNOWLEDGED AND AGREED TO BY:

NEW WORLD SYSTEMS® CORPORATION
(New World)

By: Larry D. Leinweber
Larry D. Leinweber, President

Date: 10-02-08

MERCED POLICE DEPARTMENT, CA
(Customer)

By: _____ City Manager
Authorized Signature **Title**

By: _____
Authorized Signature **Title**

Date: 9/30/2008

Each individual signing above represents that (s)he has the requisite authority to execute this Agreement on behalf of the organization for which (s)he represents and that all the necessary formalities have been met.

The "Effective Date" of this Agreement is the latter of the two dates in the above signature block.

Account Number: **N/A**

Amount: **N/A**

VERIFIED

BY: _____
Finance Officer

FINANCE ENTRY	
Contract No:	940059
Vendor Number:	N/A
P.O. Number:	N/A
Funds Available:	No funds to encumber. 9/29/08 MKN

EXHIBIT A
LICENSED STANDARD SOFTWARE AND FEES

1. License Fee for Licensed Standard Software And Documentation Selected By Customer:

Application Package[1,2,3,4]			Cost
ADDITIONS			
1. Additional Aegis/MSP Software for Law Enforcement Records			
- Alarm Tracking and Billing*			10,000
2. Additional Aegis/MSP Software for Computer Aided Dispatch[5]			
- Service Vehicle Rotation (Wrecker, Ambulance)**			8,000
ADDITIONAL PUBLIC SAFETY SOFTWARE			
3. Aegis/MSP Public Safety State/NCIC Interface Software[6]			
On-Line Modules - Includes 4 state inquiry screens			
- On-Line Pawn Shop Check Interface to State/NCIC**			7,200
MOBILE CLIENT SOFTWARE			
4. Aegis® Law Enforcement Mobile Unit Software (64 Units)			
Mobile Messaging			
Mugshot Image Download	$200	ea.	12,800
DELETIONS			
3. Additional Aegis/MSP Software for Law Enforcement Records			
- Bookings			-10,000
- Career Criminal Registry (parolee, sex offender)			-6,000
- Gun Permits and Registrations			-6,000
- Index Cards			-6,000
NEW WORLD STANDARD SOFTWARE LICENSE FEE			**10,000**
LESS CUSTOMER LOYALTY SOFTWARE CREDIT - Alarms*			**(1,083)**
LESS CUSTOMER LOYALTY SOFTWARE DISCOUNT - Alarms*			**(8,917)**
TOTAL SOFTWARE LICENSE FEE [7,8]			**$0**

Exhibit A / LICENSED STANDARD SOFTWARE AND FEES

*Previously purchased Alarms Tracking and Billing module on 8/16/94 contract. Should have been included in Upgrade to Windows addendum. Customer will not implement at this time so additional Services Agreement may be needed in future.

**Support service hours in the Upgrade to Windows addendum which were to be used for the dropped modules will be used instead for the added modules. Merced will cover the Travel and Living costs for the additional trip required for the On-line Pawn module.

Note: Standard Software Maintenance Agreement (SSMA) fees will remain unchanged.

ENDNOTES

1 *Personal Computers must meet the minimum hardware requirements for New World Systems' MSP product. Microsoft Windows 2000 or XP is the required operating system for all client machines. Windows 2003 Server and SQL Server 2000/2005 are required for the Application and Database Server(s).*

2 *New World Systems' MSP product requires Microsoft Windows 2003 Server and SQL Server 2000/2005 including required Client Access Licenses (CALs) for applicable Microsoft products. Servers must meet minimum hardware requirements provided by New World Systems.*

3 *New World Systems' MSP product requires Microsoft Word and Excel.*

4 *Suggested minimum: 100MB Ethernet Network. 10MB CAT5 Ethernet Network may have less than adequate response time. Further consultation would be required to assess your network.*

5 *Does not include any required 3rd party hardware or software unless specified in Section C of this proposal. Customer is responsible for any 3rd party support.*

6 *Customer is responsible for obtaining the necessary State approval and any non-New World hardware and software.*

7 *Prices assume that all software is licensed. Prices are quoted as preliminary estimates only and are subject to further clarification and confirmation.*

8 *Any taxes or fees imposed are the responsibility of the purchaser and will be remitted when imposed.*

Contract/Agreement

Council Date 7/6/09

Council Item #

Vendor Name New World Systems

Project/Service Amendment - CAD Upgrade - Additional Programming

Comments -for info only at council

-Mailed to vendor for signature 6/19/09.

Rec'd 6/29/09

City Clerk's Date 6/11/2009

City Attorney's Date 6/11/2009

Finance's Date 6/12/2009

City Manager's Date 6/17/09

Deputy City Clerk Date N/A

Mailed Date 6/19/09

Please sign and return to Emily in Records x.6838.

1 copies to P.D. + Finance

Clerk Review Date: 6/12/2009

JUN 16 2009

City of Merced
TRANSMITTAL FOR CONTRACT/AGREEMENT APPROVAL

Contract No.: _____ *(# will be assigned by City Clerk's Office after all documentation has been obtained)*
Distribution: Original Contract - Filed in the City Clerk's Office
Duplicate Originals/Copies - Originating Department

Date Submitted: 06/09/2009 Submitting Dept.: Police Department

Date of Council Meeting *(If applicable)*: _____ Date Item(s) Required: 06/15/2009

Funds available in the Budget?: ☒ Yes ☐ No ☐ Does Not Require Budget Funds
Account No(s): 001-1006-522-17-00 If No: ☐ Dept. Prepared Budget Transfer Form *(copy attached)*
001-1048-522-18-00 ☐ Admin. Report Appropriating Funds *(copy attached)*

New Contract ☐ Amendment: 1st ☐ 2nd ☐ 3rd ☐ Change Order No.: _____

Note: *The following require City Council approval:*
- Non-Public Works Contracts in Excess of $25,000 or Public Work Contracts in Excess of $50,000; or
- Amendments Exceeding the Accumulated Contract Amount of 25% or More

Contractor/Vendor Name: New World Systems Misc. Receivable Acct. No.: _____

Verification of Business License: ☐ Business License No.: _____

Purpose of the Contract: Purchase of additional software and training for our CAD upgrade - programming

Original Contract Amount: $ _____ 1st Amendment: $ 2,580.00

Date of Original Contract: 7/13/94 2nd Amendment: $ _____
(Council Meeting date if requires Council approval.)

3rd Amendment: $ _____

Beginning Date: _____ Expiration Date: _____

Required Attachments:
☐ Certificate of Insurance ☐ Labor & Material Bond ☐ Warranty Bond
☐ W-9 (or substitution) ☐ Faithful Performance Bond ☐ Admin. Report *(if applicable)*
Other: _____

Note: Please be sure all blanks have been filled in, all exhibits are attached, and the contract has been signed by the contractor/vendor and City Attorney's Office before submitting to the City Clerk's Office for routing.

Department Head Signature: _____ Date: _____

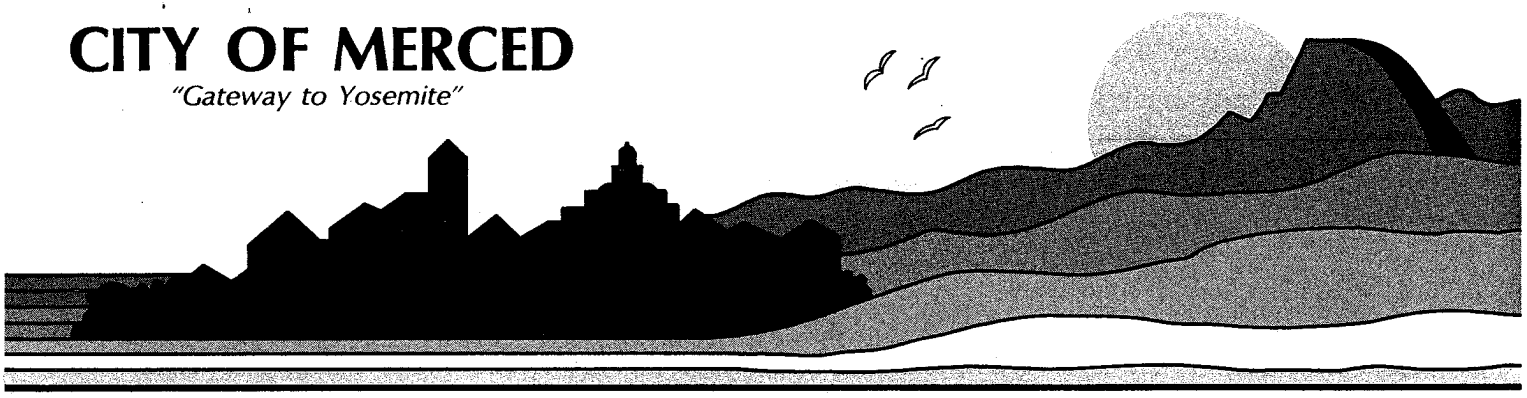
☑ **City Attorney's Office Signature** *(approved as to form)*

City Clerk's Office Checklist:
~~☐ Dept. Head Signature on Form~~ ☑ Admin. Report Attached ☒ Applicable Bond(s)
☑ Contractor/Vendor Signature ☑ Finance Dept. Signature ☑ City Manager's Signature
☑ City Attorney's Dept. Signature ☒ Insurance Certificate(s) ☒ Deputy City Clerk Signature
☑ Logged into Databases ☒ Council Approval Verification ☐ Image & File Contract

Updated 10/08/2008

CITY OF MERCED

"Gateway to Yosemite"



June 19, 2009

Larry D. Leinweber, President
New World Systems
888 W. Big Beaver Rd, Ste. 600
Troy, MI 48084-4749

Dear Mr. Leinweber:

Enclosed please find two sets of duplicate original agreements, which have been executed by the City Manager of the City of Merced, for additional programming, software, and training. When executed by the appropriate official, please return one original of each fully executed agreement to my attention in the Merced City Clerk's office, retaining an original of each for your records.

Thank you in advance for your time and consideration regarding this matter.

Sincerely,

Emily Shuping
Records Clerk
(209) 385-6838

New World Systems®
The Public Sector Software Company

June 24, 2009

Ms. Emily Shuping
Records Clerk
City of Merced
678 West 18th Street
Merced, CA 95340

Dear Ms. Shuping:

Enclosed is a copy of the fully executed Additional Software License Agreement and Services Agreement to purchase additional New World Aegis MSP Licensed Standard Software and services.

We appreciate the City of Merced's continued business with New World Systems and we look forward to working with you on this project. Should you have any questions, please do not hesitate to call.

Sincerely,

Nancy A. Spencer
Sales Support Administrator

Enclosure

New World Systems®
The Public Sector Software Company

May 27, 2009

ADDITIONAL SERVICES AGREEMENT

Mr. Marvin Dillsaver
Merced, CA
611 W. 22d Street
Merced, CA 95340

Dear Mr. Dillsaver:

New World Systems is pleased to provide additional services to add functionality to the way the message is handled on the switch.

The attached form (Exhibit B) is to be reviewed and approved by you and/or your authorized representative. It describes the additional services you have requested along with the related fees.

Other than for the purposes of internal review, we ask that you treat our fees as confidential information. This is due to the competitive nature of our business.

The General Terms and Conditions from our original License Agreement are incorporated and continue to apply. Any taxes or fees imposed from the course of this Agreement are the responsibility of the Customer.

We thank you for your continued business with New World Systems. We look forward to working on this project with you.

ACKNOWLEDGED AND AGREED TO BY:

NEW WORLD SYSTEMS® CORPORATION (New World)	**MERCED, CALIFORNIA** (Customer)
By: Larry D. Leinweber 6/23/09	By: John M. Bramble - City Manager
Larry D. Leinweber, President	Authorized Signature Title
	By: _____
	Authorized Signature Title
Date: 6-23-09	Date: June 17, 2009

Each individual signing above represents that (s)he has the requisite authority to execute this Agreement on behalf of the organization for which (s)he represents and that all the necessary formalities have been met.

The "Effective Date" of this Agreement is the latter of the two dates in the above signature block.

PRICING IS VALID THROUGH AUGUST 28, 2009.

Account Number: **001-1006-512-17-00 208007**

Amount: $ 2,500.00

VERIFIED

BY: _____
Finance Officer

FINANCE ENTRY	
Contract No:	194059
Vendor Number:	495
P.O. Number:	93433
Funds Available:	YES. MRN 6/16/09

EXHIBIT B
ADDITIONAL SUPPORT SERVICES AND FEES

1. Service Fees and Travel Costs

Allocating adequate support service resources to add functionality to the way the message is handled on the switch will be **$2,500**. (Plus all actual and reasonable travel expenses incurred by **New World** divided proportionately between all **New World** customers visited on a single trip and actual employee travel time for Installation and Training up to but not exceed four (4) hours per Customer visit.) The installation and training support services are typically performed at **Customer's** premises but, at **Customer's** option, may be provided at **New World** national headquarters in Troy, Michigan. (Other support services often involve services performed at the **New World's** national headquarters.) **Customer** agrees to reimburse **New World** for support trips canceled by **Customer** less than ten (10) days before the scheduled start date to cover **New World's** out of pocket costs and lost revenues.

Additional support services provided by **New World** after execution of this Agreement will be provided at the **Customer's** hourly rate in effect at that time, currently $140 per hour.

2. Additional Services Available

Other **New World** services may be required or requested for the following:

(a) File conversion assistance;
(b) Consulting with **New World** technical staff;
(c) Modifying the Licensed Standard Software;
(d) Designing and programming Custom Software;
(e) Maintaining modified Licensed Standard Software and/or Custom Software;
(f) **New World** Consultation with other vendors or third parties;
(g) Software testing; and/or
(h) Assistance as Customer is going "live".

Customer may request these additional services in writing using **New World's** Request For Service (RFS) procedure (or other appropriate procedure mutually agreed upon by **Customer** and **New World**).

3. Payments for Services and Travel Costs

Support Services will be billed as follows:

a)	50% of the total amount is due upon **Agreement** being signed	$1,250
b)	50% of the total amount is due upon completion of the individual installation	1,250
	TOTAL DUE	**$2,500**

All travel costs will be billed weekly for the previous calendar week. Any taxes or fees imposed from the course of this Agreement are the responsibility of the **Customer** and **Customer** agrees to remit when imposed. If an exemption is claimed by the **Customer**, an exemption certificate must be submitted to **New World**. **Payments are due within fifteen (15) days from receipt of invoice.**

ADMINISTRATIVE REPORT

AGENDA ITEM: _____

MTG. DATE: 7/6/2009

TO: John M. Bramble, City Manager

FROM: Emily R. Shuping, Records Clerk

DATE: July 6, 2009

SUBJECT: INFORMATION ONLY – CONTRACTS

CONTRACTS:

Pursuant to the authority delegated to the City Manager by Article XI, Section 1109 of the Merced City Charter to execute Public Works contracts under $50,000.00 and Chapter 3.04.080-3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under $25,000.00 on behalf of the City, the contracts listed on the attached table were entered into by the City.

Respectfully Submitted:

Emily R. Shuping
Records Clerk

Reviewed and Approved:

John M. Bramble
City Manager

Reviewed and Approved:

Deneen Proctor
Director of Support Services

Attachment: Exhibit 1 – Table of Contracts

Exhibit 1 – Table of Contracts

7/6/2009 City Council Meeting

Department/Division	Vendor	Purpose/Location	Amount
Police, Communications	New World Systems	Additional Services Agreement for Programming	$2,500
Police, Communications	New World Systems	Additional Services Agreement for Software and Training	$22,000
Finance	Willdan Financial Services	Second Amendment to Administrative Services Agreement for CFD 2003-1 & 2003-2 (extends term)	N/A

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

Contract/Agreement

Council Date 7/6/09

Council Item #

Vendor Name New World Systems

Project/Service Amendment - CAD Upgrade - Additional Software and Training

Comments - Info only @ council

- Mailed to vendor for signature 6/19/09.

↳ Rec'd 6/29/09, Copies to P.D. + Finance

City Clerk's Date 6/11/2009

City Attorney's Date 6/11/2009

Finance's Date 6/12/2009

City Manager's Date 6/17/09

Deputy City Clerk Date N/A

Mailed Date 6/19/09

Please sign and return to Emily in Records x.6838.

Clerk Review Date: 6/12/2009

JUN 16 2009

City of Merced
TRANSMITTAL FOR CONTRACT/AGREEMENT APPROVAL

Contract No.: _____ *(# will be assigned by City Clerk's Office after all documentation has been obtained)*
Distribution: Original Contract - Filed in the City Clerk's Office
Duplicate Originals/Copies - Originating Department

Date Submitted: 06/09/2009 Submitting Dept.: Police Department

Date of Council Meeting *(If applicable)*: _____ Date Item(s) Required: 06/15/2009

Funds available in the Budget?: ☒ Yes ☐ No ☐ Does Not Require Budget Funds
Account No(s): 001-1006-522-17-00 If No: ☐ Dept. Prepared Budget Transfer Form *(copy attached)*
001-1048-522-18-00 ☐ Admin. Report Appropriating Funds *(copy attached)*

New Contract ☐ Amendment: 1st ☐ 2nd ☐ 3rd ☐ Change Order No.: _____

Note: *The following require City Council approval:*
- Non-Public Works Contracts in Excess of $25,000 or Public Work Contracts in Excess of $50,000; or
- Amendments Exceeding the Accumulated Contract Amount of 25% or More

Contractor/Vendor Name: New World Systems Misc. Receivable Acct. No.: _____

Verification of Business License: ☐ Business License No.: _____

Purpose of the Contract: Purchase of additional software and training for our CAD upgrade - module / additional software + training

Original Contract Amount: $ _____ 1st Amendment: $ 22,000.00

Date of Original Contract: 7/13/94 2nd Amendment: $ _____
(Council Meeting date if requires Council approval.)

3rd Amendment: $ _____

Beginning Date: _____ Expiration Date: _____

Required Attachments:
☐ Certificate of Insurance ☐ Labor & Material Bond ☐ Warranty Bond
☐ W-9 (or substitution) ☐ Faithful Performance Bond ☐ Admin. Report *(if applicable)*
Other: _____

Note: Please be sure all blanks have been filled in, all exhibits are attached, and the contract has been signed by the contractor/vendor and City Attorney's Office before submitting to the City Clerk's Office for routing.

Department Head Signature: _____ Date: _____

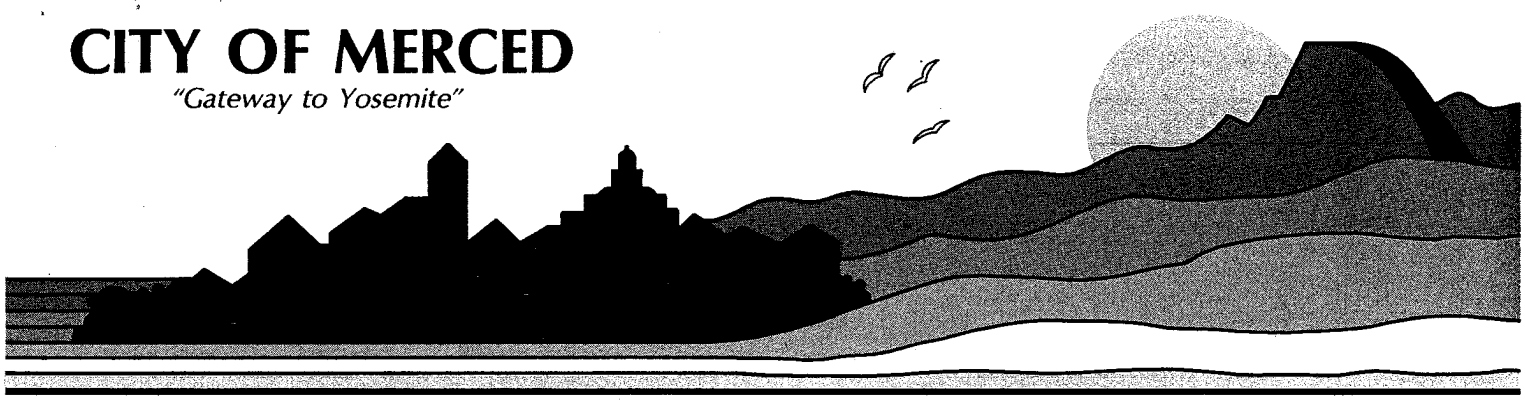
☒ **City Attorney's Office Signature** *(approved as to form)*

City Clerk's Office Checklist:
~~☐ Dept. Head Signature on Form~~ ☒ Admin. Report Attached ☒ Applicable Bond(s)
☒ Contractor/Vendor Signature ☒ Finance Dept. Signature ☒ City Manager's Signature
☒ City Attorney's Dept. Signature ☒ Insurance Certificate(s) ☒ Deputy City Clerk Signature
☒ Logged into Databases ☒ Council Approval Verification ☐ Image & File Contract

Updated 10/08/2008

CITY OF MERCED

"Gateway to Yosemite"



June 19, 2009

Larry D. Leinweber, President
New World Systems
888 W. Big Beaver Rd, Ste. 600
Troy, MI 48084-4749

Dear Mr. Leinweber:

Enclosed please find two sets of duplicate original agreements, which have been executed by the City Manager of the City of Merced, for additional programming, software, and training. When executed by the appropriate official, please return one original of each fully executed agreement to my attention in the Merced City Clerk's office, retaining an original of each for your records.

Thank you in advance for your time and consideration regarding this matter.

Sincerely,

Emily Shuping
Records Clerk
(209) 385-6838

New World Systems®
The Public Sector Software Company

June 24, 2009

Ms. Emily Shuping
Records Clerk
City of Merced
678 West 18th Street
Merced, CA 95340

Dear Ms. Shuping:

Enclosed is a copy of the fully executed Additional Software License Agreement and Services Agreement to purchase additional New World Aegis MSP Licensed Standard Software and services.

We appreciate the City of Merced's continued business with New World Systems and we look forward to working with you on this project. Should you have any questions, please do not hesitate to call.

Sincerely,

Nancy A. Spencer
Sales Support Administrator

Enclosure

New World Systems®
The Public Sector Software Company

May 27, 2009

ADDITIONAL SOFTWARE LICENSE AGREEMENT

Mr. Marvin Dillsaver
Merced, CA
611 W. 22d Street
Merced, CA 95340

Dear Mr. Dillsaver:

New World Systems is pleased to license you additional software per your request.

The attached forms (Exhibits A and B) are to be reviewed and approved by you and/or your authorized representative. They describe the additional software and services you have requested along with the related fees.

Other than for the purposes of internal review, we ask that you treat our fees as confidential information. This is due to the competitive nature of our business.

The General Terms and Conditions from our original License Agreement are incorporated and continue to apply. Any taxes or fees imposed from the course of this Agreement are the responsibility of the Customer.

We thank you for your continued business with New World Systems. We look forward to working on this project with you.

ACKNOWLEDGED AND AGREED TO BY:

NEW WORLD SYSTEMS® CORPORATION
(New World)

By: Larry D. Leinweber
Larry D. Leinweber, President

Date: 6-13-09

MERCED, CALIFORNIA
(Customer)

By: John M. Bramble - City Manager
Authorized Signature **Title**

By: _____
Authorized Signature **Title**

Date: June 17, 2009

Each individual signing above represents that (s)he has the requisite authority to execute this Agreement on behalf of the organization for which (s)he represents and that all the necessary formalities have been met.

The "Effective Date" of this Agreement is the latter of the two dates in the above signature block.

PRICING IS VALID THROUGH AUGUST 28, 2009.

Account Number: **001-1006-512-17-00 208007**

Amount: **$22,500.00**

VERIFIED

BY: 

Finance Officer

FINANCE ENTRY	
Contract No:	194059
Vendor Number:	495
P.O. Number:	93433
Funds Available:	YES. MRN 10/16/09 V.F.

MSP Software - Law Enforcement Records-Pg 2	$	10,000.00
MSP Public Safety State/NCIC Interface-Pg 2		11,000.00
Demonstration Site Discount-Pg 2		(4,200.00)
Estimated Travel-Pg 5		5,700.00
Total	$	22,500.00

EXHIBIT A
LICENSED STANDARD SOFTWARE AND FEES

1. **License Fee for Licensed Standard Software And Documentation Selected By Customer**:

Application Package	Cost
STANDARD APPLICATION SOFTWARE [1,2,3,4]	
ITEM DESCRIPTION	**INVESTMENT**
LAW ENFORCEMENT RECORDS	
1. Additional Aegis/MSP Software for Law Enforcement Records	
- Property Room Bar Coding[5]	10,000
ADDITIONAL PUBLIC SAFETY SOFTWARE	
2. Aegis/MSP Public Safety State/NCIC Interface Software [6]	
- On-Line Global Subjects Interface to State/NCIC	11,000
NEW WORLD STANDARD SOFTWARE LICENSE FEE	**21,000**
LESS DEMONSTRATION SITE DISCOUNT	**(4,200)**
TOTAL SOFTWARE LICENSE FEE [7,8]	**$16,800**

Note: Standard Software Maintenance Agreement (SSMA) fees for the above software will be added to **Customer**'s current SSMA fees and will commence July 1, 2010. The rates will be as follows:

July 1, 2010 – June 30, 2011	$5,040
July 1, 2011 – June 30, 2012	$5,040
July 1, 2012 – June 30, 2013	$3,800

ENDNOTES

1 *Personal Computers must meet the minimum hardware requirements for New World Systems' MSP product. Microsoft Windows 2000 or XP is the required operating system for all client machines. Windows 2003/2008Server and SQL Server 2005/2008 are required for the Application and Database Server(s).*

2 *New World Systems' MSP product requires Microsoft Windows 2003 Server and SQL Server 2003/2008 including required Client Access Licenses (CALs) for applicable Microsoft products. Servers must meet minimum hardware requirements provided by New World Systems.*

3 *New World Systems' MSP product requires Microsoft Word and Excel.*

4 *Suggested minimum: 100MB Ethernet Network. 10MB CAT5 Ethernet Network may have less than adequate response time. Further consultation would be required to assess your network.*

5 *Does not include any required 3rd party hardware or software unless specified in Section C of this proposal. Customer is responsible for any 3rd party support.*

6 *Customer is responsible for obtaining the necessary State approval and any non-New World hardware and software.*

7 *Prices assume that all software is licensed.*

8 *Any taxes or fees imposed are the responsibility of the purchaser and will be remitted when imposed.*

Exhibit A / LICENSED STANDARD SOFTWARE AND FEES

2. License Fee Payment Schedule for Licensed Standard Software and Documentation

a)	DOWN PAYMENT 50% of the total Exhibit A cost [Invoiced upon receipt of signed *Standard Software License and Services Agreement.*]	$8,400
b)	DELIVERY PAYMENT 50% of each application cost [Invoiced as each Exhibit A Licensed Standard Software package is delivered to **Customer**.]	$8,400
	TOTAL LICENSED STANDARD SOFTWARE PAYMENTS DUE	**$16,800**

ALL PAYMENTS ARE DUE WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF INVOICE

PRICING VALID THROUGH AUGUST 28, 2009

EXHIBIT B
INSTALLATION AND TRAINING SUPPORT SERVICES AND FEES

1. Installation and Training Support Hours Recommended

It is recommended that appropriate support hours are allocated for all Licensed Standard Software listed in Exhibit A to insure successful installation of and training on each application package. Based on the Licensed Standard Software listed on Exhibit A, **30** hours of **New World** installation and training support services have been allocated. Avoiding or minimizing custom or modified features will aid in keeping the support costs to the amount allocated. **Customer** agrees to reimburse **New World** for support trips canceled by **Customer** less than ten (10) days before the scheduled start date to cover **New World's** out-of-pocket costs and lost revenues. The recommended installation and training support services include:

a) installation of each package of Licensed Standard Software; and
b) **Customer** training and/or assistance in testing for each package of Licensed Standard Software.

2. Support Service Fees Estimate

The **30** hours of installation and training support services cost has been calculated using a rate of **$140** per hour. Additional services are also available at the rate of **$140** per hour. This rate is guaranteed for work performed on this contract within 6 months of acceptance. Beyond that date, these and any additional services will be provided at your then current rate.

Based on the services suggested above, the Installation and Training Support Services costs will be a total of **$4,200**. (Plus all actual and reasonable travel expenses incurred by **New World** divided proportionately between all **New World** customers visited on a single trip and actual employee travel time for Installation and Training up to but not exceeding four (4) hours per **Customer** visit.)

3. Additional Services Available

Other **New World** services may be required or requested for the following:

a) additional software training;
b) tailoring of Licensed Standard Software by **New World** technical staff and/or consultation with **New World** technical staff;
c) **New World** consultation with other vendors or third parties;
d) modifying the Licensed Standard Software;
e) designing and programming custom software; and
f) maintaining modified Licensed Standard Software and/or custom software.

Customer may request these additional services in writing using **New World's** Request For Service (RFS) procedure (or other appropriate procedures mutually agreed upon by **Customer** and **New World**).

Exhibit B / PROJECT MANAGEMENT, INSTALLATION AND TRAINING SUPPORT SERVICES AND FEES

4. Payments for Installation and Training Support Services and Travel Costs

All hours for installation and training support services and all travel costs will be billed weekly for services provided in the previous calendar week.

Note: Any taxes imposed from the course of this **Agreement** are the responsibility of the **Customer** and **Customer** agrees to remit when imposed. If an exemption is claimed by the **Customer**, an exemption certificate must be submitted to **New World**.

ALL PAYMENTS ARE DUE WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF INVOICE.

Neely, Melanie

From: Mora, Tonya
Sent: Tuesday, June 16, 2009 10:44 AM
To: Neely, Melanie
Cc: Dillsaver, Marvin
Subject: FW: New World contract

New PO should be $25000

-----Original Message-----
From: Mora, Tonya
Sent: Tuesday, June 16, 2009 10:12 AM
To: Neely, Melanie
Cc: Dillsaver, Marvin
Subject: New World contract

Hi Melanie. Here is what we are trying to do..

You should have a budget transfer from me moving $4,300 from 001-1048-522-18-00 into 001-1006-522-17-00. I am sending over another one today from 001-1048-522-18-00 to 001-1006-522-17-00 in the amount of $5,700.

This transfer will give us $40735 in the 001-1006-522-17-00 account line.

We would like to then cut a new purchase order for the New World Contract that Marvin brought over to you. The P.O. should charge $25,000 to acct #001-1006-522-17-00.

Thank you.

Tonya Mora
Secretary to the Chief
Merced Police Department
(209) 385-6910

ADMINISTRATIVE REPORT

AGENDA ITEM: _____

MTG. DATE: 7/6/2009

TO: John M. Bramble, City Manager

FROM: Emily R. Shuping, Records Clerk

DATE: July 6, 2009

SUBJECT: INFORMATION ONLY – CONTRACTS

CONTRACTS:

Pursuant to the authority delegated to the City Manager by Article XI, Section 1109 of the Merced City Charter to execute Public Works contracts under $50,000.00 and Chapter 3.04.080-3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under $25,000.00 on behalf of the City, the contracts listed on the attached table were entered into by the City.

Respectfully Submitted:

Emily R. Shuping
Records Clerk

Reviewed and Approved:

John M. Bramble
City Manager

Reviewed and Approved:

Deneen Proctor
Director of Support Services

Attachment: Exhibit 1 – Table of Contracts

Exhibit 1 – Table of Contracts

7/6/2009 City Council Meeting

Department/Division	Vendor	Purpose/Location	Amount
Police, Communications	New World Systems	Additional Services Agreement for Programming	$2,500
Police, Communications	New World Systems	Additional Services Agreement for Software and Training	$22,000
Finance	Willdan Financial Services	Second Amendment to Administrative Services Agreement for CFD 2003-1 & 2003-2 (extends term)	N/A

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

CITY OF MERCED - Contract Summary & Routing Cover Sheet

Report Date: 11/29/2018

Contract Name: NEW WORLD SYSTEMS CORPORATION (NOW, TYLER TECHNOLOGIES, INC.) 1001-1994-59 **Contract No.:** 1001-1994-59

Contract Obligation: $452,735.70 **Project No.:**
Vendor/Person Name: TYLER TECHNOLOGIES, INC.
Contract Status: Out for Attorney Signature **Services PO #:**
Responsible Dept.: (1001) Police Department - Administration
City Dept. Contact: Marvin Dillsaver (x8870) **Finance PO #:** 132835

Key Dates: Effective: 7/13/1994 Expires: 7/13/1999 Retain Until: 1/1/2039
Council Meeting: 12/17/2018 **Recorded:** **Doc. No.:**

Contract Categories: Software Licensing/Service Agreement (C.8.0)

Key Elements:

Key Element Name	Eff./Exp. Date	Short Text	$ Value
$ Amendment	12/17/18	NO. 6 - Custom Software Interface to communicate with DA's record management system.	$32,000.00
$ Contract Extras	1/16/2001	AMENDMENT NO. 1 - Software upgrade from IBM AS/400 CISC processor to RISC platform.	$4,000.00
$ Contract Extras	2/19/2008	AMENDMENT NO. 2 - MSP upgrade from Aegis 400 to Aegis MSP (Windows-based platform) and required hardware.	$343,735.70
$ Contract Extras	9/22/2008	AMENDMENT NO. 3 - MSP upgrade for licensing of additional software.	$0.00
$ Contract Extras	6/12/2009	AMENDMENT NO. 4 - CAD upgrade for additional programming services.	$2,500.00
$ Contract Extras	6/12/2009	AMENDMENT NO. 5 - CAD upgrade for additional software and training.	$22,500.00
$ Original Value			$48,000.00

Description/Comments **APN:**

Standard Software License and Services Agreement for "CAD" (Computer Aided Dispatch) and "RMS" (Records Management System).

Original AS/400 Contract No. 1001-1994-059 was for a five-year term.

Amendment No. 6 is a Custom Software Interface to provide communication between the Merced City Police Department's record system and the Karpel Case Management System utilized by the Merced County District Attorney's Office.

MUST BE ROUTED BACK TO DEPT. FOR VENDOR SIGNATURES.

Routing Information

		2nd Submittal
Received by Clerk:	11/29/18	11/30/18
Signed by Attorney:	11/30/18	
Finance Contract No.:	940059	**2nd Submittal**
Submitted to Finance:	12/3/18	
Forwarded to City Mgr.:	12/18/18	**Signed by Mayor:**
Attested to by Clerk:	12/18/18	**Date E-Mailed or Mailed:** 12/19/18 → (MARVIN DILLSAVER)
Approved by Council:	7/5/1994	**E-Mail Address:** David.Fallwell@tylertech.com (+1/24/19) (MARVIN DILLSAVER + FINANCE)

FINANCE DEPARTMENT

When processed by your department, please return to the City Clerk's Office.

--Thank you!

Please sign and return to Kirk Greene, Ext. 6202, in the City Clerk's Office.

FORWARDED TWO ORIGINALS TO MARVIN DILLSAVER IN PD ON 12/19/18 FOR VENDOR SIGNATURES.

City of Merced
Contract/Agreement Transmittal Form

*Please Note: The City Clerk's Office will keep **one original** for the City's files.*
All other originals will be returned to the department, unless specific instructions for distribution are attached.

SUBMITTING DEPARTMENT TO COMPLETE ALL INFORMATION

Date Submitted: 12/3/2018 Council Approval Needed? Yes (●) No ( )

Department: Police Council Meeting Date: 12/17/2018

Contact Name/Ext.: Marvin Dillsaver (x8870) *(If Council approval is required, please attach a copy of your Admin. Report.)*

Department Head Signature: _____

Contract Information ***(If expediting needed, please provide a brief explanation below as to why.)***

SPECIAL HANDLING: CONFIDENTIAL [ ] RUSH [ ] OTHER [ ] DATE NEEDED BY: _____

Reason: _____

[ ] New Contract

[✓] Modification - Amendment #: 6 Change Order #: ____ **Original** Contract Date: 7/13/1994

Purpose of Contract: Custom software interface to communicate with DA's records system.

