



# CITY OF MERCED

## Meeting Agenda

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

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

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Monday, August 5, 2019

6:00 PM

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

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

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

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

#### INDIVIDUALS WITH DISABILITIES

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

#### A. CLOSED SESSION ROLL CALL

#### B. CLOSED SESSION

- B.1. [19-445](#)      SUBJECT: CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION; California Department of Finance v. City of Merced, et al.; Sacramento County Superior Court Case No.34-2016-80002485; AUTHORITY: Government Code Section 54956.9(d)(1)

#### C. CALL TO ORDER

- C.1. Invocation - Bruce Metcalf, Merced Rescue Mission

C.2. Pledge of Allegiance to the Flag

## **D. ROLL CALL**

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

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

## **F. CEREMONIAL MATTERS**

F.1. [19-395](#)      **SUBJECT:** Recognition of UC Merced Chancellor Dorothy Leland

### **REPORT IN BRIEF**

UC Merced Chancellor Dorothy Leland will be recognized for her time and contributions to UC Merced and to the City of Merced.

F.2. [19-441](#)      **SUBJECT:** Certificate of Recognition Merced School of Employees  
Federal Credit Union

### **REPORT IN BRIEF**

Mayor Murphy will present a certificate of recognition to Mary Robinson Marketing Manager from Merced School Employees Federal Credit Union for their sponsorship of the City of Merced 2019 Summer at City Hall Program.

F.3. [19-416](#)      **SUBJECT:** Proclamation - National Health Center Week

### **REPORT IN BRIEF**

Presented to Yamilet Valladolid, Manager of Government Affairs Golden Valley Health Centers.

## **G. WRITTEN PETITIONS AND COMMUNICATIONS**

## **H. ORAL COMMUNICATIONS**



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

## **I. CONSENT CALENDAR**

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

**I.1.     [18-642](#)                    **SUBJECT: Reading by Title of All Ordinances and Resolutions****

**REPORT IN BRIEF**

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

**RECOMMENDATION**

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

**I.2.     [19-382](#)                    **SUBJECT: Information-Only Contracts for the Month of July 2019****

**REPORT IN BRIEF**

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

**I.3.     [19-394](#)                    **SUBJECT: Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of July 1, 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 July 1, 2019.

**I.4.     [19-448](#)                    **SUBJECT: Approval of Supplemental Appropriation to Increase the FY****

2019-20 Budget in the Amount of \$825 in Fund 344 - University Capital Charge (Debt Service) for Annual Fee Expense

**REPORT IN BRIEF**

Considers approving \$825 supplemental appropriation to cover annual fees in Debt Service Fund 344-University Capital Charge.

**RECOMMENDATION**

**City Council** - Adopt a motion approving a supplemental appropriation in the amount of \$825 from the unappropriated, unreserved fund balance of Debt Service Fund 344 - University Capital Charge to cover annual fees.

I.5. [19-443](#)

**SUBJECT:** Adoption of Resolutions Approving Proposition 68 Statewide Park Program Grant Round 3 - Grant Applications for Charles Ogletree Park Project, Fahren's Creek Site Park Project, and Lester K. Yoshida Park Project

**REPORT IN BRIEF**

Considers approving three Resolutions to approve three final statewide park program grant applications, and if awarded, accept contract terms.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Adopting **Resolution 2019-46**, a Resolution of the City Council of the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Charles Ogletree Park Project; and,

B. Adopting **Resolution 2019-47**, a Resolution of the City Council of the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Fahren's Creek Site Park Project; and,

C. Adopting **Resolution 2019-48**, a Resolution of the City Council of the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Lester K. Yoshida Park Project; and,

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

I.6. [19-360](#)

**SUBJECT:** Acceptance of a Petitions to Annex into Community

Facilities District (CFD) No. 2003-2 (Services) and Approval of  
Deposit and Reimbursement Agreements for the Costs of Annexing  
into the CFD for the Merced Gateway Shopping Center (Merced  
Gateway Marketplace) and the PG&E Service Center

**REPORT IN BRIEF**

Considers accepting the petition to annex into CFD No. 2003-2 (Services) from Gateway Park Development Partners, LLC, and PG&E and approve a deposit and reimbursement agreement for the costs of annexing into the CFD for the Merced Gateway Shopping Center (Merced Gateway Marketplace) and the PG&E Service Center.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Accepting the petition for annexation from Gateway Park Development Partners, LLC and PG&E for annexation into Community Facilities District (CFD) No. 2003-2 (Services); and,
- B. Approving the deposit and reimbursement agreements, increasing revenue account in the amount of \$50,000 and appropriating the same in Fund 150 to reimburse the City for the cost of Community Facilities District formation and related expenditures; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the Agreements.

**I.7.     [19-375](#)**

**SUBJECT:** Approval of a Fifteen (15) Year Conduit Lease Agreement for the Expansion of Telecommunication Services for the City and CVIN, LLC dba VAST NETWORKS, a Competitive Local Exchange Carrier with the Option to Renew the Contract in 5 Year Increments

**REPORT IN BRIEF**

Considers entering into a fifteen (15) year conduit lease agreement for the expansion of telecommunication services for the City and CVIN, LLC dba VAST NETWORKS, a Competitive Local Exchange Carrier with the option to renew the