Contract Effective Date: 12/17/2018 Contract Expiration Date: _____

Contractor/Vendor Information

Name: Tyler Technologies, Inc. Business License #: _____

E-Mail: David.Fallwell@tylertech.com Misc. Receivable Acct. #: _____

Budget Information

Funds Available in Budget? *(Select one)*

(●) Yes - Account #: 001-1002-522.17-00

( ) No - Attach a copy of Budget Transfer Form or the Administrative Report appropriating funds

( ) Does not require funds

Amount of Contract: $ 420,735.70 (to date) Amount of Amendment: $ 32,000.00

Required Attachments (as applicable) *(If available, please include when submitting contract paperwork.)*

[ ] Certificate of Insurance	[ ] Labor & Material Bond	[ ] Warranty Bond
[ ] W-9 (or substitution)	[ ] Faithful Performance Bond	[✓] Administrative Report

CITY CLERK DEPARTMENT TO COMPLETE	CONTRACTING DEPARTMENT TO COMPLETE
✓Enter into database(s) ✓Contract cover sheet with contract # for Finance	✓W-9 and/or insurance certificate(s)
✓Finance Dept. signature and funds verification	✓Applicable bonds/insurance carrier ratings
✓Council approval verification *(if applicable)*	✓Contractor/Vendor signature(s)
✓City Manager or designee signature ✓Clerk's attestation with City seal	✓Attorney's Office review/approval as to form
✓Image contract and file original ✓E-mail to Contractor/Vendor	✓Mail/deliver original to Contractor/Vendor

Greene, Kirk

From: Greene, Kirk
Sent: Tuesday, January 15, 2019 5:04 PM
To: 'Fallwell, David'
Subject: RE: Signed Karpel Agreement - Original, Wet-Signed, Fully-Executed Amendment

Mr. Fallwell:

Thank you so much for all your help with this. Anything you can do is greatly appreciated.

Have a good evening!

Kirk

From: Fallwell, David [mailto:David.Fallwell@tylertech.com]
Sent: Tuesday, January 15, 2019 4:57 PM
To: Greene, Kirk <GreeneK@cityofmerced.org>
Subject: RE: Signed Karpel Agreement - Original, Wet-Signed, Fully-Executed Amendment

Kirk,

My apologies for not understanding. I will reach out and request that an original be forwarded to you via mail. Have a great evening!

Regards,

Dave

David Fallwell
Client Executive
Tyler Technologies, Inc.

P: 248.269.1000 ext. 1422
C: 979.218.8955
www.tylertech.com

CONNECT
FUELING
CONNECTED
COMMUNITIES

From: Greene, Kirk <GreeneK@cityofmerced.org>
Sent: Tuesday, January 15, 2019 6:05 PM
To: Fallwell, David <David.Fallwell@tylertech.com>
Subject: RE: Signed Karpel Agreement - Original, Wet-Signed, Fully-Executed Amendment

January 15, 2019

Good afternoon, Mr. Fallwell:

Thank you very much for taking the time out of your busy schedule to respond so quickly. I apologize, though, if my e-mail was less than clear. I did receive the PDF copy of the fully-executed amendment, which I thank you very much for providing us. However, my question was whether one of the original, wet-signed, fully-executed hardcopies of the amendment we sent you is going to be mailed back to the City for our files. The City of Merced prefers retaining one of the duplicate originals for their official contract records, if at all possible.

I understood that Marvin Dillsaver had mailed you two originals for signing last month—one to be retained by Tyler Technologies, and one to be returned to the City of Merced. When you have a chance, would you let me know if we can expect the duplicate original back from your company?

Thank you very much for your help with this.

Take care,

Kirk Greene

From: Fallwell, David [mailto:David.Fallwell@tylertech.com]
Sent: Tuesday, January 15, 2019 3:31 PM
To: Greene, Kirk <GreeneK@cityofmerced.org>
Subject: RE: Signed Karpel Agreement - Original, Wet-Signed, Fully-Executed Amendment

Kirk,

I have attached a fully executed copy of the Karpal contract. I'm sorry this was not sent out to you previously. Please let me know if there is anything else that you need from me. Have a great evening!!

Regards,

Dave

David Fallwell
Client Executive
Tyler Technologies, Inc.

P: 248.269.1000 ext. 1422
C: 979.218.8955
www.tylertech.com



From: Greene, Kirk <GreeneK@cityofmerced.org>
Sent: Tuesday, January 15, 2019 1:42 PM
To: Fallwell, David <David.Fallwell@tylertech.com>
Subject: FW: Signed Karpel Agreement - Original, Wet-Signed, Fully-Executed Amendment

January 15, 2019

Good morning, Mr. Fallwell:

My name is Kirk Greene and I am the Records Clerk for the City of Merced. Thank you very much for providing us with a fully-executed copy of the most recent amendment to your agreement (see attached).

Last month, we had provided your company with two originals of the amendment for the Karpel Case Management System purchase for signing. We were just following up to see if you would be returning one of the two fully-executed originals back to the City of Merced for our files.

Thank you very much for your kind and prompt attention to this matter.

Respectfully,

Kirk Greene
Records Clerk II
City of Merced

From: Dillsaver, Marvin
Sent: Thursday, December 20, 2018 2:19 PM
To: Greene, Kirk <GreeneK@cityofmerced.org>
Subject: FW: Signed Karpel Agreement

Kirk, will this work or do you need an original I was sending the other out tomorrow.

From: Fallwell, David <David.Fallwell@tylertech.com>
Sent: Thursday, December 20, 2018 2:13 PM
To: Dillsaver, Marvin <dillsaverm@cityofmerced.org>
Subject: Signed Karpel Agreement

Marvin,

Attached is the fully executed version of the Karpel agreement for your records. Have a great evening!!

Regards,

Dave

David Fallwell
Client Executive
Tyler Technologies, Inc.

P: 248.269.1000 ext. 1422
C: 979.218.8955
www.tylertech.com



Greene, Kirk

From: Greene, Kirk
Sent: Thursday, November 29, 2018 2:39 PM
To: Dillsaver, Marvin
Cc: Tresidder, John; Kovalcheck, Lynda; Law, Faye
Subject: RE: County of Merced Agreement / Tyler Technologies Amendment (Dec. 17, 2018 Council Mtg.)

November 29, 2018

Hello, Marvin:

I wanted to let you know that, on your behalf, I submitted a Legal Services Request to the Attorney's Office today, along with two originals of Amendment No. 6 with Tyler Technologies. John spoke with the Attorney's Office and they advised him that the amendment would also need to be approved as to form by the Attorney's Office and then be routed in the usual manner to the various departments.

In addition, your Admin. Report #18-616 for the December 17, 2018 Council meeting will likely require some slight modifications to make it clear that the City Council will be approving both the amendment with Tyler Technologies as well as the Merced County reimbursement agreement with the DA's Office.

Get plenty of rest, and see you next week.

Thank you very much,

Kirk

From: Dillsaver, Marvin <dillsaverm@cityofmerced.org>
Sent: Thursday, November 29, 2018 12:45 PM
To: Greene, Kirk <GreeneK@cityofmerced.org>
Subject: RE: County of Merced Agreement / Tyler Technologies Amendment (Dec. 17, 2018 Council Mtg.)

Thank you very much I won't be back until next Tuesday so that would really help me out

---

From: Greene, Kirk <GreeneK@cityofmerced.org>
Sent: Thursday, November 29, 2018 10:15 AM
To: Dillsaver, Marvin <dillsaverm@cityofmerced.org>
Subject: FW: County of Merced Agreement / Tyler Technologies Amendment (Dec. 17, 2018 Council Mtg.)

November 29, 2018

Hi, Marvin:

Just to confirm our phone conversation this morning: As I mentioned, I discovered that this item is going before Council on Dec. 17th, so I printed out the admin. report for it to include with the agreement paperwork to Finance. In doing so, I noticed that the amendment with Tyler Technologies

is included as an attachment to that report, so I printed the amendment, labeled it as "Exhibit A," and attached it to the agreement with Merced County for submission to Finance.

It is possible that Finance may have some objections to combining the paperwork this way, due to the dollar amount being $32,000, and may therefore require the amendment with Tyler be routed through the Attorney's Office as a separate agreement. John is going to check with Kelly Fincher for direction; but perhaps I should create a Legal Services Request just in case, in order to send the Tyler amendment up to the Attorney's Office for review. This would be playing it safe, so as not to delay things unnecessarily, since you are currently out of the office.

Thank you for responding to my e-mail, even though you're home sick. I hope you get better soon.

Take care,

Kirk

From: Greene, Kirk
Sent: Thursday, November 29, 2018 8:52 AM
To: Dillsaver, Marvin <dillsaverm@cityofmerced.org>
Subject: County of Merced Agreement / Tyler Technologies Amendment

November 29, 2018

Good morning, Marvin:

I have received your Agreement for Special Services with Merced County, and I just had a quick question or two about this. The agreement refers to an Amendment with Tyler Technologies being attached as Exhibit A, but there doesn't appear to be any attachment. Has the amendment with Tyler been finalized yet, and will it be coming to the Clerk's Office as a separate agreement on its own?

When you have a chance, would you let me know? I am not certain I should forward this on to Finance yet, if the amendment attachment is not ready.

Thank you very much for your help.

MERCED

Kirkland Greene
Records Clerk II
City of Merced | 678 W. 18th Street | Merced, CA 95340
(209) 385-6202 | (209) 388-8614 FAX
GreeneK@cityofmerced.org | www.cityofmerced.org
Follow us on Twitter: @MercedCityClerk

LEGAL SERVICES REQUEST

TO: CITY ATTORNEY'S OFFICE DATE: 11/29/18

FROM: Kirk Greene, Records Clerk II DEPT: Police

CONTACT/EXTENSION: Marvin Dillsaver (x8870)

PROJECT/REFERENCE NAME: Tyler Technologies, Inc. Amendment No. 6 to Agreement, effective 7/13/1994. (Formerly, New World Systems Corporation.)

DESCRIPTION OF ASSIGNMENT:

It appears that this amendment for $32,000 should be reviewed and approved as a separate agreement for Council approval, instead of being merely attached to the reimbursement agreement with the District Attorney's Office. Please advise.

SUPPORTING DOCUMENTS MUST BE ATTACHED TO THIS REQUEST (I.E., DRAFT DOCUMENT INCLUDING EXHIBITS) OR THE REQUEST WILL BE RETURNED TO THE DEPARTMENT FOR COMPLIANCE)

Draft Document Attached: YES ☑ NO ☐ Exhibits Attached: YES ☐ NO ☐

Previously Reviewed by this Office: YES ☐ NO ☑ Which Attorney: _____

SCHEDULED FOR CITY COUNCIL OR COMMISSION MEETING? YES ☑ NO ☐

CITY COUNCIL/COMMISSION MEETING DATE: 12/17/18

DUE DATE: 12/14/18

IF DUE DATE IS LESS THAN TWO (2) WEEKS THEN DEPT. HEAD'S SIGNATURE AND JUSTIFICATION ARE REQUIRED, SUBJECT TO INITIAL REVIEW BY CITY MANAGER

JUSTIFICATION FOR URGENCY (Agenda deadline NOT acceptable justification):

_____ _____

City Manager Signature Dept. Head Signature

JUSTIFICATION: Accepted: ___ Not Accepted: ___ _____

City Attorney

INITIALS OF ASSIGNED STAFF: _____ DATE RECEIVED: ____/____/____

Assigned Support Staff: _____ ID NO.: _____

PROGRESS TO DATE: _____

_____

DATE COMPLETED:____/____/____ Weighted Total: _____

Disposition of Materials/Follow-up instructions:

_____

_____

_____

Document #: 0606-18A1A

AMENDMENT

This amendment ("Amendment") is effective as of the date of signature of the last party to sign as indicated below ("Amendment Effective Date") by and between Tyler Technologies, Inc., a Delaware corporation with offices at 840 West Long Lake Road, Troy, MI 48098 ("Tyler") and City of Merced, with offices at 611 West 22nd Street, Merced, CA 95340 ("Client").

WHEREAS, Tyler and the Client are parties to a License Agreement with an effective date of August 10, 1994 (the "Agreement");

WHEREAS, Tyler and Client now desire to amend the Agreement;

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, Tyler and the Client agree as follows:

1. The services set forth in Exhibit 1, and Schedule 1, to this Amendment are hereby added to the Agreement. Any additional adjustments to scope not set forth herein must be reflected in another amendment to the Agreement.

2. The following payment terms, as applicable, shall apply:

   a. *Requested Custom Software Interfaces:* Requested custom software interfaces are invoiced 100% upon initial delivery of the interface.
   b. Travel expenses shall be invoiced as incurred, if applicable.

3. This Amendment shall be governed by and construed in accordance with the terms and conditions of the Agreement.

4. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below.

Tyler Technologies, Inc.

By: _____

Name: Greg Sebastian

Title: President, Public Safety Division

Date: 12-20-18

Merced Police Department, CA

By: _____

Name: STEVE CARRIGAN

Title: City Manager

Date: 12/18/18

940059 PO# 132835

FUNDS/ACCOUNTS VERIFIED

(SEE ATTACHED PAGE.) V-17554

DATE

APPROVED AS TO FORM:

Funds available. MS 12/10/18

001-1062-522-17-00

$ 32,000.00

Exhibit 1
Investment Summary

new world
a tyler public safety solution

Date:	11/16/2018
Quote Expiration:	1/31/2019
Quote Name:	Merced Police - one way custom export to Karpel Case Management System
Quote Number:	2017-23053-2
Quote Description:	Merced Police- one way custom export to Karpel Case Management

Sales Quotation For
City of Merced Police Department
611 W 22nd St
Merced , CA 95340-3737
Phone: 2093854701

Services

Description	Quantity	Unit Price	Unit Discount	Extended Price
Custom one way export to Karpel Case Management System	1	$32,000	$0	$32,000
TOTAL:				**$32,000**

Summary	One Time Fees	Recurring Fees
Total Tyler Software	$0	$0
Total Tyler Services	$32,000	
Total Other Costs	$0	
Total Third Party Hardware, Software and Services	$0	$0
Travel and Living Expenses	$0	
Summary Total	**$32,000**	**$0**

Assumptions

Personal Computers must meet the minimum hardware requirements for New World products. Microsoft Windows 7/8.1/10 32/64 bit or later is required for all client machines. Windows 2008/2012/2016 Server and SQL Server 2008/2012/2014/2016 are required for the Application and Database Server(s).

New World product requires Microsoft Windows 2008/2012/2016 Server and SQL Server 2008/2012/2016, including required Client Access Licenses (CALs) for applicable Microsoft products. Servers must meet minimum hardware requirements provided by Tyler. The supported Microsoft operating system and SQL versions are specific to Tyler's release versions.

New World product requires Microsoft Excel or Windows Search 4.0 for document searching functionality; Microsoft Word is required on the application server for report formatting.

Tyler recommends a 100/1000MB (GB) Ethernet network for the local area network. Wide area network requirements vary based on system configuration, Tyler will provide further consultation for this environment.

Does not include servers, workstations, or any required third-party hardware or software unless specified in this Investment Summary. Customer is responsible for any third-party support.

Licensed Software, and third party software embedded therein, if any, will be delivered in a machine readable form to Customer via an agreed upon network connection. Any taxes or fees imposed are the responsibility of the purchaser and will be remitted when imposed.

Tyler's GIS implementation services are to assist the Customer in preparing the required GIS data for use with the Licensed New World Software. Depending upon the Licensed Software the Customer at a minimum will be required to provide an accurate street centerline layer and the appropriate polygon layers needed for Unit Recommendations and Run Cards in an industry standard Esri file format (Personal Geodatabase, File Geodatabase, Shape Files). Customer is responsible for having clearly defined boundaries for Police Beats, EMS Districts and Fire Quadrants. If necessary Tyler will assist Customer in creating the necessary polygon layers (Police Beats, EMS Districts and Fire Quadrants) for Unit Recommendations and Run Cards. Tyler is not responsible for the accuracy of or any ongoing maintenance of the GIS data used within the Licensed New World Software.

Client is responsible for any ongoing annual maintenance on third-party products, and is advised to contact the third-party vendor to ensure understanding of and compliance with all maintenance requirements

All Tyler Customers are required to use Esri's ArcGIS Suite to maintain GIS data. All maintenance, training and ongoing support of this product will be contracted with and conducted by Esri. Maintenance for Esri's ArcGIS suite of products that are used for maintaining Customer's GIS data will be contracted by Customer separately with Esri.

When Custom interface is included, Custom interface will be operational with existing third party software. Any subsequent changes to third party applications may require additional services.

When State/NCIC is included, Client is responsible for obtaining the necessary State approval and any non-Tyler hardware and software. Includes state-specific standard forms developed by Tyler. Additional forms can be provided for an additional fee.

Schedule 1
Customer Requested Standard Software Enhancements and/or Custom Software

1. Definition

We will provide you requested standard software enhancements and/or custom software services as discussed below. You agree to cooperate in limiting the scope of those modifications and enhancements, as described below.

An analysis and assessment to verify the scope of effort for these services will be conducted. A revised estimate for the enhancements/customizations may be provided at the conclusion of the assessment. You may elect to cancel or proceed with the enhancements/customizations based on the revised estimate.

Capabilities included in the initial scope:

a) Custom Software/Interface(s)

While we will provide reasonable consultation, you are responsible for obtaining technical contacts and/or technical specifications from the third parties involved.

(1) One-way export to Karpel Case Management System:

1. One-way export of case information from the New World Case Module
2. Data will be passed using web services provided by Karpel export will be triggered by case status or some other trigger agreed upon between New World and Merced
    a. Data to be passed are limited to fields existing in the New World Case Module and will include:
        - Incident date/time, number, location
        - ORI
        - Incident Narrative
        - Case subjects and basic details
            - Subjects can include Victims, Defendants and any other configured subject type added to the Subjects tab on the case
            - Details will include:
                - Jacket Type (adult, juvenile, business, etc.)
                - Name (first, middle, last, suffix)
                - Address
                - Demographics (height, weight, hair color, eye color, sex, race)
                - Identifiers (DOB, SSN, SID, DL, Phone Number)
                - Alias/Nickname
        - Charge information (from the Arrest Charges tab on the case)
            - Count
            - Statute and Statute Description
            - Subject (Arrestee)
3. Case documents can be passed as part of the export; they will be passed as binary data embedded in the XML
4. Credentials and any certificates will be provided by customer and/or 3rd party

2. Methodology to Provide Enhancements and/or Custom Software

a) Our Responsibility

As part of our delivery of these services, we will:

(1) Review the required features for the items set forth in paragraph 1, above, with you.

(2) Prepare a Requirements Document (RD) to include:
- Detailed description of the required feature
- menu samples
- screen samples
- report samples

(3) Conduct the programming and programming test.

(4) Provide the associated in-scope training, testing and/or other support services.

For an enhancement or custom software requiring over seven (7) days of services, we will utilize the design document procedure described below. For enhancements or custom software that require less than seven (7) days of services, we will use a Request For Service (RFS) procedure. Both procedures are reviewed with you at a pre-installation planning meeting. The RFS procedure utilizes a form with a narrative description and supporting documentation if applicable to define the work to be done.

b) Design and Development Procedure

	Activity	Targeted Time Period
(1)	We will work with your staff in completing the RD. You agree to be reasonable and flexible in not attempting to design the modifications to be more extensive than called for in the scope (cost and schedule) of this project.	To be determined
(2)	We submit completed RD to you.	To be determined
(3)	You will review and sign off on the RD. Once you sign off on the RD, any subsequent changes must be documented along with the impact on pricing and schedule, if any. No programming will be done by us until the formal sign-off and your authorization to proceed in writing.	To be determined
(4)	We complete programming from RD and provide the associated deliverable to you.	To be determined
(5)	You test software modification based on RD.	To be determined

3. Third Party Responsibilities

a) The third-party will provide a documented API that will allow access to required data via a file transfer, web service, or TCP/IP.

b) We will not be responsible for making any modification in the 3rd party software to support this interface.

c) The third-party will work with us and you to test the interface.

TYLER TECHNOLOGIES, INC.

Account Number: 001-1002-522-17-00

Amount: $ 32,000.00

VERIFIED

BY: _____
Finance Officer

FINANCE ENTRY	
Contract No:	940059
Vendor Number:	17554
P.O. Number:	132835
Funds Available:	yes. ms 12/10/18
	11/29/18

PL 12/11/18

ATTEST:
CITY CLERK

BY _____
Assistant/Deputy City Clerk

CITY of MERCED, CALIFORNIA
INCORPORATED APRIL 1, A.D. 1889

CITY OF MERCED

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

ADMINISTRATIVE REPORT

File #: 18-616 Meeting Date: 12/17/2018

Report Prepared by: Marvin Dillsaver, Communications Supervisor, Police Department

SUBJECT: Approval of Agreement with Tyler Technologies in the Amount of $32,000 for a Custom Interface to Securely Connect the Police Department and District Attorney's Records Management Systems and Authorization for the Use of Pooled Cash for the Purchase Until Reimbursement from the County of Merced

REPORT IN BRIEF
Merced Police Department is requesting reimbursable funds to purchase a custom interface to connect the Merced Police Departments Records Management System with the Merced County District Attorney's Office Records Management System.

RECOMMENDATION
City Council - Adopt a motion:

A. Approving an increase to revenue account 001-1002-332-01-01 Police Operations Cost Recovery in the amount of $32,000 and appropriating the same to expenditure account 001-1002-522-17-00 Police Operations Professional Services; and,

B. Approving an Amendment with Tyler Technologies for Custom Software Interface; and,

C. Approving a Special Service Agreement with Merced County for cost recovery reimbursement; and,

D. Authorizing the use of pooled cash for the purchase of the custom interface until the City receives reimbursement funds from the County of Merced; and,

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

ALTERNATIVES
1. Approve, as recommended by Staff; or,
2. Deny; or,
3. Refer back to staff for recommendation of specific items

AUTHORITY
City of Merced Charter Section 200.

CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget

DISCUSSION

During fiscal year 2017/18, the Merced Police Department (MPD) was approached by the Merced County District Attorney's Office (DA) with a specific request to interface their Karpel Records Management System (RMS) with the MPD's Tyler Technologies Records Management System (RMS). The DA informed the MPD that they would fund the project for the interface because it would significantly assist them with their workload and their ability to process cases faster. This custom interface will electronically transfer case data securely between the RMS of the MPD and the RMS of the DA. All suspect, victim, and witness information associated to a case will be transferred automatically and the interface will notify the MPD of files that have been delivered.

The interface will save time for MPD staff because cases will not have to be hand delivered. Cases will be electronically sent to the DA. It will also assist the MPD and the DA in providing a faster and more efficient manner of exchanging confidential information.

The interface will need to be sold to the MPD as the custom interface will be written by Tyler Technologies, which is the MPD's vendor for their RMS. The interface will be installed on servers at the MPD. Tyler Technologies has done this same type of interface for the Merced County Sheriff's Office (SO) who also uses Tyler Technologies for their RMS. Due to the fact that the DA is not a Tyler customer, the City of Merced has entered into an agreement with the County of Merced to reimburse the City fully for the purchase price of the interface. It should be noted that this is a custom interface and it has no maintenance associated with it. The DA is aware of this and that they may need additional funding if something fails after an upgrade to the RMS at the MPD. Upgrades to the RMS are rare, and only done once or twice a year. The likelihood of something failing is minimal.

The MPD is requesting the use of pooled funds to purchase the interface. Once the interface has been paid for by the City of Merced, the County of Merced will reimburse the City for the funds spent.

IMPACT ON CITY RESOURCES

An increase in the amount of $32,000 to Police Operations Cost Recovery Revenue Account 001-1002-332-01-01 and appropriation of the same for expenditures to Police Operations Professional Services account 001-1002-522-17-00 is needed. The Department is requesting the use of pooled cash until the reimbursement of the purchase can be processed by Merced County.

ATTACHMENTS

1. Agreement
2. Quote from Tyler Technologies for Custom Interface

ADMINISTRATIVE REPORT

Agenda Item H.10. Meeting Date: 2/19/2019

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

SUBJECT: Award of Bid and Approval of Contract with Hobbs Construction Inc., in the Amount of $2,691,790 for Well 21 Site Improvements, Project No. 113026

REPORT IN BRIEF

Considers awarding a contract in the amount of $2,691,790 to Hobbs Construction, Inc. to perform the pump station construction for the new water supply Well 21 at the intersection of Bellevue Road and G Street.

RECOMMENDATION

City Council - Adopt a motion awarding the bid for Well 21 Site Improvements, Project 113026, to Hobbs Construction, Inc., in the amount of $2,691,790; and, authorizing the City Manager or the Assistant City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

ALTERNATIVES

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

AUTHORITY

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

Municipal Code Chapter 3.04, Article IV - Public Works Contracts. Every project involving an expenditure of more than the adjusted amount of sixty-nine thousand, eight hundred and thirty- three dollars ($69,833) for the construction or improvements of public buildings, works, streets, drains, sewers, utilities, parks, and playgrounds shall be let by contract to the lowest responsive and responsible bidder after notice by publication in the official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids.

CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget

DISCUSSION

The City Engineer and the Public Works Director have recommended that a new water well be

located at the intersection of Bellevue Road and G Street. On September 21, 2015, the City Council awarded an Agreement for Professional Services to AECOM Technical Services, Inc. (AECOM), to design the new Well 21 municipal well and pump station. The new well was installed in May 2018 and a new pump station and associated infrastructure is required to tie the well into the municipal water supply system.

The project, in general, consists of the installation of a pump station building, electrical service, emergency backup generator, and associated plumbing to connect the site to existing water, sewer, and storm water piping.

AECOM, under the direction of City staff, prepared plans and specifications for the work. The project was advertised and the bids were opened on January 10, 2019, with the following results:

1. Hobbs Construction, Inc. (Fresno, CA)	$	2,691,790.00
2. Smith Construction Co., Inc. (Fresno, CA)	$	2,993,606.23
3. Steve Dovali Construction, Inc. (Fresno, CA)	$	3,140,580.60

The engineer's estimate was $2,500,000.

The following is the proposed budget for the project:

Construction	$	2,691,790.00
Contingency (10%)	$	269,179.00
Engineering, Testing, Inspection (5%)	$	134,589.50
Total:	$	3,095,558.50

History and Past Actions

On February 2, 2004, the City Council adopted a resolution 2004-24 approving the final subdivision map for "*Bellevue Ranch East Village 16*" and accepting lot "*W2*" for well site purposes.

On February 17, 2015, the City Council approved the use of lot "*W2*" for well site purposes.

On April 23, 2017, the City Council awarded a contract to Yellow Jacket Drilling to construct a test well at the new Well #21 site.

On February 5, 2018, the City Council awarded a contract to Nor-Cal Pump and Well Drilling to construct the new water Well #21.

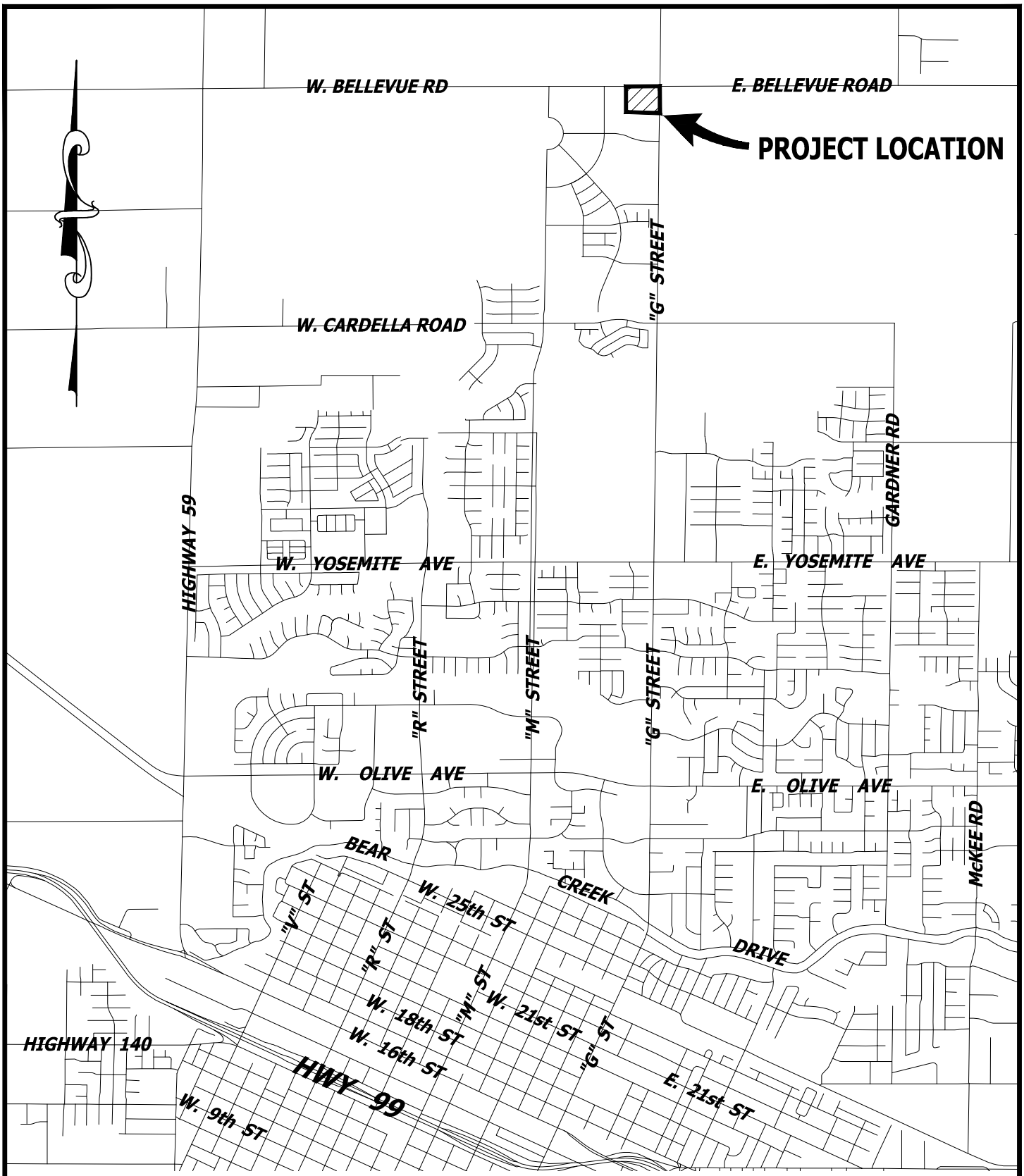
IMPACT ON CITY RESOURCES

This project was established as a Capital Improvement Project, and account 556-1118-637-65.00-113026 contains sufficient funding to complete the project.

ATTACHMENTS

1. Vicinity Map
2. Location Map

3. Bid Results
4. Contract



LOCATION MAP

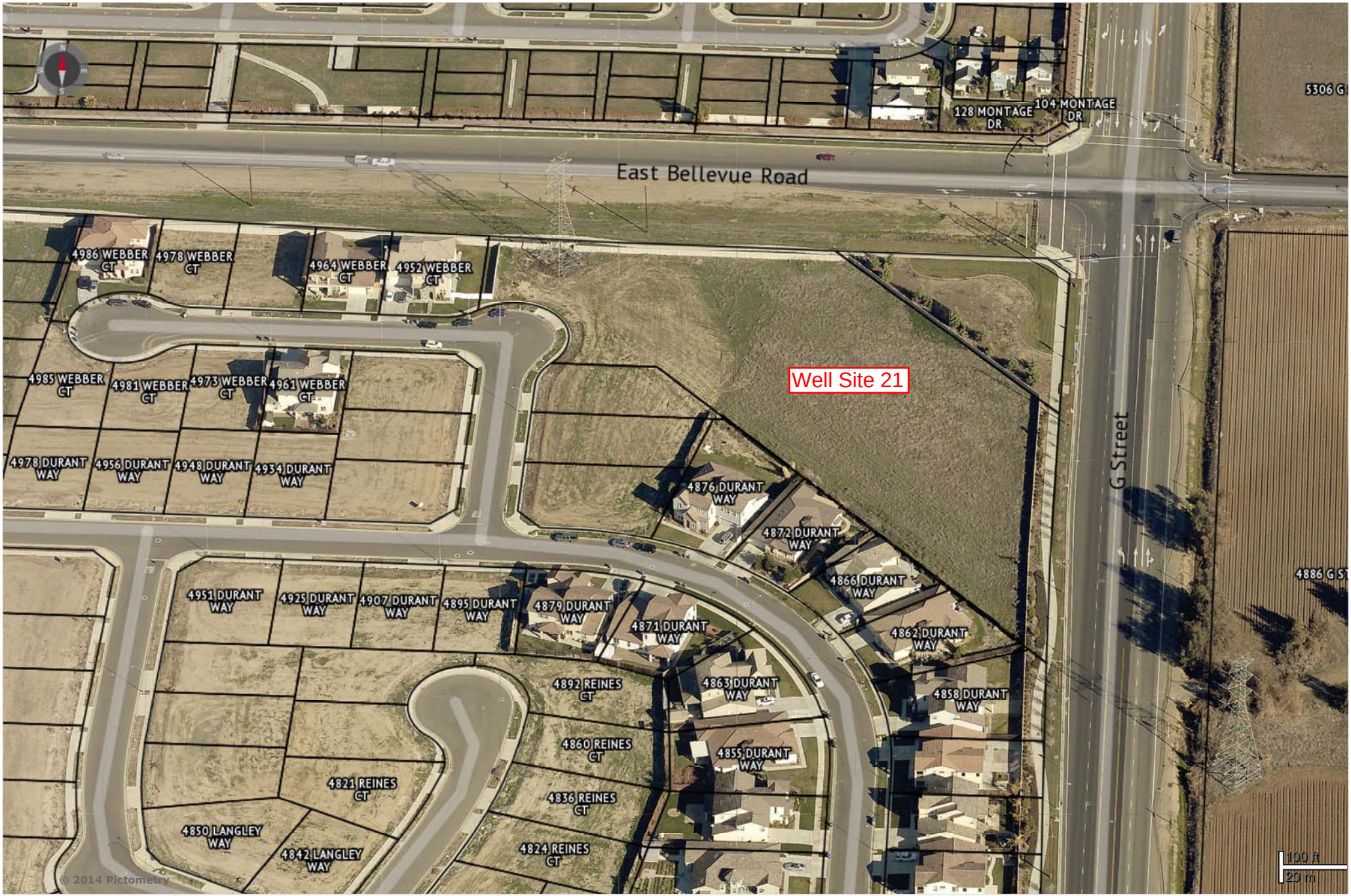
NO SCALE

PROJECT NO. 113026

WELL SITE 21

ATTACHMENT 1

CONNECTEXPLORER



map: Auto (Oblique) | Feb 2014 - Feb 2014 | image 1 of 4 | 02/22/2014

ATTACHMENT 2 - Site Map

Bid Opening 1/10/2019 @ 2:00 p.m.

NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	HOBBS CONSTRUCTION, INC FRESNO, CA UNIT PRICE	HOBBS CONSTRUCTION, INC FRESNO, CA ITEM TOTAL	SMITH CONSTR CO, INC FRESNO, CA UNIT PRICE	SMITH CONSTR CO, INC FRESNO, CA ITEM TOTAL	STEVE DOVALI CONSTR, INC FRESNO, CA UNIT PRICE	STEVE DOVALI CONSTR, INC FRESNO, CA ITEM TOTAL
1	Mobilization (not to exceed $100,000)	LS	1	$ 100,000.00	$ 100,000.00	$ 71,089.00	$ 71,089.00	$ 100,000.00	$ 100,000.00
2	Record Drawings and O&M Manuals	LS	1	$ 7,500.00	$ 7,500.00	$ 1,639.00	$ 1,639.00	$ 4,000.00	$ 4,000.00
3	Construction Staking and Surveying Services	LS	1	$ 6,000.00	$ 6,000.00	$ 7,647.00	$ 7,647.00	$ 6,500.00	$ 6,500.00
4	Sheeting, Shoring, and Bracing	LS	1	$ 10,000.00	$ 10,000.00	$ 6,227.00	$ 6,227.00	$ 1,000.00	$ 1,000.00
5	Clearing, Grubbing, and Grading at Well Site, and Demolition and Restoration of Miscellaneous Work	LS	1	$ 250,000.00	$ 250,000.00	$ 181,089.00	$ 181,089.00	$ 144,000.00	$ 144,000.00
6	Storm Water Pollution Prevention Plan (SWPPP)	LS	1	$ 5,000.00	$ 5,000.00	$ 8,193.00	$ 8,193.00	$ 15,155.00	$ 15,155.00
7	Traffic Control	LS	1	$ 7,500.00	$ 7,500.00	$ 7,570.00	$ 7,570.00	$ 4,000.00	$ 4,000.00
8	Type B Asphalt Concrete Pavement	SF	95,650	$ 1.70	$ 162,605.00	$ 1.73	$ 165,091.90	$ 1.80	$ 172,170.00
9	Class 2 Aggregate Base Course for Asphalt Pavement at Well Site and for Access Road	CY	2660	$ 66.00	$ 175,560.00	$ 67.54	$ 179,664.38	$ 69.56	$ 185,029.60
10	Well Site Yard Piping and Related Appurtenances	LS	1	$ 140,000.00	$ 140,000.00	$ 203,734.00	$ 203,734.00	$ 231,360.00	$ 231,360.00
11	Building, Materials Storage, and Related Appurtenances	LS	1	$ 427,750.00	$ 427,750.00	$ 586,743.00	$ 586,743.00	$ 709,900.00	$ 709,900.00
12	Vertical Turbine Pump and Motor	LS	1	$ 170,000.00	$ 170,000.00	$ 175,404.00	$ 175,404.00	$ 193,400.00	$ 193,400.00
13	Chemical Feed Equipment for Chlorine and Fluoride Systems	LS	1	$ 35,000.00	$ 35,000.00	$ 103,971.00	$ 103,971.00	$ 101,200.00	$ 101,200.00
14	CMU Block Wall and Gates (8'-8" Total Height)	LF	700	$ 350.00	$ 245,000.00	$ 392.50	$ 274,750.00	$ 300.00	$ 210,000.00
15	16-Inch DIP Class 150 (Water Transmission Pipeline)	LF	125	$ 250.00	$ 31,250.00	$ 163.88	$ 20,485.00	$ 302.00	$ 37,750.00
16	16-Inch Watermain Isolation Valves and Connection	LS	1	$ 42,500.00	$ 42,500.00	$ 31,682.00	$ 31,682.00	$ 28,100.00	$ 28,100.00
17	12-Inch RCP Class III or HDPE Storm Drain	LF	440	$ 85.00	$ 37,400.00	$ 108.75	$ 47,850.00	$ 56.40	$ 24,816.00
18	18-Inch RCP Class III or HDPE Storm Drain	LF	275	$ 120.00	$ 33,000.00	$ 130.49	$ 35,884.75	$ 111.00	$ 30,525.00
19	New 48-Inch Diameter Storm Drain Manhole and Modifications to Existing Storm Drain Facilities Along G Street	LS	1	$ 27,500.00	$ 27,500.00	$ 39,621.00	$ 39,621.00	$ 11,000.00	$ 11,000.00
20	Concrete Valley Gutter	LS	1	$ 18,000.00	$ 18,000.00	$ 15,938.00	$ 15,938.00	$ 17,500.00	$ 17,500.00
21	Generator Set	LS	1	$ 110,000.00	$ 110,000.00	$ 233,106.00	$ 233,106.00	$ 158,700.00	$ 158,700.00
22	Electrical Work	LS	1	$ 500,000.00	$ 500,000.00	$ 469,132.00	$ 469,132.00	$ 400,000.00	$ 400,000.00
23	Instrumentation Work	LS	1	$ 105,000.00	$ 105,000.00	$ 103,778.00	$ 103,778.00	$ 147,000.00	$ 147,000.00
24	4-Inch Sewer Service	LF	105	$ 145.00	$ 15,225.00	$ 109.24	$ 11,470.20	$ 35.00	$ 3,675.00
25	Miscellaneous Work	LS	1	$ 30,000.00	$ 30,000.00	$ 11,847.00	$ 11,847.00	$ 203,800.00	$ 203,800.00
			CONSTRUCTION COST:		$ 2,691,790.00		$ 2,993,606.23		$ 3,140,580.60

Adjusted per unit price

ATTACHMENT 3

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 HOBBS CONSTRUCTION, 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. 113026;
   (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. 113026, which said Plans and Specifications are entitled, "MUNICIPAL WELL 21 SITE IMPROVEMENTS," 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 _____, 2019.

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:

ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL
Mobilization (not to exceed $100,000)	LS	1	$ 100,000.00	$ 100,000.00
Record Drawings and O&M Manuals	LS	1	$ 7,500.00	$ 7,500.00
Construction Staking and Surveying Services	LS	1	$ 6,000.00	$ 6,000.00
Sheeting, Shoring, and Bracing	LS	1	$ 10,000.00	$ 10,000.00
Clearing, Grubbing, and Grading at Well Site, and Demolition and Restoration of Miscellaneous Work	LS	1	$ 250,000.00	$ 250,000.00
Storm Water Pollution Prevention Plan (SWPPP)	LS	1	$ 5,000.00	$ 5,000.00
Traffic Control	LS	1	$ 7,500.00	$ 7,500.00
Type B Asphalt Concrete Pavement	SF	95,650	$ 1.70	$ 162,605.00
Class 2 Aggregate Base Course for Asphalt Pavement at Well Site and for Access Road	CY	2660	$ 66.00	$ 175,560.00
Well Site Yard Piping and Related Appurtenances	LS	1	$ 140,000.00	$ 140,000.00
Building, Materials Storage, and Related Appurtenances	LS	1	$ 427,750.00	$ 427,750.00
Vertical Turbine Pump and Motor	LS	1	$ 170,000.00	$ 170,000.00
Chemical Feed Equipment for Chlorine and Fluoride Systems	LS	1	$ 35,000.00	$ 35,000.00
CMU Block Wall and Gates (8'-8" Total Height)	LF	700	$ 350.00	$ 245,000.00
16-Inch DIP Class 150 (Water Transmission Pipeline)	LF	125	$ 250.00	$ 31,250.00
16-Inch Watermain Isolation Valves and Connection	LS	1	$ 42,500.00	$ 42,500.00
12-Inch RCP Class III or HDPE Storm Drain	LF	440	$ 85.00	$ 37,400.00
18-Inch RCP Class III or HDPE Storm Drain	LF	275	$ 120.00	$ 33,000.00
New 48-Inch Diameter Storm Drain Manhole and Modifications to Existing Storm Drain Facilities Along G Street	LS	1	$ 27,500.00	$ 27,500.00
Concrete Valley Gutter	LS	1	$ 18,000.00	$ 18,000.00
Generator Set	LS	1	$ 110,000.00	$ 110,000.00
Electrical Work	LS	1	$ 500,000.00	$ 500,000.00
Instrumentation Work	LS	1	$ 105,000.00	$ 105,000.00
4-Inch Sewer Service	LF	105	$ 145.00	$ 15,225.00
Miscellaneous Work	LS	1	$ 30,000.00	$ 30,000.00

Legend: LS = Lump Sum, LF = Linear Foot, SF = Square Foot, CY = Cubic Yard

Total of Items 1 through 25: $2,691,790.00

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 12357 N. FRIANT, FRESNO, CA 93730, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to such surety or person, as the case may be, at the address of such surety or person last communicated by him to the party giving the notice, postage prepaid and registered.

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

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

8. INSURANCE. The Contractor shall not commence work under this Contract until he has obtained all insurance required by Section 7-3 of the Standard Specifications for Public Works Construction (1997 Edition), as amended, and such insurance has been approved by the City Attorney of Owner, nor shall the

Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract, and particularly paragraph 9 hereof. Said insurance obtained by the Contractor shall be primary and noncontributory as to any insurance maintained by owner. ***Endorsement for additional insured shall be submitted on Standard form CG 20101185. Endorsement forms CG 20101001 and CG 20371001, when used together, are acceptable in lieu of CG 20101185 for Public Works projects***. Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy.

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

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

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

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

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

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

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

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

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

CANCELLATION CLAUSE

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

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

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

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

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

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

11. PAYMENT. The Owner will make partial and final payment to the Contractor in accordance with Section 9-3.2 of the Standard Specifications, as amended, except that the Owner will retain the five percent

(5%) of the final payment amount until the expiration of thirty-five (35) days from the date of recording by Owner of notice of acceptance of completion of all work covered by this Contract, if such notice be recorded within ten (10) days after the acceptance of completion of such Contract; or, if such notice be not so recorded within ten (10) days, until the expiration of ninety-five (95) days after the acceptance of completion of such work of improvement, at which time and not before, Owner shall pay to Contractor the whole of the remaining five percent (5%) of said contract price so held back as provided.

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

12. CALIFORNIA LABOR CODE. The Contractor is aware of, and hereby agrees to comply with 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:

HOBBS CONSTRUCTION, INC.
(Herein called Contractor)

By: _____
City Attorney

By: _____
Contractor

ACCOUNT DATA:

Project No. **113026**

Project Account Number(s) / Amount

556-1118-637.65-00-113026 $2,691,790.00

TAXPAYER I.D. NO: 20-5695587

VENDOR NUMBER: 12858

ADDRESS: P.O. Box 448

Friant, CA 93626

PHONE: (559) 434-6182

FAX: _____

EMAIL: MikeH@hobbsci.com

By: _____
Finance Officer Verification

(SEAL)

GUARANTY

To the City of Merced, California:

PROJECT NO. 113026

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: _____ Date: _____

Contractor

FAITHFUL PERFORMANCE BOND
(Contract)

WHEREAS, the City of Merced, State of California, and HOBBS CONSTRUCTION, INC., the Contractor, have entered into a contract to perform certain work as set forth in the contract for PROJECT NO. 113026; 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 $2,691,790.00, 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 _____, 2019.

By: _____ By: _____
PRINCIPAL SURETY

LABORERS AND MATERIALMENS BOND
(Contract)

WHEREAS, the City of Merced, State of California, and HOBBS CONSTRUCTION, INC., the Contractor, have entered into a contract to perform certain work as set forth in the contract for PROJECT NO. 113026; 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 $2,691,790.00, 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 _____, 2019.

By: _____ By: _____
PRINCIPAL SURETY

ADMINISTRATIVE REPORT

Agenda Item H.11. Meeting Date: 2/19/2019

Report Prepared by: John Ainsworth, Temporary Senior Engineer, Engineering Division

SUBJECT: Approval of Agreement with Union Pacific Railroad in the Not-to-Exceed Amount of $50,000 for Preliminary Engineering Services for the Installation of an Interconnect with a Traffic Signal at Highway 59 and the Railroad Spur, Project No. 114052

REPORT IN BRIEF
Considers an agreement with Union Pacific Railroad for preliminary engineering services for an installation of an interconnect with a traffic signal at Highway 59 and 16th Street.

RECOMMENDATION
City Council - Adopt a motion approving an agreement for preliminary engineering with Union Pacific Railroad in the amount of $50,000 for the traffic signal at Highway 59 and 16th Street; and, authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

ALTERNATIVES
1. Approve, as recommended by staff; or,
2. Deny; or,
3. Continue to a future meeting (date and time to be specified in the motion).

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

CITY COUNCIL PRIORITIES
As provided for in the 2018-19 Adopted Budget.

DISCUSSION
City staff has been in contact with Union Pacific Railroad (UPRR) to set up a diagnostic meeting. The diagnostic meeting will include the following stakeholders: UPRR, California Public Utilities Commission, and the City's consultant, JLB Traffic Engineers. UPRR will not attend the meeting without having a signed agreement.

The City received two CMAQ Grants, one for a traffic signal CML-5085(040) and the other for a southbound right-turn lane CML-5085(044). In order to meet funding requirements, staff needs to have this project awarded this year.

IMPACT ON CITY RESOURCES

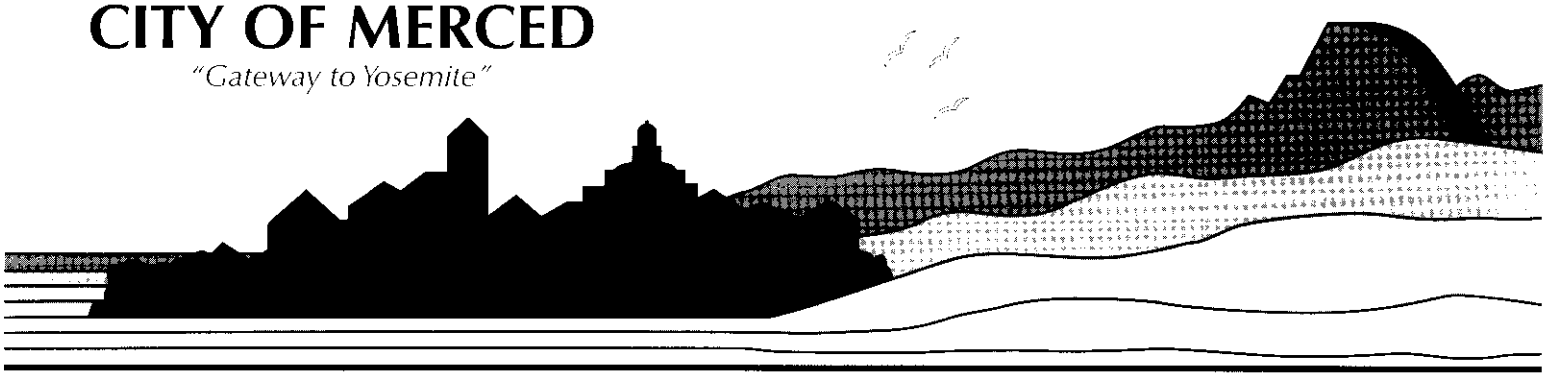
This project was established as a Capital Improvement Project and account 450-1104-637.65-00-114052 contains sufficient funding to cover this agreement.

ATTACHMENTS

1. Union Pacific Railroad Agreement w Exhibit A
2. Location Map

CITY OF MERCED

"Gateway to Yosemite"



January 31, 2019

AGREEMENT FOR PRELIMINARY ENGINEERING SERVICES AND SUBMITTAL OF EXHIBIT "A" FOR RAILROAD APPROVAL

Crossing: Public:
State: CA City: MERCED
MP 148.77
Highway 59/16th Street/ DOT # 765-923L
Merced County

Peggy Ygbuhay
Western Region Manager Public Projects - Engineering
Union Pacific Railroad Company
10031 Foothills Boulevard
Roseville, CA 95747

Dear Peggy Ygbuhay:

Plans are being prepared to install right turn lanes and a Traffic Signal at the location referenced above. The proposed work includes an interconnect between the railroad spur crossing and the traffic signal. In connection with the project, the Agency considers it necessary for the successful advancement of the project for your company to collaborate in the development of the project by performing the following:

- preliminary engineering and other related services
- development of cost estimates
- review of the project's preliminary layouts
- submit current train and switching moves

The Agency authorizes and agrees to reimburse the Railroad for its expenses and actual costs that are incurred for collaborating in the development of the project's preliminary engineering and other preliminary activities. The Railroad has estimated that these preliminary engineering and other preliminary costs will be $50,000.00. Payment will be made within thirty (30) days from the Agency's receipt and approval of the Railroad's request for reimbursement. Railroad will refer to Agency's Project Number 114052 and forward Invoices to John Ainsworth.

Additionally, attached for your company's review and approval is one (1) set of half-scale prints of the concept plans marked **Exhibit A**, which are the 25% complete plans and show the basic features of the proposed highway project at the location referenced above. Please review and provide comment on the basic features of the **Exhibit A** as soon as possible. Also enclosed is

one (1) set of photos of the project area.

The project may require the Railroad to incur costs for force account activities. Please prepare the railroad force account cost estimate for work activities to be provided by your company, as identified in **Exhibit A** and submit them at your earliest convenience so that they may be attached to the railroad generated Construction & Maintenance (C&M) agreement.

Please verify the number of current regular train (X) and switching movements (X) with a Maximum Speed of (XX) at this location as currently shown in our inventory records. This information will be used by the Agency's Contractor to obtain Railroad Protective Liability Insurance.

This agreement is intended to address Preliminary Engineering. It is understood by both parties that railroad may withhold its approval for any reason directly or indirectly related to safety or its operations, property issues or effect to its facilities. If the Project is approved, Union Pacific will continue to work with the Agency to develop Final Plans, Specifications and prepare Material and Cost Estimates for Railroad Construction Work associated with the project. It is also understood that if the project is constructed, if at all, at no cost to the railroad.

The Agency and the Railroad will enter into separate License, Right of Entry, Construction and Maintenance Agreements associated with the actual construction of the project if the project is accepted and approved by the railroad. The Agreements will be drafted by Union Pacific and forwarded to the Agency after the **Exhibit A** and cost estimates have been approved.

Please contact John Ainsworth at telephone number (209) 385-6934 via email at ainsworthj@cityofmerced.org if you have any questions. Your assistance in this matter is appreciated.

APPROVED AS TO FORM:

[signature] 2-13-19

City Attorney Date

Sincerely,

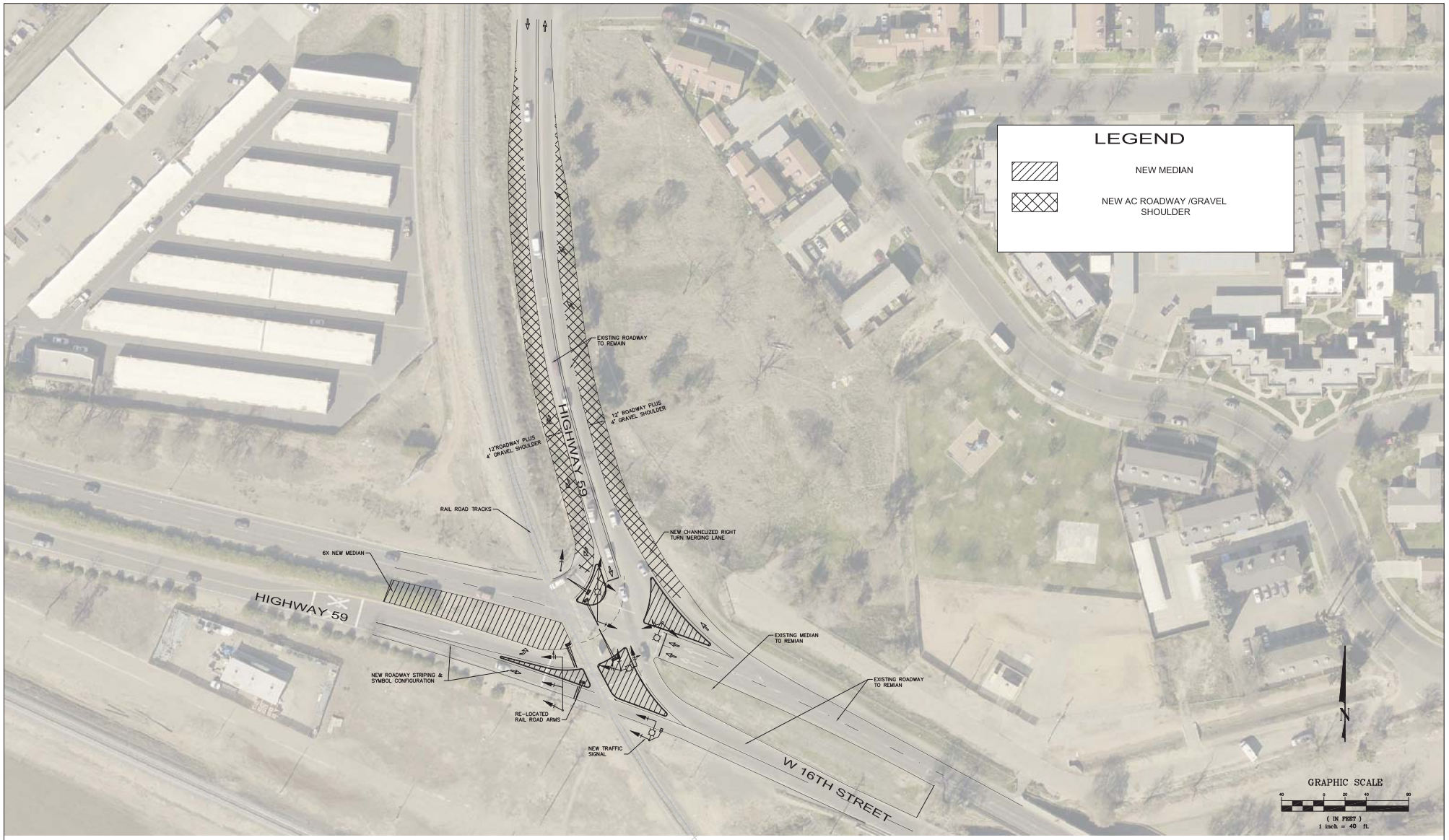
Steve Carrigan
City Manager
City of Merced

UNION PACIFIC RAILROAD COMPANY

By _____ Date _____

Name and Title

Exhibit A



NO.	DATE	BY	REVISION MADE

Underground Service Alert
TWO DAYS BEFORE YOU DIG
Call: TOLL FREE 1 (800) 227 - 2600

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.

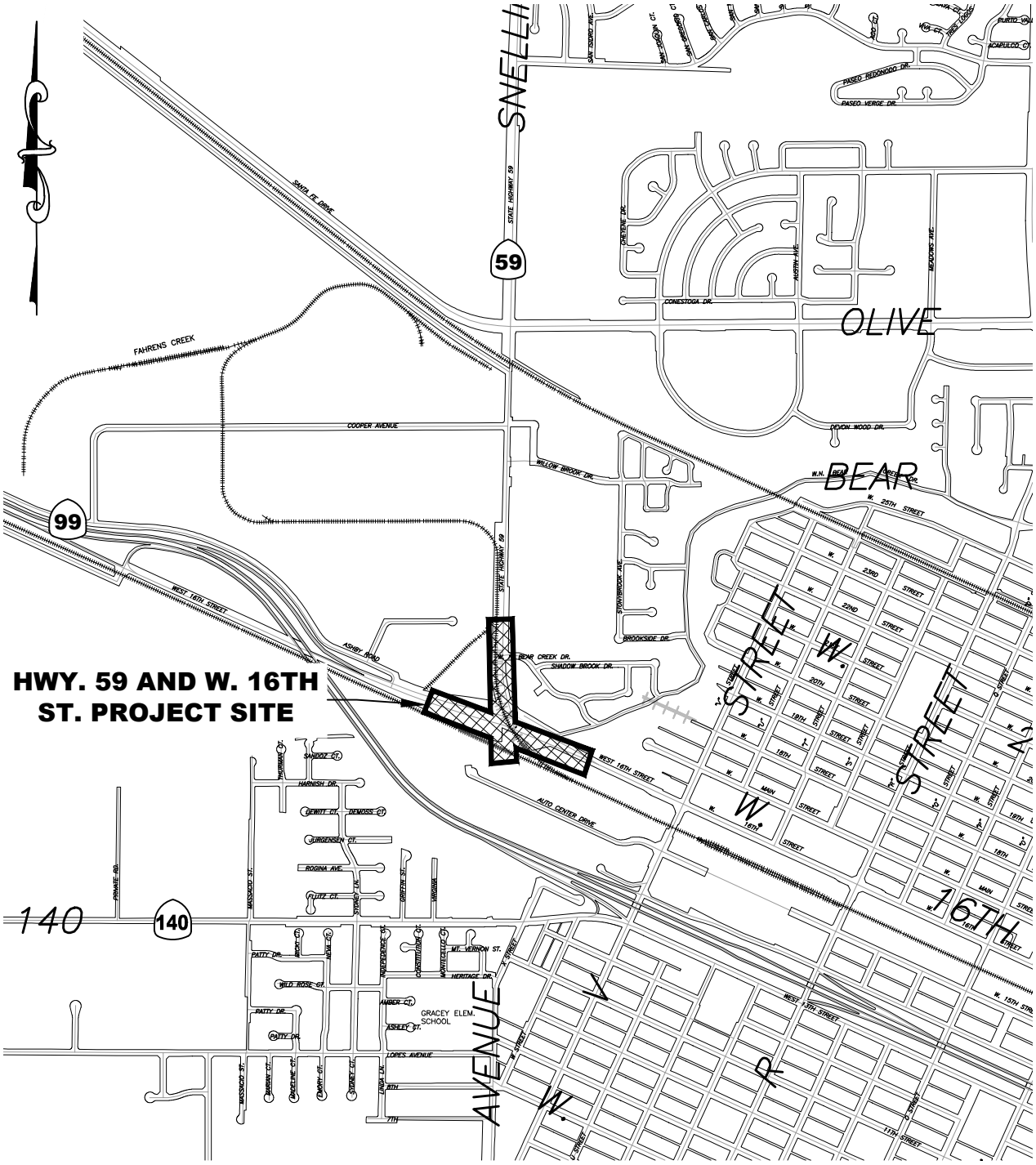
City of Merced
"Gateway to Yosemite"
DEVELOPMENT SERVICES
ENGINEERING PROJECTS AND STANDARDS
678 W. 18th Street (209) 385-6846

SITE LAYOUT

PROJECT NO. 114052
CMAQ TRAFFIC SIGNAL
HIGHWAY 59 AT 16TH STREET

DR. BY:	PAF
DATE:	2/6/19
CH. BY:	JA
DATE:	2/6/19
SCALE:	AS SHOWN

File No. 0943
Sheet 1 of 1



LOCATION MAP

SCALE: 1"=1,500'

City of Merced
"Gateway to Yosemite"
DEVELOPMENT SERVICES
ENGINEERING PROJECTS AND STANDARDS
678 W. 18th Street (209) 385-6846

PROJECT NO. 114052
CMAQ TRAFFIC SIGNAL AT HIGHWAY 59 AND 16TH ST

DR. BY: PAF
DATE: 2/6/19
CH. BY: JA
DATE: 2/6/19
File No.
SCALE: AS SHOWN

ADMINISTRATIVE REPORT

Agenda Item I.1. Meeting Date: 2/19/2019

Report Prepared by: Julie Nelson, Associate Planner, Development Services Department

SUBJECT: Continued Public Hearing - Vacation No. 18-03 for the Adoption of Resolutions Ordering the Vacation and Conditional Vacation of a 20-Foot Wide Temporary Access Easement Located on a Portion of 7 Lots within the Summer Creek Subdivision.

REPORT IN BRIEF

Considers approving two Resolutions ordering the vacation and conditional vacation of a 20-foot wide temporary access easement located on a portion of 7 lots within the Summer Creek Subdivision generally located west of McKee Road at Silverstone Drive.

RECOMMENDATION

City Council - Adopt a motion:

A. Adopting **Resolution 2019-07**, a Resolution of the City Council of the City of Merced, California, ordering the vacation of a 20-foot-wide Temporary Emergency Access Easement on Lot 130 within the Summer Creek Phase One Subdivision (Vacation #18-03); and,

B. Adopting **Resolution 2019-08**, a Resolution of the City Council of the City of Merced, California, ordering the conditional vacation of a 20-foot-wide Temporary Emergency Access Easement on Lots 5, 6, 7, 17, 18, and 29 within the Summer Creek, Phase One Subdivision (Vacation #18-03) subject to the easement area on lots 6,7,17,18 and 29 being deeded to the Merced Irrigation District (MID).

ALTERNATIVES

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

AUTHORITY

Section 8335 of the Streets and Highways Code authorizes the City Council to vacate a right-of-way or easement by adopting a resolution of vacation. Section 8336 of that Code requires the City Clerk to record a certified copy of the resolution of vacation. Additionally, City of Merced Administrative Policy A-6 provides direction to staff for processing vacation requests, and City Resolution 76-80 establishes a policy concerning costs associated with the vacation.

CITY COUNCIL PRIORITIES
Not applicable.

DISCUSSION
Vesting Tentative Subdivision Map #1247 for the Summer Creek Subdivision was approved by the Planning Commission with the condition that a Temporary Emergency Access Easement (EVA) be provided along Lots 5, 6, 7, 17, 18, 29, and 130 (Attachment 1). The Temporary EVA was dedicated by Final Map # 5282. Bright Development, Inc. is the owner of Lots 6, 7, 17, 18, 29, and 130. Lot 5 has been sold to Chris and Hassan Curtis and a home has been constructed on this lot.

Bright Development is requesting the Vacation/Abandonment of the 20-foot-wide temporary emergency vehicle access easement along the north property lines of Lots 6, 7, 17, 18, and 29 and along the southeast property line of Lot 130 within the Summer Creek Subdivision (see Location Map at Attachment 1). Chris and Hassan Curtis are requesting the Vacation/Abandonment of the temporary emergency vehicle access for Lot 5 of the Summer Creek Phase One Subdivision.

This item originally came before the City Council on December 17, 2018. At that time the Council expressed concerns with access to the Summer Creek and Moraga Subdivisions and were hesitant to relinquish the temporary access easement between McKee Road and Whitewater Way (adjacent to Lots 5, 6, 7, 17, 18, and 29 of the Summer Creek Subdivision). The vacation request was continued to the January 7, 2019, City Council Meeting.

At the January 7, 2019, Council meeting, staff provided information on access to the area and explained the past Council actions that had precluded additional access from Whitewater Way to Yosemite Avenue. Staff reported that Bright Development was working with MID to possibly deed the easement area to MID, and MID would, in turn, allow the City to maintain the emergency vehicle access easement. However, as staff continued to review the request for abandonment of the easement, it was determined that MID has a distribution box located near the northeast corner of the easement area between McKee Road and Whitewater Way (refer to the aerial photo at Attachment 2). Because of this box, if a house was built on Lot 29, emergency vehicles would no longer have enough room to maneuver through the area and get to Whitewater Way. Therefore, the easement would no longer be usable. City staff has spoken with MID regarding relocating the distribution box and determined relocation is not feasible.

Bright has worked with MID to negotiate the transfer of the easement area for Lots 6, 7, 17, 18, and 29 from Bright Development to MID (Lot 5 has already been sold to a private owner). As previously mentioned, MID is willing to allow the City to maintain the easement, but a maintenance agreement would be needed as well as a solution to the limited access once Lot 29 is developed. The City cannot prohibit the development of Lot 29 without purchasing the lot from Bright Development. The owner of Lot 5, however, does not want to dedicate their portion of the access easement to MID. Therefore, a maintenance agreement would be needed with the owner of Lot 5 if the City wishes to maintain the easement.

In order to have the majority of the easement area under one ownership making maintenance issues easier to deal with, staff is recommending the vacation of the easement on Lots 6, 7, 17, 18, and 29 be subject to the condition that the vacated areas be deeded by Bright Development, Inc. to MID.

Based on the above information, staff has determined the following five options for the City Council to consider regarding the request to vacate the temporary emergency access easement along Lots 5, 6, 7, 17, 18, and 29. Options 1, 2, and 3 would eliminate the EVA. Options 4 and 5 would maintain the EVA.

1. Grant the vacation and relinquish the emergency vehicle access easement, with the condition that the easement area on Lots 6, 7, 17, 18, and 29 is deeded to MID.

2. Grant the vacation and reconsider the access from Whitewater Way to Yosemite Avenue to provide additional access to the area.

3. Grant the vacation and work to obtain access to Whitewater Way with an east/west road that would align with Silverado Avenue to the west of McKee Road, providing additional access to the area.

4. Deny the vacation, work with Bright Development to ensure property is deeded to MID, then work with MID and the owner of Lot 5 on a maintenance agreement as well as purchase of Lot 29 to allow sufficient access to Whitewater Way.

5. Deny the vacation.

Although denial is an option, the original approval for the subdivision is clear that the emergency vehicle access was intended to be a temporary access until the other roads through the Moraga Subdivision were constructed.

While the vacation of the emergency access between McKee Road and Whitewater Way is somewhat problematic, the vacation of the emergency access along Lot 130 is much less difficult. Therefore, staff has provided a separate resolution for the Council to grant the vacation of the easement adjacent to Lot 130. Staff is recommending City Council approve the resolution at Attachment 3 to grant the vacation of the easement adjacent to Lot 130.

Staff has also provided a resolution at Attachment 4 if the Council chooses to grant the vacation for the easement between McKee and Whitewater Way (Option 1 above), subject to the easement area for Lots 6, 7, 17, 18, and 29 being deeded to MID. However, if the Council chooses not to grant the vacation, staff is requesting direction on how to proceed with the vacation request. Council could direct staff to pursue any of the options above or provide other direction.

History and Past Actions

On May 21, 2003, the Planning Commission approved Tentative Map #1247 for the Summer Creek Subdivision. As a condition of approval, a temporary access was required from McKee Road.

On November 19, 2018, the City Council set a public hearing for December 17, 2018, to consider the vacation of the temporary access easement along Lots 5, 6, 17, 18, and 29, and Lot 130 within the Summer Creek Subdivision.

On December 17, 2018, the City Council held a public hearing on this matter and expressed some concerns regarding access to the area. Additionally, two people who own property in the area expressed concerns with abandoning the temporary access easement between McKee Road and Whitewater Way. As a result of this concern, the item was continued to the January 7, 2019, City Council meeting to allow staff time to prepare information regarding the access to the area.

At the January 7, 2019, Council meeting, staff provided information on the access to the area and explained the past Council actions that had precluded additional access from Whitewater Way to Yosemite Avenue. Because Bright Development was working with MID to deed the property to MID, staff recommended the item be continued to the February 19, 2019, City Council meeting. After hearing public testimony regarding this item, the City Council voted to continue the item to February 19, 2019.

Recommendation

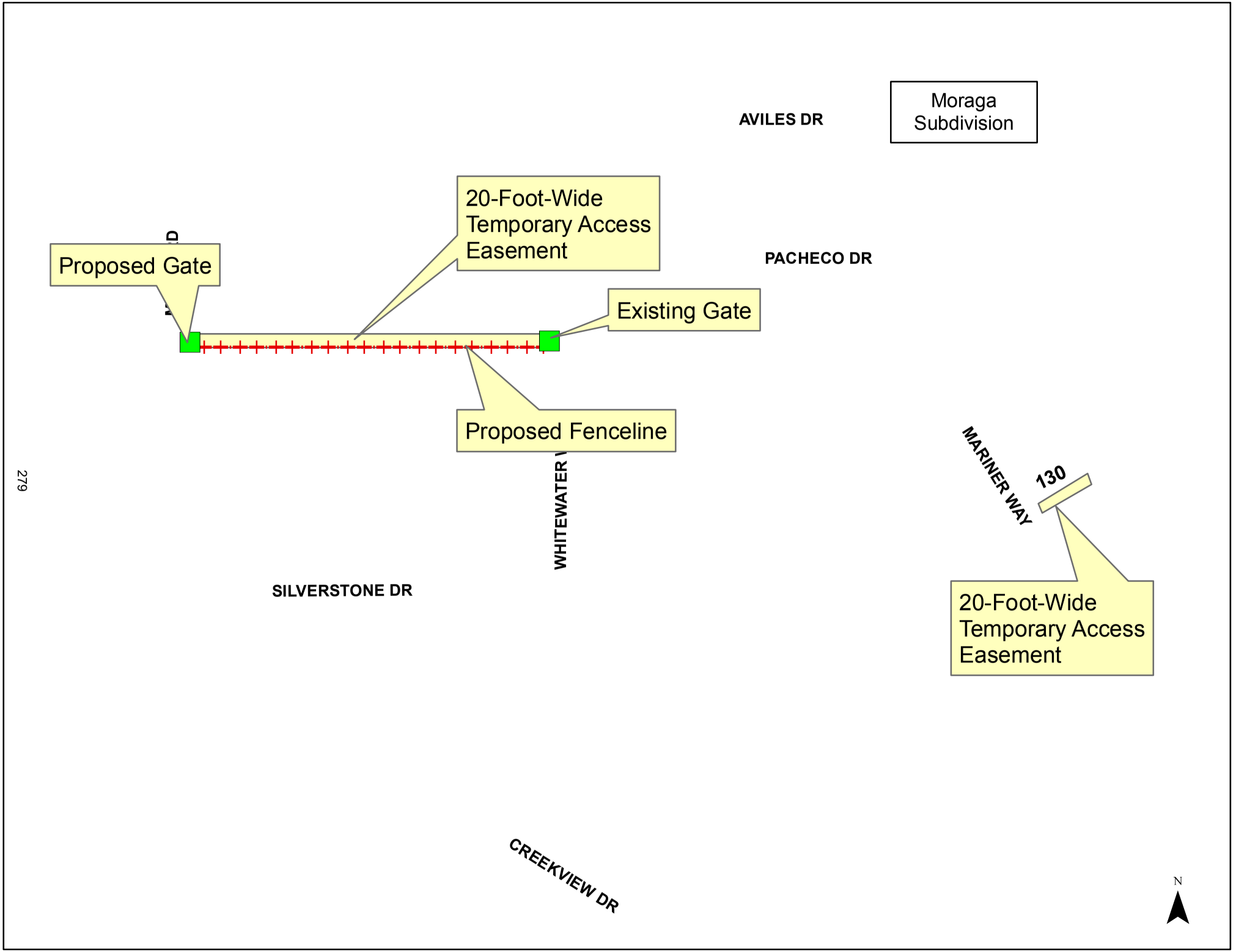
Staff is recommending the City Council take action to approve the vacation for Lot 130 by adopting the Resolution at Attachment 3 and either approve the vacation for Lots 5, 6, 7, 17, 18, and 29, subject to the easement area for Lots 6, 7, 17, 18, and 29 being deeded to MID, by adopting the Resolution at Attachment 4 or provide direction to staff regarding the vacation for these lots.

IMPACT ON CITY RESOURCES

There would be no impact on City resources as a result of this action.

ATTACHMENTS

1. Location Map
2. Aerial Photo
3. Draft City Council Resolution for Lot 130
4. Draft City Council Resolution for Lots 5, 6, 7, 17, 18, and 29
5. Presentation


Moraga Subdivision
AVILES DR
PACHECO DR
20-Foot-Wide Temporary Access Easement
Proposed Gate
Existing Gate
Proposed Fenceline
WHITEWATER
279
SILVERSTONE DR
MARINER WAY
130
20-Foot-Wide Temporary Access Easement
CREEKVIEW DR
N


MID Distribution Box

RESOLUTION NO. 2019-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA ORDERING THE VACATION OF A 20-FOOT-WIDE TEMPORARY EMERGENCY ACCESS EASEMENT ON LOT 130 WITHIN SUMMER CREEK, PHASE ONE SUBDIVISION (VACATION #18-03)

WHEREAS, by adoption of Resolution No. 2018-75 on November 19, 2018, the City Council declared its intention to consider the vacation of a 20-foot-wide temporary emergency access easement on 7 lots, including Lot 130 within Summer Creek, Phase One Subdivision, as described in Exhibit "A" and shown on the map at Exhibit "B," attached hereto; and

WHEREAS, Resolution No. 2018-75 fixed a time and place for hearing all persons interested in or objecting to the proposed vacation to wit: On Monday, December 17, 2018, at the hour of 6:00 p.m. of said day, in the Council Chambers of the City Council, 678 West 18th Street, Merced, California, which said time was not less than fifteen (15) days from the above-mentioned date and passage of Resolution No. 2018-75; and

WHEREAS, Resolution No. 2018-75 was published in the manner prescribed by Section 8320 of the Streets and Highways Code of the State of California; and

WHEREAS, the public hearing was held on December 17, 2019, and was continued to January 7, 2019, at which time the public hearing was held and continued to February 19, 2019; and

WHEREAS, on November 21, 2018, notices were conspicuously posted along the lines of the property proposed to be vacated, not more than three hundred (300) feet apart, which notices consisted of copies of Resolution No. 2018-75 and,

WHEREAS, the vacation of the public right-of-way as proposed by Resolution No. 2018-75 was submitted to the Planning Commission on October 3, 2018, which found the proposed vacation to be in conformity with the general plan.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council finds from all of the evidence submitted that the temporary emergency access easement for Lot 130 as described in Exhibit "A" and shown on the map at Exhibit "B," is unnecessary for emergency vehicle access.

SECTION 2. It is hereby ordered that the temporary emergency access easement for Lot 130 within Summer Creek, Phase One Subdivision lying within the above described territory be and the same is hereby abandoned and vacated, pursuant to the provisions of Part 3, Division 9, of the Streets and Highways Code of the State of California, being the Public Streets, Highways, and Services Easements Vacation Law.

SECTION 3. The City Clerk is directed to cause a certified copy of this resolution, attested under seal of the City of Merced, to be recorded in the Office of the County Recorder of Merced County.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ of _____, 2019, 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:

BY: Kelly Fenner 2-12-19
City Attorney Date

EXHIBIT 'A'

Legal Description for
Abandonment of 20' Wide Temporary Access Easement
Summer Creek Phase 1 (A.P.N. 008-403-004)

The southeasterly 20.00 feet of Lot 130 as shown on the map of Summer Creek Phase 1 filed in Book 62 of Official Plats, at Pages 43 through 47, inclusive, Merced County Records, lying in Section 16, Township 7 South, Range 14 East, Mount Diablo Base and Meridian, in the City of Merced, County of Merced, State of California.

This real property description was prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.



Sean Harp, P.L.S. 7823 — 5/1/2018 Date

EXHIBIT A

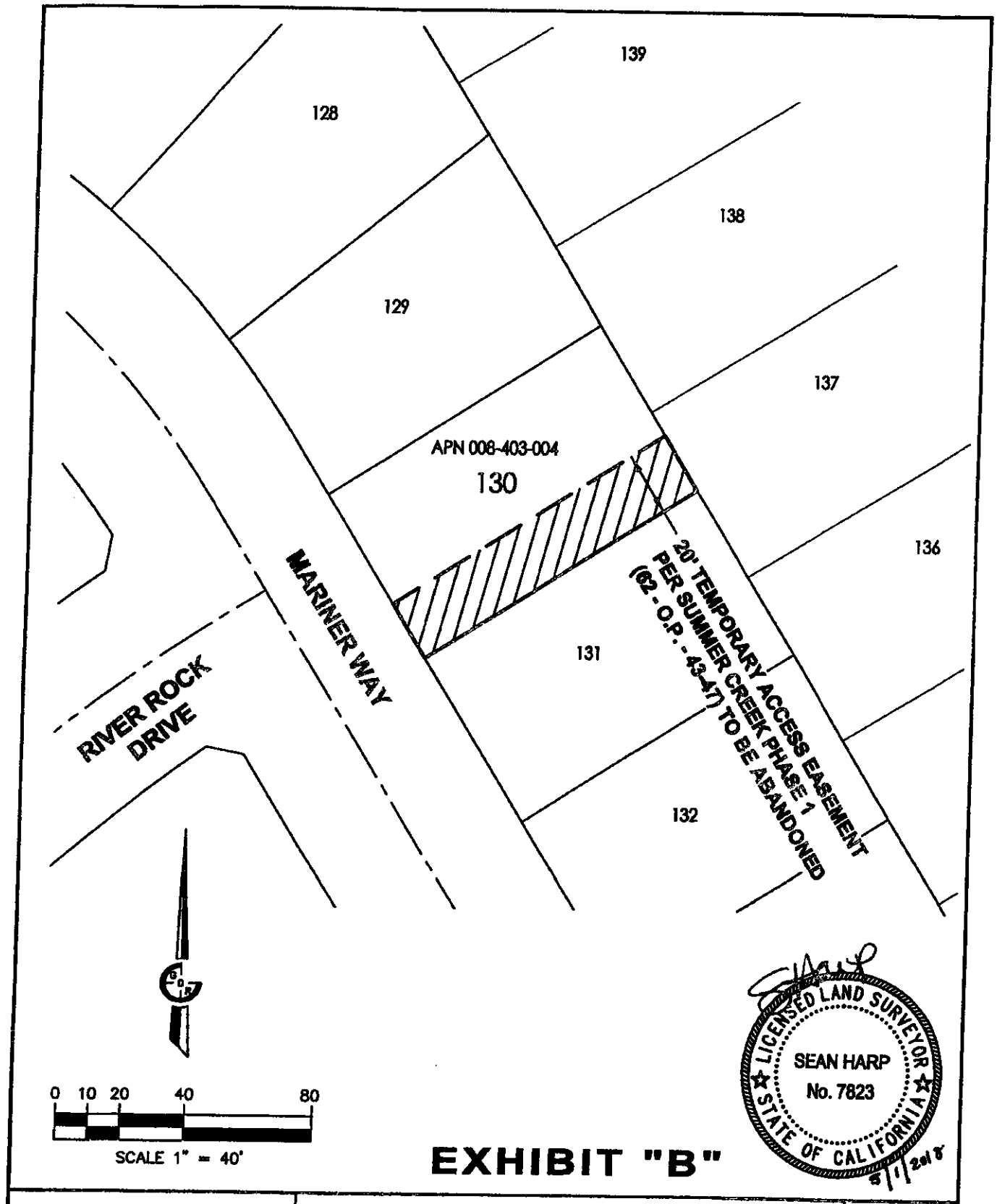


EXHIBIT "B"

GDR ENGINEERING, Inc. ENGINEERING/SURVEYING/PLANNING 3225 Mitchell Road, Ste. G, Ceres, CA 95307 PH: (209) 538-3360 www.gdrengineering.com	**ABANDONMENT OF TEMPORARY ACCESS EASEMENT FOR SUMMER CREEK PHASE 1** CITY OF MERCED, COUNTY OF MERCED, CALIFORNIA	JOB NO.: 18022 APRIL, 2018 SHEET 1 OF 1

RESOLUTION NO. 2019-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA ORDERING THE CONDITIONAL VACATION OF A 20-FOOT-WIDE TEMPORARY EMERGENCY ACCESS EASEMENT ON LOTS 5, 6, 7, 17, 18 AND 29 WITHIN SUMMER CREEK, PHASE ONE SUBDIVISION (VACATION #18-03) SUBJECT TO THE EASEMENT AREA ON LOTS 6, 7, 17, 18 AND 29 BEING DEEDED TO THE MERCED IRRIGATION DISTRICT (MID)

WHEREAS, Bright Development, Inc.is the owner of lots 6, 7, 17, 18, and 29 of the Summer Creek Phase 1 Subdivision, and Lot 5 of the Summer Creek Phase 1 Subdivision is privately owned by Chris and Hassan Curtis (collectively "Owners"); and

WHEREAS, the Owners have applied for the vacation of the 20-foot-wide Temporary Emergency Vehicle Access (EVA) Easement on Lots 5, 6, 7, 17, 18, and 29 as described in Exhibit "A" attached hereto and incorporated herein and shown on the map shown in Exhibit "B," attached hereto and incorporated herein; and

WHEREAS, the Merced Irrigation District (MID) has an easement over the location of the City's 20-foot-wide Temporary EVA and it does not intend to vacate this easement as it remains necessary for their operations; and

WHEREAS, by adoption of Resolution No. 2018-75 on November 19, 2018, the City Council declared its intention to consider the vacation of a 20-foot-wide temporary emergency access easement on 7 lots, including Lots 5, 6, 7, 17, 18 and 29 within Summer Creek, Phase One Subdivision, as described in Exhibit "A" and shown on the map at Exhibit "B," attached hereto; and

WHEREAS, Resolution No. 2018-75 fixed a time and place for hearing all persons interested in or objecting to the proposed vacation to wit: On Monday, December 17, 2018, at the hour of 6:00 p.m. of said day, in the

Council Chambers of the City Council, 678 West 18th Street, Merced, California, which said time was not less than fifteen (15) days from the above-mentioned date and passage of Resolution No. 2018-75; and

WHEREAS, Resolution No. 2018-75 was published in the manner prescribed by Section 8320 of the Streets and Highways Code of the State of California; and

WHEREAS, the public hearing was held on December 17, 2019, and was continued to January 7, 2019, at which time the public hearing was held and continued to February 19, 2019; and

WHEREAS, on November 21, 2018, notices were conspicuously posted along the lines of the property proposed to be vacated, not more than three hundred (300) feet apart, which notices consisted of copies of Resolution No. 2018-75 and,

WHEREAS, the vacation of the public right-of-way as proposed by Resolution No. 2018-75 was submitted to the Planning Commission on October 3, 2018, which found the proposed vacation to be in conformity with the general plan.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council finds from all of the evidence submitted that the temporary emergency access easement for Lots 5, 6, 7, 17, 18 and 29 of the Summer Creek, Phase One Subdivision, as described in Exhibit "A" and shown on the map at Exhibit "B," is unnecessary for emergency vehicle access.

SECTION 2. The City Council finds that it is in the best interest of the City for the easement areas on Lots 6, 7, 17, 18 and 29 to be deeded by Bright Development, Inc. to the Merced Irrigation District (MID) as a condition of this vacation.

SECTION 3. It is hereby ordered that the temporary emergency access easement for Lots 5, 6, 7, 17, 18 and 29 within Summer Creek, Phase One Subdivision lying within the above described territory be and the same is hereby abandoned and vacated, pursuant to the provisions of Part 3, Division 9, of the Streets and Highways Code of the State of California,

being the Public Streets, Highways, and Services Easements Vacation Law, subject to the Condition listed in Exhibit "C," attached hereto and incorporated herein. This Resolution shall only become effective and recorded when the condition set forth in Exhibit "C" has been satisfactorily completed.

SECTION 4. The City Clerk is directed to cause a certified copy of this resolution, attested under seal of the City of Merced, to be recorded in the Office of the County Recorder of Merced County, once the condition set forth in Exhibit "C" has been satisfactorily completed and the Director of Development Services, or designee has sent a memorandum to the City Clerk stating that the condition has been satisfactorily completed.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ of _____, 2019, 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:

BY: Kelly Timmer 2-12-19
City Attorney Date

EXHIBIT 'A'

Legal Description for

Abandonment of 20' Wide Temporary Emergency Access Easement

Summer Creek Phase 1 (A.P.N. 008-391-005, 006, 007, 017, 018 and 029)

The north 20.00 feet of Lots 5, 6, 7, 17, 18 and 29 as shown on the map of Summer Creek Phase 1 filed in Book 62 of Official Plats, at Pages 43 through 47, inclusive, Merced County Records, lying in Section 16, Township 7 South, Range 14 East, Mount Diablo Base and Meridian, in the City of Merced, County of Merced, State of California.

This real property description was prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

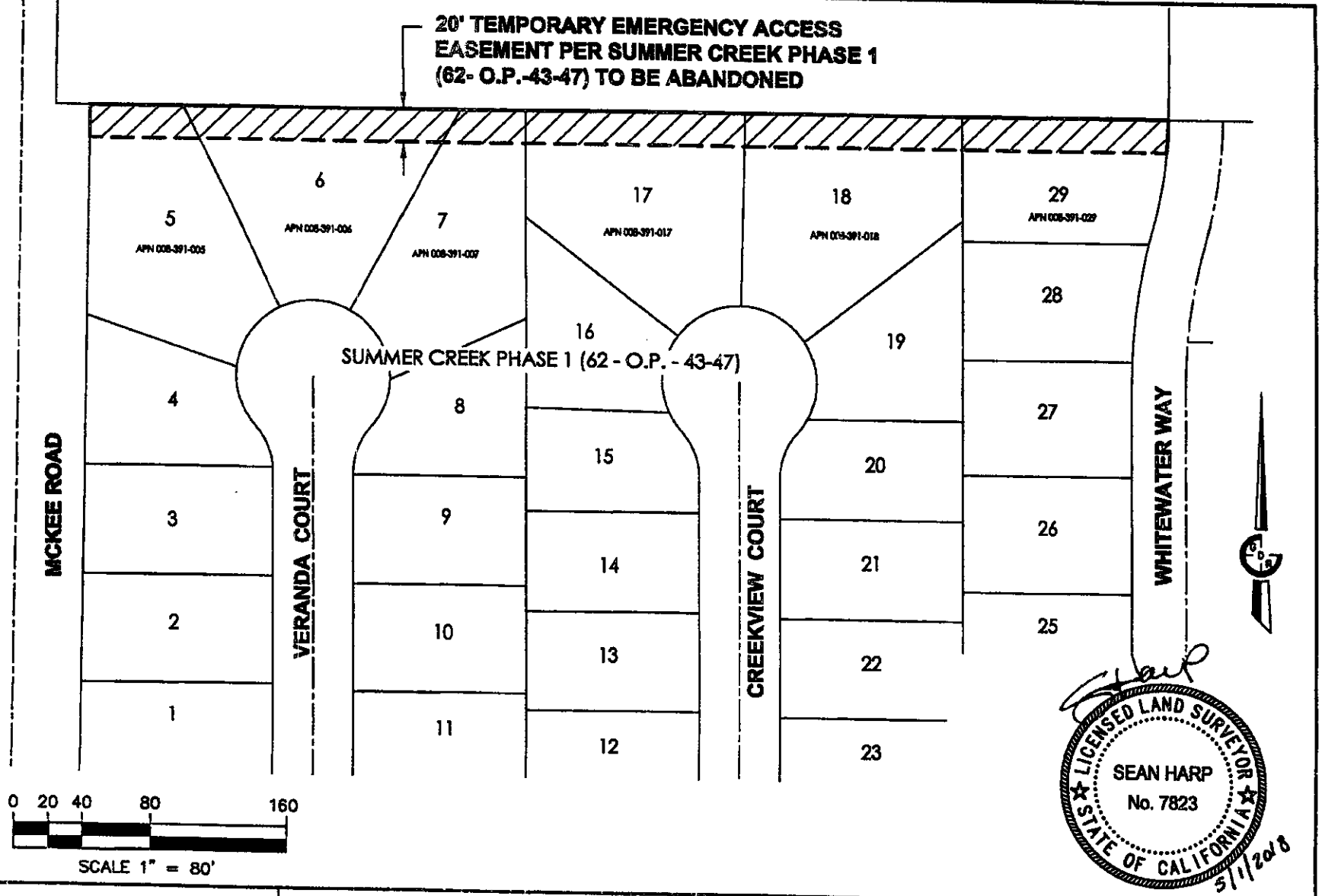


S Harp 5/1/2018

Sean Harp, P.L.S. 7823 Date

EXHIBIT A

EXHIBIT B



GDR ENGINEERING, Inc.
ENGINEERING/SURVEYING/PLANNING
3525 Mitchell Road, Ste. G, Ceres, CA 95307
PH: (209) 538-3360
www.gdrengineering.com

ABANDONMENT OF TEMPORARY EMERGENCY ACCESS EASEMENT FOR SUMMER CREEK PHASE 1

CITY OF MERCED, COUNTY OF MERCED, CALIFORNIA

JOB NO.:18022
APRIL, 2018
SHEET 1 OF 1

EXHIBIT C
CONDITIONS FOR VACATION #18-03

The 20-foot-wide temporary emergency vehicle access easement shown on Lots 6, 7, 17, 18, and 29 of the Summer Creek Phase One Subdivision shall be deeded to the Merced Irrigation District (MID). The vacation of the easement shall not be effective until the property has been transferred from Bright Development, Inc. to MID.

Vacation #18-03

Vacation of Emergency Vehicle Access in Summer Creek Subdivision

City Council
2/19/2019


20-Foot-Wide
Temporary Access
Easement
5
6
7
17
18
29
130
20-Foot-Wide
Temporary Access
Easement
N

Vacation Area – Closer Look



- Lot 5 is occupied and privately owned.
- Lots 6, 7, 17, 18, and 29 vacant and owned by Bright Development.

Status of Vacation Request

(EVA – Emergency Vehicle Access)

- MID has agreed to accept the easement area between McKee Rd. and Whitewater Way (except the area for Lot 5).
- MID agreed to allow the City to maintain the access easement, but would need a maintenance agreement if the City expects the property to be maintained for vehicular access.
- The City would be responsible for maintenance of the EVA.

New Issues

- Staff discovered the MID Distribution Box at the northeast corner of the easement area would block access to Whitewater Way if Lot 29 is developed.
- The owner of Lot 5 does not want to deed their property to MID.
- An additional maintenance agreement would be needed with the owner of Lot 5 if easement is maintained.


Lot 29
MID Distribution Box


This Area Not Dedicated to MID
5
6
7
17
18
29

Maintenance Issues

(EVA – Emergency Vehicle Access)

- If the easement is not vacated, maintenance could be an issue.
- If easement is deeded to MID, they would require the City to maintain the easement for vehicular purposes.
- An additional agreement would be needed with owner of Lot 5.
- If vacation not granted and property isn't deeded to MID, the owner of each lot would be required to maintain the area, which could be problematic for maintaining the area for vehicular traffic and keeping clean.

Options for Lots 5, 6, 7, 17, 18, and 29

(EVA – Emergency Vehicle Access)

OPTIONS THAT WOULD NOT MAINTAIN EVA

- Grant the vacation for Lots 5, 6, 7, 17, 18, and 29, subject to the easement area on Lots 6, 7, 17, 18, and 29 being deeded to MID (staff recommendation).
- Grant the vacation for Lots 5, 6, 7, 17, 18, and 29 with the property reverting back to the individual lots/owners.
- Grant the vacation and reconsider the access from Whitewater Way to Yosemite Avenue.
- Grant the vacation and work to obtain access to Whitewater Way with an east/west road that would align with Silverado Avenue to the west of McKee Road.

Options for Lots 5, 6, 7, 17, 18, and 29

OPTIONS TO MAINTAIN THE EVA

- Deny the vacation, work with Bright Development to ensure property is deeded to MID, then work with MID and the owner of Lot 5 on a maintenance agreement as well as purchase of Lot 29 to allow sufficient access to Whitewater Way.
- Deny the vacation which would allow the property to revert to each individual lot.

Lot 130

- This easement is not affected by the MID easement or access to the subdivision.
- Staff recommends approving the Vacation for the easement adjacent to Lot 130 separately from the other vacation.



Recommendation

- Approve Vacation for Lot 130;
- Approve Vacation for Lots 5, 6, 7, 17, 18, and 29, subject to easement area on Lots 6, 7, 17, 18, and 29 being deeded to MID; OR,
- Provide direction according to Options in Admin Report; OR,
- Provide other direction to staff.

City Council Action

- Open Public Hearing;
- Take action on Lot 130;
- Take action on Lots 5, 6, 7, 17, 18, and 29.



Questions...

ADMINISTRATIVE REPORT

Agenda Item I.2. Meeting Date: 2/19/2019

Report Prepared by: Michael Hren, Principal Planner, Development Services Department

SUBJECT: Public Hearing - Adoption of a Categorical Exemption (Environmental Review #19-01) and Introducing an Ordinance Amending Section 20.44.170 "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required" of the Merced Municipal Code

REPORT IN BRIEF

Considers the review of proposed updates to Section 20.44.170 of the Zoning Ordinance, pertaining to modifications and clarifications of the regulations on commercial cannabis business permits, including the addition of a new license for a retail sales dispensary.

RECOMMENDATION

City Council - Adopt a motion approving a Categorical Exemption (Environmental Review #19-01) and introducing **Ordinance 2498**, an Ordinance of the City Council of the City of Merced, California, Amending Section 20.44.170, "Regulation of Commercial Cannabis Activities - Commercial Cannabis Business Permit Required," of the Merced Municipal Code.

ALTERNATIVES

1. Approve the Ordinance, as recommended by Planning Commission and staff; or,
2. Approve the Ordinance, subject to modification by City Council (identify specific items to be amended in the motion); or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items (to be addressed in the motion); or,
5. Continue to a future City Council meeting (date and time to be specified in the motion).

AUTHORITY

Merced Municipal Code Section 20.80, "Zoning Ordinance Amendments" spell out procedures for amending the Zoning Ordinance.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

The City of Merced's regulations regarding commercial cannabis businesses have been in effect since January 3, 2018. In order to ensure that the City's process continues to function in an effective and timely fashion, amendments to the language are proposed. These amendments are based on a number of factors, including observation of the process since the initial implementation of the City of

Merced's cannabis business application process and best practices learned from contact with other communities and professionals in the cannabis industry.

Summary

The City is proposing various changes to what was adopted under Cannabis Ordinance #2480 in 2017. Changes include an addition of a fifth permit for a cannabis dispensary for retail sales, clarification of key definitions, modifications to the list of disqualifying factors for an application that can be discovered during a background check, clarifications and updates to the procedures undertaken in order to select applications to be recommended to the Planning Commission, updates to the method by which modifications to applications or permitted businesses can be undertaken, and other clarifications to bring the ordinance and the City's implementation of it in line with best practices, along with minor corrections for spelling, grammar, and formatting throughout Section 20.44.170.

Proposed Changes to the Zoning Ordinance

The proposed zoning ordinance amendment (redline changes to the Ordinance are presented at Attachment 3) would do the following:

1) Increase the number of allowable commercial dispensaries for retail sale of cannabis from four (4) to five (5).

2) Change the point at which the City reviews sensitive uses for each application to the time at which an application is received. Previously, this point was the time at which a permit was issued.

3) Add a definition of "Greenhouse" that is inclusive of facilities using solely artificial light and facilities using mixed-light.

4) Update the definition of "Owner" and "Ownership interest" to include "entities" and note that persons holding 5% or greater financial interest in an entity that is an owner makes those persons owners of a cannabis business.

5) Add a definition of "Selection Panel."

6) Update the definition of "School" to eliminate a circular definition and prevent edge cases.

7) Update the validity of a Commercial Cannabis Business Permit issued on or after October 1 to be valid until December 31 of the following calendar year. Previously, such permits would expire on December 31 of the same calendar year.

8) Modify permittee requirements to inform the City in writing within ten (10) days of receipt of a State license. Previously, the requirement was to inform the City within ten (10) days of applying for a State license.

9) Give the Director of Development Services the discretion to grant an exception to fencing

requirements in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10) Update the number of days the Director of Development Services has to notify applicants of deficiencies in applications to thirty (30) days, consistent with other City policies. Previously, the Director of Development Services had twenty-one (21) days to do so.

11) Give the Chief of Police discretion to disqualify an applicant if any of the following are discovered upon completion of the comprehensive background check: any civil judgment(s) against any owner for torts involving dishonesty including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties; any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

12) Update the Zoning Clearance provided by the Zoning Administrator during the Phase I process to be a Provisional Zoning Clearance, and add that it shall be subject to final approval by the Planning Commission. The Zoning Clearance confirms that the application is outside of the buffer zones from sensitive uses, such as schools, and adheres to all other zoning requirements.

13) Update the scoring process for ranking of applicants consistent with established practice from previously approved permits, as well as noting that the existing ranking list expires on September 20, 2019, and that future ranking lists created after that date shall expire 180 days after the issuance of the last available Commercial Cannabis Business Permit.

14) Require the Planning Commission to review only the Commercial Cannabis Business Permit application(s) for Dispensaries/Retail Sales recommended by the Selection Panel. Previously, the requirement was for “all” such applications to be reviewed.

15) Add language to sections discussing disqualification of applicants requiring notice to be provided to the applicant within ten (10) days, and noting that there shall be no further right to appeal the disqualification.

16) Add a section relating to modifications of pending applications, allowing minor modifications to such things as name or structure of business, change in ownership, floor/site/elevation plans, operation/security procedures, and modifications to the parcel on which the proposed business is located.

17) Add a section relating to modifications of approved permits consistent with #16 above, with the addition of location changes, with the approval of the Planning Commission at a public hearing.

18) Update numbering, references, spelling, grammar, and formatting throughout Section 20.44.170.

Planning Commission Recommendation

At the January 23, 2019, public hearing of the Planning Commission, the Commission voted 5-2 (5 ayes, 2 noes) to recommend approval of the Zoning Ordinance Amendment as proposed. See

Attachments 1 and 2 for the Planning Commission Staff Report and Resolution.

After the Planning Commission's review and recommendation, staff noted that a number of passages of the proposed Ordinance followed the format, "[Position Title] or his designee." Staff has updated the proposed Ordinance to follow the format, "[Position Title] or designee," instead.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

1. Planning Commission Staff Report
2. Planning Commission Resolution
3. Redline version of Ordinance
4. Draft Ordinance
5. Staff Presentation

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT:	**#19-02**	**AGENDA ITEM:**	**4.3**
FROM:	Kim Espinosa, Planning Manager	**PLANNING COMMISSION** **MEETING DATE:**	**Jan. 23, 2019**
PREPARED BY:	Michael Hren, Principal Planner	**CITY COUNCIL** **MEETING DATE:**	**Feb. 19, 2019** (Tentative)

SUBJECT: **Zoning Ordinance Amendment #19-01**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.44.170 ("Commercial Cannabis Businesses"). This amendment would add a fifth permit for retail cannabis dispensaries to the allowable number within the City of Merced; the amendment also clarifies and modifies various parts of the permitting process for cannabis businesses. *PUBLIC HEARING*.

ACTION: PLANNING COMMISSION:

Recommendation to City Council

1) Environmental Review #19-01 (Categorical Exemption)
2) Zoning Ordinance Amendment (ZOA) #19-01

CITY COUNCIL:

Approve/Disapprove/Modify

1) Environmental Review #19-01 (Categorical Exemption)
2) Zoning Ordinance Amendment (ZOA) #19-01

SUMMARY

The City is proposing various changes to Cannabis Ordinance #2480 adopted in 2017. Changes include an addition of a fifth permit for a cannabis dispensary for retail sales, clarification of key definitions, modifications to the list of disqualifying factors for an application that can be discovered during a background check, clarifications and updates to the procedures undertaken in order to select applications to be recommended to the Planning Commission, updates to the method by which modifications to applications or permitted businesses can be undertaken, and other clarifications to bring the ordinance and the City's implementation of it in line with best practices, along with minor corrections for spelling, grammar, and formatting throughout Section 20.44.170.

ATTACHMENT 1

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend approval of Environmental Review #19-01 (Categorical Exemption) and Zoning Ordinance Amendment #19-01 (including the adoption of the Resolution at Attachment C) as proposed in Findings A through D below and described in Attachment A.

BACKGROUND AND DISCUSSION

The City of Merced's regulations regarding commercial cannabis businesses have been in effect since January 3, 2018. In order to ensure that the City's process continues to function in an effective and timely fashion, amendments to the language are proposed. These amendments are based on a number of factors, including observation of the process since the initial implementation of the City of Merced's cannabis business application process and best practices learned from contact with other communities and professionals in the cannabis industry.

General Plan Policies Related to This Application

A) The proposed zoning ordinance amendments would make changes described in the "Background" section above. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance in order to streamline and make the development process more business-friendly and understandable.

Proposed Changes to the Zoning Ordinance

B) Amendments are proposed to Table 20.44-1 ("Commercial Cannabis Businesses"), and Sections 20.44.170(C) ("Definitions"), 20.44.170(E) ("General Provisions for Commercial Cannabis Activities in the City of Merced"), 20.44.170(F) ("Additional Regulations for Dispensary and Retail Sales of Cannabis"), 20.44.170(H) ("Additional Requirements for Manufactured Cannabis Businesses"), 20.40.170(I) ("Additional Requirements for Cannabis Cultivation Businesses"), 20.40.170(J) ("Additional Requirements for Cannabis Testing Laboratory Businesses"), 20.40.170(K) ("Additional Requirements for Cannabis Distribution Businesses"), 20.40.170(L) ("Commercial Cannabis Business Permit Selection Process"), and 20.40.170(N) ("Enforcement"), in addition to minor corrections for spelling, grammar and formatting throughout Section 20.44.170.

The proposed zoning ordinance amendment (Attachment A) would do the following:

1) Increase the number of allowable commercial dispensaries for retail sale of cannabis from four (4) to five (5).

2) Change the point at which the City reviews sensitive uses for each application to the time at which an application is received. Previously, this point was the time at which a permit was issued.

3) Add a definition of "Greenhouse": " 'Greenhouse' means a facility in which plants are grown and is inclusive of facilities using solely artificial light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a 'Fully Enclosed and Secure Structure' as defined above in 20.44.170(C), Subsection 20."

4) Update the definition of "Owner" and "Ownership interest" to include "entities" and the following sentence: "In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an 'owner' of the commercial cannabis business."

5) Update the definition of "School" to the following: " 'School' means any site upon which full-time instruction in any of grades K through 12 is provided. 'School' does not include any private site in which education is primarily conducted in private homes."

6) Add a definition of "Selection Panel": " 'Selection Panel' means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits."

7) Update the validity of a Commercial Cannabis Business Permit issued on or after October 1 to be valid until December 31 of the following calendar year. Previously, such permits would expire on December 31 of the same calendar year.

8) Modify permittee requirements to inform the City in writing within ten (10) days of receipt of a State license. Previously, the requirement was to inform the City within ten (10) days of applying for a State license.

9) Give the Director of Development Services the discretion to grant an exception to fencing requirements in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10) Update the number of days the Director of Development services has to notify applicants of deficiencies in applications to thirty (30) days, consistent with other City policies. Previously, the Director of Development services had twenty-one (21) days to do so.

11) Give the Chief of Police discretion to disqualify an applicant if any of the following are discovered upon completion of the comprehensive background check: a. Any civil judgment(s) against any owner for torts involving dishonesty including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties; b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or, c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

12) Update the Zoning Clearance provided by the Zoning Administrator during the Phase I process to be a Provisional Zoning Clearance, and add that it shall be subject to final approval by the Planning Commission. The Zoning Clearance confirms that the application is outside of the buffer zones from sensitive uses, such as schools, and adheres to all other zoning requirements.

13) Update the scoring process for ranking of applicants as follows: "The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees. The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit based system and all merit based considerations shall be included with the application forms. An average score for each applicant based upon the merit based scoring of the Selection Panel shall be calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit – Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits – Dispensaries/Retail Sales then available.

a. The Qualified Commercial Cannabis Business Application List – Dispensaries/Retail that was established on September 20, 2018, shall be valid until September 20, 2019. Should a new Commercial Cannabis Business Permit-Dispensaries/Retail become available, whether by creation of a new permit or by vacancy of an existing permit, before September 20, 2019, the highest ranking applicant on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be recommended to the Planning Commission for issuance of a Commercial Cannabis Business Permit-Dispensaries/Retail. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019, and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20 of 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. Except as provided in subsection 20.44.170(L)(1)(g)(iv)(a) above, the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed 180 days from the date the last available Commercial Cannabis

Business Permit-Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after 180 days have elapsed since the last available Commercial Cannabis Business Permit was issued."

Previously a number of these provisions were not explicit; additionally a number of references to a waiting list have been removed in favor of the language above.

14) Require the Planning Commission to review the Commercial Cannabis Business Permit application(s) for Dispensaries/Retail Sales recommended by the Selection Panel. Previously, the requirement was for "all" such applications to be reviewed.

15) Add the following language to sections discussing disqualification of applicants: "In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision."

16) Add a section relating to modifications of pending applications as follows:

"a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;
ii. A change in the organizational structure of a proposed business;
iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);
iv. A change in building elevations, floor plans, or site plans;
v. A change in operational procedures or security plans or procedures; and
vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal."

17) Add a section relating to modifications of approved permits consistent with #16 above, with the addition of the following: "Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040."

18) Update numbering, references, spelling, grammar, and formatting throughout Section 20.44.170.

Neighborhood Impact/Interface

C) This request involves a change to the City's zoning regulations. Such regulations by themselves do not have a direct impact on the environment as there is no physical change to the environment proposed at this time.

Environmental Clearance

D) Planning staff conducted an environmental review (#19-01) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment B).

Attachments:

A) Proposed Zoning Ordinance Amendment
B) Categorical Exemption
C) Draft Planning Commission Resolution

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTION 20.44.170, "REGULATION OF COMMERCIAL CANNABIS ACTIVITIES – COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED," OF THE MERCED MUNICIPAL CODE

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

SECTION 1. AMENDMENT TO CODE. Section 20.44.170, "Regulation of Commercial Cannabis Activities – Commercial Cannabis Permit Required," of the Merced Municipal Code is hereby amended to read as follows:

"**20.44.170 - REGULATION OF COMMERCIAL CANNABIS ACTIVITIES - COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED**

A. Zoning Compliance and Commercial Cannabis Business Permit Requirements

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, 1-L and 1-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

ATTACHMENT A

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted – 'X', or permitted – 'P'. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1							Additional Specific Use Standards
	Land Use Classification [4][5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	P	P	Sec. 20.44.170(k)

Footnotes

1. Only five (5) ~~four (4)~~ dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) ~~four (4)~~ dispensaries of any kind be allowed within the City of Merced at any one time.

2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.

3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).

4. If listed as 'Permitted' in a specific zone above, then that use is also 'Permitted' in Planned Development (P-0) zones that have the equivalent General Plan land use designation as that zone.

5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, ~~at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code and~~ as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to

the City, ~~at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code and~~ as required in Merced Municipal Code Section 20.44.170(E)(3)(f). ~~No Commercial Cannabis Business may be located within a 600-foot radius from a school, day care center, youth center, library or public park as required in Merced Municipal Code Section 20.44.170(E)(3)(f).~~

Land Use Classifications:

Greenhouse, Commercial A - Permitted cultivation area: 0 to 5,000 square feet
Greenhouse, Commercial B - Permitted cultivation area: 5,001 to 10,000 square feet
Greenhouse, Commercial C - Permitted cultivation area: 10,000 to 22,000 square feet
Greenhouse, Commercial D - Permitted cultivation area: 22,000 square feet

B. Cultivation of Cannabis for Personal Use in Residential Zones

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(B)(1)(j) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height

limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owner's right to deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO2, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or§ 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code

and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.

ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

C. Definitions

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **‘Applicant’** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **‘Cannabis’** means all parts of the Cannabis sativa Linnaeus, Cannabis lndica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from marijuana. ‘Cannabis’ also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, ‘cannabis’ does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **‘Cannabis waste’** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **‘Canopy’** means all of the following:

a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **'City'** means the City of Merced.

6. **'Commercial cannabis business permit (CCBP)'** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **'Commercial cannabis activity'** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **'Commercial vehicle'** means a vehicle as defined in Vehicle Code section 260.

9. **'Concentrated cannabis product'** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **'Cultivation'** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **‘Customer’** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **‘Day Care Center’** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **‘Delivery’** means the commercial transfer of marijuana or marijuana products to a customer. ‘Delivery’ also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

14. **‘Delivery employee’** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **‘Dispensary’** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

16. **‘Display’** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

17. **‘Display case’** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.

18. **‘Distribution’** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

19. **‘Edible cannabis product’** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

20. **‘Fully Enclosed and Secure Structure’** means a fully-enclosed space within a building that complies with the California Building Code (‘CBSC’), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **‘Free sample’** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **‘Greenhouse’** means a facility in which plants are grown and is inclusive of facilities using solely artificial

light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a 'Fully Enclosed and Secure Structure' as defined above in 20.44.170(C), Subsection 20.

23. **'Indoors'** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 2019.

24. **'License'** means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.

25. **'Limited-access area'** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.

26. **'Medical'** or **'Medicinal'** have the same meaning under the terms of this ordinance.

27. **'Medical cannabis goods'** means cannabis, including dried flower, and manufactured cannabis products.

28. **'Medical cannabis patient'** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.

29. **'Manufacturer'** means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

30. **‘Manufacturing’** or **‘manufacturing operation’** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.

31. **‘Nonvolatile solvent’** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.

32. **‘Operating hours’** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.

33. **‘Owner’** or **‘Ownership interest’** means an interest held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an ‘owner’ of the commercial cannabis business.

34. **‘Package’** and **‘Packaging’** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. ‘Package’ and ‘packaging’ does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

35. **‘Patient or qualified patient’** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

36. **‘Person’** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

37. **‘Pest’** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

38. **‘Physician's recommendation’** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

39. **‘Premises’** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

40. **‘Pre-roll’** means dried cannabis flower rolled in paper prior to retail sale.

41. **‘Primary Caregiver’** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

42. **‘Private security officer’** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.

43. **‘Publicly owned land’** means any building or real property that is owned by a city, county, state, federal, or other government entity.

44. **‘Purchase’** means obtaining cannabis goods in exchange for consideration.

45. **‘Purchaser’** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

46. **‘Quarantine’** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.

47. **‘Retail area’** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.

48. ~~**‘School’** means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes or as otherwise provided in Health and Safety Code Section 11362.768(h).~~

‘School’ means any site upon which full-time instruction in any of grades K through 12 is provided. ‘School’ does not include any private site in which education is primarily conducted in private homes.

49. **‘Security monitoring’** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

50. **‘Selection Panel’** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.

51. **‘Sell,’ ‘sale,’** and ‘**to sell’** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.

52. **‘Sublet’** means to lease or rent all or part of a leased or rented property.

53. **‘State’** means the State of California.

54. **‘Testing Laboratory’** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

55. **‘Vehicle alarm system’** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

56. **‘Volatile solvent’** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

57. **‘Wholesale’** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

58. **‘Youth Center’** means any public or private facility that is primarily used to host recreational or social

activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

D. Compliance with State and Local Licensing Requirements

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

E. General Provisions for Commercial Cannabis Activities in the City of Merced

1. Commercial Cannabis Business Permit Required

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:

i. Cultivation

ii. Distribution

iii. Manufacturing

iv. Retail sales (Dispensary)

v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted

herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

i. A felony offense listed in California Health and Safety Code Section 11590.

ii. A felony offense listed in California Penal Code Section 667.S(c).

iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.

iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.

v. A felony conviction involving fraud, deceit, or embezzlement.

vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(7)~~(4)(c)~~, and does not run with the land or with the business. ~~Any change to the business location, organizational structure, or ownership may require a new application with associated fees at the discretion of the Director of Development Services or designee~~.

2. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

j. Proof of insurance.

3. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, ~~that is in existence at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code~~. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted

to the City, ~~that is in existence at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code~~. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter 20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed "abandoned" and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an "A" rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's "doing business as" name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the

alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. ~~applies for that initial permit or if the permittee applies for any additional State licenses~~. Said notification shall be addressed to the Director of Development Services or his designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

i. Emergency action response planning as necessary

ii. Employee accident reporting and investigation policies

iii. Fire prevention

iv. Hazard communication policies, including maintenance of material safety data sheets

v. Materials storage and handling policies

vi. Personal protective equipment policies

vii. Operation manager contacts

viii. Emergency responder contacts

ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

]

F. Additional Regulations for Dispensary and Retail Sales of Cannabis

1. Only five (5) ~~four (4)~~ dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) ~~four (4)~~ dispensaries of any kind be allowed within the City of Merced.

2. No retail cannabis facility may engage in check cashing activities at any time.

3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.

4. Restrooms shall remain locked during business hours and not open to the public.

5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.

6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.

7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.

8. Security guards are permitted, but not mandated, to carry firearms.

9. All cannabis products available for sale shall be securely locked and stored

10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.

11. Medical Cannabis Dispensaries shall maintain the full name, address and telephone number(s) of all patient members to whom the business provides medical cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.

12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.

14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier

than 8 a.m. Pacific Time and no later than 9 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.

15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.

16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis dispensary: "Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited."

17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis. A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the "Prohibited Conduct Involving Marijuana and Marijuana Products" contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive- through facility.

G. Additional Regulations for Commercial Cannabis Delivery Services

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.

2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.

3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of $1,000,000 for any and all vehicles being used to transport cannabis goods.

4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.

5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.

6. The following applies to all deliveries of cannabis products:

a. May only be made to a physical address in California; and

b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.

7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.

9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.

10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed $3,000 at any time.

12. Each delivery request shall have a receipt prepared by the dispensary with the following information:

a. Name and address of the licensed dispensary;

b. The name of the employee who delivered the order;

c. The date and time the delivery request was made;

d. The complete delivery address;

e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;

f. The total amount paid for the delivery including any fees or taxes; and

g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

13. The delivery business shall provide a flyer that spells out the "Prohibited Conduct Involving Marijuana and Marijuana Products" contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

H. Additional Requirements for Manufactured Cannabis Businesses

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.

2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.

3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis manufacturing including Health and Safety Code 11362.775 and as it may be amended.

4. Inspections by the City Fire Chief or his designee may be conducting anytime during the business's regular business hours.

5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.

6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not

violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor manufacturing of cannabis is expressly prohibited.

I. Additional Requirements for Cannabis Cultivation Businesses

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.

2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.

3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.

5. All outdoor lighting used for security purposes shall be shielded and downward facing.

6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.

7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation

activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

J. Additional Requirements for Cannabis Testing Laboratory Businesses

1. A licensed cannabis testing facility shall comply with all State regulations.

2. Any cannabis testing facility shall maintain all certifications required by the State.

3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.

4. Inspections by the City Fire Chief or his designee may be conducted anytime during the business's regular business hours.

K. Additional Requirements for Cannabis Distribution Businesses

1. A licensed cannabis distribution facility shall comply with all State regulations.

2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.

3. Inspections by the City Police Chief or his designee may be conducted anytime during the business's regular business hours.

4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.

5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:

a. The manufacturer or cultivator's name and license number;

b. The date of entry into the distributor's storage area;

c. The unique identifiers and batch number associated with the batch;

d. A description of the cannabis goods with enough detail to easily identify the batch; and

e. The weight of or quantity of units in the batch.

6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42

degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10. If located in a General Commercial (C-G) zone,

a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and

b. All loading and unloading activities shall take place within the secured fenced area required above.

L. Commercial Cannabis Business Permit Selection Process

1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)

a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The City of Merced has established a merit based scoring system to objectively award permits as described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.

d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will

evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the "Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales" and shall be notified in writing that they are a "Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales". The qualified applicants will be entered into the Phase 2 review process.

e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) ~~21~~ calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

~~f. All Cannabis applications received after the initial application period will be placed on the "Waitlist for Dispensaries/Retail Sales" in the order it is received. Applicants placed on the "Waitlist" shall be notified in writing of their "Waitlist" status.~~

~~g. Cannabis applications placed on the "Waitlist for Dispensaries/Retail Sales" will be moved to the "Qualified Applicant List for Dispensaries/Retail Sales" only if the application passes the Phase 1 review and when a Commercial Cannabis Business Permit for Dispensaries/Retail Sales becomes available, whether by creation of a new license, or the forfeiture of an existing one. Applicants moved to the "Qualified Applicant List for Dispensaries/Retail Sales" from the Waitlist will be~~

~~notified of the change in writing. If the Director of Development Services or designee determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.~~

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the "Qualified Applicant List for Dispensaries/Retail Sales" and entered into the Phase 2 review process. These requirements include but are not limited to:

i. All Application documents required in the City's Phase 1 application package;

ii. Application was submitted during the application period.

iii. Application forms are filled out completely;

iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that

was conducted within 14 days prior to submitting the application;

v. Phase 1 application fee is paid; and

vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 - Final Review and Scoring.

Phase 2 requirements include, but are not limited to:

i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:

a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;

b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or

c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:

a. The use is permitted in the Zoning District;

b. The location of the cannabis business meets the distance requirements from sensitive uses;

c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;

d. No zoning violations exist on the property;

e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and

f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees. ~~to make the final decision, based on the merit-based scoring system, of successful applicants to recommend to the Planning Commission for the Commercial Cannabis Business Permit-Dispensaries/Retail Sales.~~ The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit based system and all merit based considerations shall be included with the application forms. An average score for each applicant based upon the merit based scoring of the Selection Panel shall be

calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit – Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits – Dispensaries/Retail Sales then available.

a. The Qualified Commercial Cannabis Business Application List – Dispensaries/Retail that was established on September 20, 2018, shall be valid until September 20, 2019. Should a new Commercial Cannabis Business Permit-Dispensaries/Retail become available, whether by creation of a new permit or by vacancy of an existing permit, before September 20, 2019, the highest ranking applicant on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be recommended to the Planning Commission for issuance of a Commercial Cannabis Business Permit-Dispensaries/Retail. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019

and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. Except as provided in subsection 20.44.170(L)(1)(g)(iv)(a) above, the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed 180 days from the date the last available Commercial Cannabis Business Permit-Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after 180 days have elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 – Planning Commission

The Planning Commission will review the ~~all~~ Commercial Cannabis Business Permit-Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit-Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section

20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit- Dispensaries/Retails Sales shall be issued otherwise.

2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)

a. The Commercial Cannabis Business Permit-All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the "Qualified Commercial Cannabis Business Application List-All Other Cannabis Businesses" and shall be notified in writing that they are a "Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses". The

qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the "Qualified Application List for All Other Cannabis Businesses".

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) ~~21~~ calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

~~e. All Cannabis applications received after the initial application period will be placed on the "Waitlist for All Other Cannabis Businesses" in the order it is received. Applicants placed on the "Waitlist" shall be notified in writing of their "Waitlist" status.~~

~~f. Cannabis applications placed on the "Waitlist for All Other Cannabis Businesses" will be moved to the "Qualified Applicant List for All Other Cannabis Businesses" on a one for one basis only if the application passes the Phase 1 review and when the number of applicants on the "Qualified Applicant List" falls below five, and will be notified of the change in writing. At any time, the Director of Development Services may suspend the requirement for a "Waitlist for All Other Cannabis Businesses" if the number of applications does not merit the need for the "Waitlist." If the Director of Development Services or designee~~

~~determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.~~

e. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 1 - Initial Review

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the "Qualified Applicant List for All Other Cannabis Businesses" and entered into the Phase 2 review process. These requirements include, but are not limited to:

i. All Application documents required in the City's Phase 1 application package;

ii. Application was submitted during the application period;

iii. Application forms are filled out completely;

iv. Business Owner(s) I Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application;

v. Phase 1 application fee is paid; and

vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

f. Commercial Cannabis Business Permit- All Other Cannabis Businesses Selection - Phase 2 - Final Review

Phase 2 requirements include, but are not limited to:

i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:

a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;

b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or

c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the

applicant shall be given written notice of the disqualification within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:

a. The use is permitted in the Zoning District;

b. The use meets the distance requirements from sensitive uses;

c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;

d. No zoning violations exist on the property;

e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced

Planning Department for the property location the commercial cannabis business will occupy; and

f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and reviewing the foregoing information will make a recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 – Planning Commission

The Planning Commission will review the ~~all~~ Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

ii. A change in the organizational structure of a proposed business;

iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

iv. A change in building elevations, floor plans, or site plans;

v. A change in operational procedures or security plans or procedures;

vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the ~~all~~ Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted, as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.

~~c. A Commercial Cannabis Business Permit holder may file a request to transfer ownership of the business. The request shall be made to the Director of Development Services. The request must be in writing and must be at least 60 days prior to the transfer. The Director of Development Services shall review the request and may require additional background material on the proposed new owner. The Director of Development Services shall notify the permit holder in writing along with the reason for approval or denial of the transfer. The original term of the Commercial Cannabis Business Permit shall stay in effect including the renewal date.~~

c. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

i. Any act which would be considered a ground for denial of the permit in the first instance;

ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity;

iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee;

iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;

v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;

vi. Violates or fails to comply with the terms and conditions of the permit; or

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

b. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission within thirty (30) calendar days of receiving the appeal.

ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

iii. Any interested person may appear and be heard regarding the appeal.

iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.

v. A matter being heard on appeal may be continued for good cause.

vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de nova review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

7. Modifications to Commercial Cannabis Business Permit (All Types)

a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

ii. A change in the organizational structure of a proposed business;

iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

iv. A change in building elevations, floor plans, or site plans;

v. A change in operational procedures or security plans or procedures;

vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

i. Any act which would be considered a ground for denial of the permit in the first instance.

ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity.

iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.

iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.

v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or

obstruction of the operation of another business.

vi. Violates or fails to comply with the terms and conditions of the permit.

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

c. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission within (thirty) 30 days of receiving the appeal.

ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.

iii. Any interested person may appear and be heard regarding the appeal.

iv. The Planning Commission's review of the appeal shall be limited to review of the

Development Services Director decision and shall not be a de novo review.

v. A matter being heard on appeal may be continued for good cause.

vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be

the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

M. Limitations on the City's Liability

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;

2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;

3. Name the city as an additionally insured on all City required insurance policies;

4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and

5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City

may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

N. Enforcement

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.

2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:

a. A discrepancy of more than $1,000 in inventory over a period of 24 hours or $3,000 over period of 7 days.

b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.

c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of

abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

O. Fees and Taxes

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. Initial Application Fees. The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two

fees according to Initial Review (Phase 1) and Final Review (Phase 2).

2. Application Renewal Fees. The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.

3. Business License Fee. The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.

4. Commercial Cannabis Regulatory Fee. The Business Owner shall pay an annual regulatory fee ("Regulatory Fee") to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

5. All required taxes including sales and use taxes, business, payroll etc.

6. Additional cannabis-specific gross receipts, excise, cultivation or any other tax approved by the voters of the City of Merced."

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 _____, 2019, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2019, 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

NOTICE OF EXEMPTION

To: ____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

__X__ County Clerk
County of Merced
2222 M Street
Merced, CA 95340

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

Project Title: **Zoning Ordinance Amendment #19-01/Environmental Review #19-01**

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: This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.44.170 ("Regulation of Commercial Cannabis Business Activities – Commercial Cannabis Business Permit Required").

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: City of Merced

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: _____.
_X_ General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: The proposed amendment to the 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, and City staff has determined that the update of regulations for commercial cannabis businesses does not meet any of the thresholds contained in the Checklist that would trigger a significant environmental impact, and thus according to the "general rule exemption" (Section 15061(b)(3) of the CEQA Guidelines), projects which have no potential for causing a significant effect on the environment are not subject to CEQA, no further environmental analysis is required.

Lead Agency: City of Merced
Contact Person: Michael Hren **Area Code/Telephone:** (209) 385-6858

Signature: _____ **Date:** 1/18/19 **Title:** Principal Planner
17

_X_ Signed by Lead Agency Date Received for Filing at OPR:_____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

ATTACHMENT B

ATTACHMENT C of the Planning Commission Staff Report, the draft Resolution, has been removed in favor of the signed Resolution that follows.

CITY OF MERCED
Planning Commission

Resolution #4015

WHEREAS, the Merced City Planning Commission at its regular meeting of January 23, 2019, held a public hearing and considered **Zoning Ordinance Amendment #19-01,** initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.44.170 ("Commercial Cannabis Businesses"). This amendment would add a fifth permit for retail cannabis dispensaries to the allowable number within the City of Merced; the amendment also clarifies and modifies various parts of the permitting process for cannabis businesses; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through D of Staff Report #19-02; 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 recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #19-01, and approval of Zoning Ordinance Amendment #19-01, as 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 Harris, Martinez, Padilla, Rashe, and Chairperson Dylina
NOES: Commissioners Camper and Drexel
ABSENT: None
ABSTAIN: None

ATTACHMENT 2

Adopted this 23rd day of January 2019

Chairperson, Planning Commission of the City of Merced, California

ATTEST:

Secretary

Attachment:
Exhibit A – Draft Cannabis Ordinance with Proposed Changes

n:shared:planning:PC Resolutions:ZOA#19-01

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTION 20.44.170, "REGULATION OF COMMERCIAL CANNABIS ACTIVITIES – COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED," OF THE MERCED MUNICIPAL CODE

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

SECTION 1. AMENDMENT TO CODE. Section 20.44.170, "Regulation of Commercial Cannabis Activities – Commercial Cannabis Permit Required," of the Merced Municipal Code is hereby amended to read as follows:

"**20.44.170 - REGULATION OF COMMERCIAL CANNABIS ACTIVITIES - COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED**

A. Zoning Compliance and Commercial Cannabis Business Permit Requirements

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, 1-L and 1-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4015

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted – 'X', or permitted – 'P'. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1							Additional Specific Use Standards
	Land Use Classification [4][5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	P	P	Sec. 20.44.170(k)

Footnotes

1. Only five (5) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced at any one time.

2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.

3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).

4. If listed as 'Permitted' in a specific zone above, then that use is also 'Permitted' in Planned Development (P-0) zones that have the equivalent General Plan land use designation as that zone.

5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f).

Land Use Classifications:

Greenhouse, Commercial A - Permitted cultivation area: 0 to 5,000 square feet
Greenhouse, Commercial B - Permitted cultivation area: 5,001 to 10,000 square feet
Greenhouse, Commercial C - Permitted cultivation area: 10,000 to 22,000 square feet
Greenhouse, Commercial D - Permitted cultivation area: 22,000 square feet

B. Cultivation of Cannabis for Personal Use in Residential Zones

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(B)(1)(j) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owner's right to

deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO2, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or§ 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic,

vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.

ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

C. Definitions

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **'Applicant'** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **‘Cannabis’** means all parts of the Cannabis sativa Linnaeus, Cannabis lndica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from marijuana. ‘Cannabis’ also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, ‘cannabis’ does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **‘Cannabis waste’** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **‘Canopy’** means all of the following:

a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **'City'** means the City of Merced.

6. **'Commercial cannabis business permit (CCBP)'** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **'Commercial cannabis activity'** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **'Commercial vehicle'** means a vehicle as defined in Vehicle Code section 260.

9. **'Concentrated cannabis product'** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **'Cultivation'** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **'Customer'** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **'Day Care Center'** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities,

and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **‘Delivery’** means the commercial transfer of marijuana or marijuana products to a customer. ‘Delivery’ also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

14. **‘Delivery employee’** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **‘Dispensary’** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

16. **‘Display’** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

17. **‘Display case’** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.

18. **‘Distribution’** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

19. **‘Edible cannabis product’** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

20. **‘Fully Enclosed and Secure Structure’** means a fully-enclosed space within a building that complies with the California Building Code (‘CBSC’), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **‘Free sample’** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **‘Greenhouse’** means a facility in which plants are grown and is inclusive of facilities using solely artificial light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a ‘Fully Enclosed and Secure Structure’ as defined above in 20.44.170(C), Subsection 20.

23. **‘Indoors’** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 20.

24. **‘License’** means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.

25. **‘Limited-access area’** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.

26. **‘Medical’** or **‘Medicinal’** have the same meaning under the terms of this ordinance.

27. **‘Medical cannabis goods’** means cannabis, including dried flower, and manufactured cannabis products.

28. **‘Medical cannabis patient’** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.

29. **‘Manufacturer’** means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

30. **‘Manufacturing’** or **‘manufacturing operation’** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products.

Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.

31. **‘Nonvolatile solvent’** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.

32. **‘Operating hours’** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.

33. **‘Owner’** or **‘Ownership interest’** means an interest held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an ‘owner’ of the commercial cannabis business.

34. **‘Package’** and **‘Packaging’** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. ‘Package’ and ‘packaging’ does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

35. **‘Patient or qualified patient’** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

36. **‘Person’** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust,

receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

37. **‘Pest’** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

38. **‘Physician's recommendation’** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

39. **‘Premises’** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

40. **‘Pre-roll’** means dried cannabis flower rolled in paper prior to retail sale.

41. **‘Primary Caregiver’** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

42. **‘Private security officer’** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.

43. **‘Publicly owned land’** means any building or real property that is owned by a city, county, state, federal, or other government entity.

44. **‘Purchase’** means obtaining cannabis goods in exchange for consideration.

45. **‘Purchaser’** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

46. **‘Quarantine’** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.

47. **‘Retail area’** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.

48. **‘School’** means any site upon which full-time instruction in any of grades K through 12 is provided. ‘School’ does not include any private site in which education is primarily conducted in private homes.

49. **‘Security monitoring’** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

50. **‘Selection Panel’** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.

51. **‘Sell,’ ‘sale,’** and ‘**to sell’** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.

52. **‘Sublet’** means to lease or rent all or part of a leased or rented property.

53. **‘State’** means the State of California.

54. **'Testing Laboratory'** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

55. **'Vehicle alarm system'** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

56. **'Volatile solvent'** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

57. **'Wholesale'** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

58. **'Youth Center'** means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

D. Compliance with State and Local Licensing Requirements

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City

of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

E. General Provisions for Commercial Cannabis Activities in the City of Merced

1. Commercial Cannabis Business Permit Required

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:

i. Cultivation

ii. Distribution

iii. Manufacturing

iv. Retail sales (Dispensary)

v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

i. A felony offense listed in California Health and Safety Code Section 11590.

ii. A felony offense listed in California Penal Code Section 667.S(c).

iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.

iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.

v. A felony conviction involving fraud, deceit, or embezzlement.

vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(7), and does not run with the land or with the business.

2. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either

hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

j. Proof of insurance.

3. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not

voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted to the City. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter

20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed ‘abandoned’ and the permit shall be forfeited. A

business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an ‘A’ rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's 'doing business as' name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. Said notification shall be addressed to the Director of Development Services or his designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

i. Emergency action response planning as necessary

ii. Employee accident reporting and investigation policies

iii. Fire prevention

iv. Hazard communication policies, including maintenance of material safety data sheets

v. Materials storage and handling policies

vi. Personal protective equipment policies

vii. Operation manager contacts

viii. Emergency responder contacts

ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

F. Additional Regulations for Dispensary and Retail Sales of Cannabis

1. Only five (5) dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced.

2. No retail cannabis facility may engage in check cashing activities at any time.

3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.

4. Restrooms shall remain locked during business hours and not open to the public.

5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.

6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.

7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.

8. Security guards are permitted, but not mandated, to carry firearms.

9. All cannabis products available for sale shall be securely locked and stored

10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.

11. Medical Cannabis Dispensaries shall maintain the full name, address and telephone number(s) of all patient members to whom the business provides medical

cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.

12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.

14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 9 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.

15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.

16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis dispensary: ‘Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited.’

17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis.

A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the ‘Prohibited Conduct Involving Marijuana and Marijuana Products’ contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business

premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive- through facility.

G. Additional Regulations for Commercial Cannabis Delivery Services

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.

2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.

3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of $1,000,000 for any and all vehicles being used to transport cannabis goods.

4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.

5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.

6. The following applies to all deliveries of cannabis products:

a. May only be made to a physical address in California; and

b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.

7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.

9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.

10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed $3,000 at any time.

12. Each delivery request shall have a receipt prepared by the dispensary with the following information:

a. Name and address of the licensed dispensary;

b. The name of the employee who delivered the order;

c. The date and time the delivery request was made;

d. The complete delivery address;

e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;

f. The total amount paid for the delivery including any fees or taxes; and

g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

13. The delivery business shall provide a flyer that spells out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

H. Additional Requirements for Manufactured Cannabis Businesses

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.

2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.

3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis

manufacturing including Health and Safety Code 11362.775 and as it may be amended.

4. Inspections by the City Fire Chief or his designee may be conducting anytime during the business's regular business hours.

5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.

6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises._Outdoor manufacturing of cannabis is expressly prohibited.

I. Additional Requirements for Cannabis Cultivation Businesses

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.

2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.

3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.

5. All outdoor lighting used for security purposes shall be shielded and downward facing.

6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.

7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

J. Additional Requirements for Cannabis Testing Laboratory Businesses

1. A licensed cannabis testing facility shall comply with all State regulations.

2. Any cannabis testing facility shall maintain all certifications required by the State.

3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.

4. Inspections by the City Fire Chief or his designee may be conducted anytime during the business's regular business hours.

K. Additional Requirements for Cannabis Distribution Businesses

1. A licensed cannabis distribution facility shall comply with all State regulations.

2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.

3. Inspections by the City Police Chief or his designee may be conducted anytime during the business's regular business hours.

4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.

5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:

a. The manufacturer or cultivator's name and license number;

b. The date of entry into the distributor's storage area;

c. The unique identifiers and batch number associated with the batch;

d. A description of the cannabis goods with enough detail to easily identify the batch; and

e. The weight of or quantity of units in the batch.

6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform

to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10. If located in a General Commercial (C-G) zone,

a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and

b. All loading and unloading activities shall take place within the secured fenced area required above.

L. Commercial Cannabis Business Permit Selection Process

1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)

a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The City of Merced has established a merit based scoring system to objectively award permits as

described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.

d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List- Dispensaries/Retail Sales' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales'. The qualified applicants will be entered into the Phase 2 review process.

e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for Dispensaries/Retail Sales' and entered into the Phase 2 review process. These requirements include but are not limited to:

i. All Application documents required in the City's Phase 1 application package;

ii. Application was submitted during the application period.

iii. Application forms are filled out completely;

iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;

v. Phase 1 application fee is paid; and

vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 - Final Review and Scoring.

Phase 2 requirements include, but are not limited to:

i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:

a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;

b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or

c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be

deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:

a. The use is permitted in the Zoning District;

b. The location of the cannabis business meets the distance requirements from sensitive uses;

c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;

d. No zoning violations exist on the property;

e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and

f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of

Police, and the Director of Development Services, or their designees. The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit based system and all merit based considerations shall be included with the application forms. An average score for each applicant based upon the merit based scoring of the Selection Panel shall be calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit – Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits – Dispensaries/Retail Sales then available.

a. The Qualified Commercial Cannabis Business Application List – Dispensaries/Retail that was established on September 20, 2018, shall be valid until

September 20, 2019. Should a new Commercial Cannabis Business Permit-Dispensaries/Retail become available, whether by creation of a new permit or by vacancy of an existing permit, before September 20, 2019, the highest ranking applicant on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be recommended to the Planning Commission for issuance of a Commercial Cannabis Business Permit-Dispensaries/Retail. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019 and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20, 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. Except as provided in subsection 20.44.170(L)(1)(g)(iv)(a) above, the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed 180 days from the date the last available Commercial Cannabis Business Permit-Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after 180 days have

elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit- Dispensaries/Retail Sales Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business Permit- Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit- Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit- Dispensaries/Retails Sales shall be issued otherwise.

2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)

a. The Commercial Cannabis Business Permit- All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List-All Other Cannabis Businesses' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses'. The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the 'Qualified Application List for All Other Cannabis Businesses'.

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

e. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 1 - Initial Review

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for All Other Cannabis Businesses' and entered into the Phase 2 review process. These requirements include, but are not limited to:

i. All Application documents required in the City's Phase 1 application package;

ii. Application was submitted during the application period;

iii. Application forms are filled out completely;

iv. Business Owner(s) I Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application;

v. Phase 1 application fee is paid; and

vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

f. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 - Final Review

Phase 2 requirements include, but are not limited to:

i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:

a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;

b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or

c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a

building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:

a. The use is permitted in the Zoning District;

b. The use meets the distance requirements from sensitive uses;

c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;

d. No zoning violations exist on the property;

e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and

f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or his designee, after reviewing the applications approved in Phase 1 and reviewing the foregoing information will make a

recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

ii. A change in the organizational structure of a proposed business;

iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

iv. A change in building elevations, floor plans, or site plans;

v. A change in operational procedures or security plans or procedures;

vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted,

as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.

c. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

i. Any act which would be considered a ground for denial of the permit in the first instance;

ii. Violates any other provision of this section or any City of Merced or State

law, statute, rule or regulation relating to the business's permitted activity;

iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee;

iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;

v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;

vi. Violates or fails to comply with the terms and conditions of the permit; or

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar

days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

b. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission within thirty (30) calendar days of receiving the appeal.

ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

iii. Any interested person may appear and be heard regarding the appeal.

iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.

v. A matter being heard on appeal may be continued for good cause.

vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de nova review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

7. Modifications to Commercial Cannabis Business Permit (All Types)

a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

ii. A change in the organizational structure of a proposed business;

iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

iv. A change in building elevations, floor plans, or site plans;

v. A change in operational procedures or security plans or procedures;

vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

i. Any act which would be considered a ground for denial of the permit in the first instance.

ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity.

iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.

iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.

v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.

vi. Violates or fails to comply with the terms and conditions of the permit.

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

c. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission within (thirty) 30 days of receiving the appeal.

ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.

iii. Any interested person may appear and be heard regarding the appeal.

iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.

v. A matter being heard on appeal may be continued for good cause.

vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

M. Limitations on the City's Liability

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;

2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;

3. Name the city as an additionally insured on all City required insurance policies;

4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and

5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

N. Enforcement

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.

2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:

a. A discrepancy of more than $1,000 in inventory over a period of 24 hours or $3,000 over period of 7 days.

b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.

c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the

destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

O. Fees and Taxes

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. Initial Application Fees. The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two fees according to Initial Review (Phase 1) and Final Review (Phase 2).

2. Application Renewal Fees. The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.

3. Business License Fee. The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.

4. Commercial Cannabis Regulatory Fee. The Business Owner shall pay an annual regulatory fee ('Regulatory Fee') to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

5. All required taxes including sales and use taxes, business, payroll etc.

6. Additional cannabis-specific gross receipts, excise, cultivation or any other tax approved by the voters of the City of Merced."

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 _____, 2019, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2019, 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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTION 20.44.170, "REGULATION OF COMMERCIAL CANNABIS ACTIVITIES – COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED," OF THE MERCED MUNICIPAL CODE

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

SECTION 1. AMENDMENT TO CODE. Section 20.44.170, "Regulation of Commercial Cannabis Activities – Commercial Cannabis Permit Required," of the Merced Municipal Code is hereby amended to read as follows:

"**20.44.170 - REGULATION OF COMMERCIAL CANNABIS ACTIVITIES - COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED**

A. Zoning Compliance and Commercial Cannabis Business Permit Requirements

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, 1-L and 1-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

ATTACHMENT 3

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted – 'X', or permitted – 'P'. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1							Additional Specific Use Standards
	Land Use Classification [4][5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	P	P	Sec. 20.44.170(k)

Footnotes

1. Only five (5) ~~four (4)~~ dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) ~~four (4)~~ dispensaries of any kind be allowed within the City of Merced at any one time.

2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.

3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).

4. If listed as 'Permitted' in a specific zone above, then that use is also 'Permitted' in Planned Development (P-0) zones that have the equivalent General Plan land use designation as that zone.

5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, ~~at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code and~~ as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to

the City, ~~at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code and~~ as required in Merced Municipal Code Section 20.44.170(E)(3)(f). ~~No Commercial Cannabis Business may be located within a 600-foot radius from a school, day care center, youth center, library or public park as required in Merced Municipal Code Section 20.44.170(E)(3)(f).~~

Land Use Classifications:

Greenhouse, Commercial A - Permitted cultivation area: 0 to 5,000 square feet
Greenhouse, Commercial B - Permitted cultivation area: 5,001 to 10,000 square feet
Greenhouse, Commercial C - Permitted cultivation area: 10,000 to 22,000 square feet
Greenhouse, Commercial D - Permitted cultivation area: 22,000 square feet

B. Cultivation of Cannabis for Personal Use in Residential Zones

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(B)(1)(j) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height

limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owner's right to deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO2, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or§ 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code

and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.

ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

C. Definitions

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **‘Applicant’** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **‘Cannabis’** means all parts of the Cannabis sativa Linnaeus, Cannabis lndica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from marijuana. ‘Cannabis’ also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, ‘cannabis’ does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **‘Cannabis waste’** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **‘Canopy’** means all of the following:

a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **'City'** means the City of Merced.

6. **'Commercial cannabis business permit (CCBP)'** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **'Commercial cannabis activity'** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **'Commercial vehicle'** means a vehicle as defined in Vehicle Code section 260.

9. **'Concentrated cannabis product'** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **'Cultivation'** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **‘Customer’** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **‘Day Care Center’** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **‘Delivery’** means the commercial transfer of marijuana or marijuana products to a customer. ‘Delivery’ also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

14. **‘Delivery employee’** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **‘Dispensary’** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

16. **‘Display’** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

17. **‘Display case’** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.

18. **‘Distribution’** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

19. **‘Edible cannabis product’** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

20. **‘Fully Enclosed and Secure Structure’** means a fully-enclosed space within a building that complies with the California Building Code (‘CBSC’), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **‘Free sample’** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **‘Greenhouse’** means a facility in which plants are grown and is inclusive of facilities using solely artificial

light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a 'Fully Enclosed and Secure Structure' as defined above in 20.44.170(C), Subsection 20.

23. **'Indoors'** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 2019.

24. **'License'** means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.

25. **'Limited-access area'** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.

26. **'Medical'** or **'Medicinal'** have the same meaning under the terms of this ordinance.

27. **'Medical cannabis goods'** means cannabis, including dried flower, and manufactured cannabis products.

28. **'Medical cannabis patient'** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.

29. **'Manufacturer'** means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

30. **‘Manufacturing’** or **‘manufacturing operation’** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.

31. **‘Nonvolatile solvent’** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.

32. **‘Operating hours’** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.

33. **‘Owner’** or **‘Ownership interest’** means an interest held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an ‘owner’ of the commercial cannabis business.

34. **‘Package’** and **‘Packaging’** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. ‘Package’ and ‘packaging’ does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

35. **‘Patient or qualified patient’** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

36. **‘Person’** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

37. **‘Pest’** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

38. **‘Physician's recommendation’** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

39. **‘Premises’** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

40. **‘Pre-roll’** means dried cannabis flower rolled in paper prior to retail sale.

41. **‘Primary Caregiver’** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

42. **‘Private security officer’** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.

43. **‘Publicly owned land’** means any building or real property that is owned by a city, county, state, federal, or other government entity.

44. **‘Purchase’** means obtaining cannabis goods in exchange for consideration.

45. **‘Purchaser’** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

46. **‘Quarantine’** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.

47. **‘Retail area’** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.

48. ~~**‘School’** means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes or as otherwise provided in Health and Safety Code Section 11362.768(h).~~

‘School’ means any site upon which full-time instruction in any of grades K through 12 is provided. ‘School’ does not include any private site in which education is primarily conducted in private homes.

49. **‘Security monitoring’** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

50. **‘Selection Panel’** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.

51. **‘Sell,’ ‘sale,’** and ‘**to sell’** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.

52. **‘Sublet’** means to lease or rent all or part of a leased or rented property.

53. **‘State’** means the State of California.

54. **‘Testing Laboratory’** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

55. **‘Vehicle alarm system’** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

56. **‘Volatile solvent’** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

57. **‘Wholesale’** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

58. **‘Youth Center’** means any public or private facility that is primarily used to host recreational or social

activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

D. Compliance with State and Local Licensing Requirements

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

E. General Provisions for Commercial Cannabis Activities in the City of Merced

1. Commercial Cannabis Business Permit Required

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:

i. Cultivation

ii. Distribution

iii. Manufacturing

iv. Retail sales (Dispensary)

v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted

herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

i. A felony offense listed in California Health and Safety Code Section 11590.

ii. A felony offense listed in California Penal Code Section 667.S(c).

iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.

iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.

v. A felony conviction involving fraud, deceit, or embezzlement.

vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(7)~~(4)(c)~~, and does not run with the land or with the business. ~~Any change to the business location, organizational structure, or ownership may require a new application with associated fees at the discretion of the Director of Development Services or designee~~.

2. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

j. Proof of insurance.

3. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, ~~that is in existence at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code~~. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted

to the City, ~~that is in existence at the time the Commercial Cannabis Business Permit is issued, as required by Section 11362.768 of the Health and Safety Code~~. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter 20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed "abandoned" and the permit shall be forfeited. A business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an "A" rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's "doing business as" name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the

alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. ~~applies for that initial permit or if the permittee applies for any additional State licenses~~. Said notification shall be addressed to the Director of Development Services or ~~his~~ designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

i. Emergency action response planning as necessary

ii. Employee accident reporting and investigation policies

iii. Fire prevention

iv. Hazard communication policies, including maintenance of material safety data sheets

v. Materials storage and handling policies

vi. Personal protective equipment policies

vii. Operation manager contacts

viii. Emergency responder contacts

ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

F. Additional Regulations for Dispensary and Retail Sales of Cannabis

1. Only five (5) ~~four (4)~~ dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) ~~four (4)~~ dispensaries of any kind be allowed within the City of Merced.

2. No retail cannabis facility may engage in check cashing activities at any time.

3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.

4. Restrooms shall remain locked during business hours and not open to the public.

5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.

6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.

7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.

8. Security guards are permitted, but not mandated, to carry firearms.

9. All cannabis products available for sale shall be securely locked and stored

10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.

11. Medical Cannabis Dispensaries shall maintain the full name, address and telephone number(s) of all patient members to whom the business provides medical cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.

12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.

14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 9 p.m. Pacific

Time, unless zoning regulations specify more restrictive hours.

15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.

16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis dispensary: "Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited."

17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis. A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the "Prohibited Conduct Involving Marijuana and Marijuana Products" contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive- through facility.

G. Additional Regulations for Commercial Cannabis Delivery Services

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.

2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.

3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of $1,000,000 for any and all vehicles being used to transport cannabis goods.

4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.

5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.

6. The following applies to all deliveries of cannabis products:

a. May only be made to a physical address in California; and

b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.

7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.

9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.

10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed $3,000 at any time.

12. Each delivery request shall have a receipt prepared by the dispensary with the following information:

a. Name and address of the licensed dispensary;

b. The name of the employee who delivered the order;

c. The date and time the delivery request was made;

d. The complete delivery address;

e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;

f. The total amount paid for the delivery including any fees or taxes; and

g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

13. The delivery business shall provide a flyer that spells out the "Prohibited Conduct Involving Marijuana and Marijuana Products" contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

H. Additional Requirements for Manufactured Cannabis Businesses

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.

2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.

3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis manufacturing including Health and Safety Code 11362.775 and as it may be amended.

4. Inspections by the City Fire Chief or ~~his~~ designee may be conducting anytime during the business's regular business hours.

5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.

6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not

violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor manufacturing of cannabis is expressly prohibited.

I. Additional Requirements for Cannabis Cultivation Businesses

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.

2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.

3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.

5. All outdoor lighting used for security purposes shall be shielded and downward facing.

6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.

7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation

activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

J. Additional Requirements for Cannabis Testing Laboratory Businesses

1. A licensed cannabis testing facility shall comply with all State regulations.

2. Any cannabis testing facility shall maintain all certifications required by the State.

3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.

4. Inspections by the City Fire Chief or ~~his~~ designee may be conducted anytime during the business's regular business hours.

K. Additional Requirements for Cannabis Distribution Businesses

1. A licensed cannabis distribution facility shall comply with all State regulations.

2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.

3. Inspections by the City Police Chief or ~~his~~ designee may be conducted anytime during the business's regular business hours.

4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.

5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:

a. The manufacturer or cultivator's name and license number;

b. The date of entry into the distributor's storage area;

c. The unique identifiers and batch number associated with the batch;

d. A description of the cannabis goods with enough detail to easily identify the batch; and

e. The weight of or quantity of units in the batch.

6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42

degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10. If located in a General Commercial (C-G) zone,

a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and

b. All loading and unloading activities shall take place within the secured fenced area required above.

L. Commercial Cannabis Business Permit Selection Process

1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)

a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The City of Merced has established a merit based scoring system to objectively award permits as described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.

d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will

evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the "Qualified Commercial Cannabis Business Application List- Dispensaries/Retail Sales" and shall be notified in writing that they are a "Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales". The qualified applicants will be entered into the Phase 2 review process.

e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) ~~21~~ calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

~~f. All Cannabis applications received after the initial application period will be placed on the "Waitlist for Dispensaries/Retail Sales" in the order it is received. Applicants placed on the "Waitlist" shall be notified in writing of their "Waitlist" status.~~

~~g. Cannabis applications placed on the "Waitlist for Dispensaries/Retail Sales" will be moved to the "Qualified Applicant List for Dispensaries/Retail Sales" only if the application passes the Phase 1 review and when a Commercial Cannabis Business Permit for Dispensaries/Retail Sales becomes available, whether by creation of a new license, or the forfeiture of an existing one. Applicants moved to the "Qualified Applicant List for Dispensaries/Retail Sales" from the Waitlist will be~~

~~notified of the change in writing. If the Director of Development Services or designee determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.~~

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the "Qualified Applicant List for Dispensaries/Retail Sales" and entered into the Phase 2 review process. These requirements include but are not limited to:

i. All Application documents required in the City's Phase 1 application package;

ii. Application was submitted during the application period.

iii. Application forms are filled out completely;

iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that

was conducted within 14 days prior to submitting the application;

v. Phase 1 application fee is paid; and

vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 - Final Review and Scoring.

Phase 2 requirements include, but are not limited to:

i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:

a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;

b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or

c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:

a. The use is permitted in the Zoning District;

b. The location of the cannabis business meets the distance requirements from sensitive uses;

c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;

d. No zoning violations exist on the property;

e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and

f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or ~~his~~ designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of Police, and the Director of Development Services, or their designees. ~~to make the final decision, based on the merit-based scoring system, of successful applicants to recommend to the Planning Commission for the Commercial Cannabis Business Permit-Dispensaries/Retail Sales.~~ The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit based system and all merit based considerations shall be included with the application forms. An average score for each applicant based upon the merit based scoring of the Selection Panel shall be

calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit – Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits – Dispensaries/Retail Sales then available.

a. The Qualified Commercial Cannabis Business Application List – Dispensaries/Retail that was established on September 20, 2018, shall be valid until September 20, 2019. Should a new Commercial Cannabis Business Permit-Dispensaries/Retail become available, whether by creation of a new permit or by vacancy of an existing permit, before September 20, 2019, the highest ranking applicant on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be recommended to the Planning Commission for issuance of a Commercial Cannabis Business Permit-Dispensaries/Retail. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019

and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. Except as provided in subsection 20.44.170(L)(1)(g)(iv)(a) above, the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed 180 days from the date the last available Commercial Cannabis Business Permit-Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after 180 days have elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 – Planning Commission

The Planning Commission will review the ~~all~~ Commercial Cannabis Business Permit-Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit-Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section

20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit- Dispensaries/Retails Sales shall be issued otherwise.

2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)

a. The Commercial Cannabis Business Permit-All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the "Qualified Commercial Cannabis Business Application List-All Other Cannabis Businesses" and shall be notified in writing that they are a "Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses". The

qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the "Qualified Application List for All Other Cannabis Businesses".

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) ~~21~~ calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

~~e. All Cannabis applications received after the initial application period will be placed on the "Waitlist for All Other Cannabis Businesses" in the order it is received. Applicants placed on the "Waitlist" shall be notified in writing of their "Waitlist" status.~~

~~f. Cannabis applications placed on the "Waitlist for All Other Cannabis Businesses" will be moved to the "Qualified Applicant List for All Other Cannabis Businesses" on a one for one basis only if the application passes the Phase 1 review and when the number of applicants on the "Qualified Applicant List" falls below five, and will be notified of the change in writing. At any time, the Director of Development Services may suspend the requirement for a "Waitlist for All Other Cannabis Businesses" if the number of applications does not merit the need for the "Waitlist." If the Director of Development Services or designee~~

~~determines the application is incomplete, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) 21 calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.~~

e. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 1 - Initial Review

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the "Qualified Applicant List for All Other Cannabis Businesses" and entered into the Phase 2 review process. These requirements include, but are not limited to:

i. All Application documents required in the City's Phase 1 application package;

ii. Application was submitted during the application period;

iii. Application forms are filled out completely;

iv. Business Owner(s) I Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application;

v. Phase 1 application fee is paid; and

vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

f. Commercial Cannabis Business Permit- All Other Cannabis Businesses Selection - Phase 2 - Final Review

Phase 2 requirements include, but are not limited to:

i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:

a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;

b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or

c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the

applicant shall be given written notice of the disqualification within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:

a. The use is permitted in the Zoning District;

b. The use meets the distance requirements from sensitive uses;

c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;

d. No zoning violations exist on the property;

e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced

Planning Department for the property location the commercial cannabis business will occupy; and

f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or ~~his~~ designee, after reviewing the applications approved in Phase 1 and reviewing the foregoing information will make a recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 – Planning Commission

The Planning Commission will review the ~~all~~ Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

ii. A change in the organizational structure of a proposed business;

iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

iv. A change in building elevations, floor plans, or site plans;

v. A change in operational procedures or security plans or procedures;

vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the ~~all~~ Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted, as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.

~~c. A Commercial Cannabis Business Permit holder may file a request to transfer ownership of the business. The request shall be made to the Director of Development Services. The request must be in writing and must be at least 60 days prior to the transfer. The Director of Development Services shall review the request and may require additional background material on the proposed new owner. The Director of Development Services shall notify the permit holder in writing along with the reason for approval or denial of the transfer. The original term of the Commercial Cannabis Business Permit shall stay in effect including the renewal date.~~

c. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

i. Any act which would be considered a ground for denial of the permit in the first instance;

ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity;

iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee;

iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;

v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;

vi. Violates or fails to comply with the terms and conditions of the permit; or

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

b. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission within thirty (30) calendar days of receiving the appeal.

ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

iii. Any interested person may appear and be heard regarding the appeal.

iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.

v. A matter being heard on appeal may be continued for good cause.

vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de nova review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

7. Modifications to Commercial Cannabis Business Permit (All Types)

a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

ii. A change in the organizational structure of a proposed business;

iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

iv. A change in building elevations, floor plans, or site plans;

v. A change in operational procedures or security plans or procedures;

vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

i. Any act which would be considered a ground for denial of the permit in the first instance.

ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity.

iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.

iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.

v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or

obstruction of the operation of another business.

vi. Violates or fails to comply with the terms and conditions of the permit.

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

c. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission within (thirty) 30 days of receiving the appeal.

ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.

iii. Any interested person may appear and be heard regarding the appeal.

iv. The Planning Commission's review of the appeal shall be limited to review of the

Development Services Director decision and shall not be a de novo review.

v. A matter being heard on appeal may be continued for good cause.

vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be

the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

M. Limitations on the City's Liability

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;

2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;

3. Name the city as an additionally insured on all City required insurance policies;

4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and

5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City

may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

N. Enforcement

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.

2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:

a. A discrepancy of more than $1,000 in inventory over a period of 24 hours or $3,000 over period of 7 days.

b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.

c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of

abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

O. Fees and Taxes

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. Initial Application Fees. The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two

fees according to Initial Review (Phase 1) and Final Review (Phase 2).

2. Application Renewal Fees. The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.

3. Business License Fee. The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.

4. Commercial Cannabis Regulatory Fee. The Business Owner shall pay an annual regulatory fee ("Regulatory Fee") to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

5. All required taxes including sales and use taxes, business, payroll etc.

6. Additional cannabis-specific gross receipts, excise, cultivation or any other tax approved by the voters of the City of Merced."

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 _____, 2019, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2019, 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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTION 20.44.170, "REGULATION OF COMMERCIAL CANNABIS ACTIVITIES – COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED," OF THE MERCED MUNICIPAL CODE

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

SECTION 1. AMENDMENT TO CODE. Section 20.44.170, "Regulation of Commercial Cannabis Activities – Commercial Cannabis Permit Required," of the Merced Municipal Code is hereby amended to read as follows:

"20.44.170 - REGULATION OF COMMERCIAL CANNABIS ACTIVITIES - COMMERCIAL CANNABIS BUSINESS PERMIT REQUIRED

A. Zoning Compliance and Commercial Cannabis Business Permit Requirements

Specific commercial cannabis businesses are allowed as a special use in the C-C, C-O, C-G, C-N, 1-L and 1-H Zoning Districts and Planned Developments which have the equivalent General Plan land use designations of those zones. Commercial cannabis activities are expressly prohibited in all other zones in the City of Merced. Commercial cannabis businesses shall apply for and conduct business only in the appropriate zones as described in Table 20.44-1 and the City of Merced's zoning ordinance as a requisite for obtaining a Commercial Cannabis Business Permit (CCBP). No commercial cannabis business may operate in the City of Merced without a Commercial Cannabis Business Permit.

ATTACHMENT 4

This Land Use Table 20.44-1 shall be used to determine whether a cannabis business is not permitted – 'X', or permitted – 'P'. Any Commercial Cannabis business in the City of Merced shall also operate in compliance with the City's zoning ordinance. If a Zoning District is not listed in the Land Use Table in this section then the use is expressly not permitted.

Commercial Cannabis Business Activities Use Type	City of Merced Municipal Code Table 20.44-1							Additional Specific Use Standards
	Land Use Classification [4][5]	C-C Zone	C-O Zone	C-G Zone	C-N Zone	I-L Zone	I-H Zone	
Cultivator	Greenhouse, Type A	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type B	X	X	X	X	P	P	Sec. 20.44.170(i)
Cultivator	Greenhouse, Type C	X	X	X	X	P	P	Sec. 20.44.170(i)
Nursery	Greenhouse, Type D	X	X	X	X	P	P	Sec. 20.44.170(i)
Manufacturing	Manufacturing, non-volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Manufacturing	Manufacturing, volatile	X	X	X	X	P	P	Sec. 20.44.170(h)
Dispensary [1][2]	Pharmaceutical, medical	P	P	P	P	P	X	Sec. 20.44.170(f)
Dispensary [1][2]	Retail, non-medical/combined	P	P	P	P	P	X	Sec. 20.44.170(f)
Testing Laboratory	No Retail	P	P	P	X	P	P	Sec. 20.44.170(j)
Distribution [3]	Freight/Transport	X	X	P	X	P	P	Sec. 20.44.170(k)

Footnotes

1. Only five (5) dispensaries shall operate within the Merced City Limits. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced at any one time.

2. Dispensaries (medical or adult use) are prohibited in the City Center area between 19th and 16th Streets and O Street and Martin Luther King Jr. Way, including properties fronting on either side of each of the above streets.

3. Only allowed in General Commercial (C-G) zones if it meets the provisions of Section 20.44.170 (K)(10).

4. If listed as 'Permitted' in a specific zone above, then that use is also 'Permitted' in Planned Development (P-0) zones that have the equivalent General Plan land use designation as that zone.

5. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f). No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City, as required in Merced Municipal Code Section 20.44.170(E)(3)(f).

Land Use Classifications:

Greenhouse, Commercial A - Permitted cultivation area: 0 to 5,000 square feet
Greenhouse, Commercial B - Permitted cultivation area: 5,001 to 10,000 square feet
Greenhouse, Commercial C - Permitted cultivation area: 10,000 to 22,000 square feet
Greenhouse, Commercial D - Permitted cultivation area: 22,000 square feet

B. Cultivation of Cannabis for Personal Use in Residential Zones

1. When authorized by State regulations, an authorized resident shall be allowed to cultivate cannabis only in a private residence in a residential zone, only indoors, and only for personal use, subject to the following regulations:

a. The cannabis cultivation area shall be located indoors within a residential structure and shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting, nor shall it exceed the limits set forth in Section 20.44.170(B)(1)(j) below. Cultivation in a greenhouse or other legal accessory structure on the property of the residence, but not physically part of the home, is permitted as long as it is fully enclosed, secure, not visible from a public right-of-way, and meeting all requirements in this Chapter. Additionally, all structures must meet setback, height limitations, and be constructed in accordance with all local requirements as well as all applicable Building Codes.

b. If the resident is not the property owner, they must have the property owner's express written authorization to conduct cannabis cultivation. Nothing contained herein shall limit the property owner's right to

deny or revoke permission to allow cannabis cultivation as set forth by State law.

c. The use of gas products such as, but not limited to CO2, butane, methane, or any other flammable or non-flammable gas for marijuana or cannabis cultivation or processing is prohibited.

d. There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the public right-of-way, including but not limited to any marijuana or cannabis plants, equipment used in the growing and Cultivation operation, and any light emanating from cultivation lighting.

e. The authorized resident shall reside full-time on the property where the cannabis cultivation occurs.

f. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for cannabis cultivation.

g. The cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code including § 1203.4 Natural Ventilation or§ 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

h. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to, installation of fire suppression sprinklers.

i. The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic,

vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

j. No more than six (6) cannabis plants, mature or immature, for personal use, are permitted per residence for indoor personal cultivation under this Chapter, unless permitted under State regulations.

k. Cannabis in excess of twenty-eight and one-half (28.5) grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

i. The authorized grower shall not provide any cannabis in any form to animals or any minors that are not authorized users under Medical Marijuana Regulation and Safety Act or the Adult Use of Marijuana Act. Anyone found in violation shall be prosecuted pursuant to State regulations.

ii. Outdoor cultivation of cannabis is expressly prohibited in all zones and districts of the City of Merced.

C. Definitions

The definitions are incorporated herein as fully set forth and are applicable to this ordinance. All definitions are intended to comply with those set forth by the State of California for all commercial cannabis activities.

1. **'Applicant'** means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

2. **'Cannabis'** means all parts of the Cannabis sativa Linnaeus, Cannabis Indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. 'Cannabis' also means the separated resin, whether crude or purified, obtained from marijuana. 'Cannabis' also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. 'Cannabis' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, 'cannabis' does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

3. **'Cannabis waste'** means waste that is not hazardous waste, as defined in Public Resources Code section 40191, that contains cannabis and that has been made unusable and unrecognizable in the manner prescribed by the State.

4. **'Canopy'** means all of the following:

a. The designated area(s) at a licensed premises that will contain mature plants at any point in time;

b. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

c. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least 10 feet of open space; and

d. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

5. **'City'** means the City of Merced.

6. **'Commercial cannabis business permit (CCBP)'** means a permit issued by the City pursuant to this chapter to a commercial cannabis business.

7. **'Commercial cannabis activity'** includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, distribution, delivery, or sale of cannabis or a cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers.

8. **'Commercial vehicle'** means a vehicle as defined in Vehicle Code section 260.

9. **'Concentrated cannabis product'** means a consolidation of cannabinoids made by dissolving cannabis in its plant form into a solvent.

10. **'Cultivation'** means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

11. **'Customer'** means a natural person 21 years of age or over or a natural person 18 years of age or older who possesses a physician's recommendation.

12. **'Day Care Center'** means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities,

and school age child care centers as defined in Health and Safety Code Sections 1596.76, 1596.7915, 1576.750, and 1596.78.

13. **'Delivery'** means the commercial transfer of marijuana or marijuana products to a customer. 'Delivery' also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

14. **'Delivery employee'** means an individual employed by a licensed dispensary who delivers cannabis goods from the permitted dispensary premises to a medical cannabis patient or primary caregiver or qualified purchaser at a physical address.

15. **'Dispensary'** means a premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

16. **'Display'** means cannabis goods that are stored in the licensed dispensary's retail area during the hours of operation.

17. **'Display case'** means container in the licensed dispensary retail area where cannabis goods are stored and visible to customers.

18. **'Distribution'** means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

19. **'Edible cannabis product'** means manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible cannabis product is not considered food as defined by Section 109935 of the California Health and Safety Code or a drug as defined by Section 109925 of the California Health and Safety Code.

20. **'Fully Enclosed and Secure Structure'** means a fully-enclosed space within a building that complies with the California Building Code ('CBSC'), as adopted in the City of Merced, or if exempt from the permit requirements of the CBSC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor lighting or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Merced.

21. **'Free sample'** means any amount of cannabis goods provided to any person without cost or payment or exchange of any other thing of value.

22. **'Greenhouse'** means a facility in which plants are grown and is inclusive of facilities using solely artificial light and facilities using mixed-light. In order to be lawful and permitted in the City of Merced, a greenhouse must be a 'Fully Enclosed and Secure Structure' as defined above in 20.44.170(C), Subsection 20.

23. **'Indoors'** means within a fully enclosed and secure structure as that structure is defined above in 20.44.170(C), Subsection 20.

24. **'License'** means a state license issued under this division, and includes both an A-license and an M-license, as well as a testing laboratory license.

25. **'Limited-access area'** means an area in which cannabis goods are stored or held and which is only accessible to a licensee and the licensee's employees and contractors.

26. **'Medical'** or **'Medicinal'** have the same meaning under the terms of this ordinance.

27. **'Medical cannabis goods'** means cannabis, including dried flower, and manufactured cannabis products.

28. **'Medical cannabis patient'** is a person whose physician has recommended the use of cannabis to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.

29. **'Manufacturer'** means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

30. **'Manufacturing'** or **'manufacturing operation'** means all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products.

Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.

31. **'Nonvolatile solvent'** means any solvent used in the extraction process that is not a volatile solvent. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide used for extraction, or as it may be defined and amended by the State.

32. **'Operating hours'** means the hours within a day during which a permitted retail sales outlet may allow qualified cannabis purchasers and primary caregivers to enter the dispensary premises and purchase cannabis goods.

33. **'Owner'** or **'Ownership interest'** means an interest held by a person or entity who is an owner as defined by State of California commercial cannabis regulations or who has a financial interest in the commercial cannabis business of 5% or more. In the event an entity holds a financial interest in the commercial cannabis business of 5% or more, any person who holds a financial interest in said entity of 5% or more is also considered an 'owner' of the commercial cannabis business.

34. **'Package'** and **'Packaging'** means any container or wrapper that may be used for enclosing or containing any cannabis goods for final retail sale. 'Package' and 'packaging' does not include a shipping container or outer wrapping used solely for the transport of cannabis goods in bulk quantity to a licensee.

35. **'Patient or qualified patient'** shall have the meaning given that term by California Health and Safety Code and possesses a valid physician's recommendation.

36. **'Person'** includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust,

receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

37. **'Pest'** means undesired insect, rodent, nematode, fungus, bird, vertebrate, invertebrate, weed, virus, bacteria, or other microorganism that is injurious to human health.

38. **'Physician's recommendation'** means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

39. **'Premises'** means the designated structure(s) and land specified in the application that are in possession of and used by the applicant or licensee to conduct the commercial cannabis activity.

40. **'Pre-roll'** means dried cannabis flower rolled in paper prior to retail sale.

41. **'Primary Caregiver'** has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

42. **'Private security officer'** has the same meaning as that term as defined in the State of California Business and Professions Code section 7574.01.

43. **'Publicly owned land'** means any building or real property that is owned by a city, county, state, federal, or other government entity.

44. **'Purchase'** means obtaining cannabis goods in exchange for consideration.

45. **'Purchaser'** means a person who is engaged in a transaction with a licensee for purposes of obtaining cannabis goods.

46. **'Quarantine'** means the storage or identification of cannabis goods, to prevent distribution or transfer of the cannabis goods, in a physically separate area clearly identified for such use.

47. **'Retail area'** means a building, room, or other area upon the licensed dispensary premises in which cannabis or other goods are sold or displayed.

48. **'School'** means any site upon which full-time instruction in any of grades K through 12 is provided. 'School' does not include any private site in which education is primarily conducted in private homes.

49. **'Security monitoring'** means the continuous and uninterrupted attention to potential alarm signals that can be transmitted from a security alarm system for the purpose of summoning law enforcement.

50. **'Selection Panel'** means the group consisting of the City Manager, Chief of Police, and Director of Development Services, or their designees, convened for the purpose of evaluating applicants based on the merit-based scoring system, and making recommendations to the Planning Commission with respect to issuance of Commercial Cannabis Business Permits.

51. **'Sell,' 'sale,'** and **'to sell'** include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis goods pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis goods by a licensee to the licensee from whom such cannabis goods were purchased.

52. **'Sublet'** means to lease or rent all or part of a leased or rented property.

53. **'State'** means the State of California.

54. **'Testing Laboratory'** means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

55. **'Vehicle alarm system'** is a device or series of devices installed to discourage theft of the commercial vehicle or its contents and is intended to summon general attention or to summon law enforcement as a result of an indication of an attempted breach of the commercial vehicle.

56. **'Volatile solvent'** means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol, or as it may be defined and amended by the State.

57. **'Wholesale'** means the sale of cannabis goods to a distributor for resale to one or more dispensaries.

58. **'Youth Center'** means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club activities, video arcades with over 10 or more video games on the premises, or similar amusement park facilities, or as otherwise described in Health and Safety Code Section 11353.1(e)(2).

D. Compliance with State and Local Licensing Requirements

Any dispensary, cultivation facility, manufacturing facility, testing facility or any other commercial cannabis activity as defined by the State of California or the City

of Merced shall operate in conformance with all regulations and standards set forth in this Section of the Municipal Code to assure that the operations of the dispensary, cultivation facility, manufacturing facility, distribution facility, testing facility or any other commercial cannabis activity as defined by the State of California or allowed by the City of Merced are in compliance with local and State law and are established to mitigate any adverse secondary effects from its operations.

Cannabis operators shall be required to obtain a State license once they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria.

Multiple cannabis uses and licenses proposed on any one site shall occur only if authorized by the State and the City of Merced and only if all uses proposed are allowed pursuant to the City's Zoning Code.

E. General Provisions for Commercial Cannabis Activities in the City of Merced

1. Commercial Cannabis Business Permit Required

a. Each business shall have a Commercial Cannabis Business Permit specific to the business activity defined by the State pertaining to that activity and whether the activity is medical or non-medical or any other commercial cannabis activity the State may define and as they may be amended. Following is a list of current license types:

i. Cultivation

ii. Distribution

iii. Manufacturing

iv. Retail sales (Dispensary)

v. Testing

b. It shall be unlawful for any person, association, partnership, corporation, or other entity to engage in, conduct or carry on, in or upon any premises within the City of Merced, any commercial cannabis business without a Commercial Cannabis Business Permit. A cannabis business shall register and obtain a Commercial Cannabis Business Permit from the City of Merced prior to operation. The Commercial Cannabis Business Permit applicant shall pay an annual non-refundable regulatory fee in an amount and at a frequency established by the City Council by resolution.

c. A copy of the Commercial Cannabis Business Permit shall be displayed at all times in a place visible to the public.

d. A Commercial Cannabis Business Permit shall be valid for one (1) year or until December 31 of each year, unless sooner revoked. In the event a Commercial Cannabis Business Permit is issued on or after October 1, said permit shall be valid until December 31 of the following calendar year. No permit granted herein shall confer any vested right to any person or business for more than the above-referenced period.

e. A Commercial Cannabis Business Permit shall not be issued to an individual or a business entity owned or managed in whole or in part by an individual or a business entity employing an individual who has a previous conviction for or has entered a plea of nolo contendere/no contest to any of the following:

i. A felony offense listed in California Health and Safety Code Section 11590.

ii. A felony offense listed in California Penal Code Section 667.S(c).

iii. A felony offense listed in California Penal Code Sections 1197.2(c) or Section 1192.8.

iv. A felony or misdemeanor offense that substantially relate to the qualifications, functions, or duties of the business or profession.

v. A felony conviction involving fraud, deceit, or embezzlement.

vi. A felony or misdemeanor offense involving the sale or giving to a minor of controlled substances, cannabis, alcohol, or tobacco.

A Commercial Cannabis Business Permit may be issued, at the discretion of the City, to an individual with a conviction listed above provided a period of ten (10) years has elapsed in which the individual has remained free of criminal convictions or violations of parole or probation, and the individual has either obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 or received expungement pursuant to California Penal Code Section 1203.4.

f. The Commercial Cannabis Business Permit shall be issued to the specific person/persons/entity listed on the Cannabis Permit Application.

g. A Commercial Cannabis Business Permit is not transferable except under the terms of Merced Municipal Code Section 20.44.170(L)(7), and does not run with the land or with the business.

2. Maintenance of Records and Reporting

All records for the commercial cannabis business of the following activities shall be maintained and available to the City of Merced for at least 7 years. Records shall be produced within 24 hours of a request by an authorized City of Merced representative:

a. The business shall obtain and maintain a valid Seller's Permit from the State Board of Equalization.

b. Financial records include, but are not limited to: bank statements, sales invoices, receipts, tax records, and all records required by the California State Board of Equalization under Title 18 California Code of Regulations Section 1968.

c. Personnel records, including each employee's full name, address, phone number, social security, or individual tax payer identification number, date of beginning employment, and date of termination of employment if applicable.

d. Training records, including but not limited to the content of the training provided and the names of the employees that received the training.

e. Contracts with other licensees regarding commercial cannabis activity.

f. Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity, including BOE sellers permit.

g. Security records.

h. Records shall be kept in a manner that allows the records to be produced for the City in either

hard copy or electronic form, whichever the City requests.

i. Proof of building ownership or landlord letter acknowledging business type.

j. Proof of insurance.

3. Operational Standards for All Commercial Cannabis Business Activities

a. Interior and exterior locations of the business property shall be monitored at all times by closed circuit cameras for security purposes. The cameras and recording system shall be of adequate quality, color rendition and resolution to allow the sufficient identification of any individual committing a crime on the location premises. Cameras shall record 24 hours a day at a minimum of 20 frames per second.

b. The applicant shall conduct and pay for any required CEQA reviews and analyses, and pay for all costs, including those of the City, associated with project review under CEQA.

c. The surveillance system storage device or cameras shall be transmission control protocol/TCP capable of being accessed through the internet by the Merced Police Department or their designee on request.

d. All controlled access areas, security rooms and all points of ingress/egress to limited access areas and all point of sale (POS) areas shall have fixed camera coverage capable of identifying activity occurring within a minimum of twenty (20) feet. Camera video recordings shall be maintained unaltered in a secure location for a period of not less than thirty (30) calendar days, and be available for inspection at any time. The City of Merced or law enforcement may request the recordings in connection with an investigation. If the recordings are not

voluntarily provided, the City or law enforcement may seek a warrant or court order for the recordings

e. All commercial cannabis businesses shall create and maintain an active account within the State's track and trace system prior to commencing any commercial cannabis activity. In the event of system failure, the business shall keep a hard copy record and transfer the information to the track and trace system within 24 hours of the system being available.

f. No cannabis dispensary may be located within a 1,000-foot radius from a school or within a 600-foot radius from a day care center, youth center, library or public park that is in existence at the time the Application for a Commercial Cannabis Business Permit is submitted to the City. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a 600-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the Application for Commercial Cannabis Business Permit is submitted to the City. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

g. No physical modification of the permitted premises is allowed without written prior permission by the City of Merced and payment of any additional fees required by the City.

h. All commercial cannabis activities shall provide adequate off-street parking and comply with the City of Merced Municipal Code requirements in Chapter

20.38 Parking and Loading, to service customers without causing negative impact.

i. The commercial cannabis business shall provide adequate handicapped parking per the requirements in the California Building Code.

j. The commercial cannabis business shall provide adequate interior and exterior lighting for safety and security as determined by the Police Chief or designee.

k. The commercial cannabis business shall minimize nuisances such as trash, litter, and graffiti.

l. Any and all signage, packaging, and facilities shall not be 'attractive', as it is defined by the State, to minors.

m. All commercial cannabis facilities shall be required to provide an air treatment system that ensures off-site odors shall not result from its operations. This requirement at a minimum means that the facility shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the location is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the facility if the use occupies only a portion of a building. The air treatment system must also prevent the build-up of mold within the facility.

n. A permitted commercial cannabis business entity shall have 180 days after permit issuance by the City of Merced to begin initial operations, unless otherwise approved by the Development Services Director or designee. A permitted commercial cannabis business entity that remains inoperative for more than 60 calendar days after initial operations begin shall be deemed 'abandoned' and the permit shall be forfeited. A

business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the Development Services Director or designee.

o. The cannabis business shall comply with all State and City of Merced regulations regarding testing, labeling and storage of all cannabis products.

p. The cannabis business shall meet all State and local regulations for the disposal of all cannabis materials and materials used in conjunction with processing, distributing and cultivating of cannabis as well as any unsold cannabis or cannabis products.

q. The cannabis business shall conform to all State regulations regarding the use of appropriate weighing devices.

r. The cannabis business shall conform to all State and local regulations regarding water usage. No liquids of any kind shall be discharged into a public or private sewage or drainage system, watercourse, body of water or into the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3).

s. The cannabis businesses' electrical and plumbing shall comply with State and local regulations.

t. The cannabis business shall maintain a comprehensive general liability combined single occurrence insurance policy issued by an 'A' rated insurance carrier in an amount no less than two million dollars and naming the City of Merced as additional insured.

u. No free samples of any cannabis or cannabis product may be distributed at any time.

v. All agents, private security officers or other persons acting for or employed by a licensee shall display a laminated identification badge at least 2" X 2" in size, issued by the licensee. The badge, at a minimum, shall include the licensee's 'doing business as' name and license number, the employees first and last name, and a color photo of the employee that shows the full front of the employee's face.

w. The commercial cannabis business shall have a centrally-monitored fire and burglar alarm system which shall include all perimeter entry points and perimeter windows.

x. A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors and responds to the alarm system. The alarm company shall obtain a City of Merced business license.

y. Meet all State deadlines for applying for a State license and receive a State license within six (6) months after the date the State begins issuing licenses. This may be waived if the State has longer delays in issuing licenses of the type the commercial cannabis business seeks. The permittee must inform the City in writing within 10 days of receipt of a State license. Said notification shall be addressed to the Director of Development Services or designee at 678 W. 18th St., Merced, CA 95340.

z. All persons hiring employees to engage in commercial cannabis activities shall document compliance with the following employee safety practices:

i. Emergency action response planning as necessary

ii. Employee accident reporting and investigation policies

iii. Fire prevention

iv. Hazard communication policies, including maintenance of material safety data sheets

v. Materials storage and handling policies

vi. Personal protective equipment policies

vii. Operation manager contacts

viii. Emergency responder contacts

ix. Poison control contacts

aa. All persons with ownership interest; and all employees agents, officers or other persons acting for or employed by a permittee must be at least 21 (twenty-one) years of age.

F. Additional Regulations for Dispensary and Retail Sales of Cannabis

1. Only five (5) dispensaries shall operate within the Merced City Limits, regardless of the location's compliance with any other Section specified in this ordinance. At least one (1) of those dispensaries shall also dispense medicinal cannabis goods. If State law allows medical and adult use dispensaries on the same premises, the City of Merced would allow a combined use, but in no case shall more than five (5) dispensaries of any kind be allowed within the City of Merced.

2. No retail cannabis facility may engage in check cashing activities at any time.

3. Only one dispensary permit per person with ownership interest is allowed in the City of Merced. Any person with community property rights of an ownership interest is considered a person with ownership interest in this section.

4. Restrooms shall remain locked during business hours and not open to the public.

5. The total number of dispensaries in operation shall be determined based on the number of locations which have been issued a Commercial Cannabis Business Permit for a dispensary by the City.

6. Display of cannabis products shall be limited to only an amount necessary to provide a visual sample for customers.

7. At all times, when the cannabis dispensary is open to the public, the dispensary shall provide at least one security guard who is registered with Bureau of Security and Investigative Services, and possesses a valid and current security guard registration card on their person while on-duty.

8. Security guards are permitted, but not mandated, to carry firearms.

9. All cannabis products available for sale shall be securely locked and stored

10. The security guard and cannabis dispensary personnel shall monitor the site and the immediate vicinity of the site to ensure that patrons immediately leave the site and do not consume cannabis in the vicinity of the dispensary or on the property or in the parking lot.

11. Medical Cannabis Dispensaries shall maintain the full name, address and telephone number(s) of all patient members to whom the business provides medical

cannabis, and a copy of a physician-issued recommendation card or State-issued card for all patient members.

12. Dispensaries shall also record on the video surveillance system point-of-sale areas and areas where cannabis goods are displayed for sale.

13. Any commercial cannabis retail or medical retail sales facility shall be open to the public a minimum of 40 hours per week, unless otherwise specified in the Commercial Cannabis Business Permit.

14. Hours of operation in Commercial Office (C-O) zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 7 p.m. Pacific Time. Hours of operation in all other zones shall be limited to no earlier than 8 a.m. Pacific Time and no later than 9 p.m. Pacific Time, unless zoning regulations specify more restrictive hours.

15. Exterior signage shall be limited to one wall sign not to exceed twenty (20) square feet in area. Interior signage or advertising may not be visible from the exterior. No temporary signs (banners, A-frames, etc.) or window signs are allowed.

16. On-site consumption of cannabis or cannabis products is specifically prohibited on the premises at all times. The following information shall be provided on a sign posted in a conspicuous location inside the cannabis dispensary: 'Smoking, ingesting or consuming cannabis on this property or within 100 feet of the business is prohibited.'

17. An adult use license shall not sell cannabis products to persons under 21 years of age or allow any person under 21 years of age on its premises, unless such licensee also holds a medicinal license and the licensee holds a CCBP for both adult use and medicinal cannabis.

A medicinal licensee may sell cannabis products to and allow on the premises, any person 18 years of age or older who possesses a valid government issued identification card, and either a valid county-issued identification card under Section 11362.712 of the Health and Safety Code or a valid physician's recommendation for himself or herself or for a person for whom he or she is a primary caregiver.

18. Adequate signage shall clearly state that the City of Merced has not tested or inspected any cannabis product for pesticides, or other regulated contaminants, distributed at this location.

19. No recommendations from a doctor for medical cannabis shall be issued on-site.

20. Shipments of cannabis goods may only be accepted during regular business hours.

21. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol or tobacco by patrons.

22. Inventory shall be secured and locked in a room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss during non-business hours.

23. No cannabis product shall be visible from the exterior of the business.

24. All required labelling shall be maintained on all product, as required by State regulations, at all times.

25. The business shall post signs that spell out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 in a conspicuous manner on the business

premises for the education of patrons. The City shall develop a standard format and content for such signs.

26. The use of vending machines (i.e. a machine that dispenses articles when a coin, bill, or token is inserted) to dispense cannabis is strictly prohibited.

27. No drive-through facilities shall be allowed and no cannabis shall be sold through a drive- through facility.

G. Additional Regulations for Commercial Cannabis Delivery Services

1. Commercial cannabis deliveries may be made only from a commercial cannabis dispensary permitted by the City in compliance with this ordinance, and in compliance with all State regulations.

2. All employees who deliver cannabis shall have valid identification and a copy of the dispensary's Commercial Cannabis Business Permit at all times while making deliveries.

3. All commercial cannabis businesses shall provide proof of insurance in a minimum amount of $1,000,000 for any and all vehicles being used to transport cannabis goods.

4. Deliveries may only take place during the hours of 8:00 a.m. and 7:00 p.m. daily.

5. A customer requesting delivery shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers, only as required by State regulations.

6. The following applies to all deliveries of cannabis products:

a. May only be made to a physical address in California; and

b. A licensed delivery employee shall not leave the State of California while possessing cannabis products.

7. A dispensary shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information and for the duration of time required by State regulations.

8. A cannabis business shall only deliver cannabis in aggregate amounts as ordered by the customer. A cannabis business shall ensure compliance with State delivery limits as they regard the amount of cannabis and cannabis products.

9. A manifest with all information required in this section shall accompany any delivery person at all times during the delivery process and delivery hours.

10. Any delivery method shall be made in compliance with State regulations and as it may be amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).

11. The maximum limit of any cannabis goods carried by the delivery vehicle may not exceed $3,000 at any time.

12. Each delivery request shall have a receipt prepared by the dispensary with the following information:

a. Name and address of the licensed dispensary;

b. The name of the employee who delivered the order;

c. The date and time the delivery request was made;

d. The complete delivery address;

e. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;

f. The total amount paid for the delivery including any fees or taxes; and

g. At the time of the delivery, the date and time delivery was made, and the signature of the person who received the delivery.

13. The delivery business shall provide a flyer that spells out the 'Prohibited Conduct Involving Marijuana and Marijuana Products' contained in Health and Safety Code Section 11362.3 to all delivery customers. The City shall develop a standard format and content for such flyers.

H. Additional Requirements for Manufactured Cannabis Businesses

1. A licensed cannabis manufacturing facility may conduct all activities permitted by the State. This includes, but is not limited to, volatile and non-volatile extractions, repackaging and relabeling, and infusions.

2. Any manufacturing activity that will be conducted by the licensee shall be included on the application. No additional manufacturing activity can be conducted without applying for and receiving written permission from the City of Merced for that additional activity.

3. At all times, the cannabis manufacturing facility will be compliant with all State regulations for cannabis

manufacturing including Health and Safety Code 11362.775 and as it may be amended.

4. Inspections by the City Fire Chief or designee may be conducting anytime during the business's regular business hours.

5. Cannabis manufacturing facilities shall not contain an exhibition or product sales area or allow for retail distribution of products at that location.

6. All cannabis manufacturing activities shall occur indoors within a fully enclosed and secured structure and also within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises._Outdoor manufacturing of cannabis is expressly prohibited.

I. Additional Requirements for Cannabis Cultivation Businesses

1. The cannabis business shall register with the Department of Pesticide Regulation if using any pesticides.

2. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.

3. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

4. Compliance with Section 13149 of Water Code as enforced by the State Water Resources Control Board.

5. All outdoor lighting used for security purposes shall be shielded and downward facing.

6. The use of generators for cultivation is prohibited, except for temporary use in the event of a power outage or emergency.

7. Cannabis plants shall not be visible from offsite or the public right-of-way. All cannabis cultivation activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the premises. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises. Outdoor cultivation of cannabis is expressly prohibited.

J. Additional Requirements for Cannabis Testing Laboratory Businesses

1. A licensed cannabis testing facility shall comply with all State regulations.

2. Any cannabis testing facility shall maintain all certifications required by the State.

3. A licensed cannabis testing facility business, its owners and employees may not hold an interest in any other cannabis business except another testing business.

4. Inspections by the City Fire Chief or designee may be conducted anytime during the business's regular business hours.

K. Additional Requirements for Cannabis Distribution Businesses

1. A licensed cannabis distribution facility shall comply with all State regulations.

2. Any cannabis distribution facility shall provide proof of a bond of at least five thousand dollars to cover the costs of destruction of cannabis or cannabis products if necessitated by a violation of licensing requirements.

3. Inspections by the City Police Chief or designee may be conducted anytime during the business's regular business hours.

4. A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.

5. A distributor shall ensure a label with the following information is physically attached to each container of each batch:

a. The manufacturer or cultivator's name and license number;

b. The date of entry into the distributor's storage area;

c. The unique identifiers and batch number associated with the batch;

d. A description of the cannabis goods with enough detail to easily identify the batch; and

e. The weight of or quantity of units in the batch.

6. A distributor shall store harvest batches and edible cannabis products that require refrigeration at 35 to 42 degrees Fahrenheit. In addition, a distributor shall store harvest batches in a darkened area with no more than 60% humidity.

7. A distributor shall store medical cannabis goods in a building designed to permit control of temperature and humidity and shall prevent the entry of environmental contaminants such as smoke and dust. The area in which medical cannabis goods are stored shall not be exposed to direct sunlight. A distributor may not store medical cannabis goods outdoors.

8. Employee breakrooms, eating areas, changing facilities, and bathrooms shall be completely separated from the storage areas.

9. All cannabis distribution activities shall occur within a fully enclosed and secured structure and within a secure fence at least eight (8) feet in height that fully encloses the distribution area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code Section, or provision of law regarding the height, location, materials, or other fencing restrictions and shall not be constructed or covered with plastic or cloth. All screening shall conform

to the requirements of applicable area, community, specific and design plans. Notwithstanding the foregoing fencing requirements, the Director of Development Services shall have the discretion to grant an exception in the event fencing which fully encloses the premises is impossible or impractical, and there are other appropriate security measures in place on the premises.

10. If located in a General Commercial (C-G) zone,

a. The cannabis distribution business shall be located on a parcel no less than 20,000 square feet in size; and

b. All loading and unloading activities shall take place within the secured fenced area required above.

L. Commercial Cannabis Business Permit Selection Process

1. Selection Process for Dispensaries/Retail Sales (Limited Number of Permits Available)

a. The Commercial Cannabis Business Permit selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The City of Merced has established a merit based scoring system to objectively award permits as

described in the application documents in Phase 2 to be used in the event that there are more applications than there are Commercial Cannabis Business Permits for a specific license type, such as for retail dispensaries.

d. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant- Dispensaries/Retail Sales'. The qualified applicants will be entered into the Phase 2 review process.

e. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision.

f. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 1 - Initial Review.

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for Dispensaries/Retail Sales' and entered into the Phase 2 review process. These requirements include but are not limited to:

i. All Application documents required in the City's Phase 1 application package;

ii. Application was submitted during the application period.

iii. Application forms are filled out completely;

iv. Business Owner(s)/Applicant(s) referenced on the application provide a Live Scan that was conducted within 14 days prior to submitting the application;

v. Phase 1 application fee is paid; and

vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

g. Commercial Cannabis Business Permit-Dispensaries/Retail Sales Selection - Phase 2 - Final Review and Scoring.

Phase 2 requirements include, but are not limited to:

i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:

a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;

b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or

c. Any material misrepresentation made by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within (10) ten days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a building permit is required for site improvements, Permit issuance will be

deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:

a. The use is permitted in the Zoning District;

b. The location of the cannabis business meets the distance requirements from sensitive uses;

c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;

d. No zoning violations exist on the property;

e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and

f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or designee, after reviewing the applications approved in Phase 1 and the aforementioned information, will convene a Selection Panel composed of the City Manager, Chief of

Police, and the Director of Development Services, or their designees. The Selection Panel will review all application documents required in the City's Phase 1 application package plus an additional background check of all owners conducted to the satisfaction of the Chief of Police, and individually score each application in accordance with the merit based scoring system established by Resolution of the City Council. A complete description of the merit based system and all merit based considerations shall be included with the application forms. An average score for each applicant based upon the merit based scoring of the Selection Panel shall be calculated and the applications shall be ranked from highest to lowest in accordance with the average score. The applications, in order of ranking, shall then be placed on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail Sales in the order of ranking. The Selection Panel will recommend the highest ranked applicant(s) on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail to the Planning Commission for the issuance of a Commercial Cannabis Business Permit – Dispensaries/Retail Sales. The number of applicants recommended to the Planning Commission by the Selection Panel shall be the same number of Commercial Cannabis Business Permits – Dispensaries/Retail Sales then available.

a. The Qualified Commercial Cannabis Business Application List – Dispensaries/Retail that was established on September 20, 2018, shall be valid until

September 20, 2019. Should a new Commercial Cannabis Business Permit-Dispensaries/Retail become available, whether by creation of a new permit or by vacancy of an existing permit, before September 20, 2019, the highest ranking applicant on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be recommended to the Planning Commission for issuance of a Commercial Cannabis Business Permit-Dispensaries/Retail. The Qualified Commercial Cannabis Business Application List-Dispensaries/Retail established on September 20, 2018, shall have no further force and effect after September 20, 2019 and the City shall have no further obligations to applicants on said list.

b. Should a Commercial Cannabis Business Permit-Dispensaries/Retail become available after September 20, 2019, whether by creation of a new permit or by vacancy of an existing permit, then a new application period shall be opened as provided in Section 20.44.170(L)(1).

c. Except as provided in subsection 20.44.170(L)(1)(g)(iv)(a) above, the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail shall be valid for a period not to exceed 180 days from the date the last available Commercial Cannabis Business Permit-Dispensaries/Retail is issued by the Planning Commission. The City shall have no further obligations to applicants on the Qualified Commercial Cannabis Business Application List-Dispensaries/Retail after 180 days have

elapsed since the last available Commercial Cannabis Business Permit was issued.

h. Commercial Cannabis Business Permit- Dispensaries/Retail Sales Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business Permit- Dispensaries/Retail Sales application(s) recommended by the Selection Panel as provided herein, and all other relevant information, and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit- Dispensaries/Retail Sales, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit- Dispensaries/Retails Sales shall be issued otherwise.

2. Selection Process for All Other Commercial Cannabis Business Permits (No Limits On the Number of Permits Available)

a. The Commercial Cannabis Business Permit- All Other Cannabis Businesses selection process will be conducted in two phases, Phase 1 and Phase 2. In Phase 1, each Applicant interested in operating a commercial cannabis business will pay an application fee in an amount established by the City Council by resolution. The application will be reviewed for completeness by the Director of Development Services or designee.

b. A pre-application conference with the Director of Development Services is strongly encouraged. A pre-application conference can be scheduled by calling 209-385-6858 during regular City of Merced business hours.

c. The initial application period shall be 21 calendar days from the date the applications are released. Should the 21st day fall on a day when City Hall is closed, the application period shall be extended to the next open day at 4:00 p.m. Following the application period, the Director of Development Services or designee shall stop accepting applications and review all applications received as described in Phase 1. The Director of Development Services or designee will evaluate the applications received and determine the eligibility of each application. Each application that is complete and in compliance with the application requirements in Phase 1 shall be placed on the 'Qualified Commercial Cannabis Business Application List-All Other Cannabis Businesses' and shall be notified in writing that they are a 'Qualified Commercial Cannabis Business Applicant-All Other Cannabis Businesses'. The qualified applicants will be entered into the Phase 2 review process. The Director of Development Services shall maintain the 'Qualified Application List for All Other Cannabis Businesses'.

d. If any of the items listed in the application process are not met, the Director of Development Services shall notify the applicant of the deficiency within thirty (30) calendar days, after which the applicant will have 10 calendar days from receipt of notice to correct the deficiency. Should the 10th day fall on a day when City Hall is closed, the correction period shall be extended to the next open day at 4:00 p.m. If the deficiency is not corrected within 10 calendar days, the Director of Development Services may deny the permit and notify the applicant of this determination in writing within 10 calendar days following the Director of Development Services decision. A new application, with new fees, would then be required for any subsequent consideration of that same or similar proposal at the same location.

e. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 1 - Initial Review

The Director of Development Services or designee(s) shall determine whether each application demonstrates compliance with the minimum requirements and be placed on the 'Qualified Applicant List for All Other Cannabis Businesses' and entered into the Phase 2 review process. These requirements include, but are not limited to:

i. All Application documents required in the City's Phase 1 application package;

ii. Application was submitted during the application period;

iii. Application forms are filled out completely;

iv. Business Owner(s) I Applicant(s) referenced on the application provides a Live Scan that was conducted within 14 days prior to submitting the application;

v. Phase 1 application fee is paid; and

vi. A signed statement that the proposed location of the commercial cannabis business on the application meets the zoning criteria established in this ordinance including, but not limited to, any and all sensitive use separation criteria required by this ordinance.

f. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 - Final Review

Phase 2 requirements include, but are not limited to:

i. Phase 2 application fee is paid and a comprehensive background check of any person or entity holding an ownership interest of 5% or more, is completed to the satisfaction of the Chief of Police. Upon completion of the comprehensive background check, the Chief of Police shall have the discretion to disqualify an applicant if any of the following are discovered:

a. Any civil judgment(s) against any owner for torts involving dishonesty, including, but not limited to, fraud, embezzlement, theft, and breach of fiduciary duties;

b. Any outstanding liens and/or judgments against any owner for unpaid state, federal, or local taxes; or

c. Any material misrepresentation by the applicant in the application for a Commercial Cannabis Business Permit.

In the event an applicant is disqualified by the Chief of Police as provided herein, the applicant shall be given written notice of the disqualification within ten (10) days of such decision. Thereafter, the application will be removed from the Phase 2 process. The decision of the Chief of Police shall be final and there shall be no further right to appeal said decision.

ii. The Building Official or designee has inspected all structures in which the use is located to determine that all applicable standards and requirements are met. If a

building permit is required for site improvements, Permit issuance will be deferred until a certificate of occupancy or other building permit approval is issued. Additionally, the Building Official has determined that there are no notices of nuisance or other code compliance issues recorded or on the property.

iii. The Zoning Administrator or designee has issued a Provisional Zoning Clearance documenting compliance with the following:

a. The use is permitted in the Zoning District;

b. The use meets the distance requirements from sensitive uses;

c. All land use permits, if any, have been approved and all conditions of approval have been met or are in good standing;

d. No zoning violations exist on the property;

e. A planning and/or building permit with a receipt proving payment for processing from the City of Merced Planning Department for the property location the commercial cannabis business will occupy; and

f. The Provisional Zoning Clearance shall be subject to final approval by the Planning Commission.

iv. The Director of Development Services or designee, after reviewing the applications approved in Phase 1 and reviewing the foregoing information will make a

recommendation to the Planning Commission to approve or reject the application for the Commercial Cannabis Business Permit for All Other Cannabis Businesses.

g. Commercial Cannabis Business Permit-All Other Cannabis Businesses Selection - Phase 2 – Planning Commission

The Planning Commission will review the Commercial Cannabis Business applications for All Other Cannabis Businesses recommended by the Director of Development Services and all other relevant information and determine if a CCBP should be granted, granted with conditions, denied, or modified. Prior to issuing a Commercial Cannabis Business Permit for All Other Cannabis Businesses, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through Sections 20.70.040. No Commercial Cannabis Business Permit shall be issued otherwise.

3. Minor Modifications to Pending Application for Commercial Cannabis Business Permit (All Types).

a. Applicants may make a written request to the Director of Development Services for a minor modification to a Commercial Cannabis Business Permit application at any point in the application process.

b. The Director of Development Services shall have the discretion to approve minor modifications to the application. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

ii. A change in the organizational structure of a proposed business;

iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

iv. A change in building elevations, floor plans, or site plans;

v. A change in operational procedures or security plans or procedures;

vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. The Director of Development Services will review any proposed modifications to the application and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

4. Appeal of Denial of Commercial Cannabis Business Permit (All Types)

The Planning Commission will review the Commercial Cannabis Business applications and all other relevant information, and determine if a CCBP should be granted,

as provided in Sections 20.44.170(L)(1)(h) and 20.44.170(L)(2)(g) herein. If the Planning Commission determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. Any decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

5. Commercial Cannabis Business Permit Annual Renewal (All Types)

a. Applications for the renewal of a permit shall be filed with the Director of Development Services at least sixty (60) calendar days before the expiration of the current permit. Any permittee allowing their permit to lapse or which permit expired during a suspension shall be required to submit a new application, pay the corresponding original application fees and be subject to all aspects of the selection process.

b. Any person desiring to obtain a renewal of their respective permit shall file a written application under penalty of perjury on the required form with the Director of Development Services who will conduct a review. The application shall be accompanied by a nonrefundable filing fee established by the City Council to defray the cost of the review required by this Section. An applicant shall be required to update the information contained in their original permit application and provide any new and/or additional information as may be reasonably required by the Director of Development Services in order to determine whether said permit should be renewed. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted.

c. The Director of Development Services or designee may deny the annual renewal of a Commercial Cannabis Business Permit if the permittee or the permittee's agent or employee has committed any one of the following acts:

i. Any act which would be considered a ground for denial of the permit in the first instance;

ii. Violates any other provision of this section or any City of Merced or State

law, statute, rule or regulation relating to the business's permitted activity;

iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee;

iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public;

v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business;

vi. Violates or fails to comply with the terms and conditions of the permit; or

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

6. Appeal of Denial of Commercial Cannabis Business Permit Renewal (All Types)

a. The Development Services Director, in consultation with the Selection Panel if they were involved in the original review, will review all Commercial Cannabis Business renewal applications and all other relevant information, and determine if a renewal CCBP should be granted. If the Development Services Director determines that the permit shall not be granted, the reasons for denial shall be provided in writing to the applicant. The applicant shall have fourteen (14) calendar

days from the date of the receipt of the written denial to correct the reasons for denial and request in writing reconsideration of permit issuance. Following review of the amended permit application, the Development Services Director will approve or deny the permit by providing written notice to the applicant.

b. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission within thirty (30) calendar days of receiving the appeal.

ii. Notice of the hearing shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

iii. Any interested person may appear and be heard regarding the appeal.

iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.

v. A matter being heard on appeal may be continued for good cause.

vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de nova review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

7. Modifications to Commercial Cannabis Business Permit (All Types)

a. A Commercial Cannabis Permit holder may make a written request to the Director of Development Services for modification of an existing permit at any time.

b. The Director of Development Services shall have the discretion to approve minor modifications to the permit. Minor modifications to an application include, but are not limited to, the following:

i. A change to the name of the proposed business and/or entity;

ii. A change in the organizational structure of a proposed business;

iii. A change of owner or ownership interest, provided that any change in ownership affecting a financial interest of 5% or more shall require a new and separate background investigation, payment of fees for the costs for investigation, and must meet the requirements of Section 20.44.170(E)(1)(e);

iv. A change in building elevations, floor plans, or site plans;

v. A change in operational procedures or security plans or procedures;

vi. Modifications to the parcel upon which the proposed Commercial Cannabis Business will be located, provided that the modifications do not otherwise render the parcel nonconforming to the underlying zoning district standards.

c. Any change to the location of a Commercial Cannabis Business after issuance of a Commercial Cannabis Business Permit may require a new application with payment of associated fees, at the discretion of the Director of Development Services. Any change to the location of a Commercial Cannabis Business shall be subject to approval by the Planning Commission. Prior to approval of a change in location of a Commercial Cannabis Business, the Planning Commission will provide all public notices and conduct a public hearing as described in the City of Merced Municipal Code Section 20.70.010 through 20.70.040.

d. The Director of Development Services will review any requests for modifications to the permit and shall provide a written determination within thirty (30) days from the day the written request is received by the City. The decision of the Director of Development Services shall be final and there shall be no further right to appeal.

8. Revocation of Commercial Cannabis Business Permit (All Types)

a. The Director of Development Services or designee may suspend or revoke a Commercial Cannabis Business Permit when the permittee or the permittee's agent or employee has committed any one or more of the following acts:

i. Any act which would be considered a ground for denial of the permit in the first instance.

ii. Violates any other provision of this section or any City of Merced or State law, statute, rule or regulation relating to the business's permitted activity.

iii. Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee.

iv. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.

v. Fails to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the operation of another business.

vi. Violates or fails to comply with the terms and conditions of the permit.

vii. Fails to pay all applicable City, State, or Federal taxes and fees.

b. Prior to suspension or revocation of the applicable permit, the Director of Development Services shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least ten (10) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid.

c. Any decision of the Development Services Director may be appealed to the Planning Commission. An appeal shall be filed within five (5) business days (excluding official city holidays) following a decision by the Director of Development Services.

i. When an appeal has been filed, the matter shall be scheduled for a public hearing before the Planning Commission within (thirty) 30 days of receiving the appeal.

ii. Notice of the hearing shall be provided to the applicant at least (ten) 10 calendar days prior to the public hearing.

iii. Any interested person may appear and be heard regarding the appeal.

iv. The Planning Commission's review of the appeal shall be limited to review of the Development Services Director decision and shall not be a de novo review.

v. A matter being heard on appeal may be continued for good cause.

vi. The decision of the Planning Commission may be appealed to the City Council.

a. A written appeal shall be filed within five (5) business days (excluding official city holidays) following a Planning Commission decision.

b. When an appeal has been filed, the matter shall be scheduled for a public hearing before the City Council within thirty (30) calendar days of receiving the appeal.

c. Notice of the hearing of the appeal shall be provided to the applicant at least ten (10) calendar days prior to the public hearing.

d. Any interested person may appear and be heard regarding the appeal.

e. A matter being heard on appeal may be continued for good cause.

f. The City Council's review of the appeal shall be limited to review of the Planning Commission decision and shall not be a de novo review. At the conclusion of the hearing, the City Council may affirm, reverse or modify the decision appealed. The decision of the City Council shall be the City's final decision in this regard and shall be dispositive of the matter subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6.

M. Limitations on the City's Liability

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Commercial Cannabis Business Permit pursuant to this ordinance or the operation of any cannabis facility approved pursuant to this chapter. As a condition of approval of a Commercial Cannabis Business Permit as provided in this chapter, the applicant or its legal representative shall:

1. Execute an agreement indemnifying the City from any claims, damages, injuries or liabilities of any kind associated with the registration or operation of the commercial cannabis facility or the prosecution of the applicant or permittee or its members for violation of federal or State laws;

2. Maintain insurance in the amounts and types that are acceptable to the City Attorney or designee;

3. Name the city as an additionally insured on all City required insurance policies;

4. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Commercial Cannabis Business permit; and

5. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a Commercial Cannabis Business Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

N. Enforcement

1. A violation of the regulations in this ordinance by an act, omission, or failure of an agent, owner, officer or other person acting in concert with or employed by a permittee within the scope of their employment or office, shall be deemed the act, omission, or failure of the permittee.

2. A permitted Commercial Cannabis Business shall notify the Police Chief or designee of the City of Merced upon discovery of any of the following situations:

a. A discrepancy of more than $1,000 in inventory over a period of 24 hours or $3,000 over period of 7 days.

b. A reason to suspect diversion, loss, theft or any other criminal activity pertaining to the operation of the commercial cannabis business.

c. The loss or alteration of records related to cannabis goods, registered medical cannabis patients, caregivers or dispensary employees or agents.

d. Any other reason to suspect any other breach of security.

3. Each and every violation of this Section shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Municipal Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the business's Commercial Cannabis Business Permit, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by the cannabis business and/or any owner, agent, officer, or any other person acting in concert with or employed by the cannabis business.

4. City Officials or their designees may enter and inspect the location of any commercial cannabis business during normal business hours to ensure compliance with this Section. In addition, law enforcement may enter and inspect the location of any cannabis business and the recordings and records maintained as required by this Section, except that the inspection and copying of private medical records shall be made available to law enforcement only pursuant to a properly executed search warrant, subpoena, or court order. A person engaging in commercial cannabis business without a permit and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the permit fee for each violation, and the department, state or local authority, or court may order the destruction of cannabis associated with that violation. A violator shall be responsible for the cost of the

destruction of cannabis associated with the violation, in addition to any amount covered by a bond required as a condition of licensure. Each day of operation shall constitute a separate violation of this section.

O. Fees and Taxes

All Cannabis Operations shall pay applicable fees and taxes, which may include one or more of the following:

1. Initial Application Fees. The Business Applicant shall submit a non-refundable fee to cover the cost of processing an initial application for the commercial cannabis business. These fees may be divided into two fees according to Initial Review (Phase 1) and Final Review (Phase 2).

2. Application Renewal Fees. The Business Owner shall submit a non-refundable fee to cover the cost of processing an application renewal annually.

3. Business License Fee. The Business Owner shall at all times maintain a current and valid business license and pay all business taxes required by the Merced Municipal Code.

4. Commercial Cannabis Regulatory Fee. The Business Owner shall pay an annual regulatory fee ('Regulatory Fee') to cover the costs of anticipated enforcement relating to the Cannabis Operation. The amount of the fee shall be set by Resolution of the City Council and be supported by the estimated additional costs of enforcement and monitoring associated with the Cannabis Operation. The Regulatory Fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The Regulatory Fee may be amended from time to time based upon actual costs.

5. All required taxes including sales and use taxes, business, payroll etc.

6. Additional cannabis-specific gross receipts, excise, cultivation or any other tax approved by the voters of the City of Merced."

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 _____, 2019, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2019, 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:

Phoebe A Anton 1-30-19
City Attorney Date

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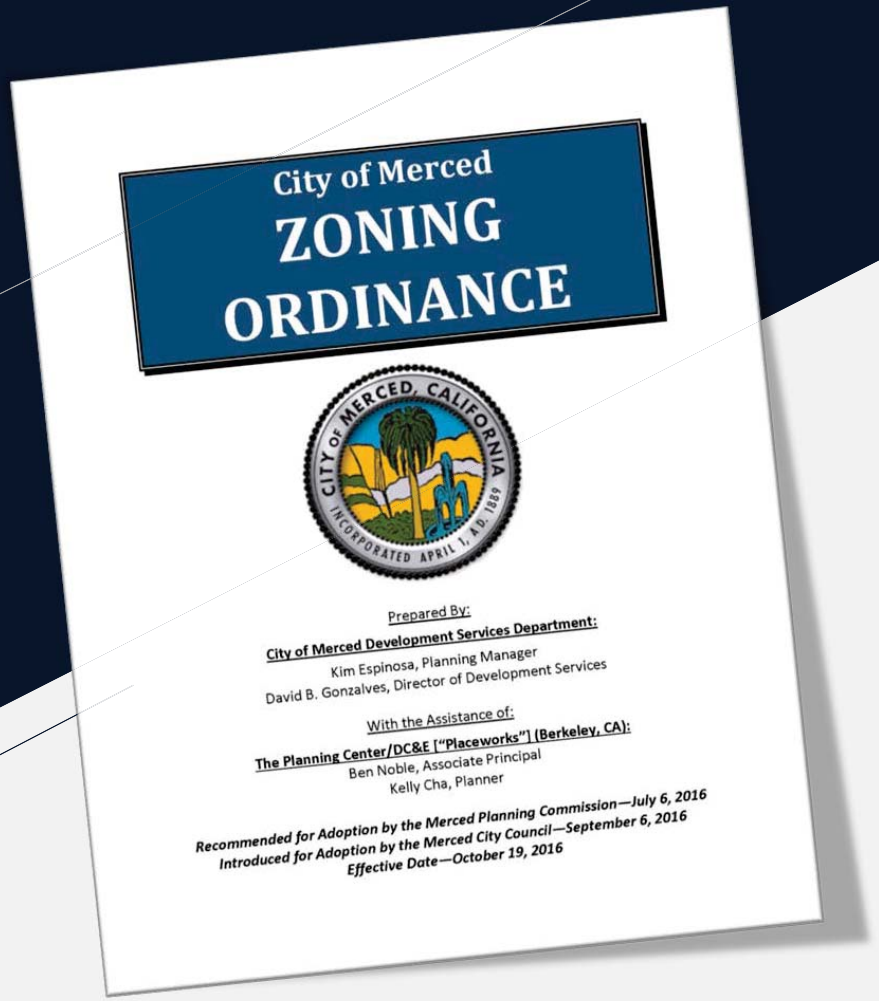

Zoning Ordinance Amendment #19-01

PUBLIC HEARING: FEBRUARY 19, 2019

ATTACHMENT 5

Synopsis

Zoning Ordinance Amendment #19-01

- Updates and fixes to issues that have been made apparent since the passage of Ordinance #2480
- Spelling, grammar, and formatting throughout Section 20.44.170
- Addition of a 5th retail sales dispensary license





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Additional Dispensary Permit

- Raises number of allowable permits for retail sales dispensaries from 4 to 5
- New licenses were contemplated by 20.44.170(L)(1)(g) of the ordinance
- Public Hearing would be heard at the Planning Commission after proposed ordinance amendments take effect
- Selection Committee would recommend the next-highest-ranking Application from existing ranked list

Ranking of Applications

Circulated 8/30/2018

The scores and rankings are as follows:

Commercial Cannabis Business Permit Applications for Dispensaries	TOTAL SCORE	AVERAGE SCORE	RANKING
CCBP #18-06R ("Blue Fire") at 1975 W Olive Ave	295	98.333	1
CCBP #18-10R ("Green Door") at 811 W Main St	292	97.333	2
CCBP #18-17R ("Manzanita") at 1594 W 18th St	289	96.333	3
CCBP #18-14R ("Harvest of Merced") at 863 W 15th St	285	95.000	4
CCBP #18-21R ("Medallion Wellness") at 808 W 16th St	269	89.667	5
CCBP #18-30R ("Jiva Life") at 1020 W Main St	255	85.000	6
CCBP #18-22R ("7 Fingers Cannabissary") at 1220-30 Martin Luther King Jr Wy	254	84.667	7
CCBP #18-11R ("Merced Pharmers Market") at 1112 W 16th St	246	82.000	8
CCBP #18-29R ("Nourish Health Merced") at 221 W Main St	244	81.333	9
CCBP #18-08R ("Bang Mingo") at 1850 Yosemite Pkwy	240	80.000	10 (Tie)
CCBP #18-05R ("Elev8 Wellness") at 235 W Main St	240	80.000	10 (Tie)
CCBP #18-13R ("Empire Health & Wellness") at 245 W 16th St	224	74.667	12
CCBP #18-09R ("Natural Supplements") at 127 W El Portal Dr	216	72.000	13
CCBP #18-07R ("Gateway Wellness") at 145 Riggs, Ste A	213	71.000	14
CCBP #18-25R ("Valley Pure") at 1180 Olivewood Ave	202	67.333	15
CCBP #18-26R ("Tamcu Investments") at 227 W Main St	201	67.000	16
CCBP #18-23R ("Kings Valley Wellness") at 850 W Main, Ste A	199	66.333	17
CCBP #18-12R ("Merced Healing Center") at 948 W 15th St	187	62.333	18
CCBP #18-24R ("Earth Source Healing") at 1035 W 14th St	179	59.667	19
CCBP #18-16R ("Sierra Gold Cannabis Co.") at 35 W 23rd St	168	56.000	20
CCBP #18-20R ("Veteran Medication 22") at 3317 M St	157	52.333	21 (Tie)
CCBP #18-18R ("Merced Pain Relief") at 946 W Main St	157	52.333	21 (Tie)



Definitions

New Key Terms Defined

- New definitions
  - Greenhouse
    - Inclusive of facilities using solely artificial light and facilities using mixed-light.
  - Selection Panel



Definitions

Updated Key Terms

- Updated definitions
  - School
    - Removes circular definition, adds ‘full-time’ to prevent edge cases
  - Owner/Ownership Interest
    - Adds ‘entity’ as possible owner, notes that those with financial interest in an entity owner are considered an owner of the cannabis business

Process Updates

Best Practices

- **Permits issued on or after Oct. 1 valid until Dec. 31 of the next year**
  - Eliminates duplication of fees and removes disincentive to apply at end of year
- **Permittees must notify City within 10 days of receipt of State license**
  - Previously was within 10 days of application for a State License
- **Sensitive Use Review now occurs at time of Application**
  - Was previously at time of issuance of the CCBP
- **Zoning Clearance from Phase I now Provisional**
  - Subject to Planning Commission final approval

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Process Updates

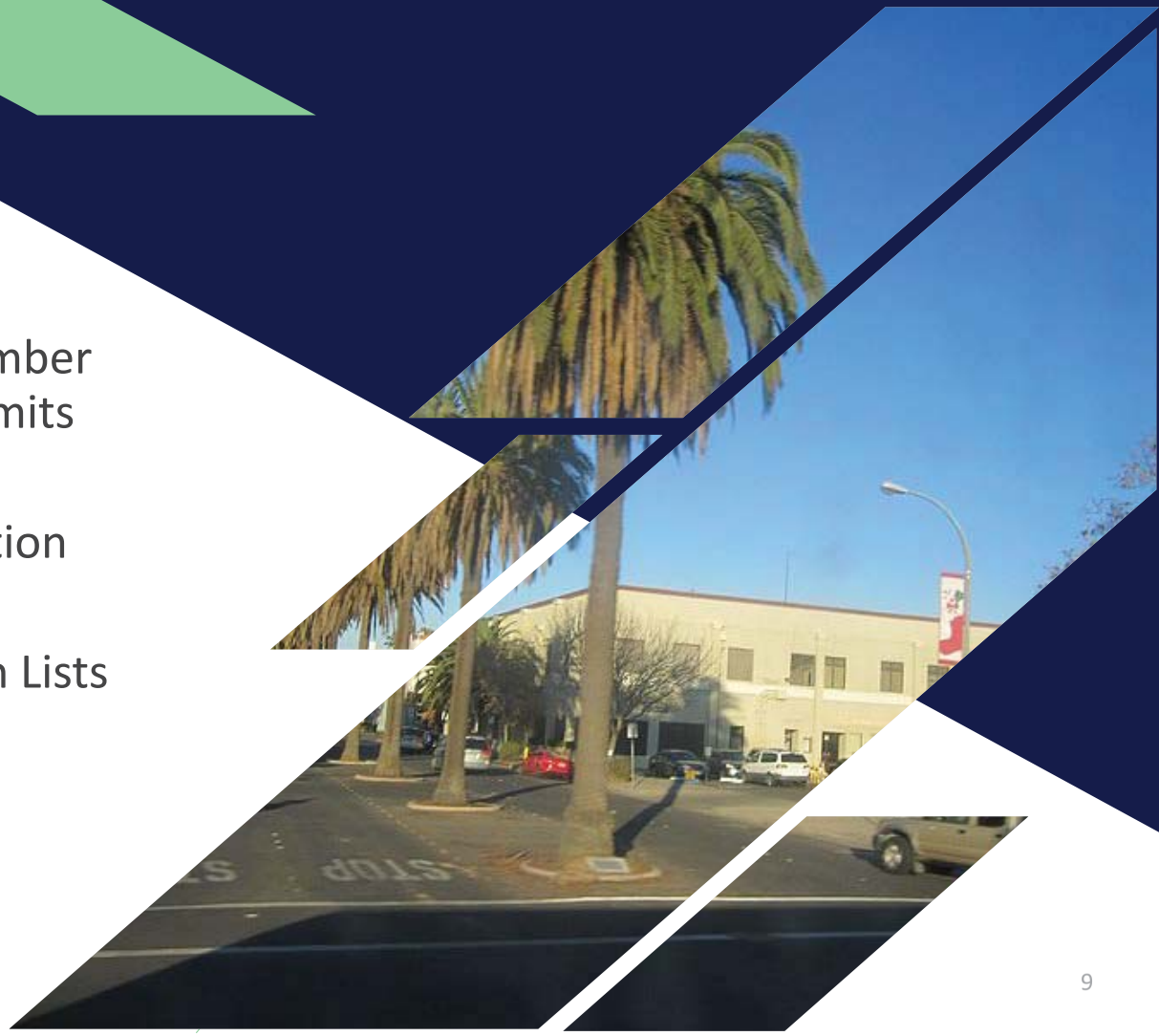
Best Practices

- **Director of Development Services has 30 days to notify applicants of deficiencies during Phase I review**
  - Brings in line with other City policies, was previously 21 days
- **Director of Development Services can grant fencing exceptions**
  - Consistent with conditions of awarded permits
- **Chief of Police can disqualify applicants for discovering in background checks:**
  - Dishonesty (fraud, embezzlement, theft, breach of fiduciary duties, etc.)
  - Outstanding liens or judgments for unpaid taxes
  - Material misrepresentation in the application
- **Planning Commission required to review applications recommended by Selection Panel**
  - Was previously 'all' applications

Ranking Process

Clarified and Refined

- Codifies ranking methodology
- Existing list maintained until September 20, 2019 in event of additional permits
- If a permit becomes available after September 20, 2019 a new application period would open
- Future ranked Qualified Application Lists would expire after 180 days



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Modifications to Applications/Permits



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Application or Approved Permit

- Minor Modifications may be made at the discretion of the Director of Development Services
  - Name
  - Organizational structure
  - Ownership (with background checks if >5%)
  - Elevation, floor, or site plans
  - Operating/Security procedures
  - Parcel modifications that do not render the parcel nonconforming to underlying zoning

Approved Permit Only

- Change in location with the approval of the Planning Commission at a Public Hearing

City Council Action

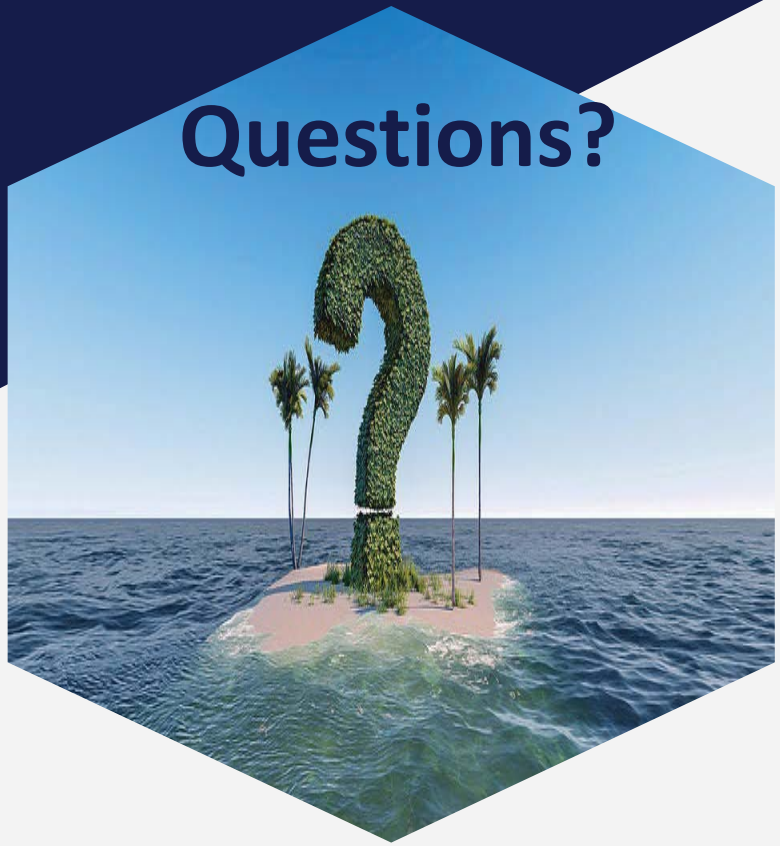
After the public hearing, the City Council should:

- Approve/Disapprove/Modify
  - Environmental Review #19-01 (Categorical Exemption)
  - Zoning Ordinance Amendment #19-01

- The Planning Commission voted to recommend ZOA #19-01 to the City Council by a vote of 5-2.



Questions?



ADMINISTRATIVE REPORT

Agenda Item J.1. Meeting Date: 2/19/2019

Report Prepared by: Venus Rodriguez, Finance Officer

SUBJECT: Discussion of Options for Funding the Section 115 Post Employment Benefit Trust Fund and Request for Authorization of Funding, Determination of Preferred Asset Allocation, and Adoption of Investment Guidelines for the Section 115 Post Employment Benefit Trust

REPORT IN BRIEF

Provides direction to staff regarding the funding of the Section 115 Post Employment Benefit Trust, Also requests a determination of asset allocation, and Adoption of investment guidelines for the Section 115 Post Employment Benefit Trust.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving the dissolution of Fund 073 Revenue Stabilization Fund and transferring $3,200,000 into the Section 115 Post Employment Benefit Trust Fund; and,

B. Authorizing a Supplemental Appropriation from the unreserved, unencumbered fund balance in Fund 553-Wastewater System in the amount of $2,000,000 and transferring into the Section 115 Post Employment Benefit Trust Fund; and,

C. Authorizing a Supplemental Appropriation from the unreserved, unencumbered fund balance in Fund 557-Water System in the amount of $1,300,000 and transferring into the Section 115 Post Employment Benefit Trust Fund; and,

D. Directing staff to begin the process for a charter amendment to remove Section 1112 Cash Basis Fund; and,

E. Selecting the Conservative asset allocation for the Trust 115 Post Employment Benefit Trust Fund Investment Portfolio; and,

F. Approving Investment Guidelines to be used for the Trust 115 Post Employment Benefit Trust Fund Investment Portfolio; and,

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

ALTERNATIVES

1. Adopt as recommended by staff; or

2. Refer back to staff with specific direction, or
3. Deny

AUTHORITY
City of Merced Charter Article VI Section 604-Finance Officer-Power and duties,
Charter Section 1003, Elections Code Section 9255 and 1415, and
Government Code Section 53216

CITY COUNCIL PRIORITIES
As provided for in the 2018-19 Adopted Budget to mitigate the increasing pension obligation and unfunded accrued liability.

DISCUSSION
On January 7, 2019, the City Council adopted Resolution 2019-04 authorizing the Post Employment Benefit Trust for pre-funding pension obligations. At that time, staff told the City Council an agenda item would come back at a later date to make a recommendation for funding the trust, selecting the preferred asset allocation for the investment portfolio, and recommending any necessary actions regarding the ability to invest in the Trust 115.

Based on CalPERS Annual Valuation report dated June 30, 2017, the City of Merced's Unfunded Accrued Liability (UAL) is $81.4 million. Staff estimates that the City of Merced's overall annual contribution amount will increase from $6.4 million in fiscal year 2016-17 to $13.5 million in fiscal year 2023-24, experiencing a 111% increase over the next six years. The General Fund's portion of pension contribution will increase from $3.6 million in fiscal year 2016-17 to $7.1 million in fiscal year 2023-24, with an increase of 99%.

Initial Funding

Staff recommends initial funding to come from three sources based on a percentage allocation of the UAL and if funds are available.

1. Fund 073-Revenue Stabilization
During the budget process for Fiscal Year 2016-17 the City Council approved establishing Fund 073 Revenue Stabilization. The Revenue Stabilization Fund was created to make funds available in anticipation of the next economic downturn. Annual funding to date totaling $3.2 million dollars has come from a portion of the General Fund unappropriated balance in excess of the Government Finance Officers Association (GFOA) recommended minimum reserve balance. The General Fund makes up over $40 million (50%) of the City's UAL. Staff feels it is appropriate and fiscally prudent to transfer all $3.2 million into the Trust 115 and dissolve the Revenue Stabilization Fund.

2. Fund 553-Wastewater Operations
The Wastewater Operations Fund had a Fiscal Year 2017-18 ending balance of $34.7 million. Although the most current Sewer Rate Study has expired, the financial model forecasts for 10 years. The 2010 Sewer Rate Study estimated the balance of the Wastewater Operations Fund

would be $26.4 million at the end of Fiscal Year 2017-18. Most of the large balance is due to projects budgeted but not completed that will roll into future years for completion. The Wastewater Operations Fund makes up $6.6 million (8.1%) of the City's UAL. Staff has determined that $2 million is available to transfer into the Trust 115.

3. Fund 557-Water Operations
The Water Operations Fund had a Fiscal Year 2017-18 ending balance of $30 million. The current Water Rate Study estimated the balance of the Water Operations Fund would be $19.7 million at the end of the Fiscal Year 2017-18. Most of the large balance is due to projects budgeted but not completed that roll into future years for completion. The Water Operations Fund makes up $4.3 million (5.25%) of the City's UAL. Staff has determined that $1.3 million is available to transfer into the Trust 115.

All other funds, which have an allocation of the UAL were analyzed and determined to have insufficient funds at this time to be able to contribute to the Trust 115.

The expected benefits in funding the Trust 115 include:

- Contributions placed in an exclusive benefit trust could address the City's Net Pension Liability
- Investment flexibility compared to restrictions on City fund investments
- Oversight and control of fund management selection and monitoring of performance
- Increased flexibility on use of trust assets
- Potential for positive rating agency and investor consideration

Annual Funding

The budget submission for each year currently includes a recommendation for a General Fund contribution to the Revenue Stabilization Fund of the calculated 75% excess of prior year audited unreserved General Fund balance over the GFOA recommended minimum. This recommendation will continue each year but instead of transferring to the Revenue Stabilization Fund, it will transfer to the Trust 115.

Example:

Fiscal Year 15-16 audited unreserved fund balance at June 30	$8,659,009
Fiscal Year 17-18 GFOA Recommended minimum	6,681,022
Excess over GFOA Minimum	$1,977,987
Amount Rounded	$1,900,000
	75%
75% of Excess	$1,425,000
80% of 75% excess to Trust 115 for Pension	$1,140,000

20% of 75% excess to Economic Development Opportunity	285,000
Total	$1,425,000

In addition, staff will analyze annually all funds, which have an allocation of the UAL to determine if funding is available to transfer into the Trust 115.

Charter Amendment

The City of Merced Charter includes Section 1112-Cash Basis Fund, which states:

"The City Council shall maintain a revolving fund to be known as the "Cash Basis Fund", for the purpose of placing the payment of running expenses of the City on a cash basis. An operating reserve shall be built up in this Fund from any available sources in an amount that the City Council deems sufficient with which to meet all lawful demands against the City for the first five months, or other necessary period, of the succeeding fiscal year prior to the receipt of ad valorem tax revenues. Transfers may be made by the City Council from such Fund to any other fund or funds of such sum or sums as may be required for the purpose of placing such funds, as nearly as possible, on a cash basis.

All moneys so transferred from the Cash Basis Fund shall be returned thereto before the end of the fiscal year."

The Finance Department established Fund 002 Cash Basis and transferred $4,000,000 from the General Fund in order to comply with Section 1112 of the Charter. The purpose of the funding was to have cash flow to cover expenses due to the timing city receives certain large revenues. For example, the City does not typically receive installments of revenues from property taxes until January and April of each fiscal year.

The City currently pools cash of all funds for investment purposes. Since its inception, the City has only used $329,219 of the funds in 1999 for Fund 021-Street Trees. The City's investment portfolio averages $160 million, of which $20 million is kept in the Local Agency Investment Fund (LAIF) with the State of California on a consistent basis. The funds kept in LAIF can be easily liquidated if needed.

If the City Council would like to utilize these funds to contribute to the Trust 115, staff would need direction to begin the process of a Charter amendment to remove Section 1112.

Amendments to the existing city charter require a majority vote of the electors and can be proposed by a governing body (i.e. City Council) or by an initiative. Section 1003 of the City's Charter specifies that all City elections are to be held pursuant to the procedures set forth in the Elections Code of the State of California. The Elections Code requires the amendment be submitted to voters at a "General Election" and the order of election be called by Council at least 88 days before the election. The next "General Election" will be on November 3, 2020.

There is an exception to the above rule. If the proposed charter amendment does not alter any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree of any local government employee organization, then the amendment can be submitted to the voters at a statewide primary election. Since this amendment would meet this exception, the earliest it could be placed on the ballot is March 3, 2020. The order of election will need to be passed by the City Council prior to Friday, December 6, 2019.

Asset Allocation

PARS provides flexibility to the City in the selection of the investment strategy for its funds in the Trust, giving the City control on the level of risk on its investments. The City has the ability to select one of five investment options that best suits its needs. Each investment option allocates the assets in varying investment combinations of equity, fixed income, and cash. With each investment option, as the expected rate of return increases so does the assumed risk.

The asset allocation strategies and the corresponding investment options currently available are:

	Equity	Fixed Income	Cash
Conservative	5%-20%	60%-95%	0%-20%
Moderately Conservative	20%-40%	50%-80%	0%-20%
Moderate	40%-60%	40%-60%	0%-20%
Balanced	50%-70%	30%-50%	0%-20%
Capital Appreciation	65%-85%	10%-30%	0%-20%

In November 2018, the Five Year Forecast was presented to the City Council, which showed that the significant increases in pension will create expenses over revenue in the General Fund and Measure C in most of the years. Due to the financial forecast and the likelihood of a recession, staff in conjunction with Highmark Capital Management, is recommending the conservative asset allocation.

Selecting the conservative asset allocation will provide more liquidity in case the funds are needed in the next few years. If, after a couple of years the funds in the trust have not been needed, staff and consultants will re-evaluate and could propose to the City Council a change to the asset allocation.

Investment Guidelines

The City of Merced currently has an adopted Investment Policy, which adheres to Government Code Section 53646. All pooled cash from all City funds are invested conforming to all state and local statutes governing the investment of public funds.

The investment restrictions that apply to public funds are not applicable to assets held in the Trust 115. Assets held in the Trust 115 can be invested per Government Code Section 53216. This code allows for increased risk diversification yet invested in a prudent fashion. Therefore, approving an Investment Guideline to be used specifically for the Trust 115 is recommended in order to meet the city's objectives.

The purpose of the attached Investment Guidelines Document is to:

- Facilitate the process of ongoing communication between the Plan Sponsor and its plan fiduciaries;
- Confirm the Plan's investment goals and objectives and management policies applicable to the investment portfolio identified below and obtained from the Plan Sponsor;
- Provide a framework to construct a well-diversified asset mix that can potentially be expected to meet the account's short- and long-term needs that is consistent with the account's investment objectives, liquidity considerations and risk tolerance;
- Identify any unique considerations that may restrict or limit the investment discretion of its designated investment managers;
- Help maintain a long-term perspective when market volatility is caused by short-term market movements.

The objectives and constraints identified in the Investment Guidelines are based on selecting the conservative asset allocation and the potential to use funds in a shorter time frame.

Investment Time Horizon: Intermediate-Term 3 - 5 years

Anticipated Cash Flows: Assets in the Plan will seek to mitigate the impact of future rate increases from CalPERS. It is not anticipated that the Plan will see a high level of disbursements in the first three years of the Plan. However, situations may arise, leading to a disbursement in assets to the CalPERS Trust.

Investment Objective: The primary objective is to maximize total Plan return, subject to the risk and quality constraints set forth herein. The investment objective the Plan Sponsor has selected is the Conservative Objective, which seeks to provide a consistent level of inflation-protected income over the long-term. The major portion of the assets will be fixed income related. Equity securities are utilized to provide inflation protection.

Risk Tolerance: Conservative

The account's risk tolerance has been rated Conservative, which demonstrates that the Plan can accept low price fluctuations to pursue its investment objectives.

Withdrawals

In order to withdraw funds from the Trust 115, the Finance Officer, as Plan Administrator, would need to submit a written request to PARS, including verification of pension costs. The city can direct PARS

to reimburse the City or transfer funds directly to CalPERS. It is a simple process and can be completed within 7-10 business days.

At this point, staff recommends reviewing the need for Trust 115 funding on a year-by-year basis. Any withdrawal recommendation will be proposed to the City Council during the budget process or as a separate City Council agenda report action item.

ATTACHMENTS

1. Investment Guidelines Document

HIGHMARK®
CAPITAL MANAGEMENT

Investment Guidelines Document

City of Merced

Employee Benefit Fund Pension Plan

February 2019

DRAFT

Investment Guidelines Document

Scope and Purpose

The purpose of this Investment Guidelines Document is to:

- Facilitate the process of ongoing communication between the Plan Sponsor and its plan fiduciaries;
- Confirm the Plan's investment goals and objectives and management policies applicable to the investment portfolio identified below and obtained from the Plan Sponsor;
- Provide a framework to construct a well-diversified asset mix that can potentially be expected to meet the account's short- and long-term needs that is consistent with the account's investment objectives, liquidity considerations and risk tolerance;
- Identify any unique considerations that may restrict or limit the investment discretion of its designated investment managers;
- Help maintain a long-term perspective when market volatility is caused by short-term market movements.

Key Plan Sponsor Account Information as of February 2019

Plan Sponsor:	City of Merced
Governance:	City Council for the City of Merced
Plan Name ("Plan"):	City of Merced Employee Benefit Fund Pension Plan
Trustee:	US Bank Contact: Susan Hughes, 949-224-7209 susan.hughes@usbank.com
Type of Account:	Pension Plan
Investment Manager:	US Bank, as discretionary trustee, has delegated investment management responsibilities to HighMark Capital Management, Inc. ("Investment Manager"), an SEC-registered investment adviser Contact: Andrew Brown, CFA, 415-705-7605 Andrew.Brown@highmarkcapital.com

Investment Authority: Except as otherwise noted, the Trustee, US Bank, has delegated investment authority to HighMark Capital Management, an SEC-registered investment adviser. Investment Manager has full investment discretion over the managed assets in the account. Investment Manager is authorized to purchase, sell, exchange, invest, reinvest and manage the designated assets held in the account, all in accordance with account's investment objectives, without prior approval or subsequent approval of any other party(ies).

Investment Objectives and Constraints

The goal of the Plan's investment program is to provide a reasonable level of growth which, will result in sufficient assets to pay the present and future obligations of the Plan. The following objectives are intended to assist in achieving this goal:

- The Plan should seek to earn a return in excess of its policy benchmark over the life of the Plan.
- The Plan's assets will be managed on a total return basis which takes into consideration both investment income and capital appreciation. While the Plan Sponsor recognizes the importance of preservation of capital, it also adheres to the principle that varying degrees of investment risk are generally rewarded with compensating returns. To achieve these objectives, the Plan Sponsor allocates its assets (asset allocation) with a strategic perspective of the capital markets.

Investment Time Horizon:	Intermediate-Term 3 - 5 years
Anticipated Cash Flows:	Assets in the Plan will seek to mitigate the impact of future rate increases from CalPERS. It is not anticipated that the Plan will see a high level of disbursements in the first three years of the Plan. However, situations may arise, leading to a disbursement in assets to the CalPERS Trust.
Investment Objective:	The primary objective is to maximize total Plan return, subject to the risk and quality constraints set forth herein. The investment objective the Plan Sponsor has selected is the Conservative Objective, which seeks to provide a consistent level of inflation-protected income over the long-term. The major portion of the assets will be fixed income related. Equity securities are utilized to provide inflation protection.
Risk Tolerance:	*Conservative* The account's risk tolerance has been rated Conservative, which demonstrates that the account can accept low price fluctuations to pursue its investment objectives.

Strategic Asset Allocation: The asset allocation ranges for this objective are listed below:

Strategic Asset Allocation Ranges		
Cash	Fixed Income	Equity
0%-20%	60%-95%	5%-20%
Policy: 5%	Policy: 80%	Policy: 15%

Market conditions may cause the account's asset allocation to vary from the stated range from time to time. The Investment Manager will rebalance the portfolio no less than quarterly and/or when the actual weighting differs substantially from the strategic range, if appropriate and consistent with your objectives.

Security Guidelines:

Equities

With the exception of limitations and constraints described above, Investment Manager may allocate assets of the equity portion of the account among various market capitalizations (large, mid, small) and investment styles (value, growth). Further, Investment Manager may allocate assets among domestic, international developed and emerging market equity securities.

Total Equities	5%-20%
Equity Style	*Range*
Domestic Large Cap Equity	5%-20%
Domestic Mid Cap Equity	0%-5%
Domestic Small Cap Equity	0%-7%
International Equity (incl. Emerging Markets)	0%-7%
Real Estate Investment Trust (REIT)	0%-5%

Fixed Income

In the fixed income portion of the account, Investment Manager may allocate assets among various sectors and industries, as well as varying maturities and credit quality that are consistent with the overall goals and objectives of the portfolio.

Total Fixed Income	60%-95%
Fixed Income Style	*Range*
Long-term bonds (maturities >7 years)	0%-40%
Intermediate-term bonds (maturities 3-7 years)	30%-95%
Short-Term bonds (maturities <3 years)	0%-30%
High Yield bonds	0%-6%

Performance Benchmarks:

The performance of the total Plan shall be measured over a three and five-year periods. These periods are considered sufficient to accommodate the market cycles experienced with investments. The performance shall be compared to the return of the total portfolio blended benchmark shown below.

Total Portfolio Blended Benchmark

7.50%	S&P 500 Index
1.50%	Russell Mid Cap Index
2.50%	Russell 2000 Index
1.00%	MSCI Emerging Market Index
2.00%	MSCI-EAFE Index
0.50%	Wilshire REIT Index
52.25%	Bloomberg Barclays Capital Aggregate Index
25.75%	ML 1-3 Year US Corp/Gov't Index
2.00%	US High Yield Master II Index
5.00%	Citi 1Mth T-Bill Index

Asset Class/Style Benchmarks

Over a market cycle, the long-term objective for each investment strategy is to add value to a market benchmark. The following are the benchmarks used to monitor each investment strategy:

Large Cap Equity	S&P 500 Index
Growth	S&P 500 Growth Index
Value	S&P 500 Value Index
Mid Cap Equity	Russell Mid Cap Index
Growth	Russell Mid Cap Growth Index
Value	Russell Mid Cap Value Index
Small Cap Equity	Russell 2000 Index
Growth	Russell 2000 Growth Index
Value	Russell 2000 Value Index
REITs	Wilshire REIT Index
International Equity	MSCI EAFE Index
Investment Grade Bonds	Bloomberg Barclays US Aggregate Index
High Yield	US High Yield Master II Index

Security Selection

Investment Manager may utilize a full range of investment vehicles when constructing the investment portfolio, including but not limited to individual securities, mutual funds, and exchange-traded funds. In addition, to the extent permissible, Investment Manager is authorized to invest in shares of mutual funds in which the Investment Manager serves as advisor or sub-adviser.

Investment Limitations:

The following investment transactions are prohibited:

- Direct investments in precious metals (precious metals mutual funds and exchange-traded funds are permissible).
- Venture Capital
- Short sales*
- Purchases of Letter Stock, Private Placements, or direct payments
- Leveraged Transactions*
- Commodities Transactions Puts, calls, straddles, or other option strategies*
- Purchases of real estate, with the exception of REITs
- Derivatives, with exception of ETFs*

**Permissible in diversified mutual funds and exchange-traded funds*

Duties and Responsibilities

Responsibilities of Plan Sponsor

The Plan Administrator for the City of Merced is responsible for:

- Confirming the accuracy of this Investment Guidelines Document, in writing.
- Advising Trustee and Investment Manager of any change in the plan/account's financial situation, funding status, or cash flows, which could possibly necessitate a change to the account's overall risk tolerance, time horizon or liquidity requirements; and thus would dictate a change to the overall investment objective and goals for the account.
- Monitoring and supervising all service vendors and investment options, including investment managers.
- Avoiding prohibited transactions and conflicts of interest.

Responsibilities of Trustee

The plan Trustee is responsible for:

- Valuing the holdings.
- Collecting all income and dividends owed to the Plan.
- Settling all transactions (buy-sell orders).

Responsibilities of Investment Manager

The Investment Manager is responsible for:

- Assisting the Plan Administrator for the City of Merced with the development and maintenance of this Investment Policy Guideline document.
- Meeting with Plan Administrator for the City of Merced to review portfolio structure, holdings, and performance.
- Designing, recommending and implementing an appropriate asset allocation consistent with the investment objectives, time horizon, risk profile, guidelines and constraints outlined in this statement.
- Researching and monitoring investment advisers and investment vehicles.
- Purchasing, selling, and reinvesting in securities held in the account.
- Monitoring the performance of all selected assets.
- Voting proxies, if applicable.
- Recommending changes to any of the above.

- Periodically reviewing the suitability of the investments, being available to meet with the Plan Administrator at least once each year, and being available at such other times within reason at your request.
- Preparing and presenting appropriate reports.
- Informing the committee if changes occur in personnel that are responsible for portfolio management or research.

Acknowledgement and Acceptance

I/We being the Plan Sponsor with responsibility for the account(s) held on behalf of the Plan Sponsor specified below, designate Investment Manager as having the investment discretion and management responsibility indicated in relation to all assets of the Plan or specified Account. If such designation is set forth in the Plan/trust, I/We hereby confirm such designation as Investment Manager.

I have read the Investment Guidelines Document, and confirm the accuracy of it, including the terms and conditions under which the assets in this account are to be held, managed, and disposed of by Investment Manager. This Investment Guidelines Document supersedes all previous versions of an Investment Guidelines Document or investment objective instructions that may have been executed for this account.

_____ Date: _____

Plan Administrator: City of Merced

_____ Date: _____

Investment Manager: Andrew Brown, CFA, Portfolio Manager, (415) 705-7605

ADMINISTRATIVE REPORT

Agenda Item J.2. Meeting Date: 2/19/2019

Report Prepared by: Venus Rodriguez, Finance Officer

SUBJECT: Mid-Year Budget Review for Fiscal Year 2018-2019 Including Requests for Approval of General Fund Supplemental Appropriations and Budget Amendments in Various Funds Totaling $58,000, Approval of an Additional Administrative Analyst Position in the Public Works Division and the Deletion of an Account Clerk III Position in the Public Works Division

REPORT IN BRIEF

Presents the Fiscal Year 2018-2019 Mid-Year Financial Report and seeks approval for General Fund Supplemental Appropriations and Budget Amendments in Various Funds totaling $58,000, approval to add an additional Administrative Analyst position in the Public Works Division and to delete an Account Clerk III position in the Public Works Division

RECOMMENDATION

City Council - Adopt a motion:

A. Approving a Supplemental Appropriation from the unreserved, unencumbered General Fund balance in the amount of $28,000; and,

B. Approving a Supplemental Appropriation from the unreserved, unencumbered General Fund balance in the amount of $30,000, transferring to Fund 424 Parks and Community Services Capital Improvement Projects and appropriating the same; and,

C. Approving the addition of a Administrative Analyst position in Fund 029 Public Works Administration; and,

D. Approving the deletion of an Account Clerk III position in Fund 029 Public works Administration.

ALTERNATIVES

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

AUTHORITY

Charter of the City of Merced, Section 1105

DISCUSSION

The purpose of this agenda item is to provide the City Council with a reconciliation on how the City ended Fiscal Year 2018-19, a General Fund update for the current Fiscal Year 2019-20, and to request changes to the budget due to needs that have been identified since the budget was adopted on June 18, 2018.

Beginning Fund Balance July 1, 2018

The table below reflects the Fiscal Year 18-19 adopted budget assumptions compared to actual fund balance at June 30, 2018.

Fund	FY 2018-19 Actual Beginning Balance	FY 2018-19 Beginning Budget Balance	Savings or (Deficit)
General Fund	$9,608.925	$8,022,598	$1,586,327
Development Services	$1,343,171	$ 309,689	$1,033,482
Parks & Community Services	$ 0	$ 0	$ 0
Airport	$ 56,215	$ 51,438	$ 4,777
Measure C	$1,523,560	$1,551,428	$ (27,868)

Fiscal Year 2018-19

The City Council adopted the Fiscal Year 2018-19 budget for all funds on June 18, 2018. Subsequent to the budget adoption, there have been several actions approved by the City Council that affected the budget.

General Fund Expenditures

The City Council has approved revenue increases of $100,462 with equal offsetting expenditures. In addition, there has been $566,655 in Supplemental Appropriations for the following:

Interim City Attorney Contract	$ 57,000
Applegate Park Playground Equipment	168,755
Entry Sign Consultant	15,900
Workers Compensation Transfer	325,000
Total	$566,655

MID-YEAR RECOMMENDATIONS

General Fund Supplemental Appropriations:

City Council

The City Clerk's office recently received the ability to provide the City Council meeting agendas to staff and City Council members through the software application ilegislate. In order to take advantage of the ilegislate application, users must download and view the agenda on an iPad. The Mid-Year General Fund supplemental appropriation request is $8,000, which will cover initial costs to purchase and set up seven iPads for all Council Members. Ongoing annual costs for the iPads, which will need to be added to future budgets is $6,200. Since this will require a lot less printing, staff estimates the savings to be up to $2,000 per year. It will also save staff time since they will no longer need to deliver the agenda packets to City Council members. The iPads could also be used for other City business functions including e-mail, making notes, etc.

Public Work-Parks

The Parks Division would like to replace and/or repair play equipment in three City Parks. The repairs are estimated to cost $31,000, of which $11,000 is available within the fiscal year 2018-19 adopted budget. The requested General Fund supplemental appropriation of $20,000 will provide the funding shortfall to replace the slide and roofing at Stephan Gray Min Park, replace the missing crawl tube at Old Fahrens Park, and replace the missing tube slide at Columbia Park.

Parks and Community Services

Due to recent break-ins at the zoo, Parks and Community Services would like to install CCTV security cameras that are viewable in real time by the Police Department for increased monitoring and security. The General Fund supplemental appropriation of $30,000 will cover the cost of the cameras and necessary infrastructure to make the camera feeds viewable at the Police Department. One camera will be located near the front gate to capture entrance into the zoo. The second camera will be located inside the zoo gift shop and the last camera will be located near an enclosure to provide video coverage of the parking lot, gift shop and barn entrance where the last break-in occurred.

Total General Fund Supplemental Appropriations

iPads for City Council	$ 8,000
Park Improvements	20,000
Cameras for the Parks	30,000
Total	$ 58,000

Public Works Administration Positions:

The Public Works Department is in the process of restructuring the administrative staff duties to better accommodate the changing workload and more complex tasks needed to run the day-to-day operations. Therefore, the Public Works Department is requesting to remove a vacant Account Clerk III position and to add an Administrative Analyst position. The Account Clerk III position is limited in scope. The change to an Administrative Analyst will allow the department flexibility in adapting to the

broader range of tasks necessary to perform the core duties.

The estimated annual cost of an Account Clerk III is $64,900. The estimated annual cost of an Administrative Analyst is $90.865. Due to salary savings in the current budget year, Public Works Administration can absorb the increase in cost for the Administrative Analyst if filled before the end of the Fiscal Year. In Fiscal Year 2019-20 and beyond, if this personnel request is approved, it is likely the restructuring will eliminate an additional position in Public Works, which will ultimately create a savings in the long term.

ADMINISTRATIVE REPORT

Agenda Item J.3. Meeting Date: 2/19/2019

Report Prepared by: Chris Goodwin, Chief of Police, Police Department

SUBJECT: Chief of Police Annual Department Report

REPORT IN BRIEF
Provides an update to Council on the Police Department's annual report.

RECOMMENDATION
For information only.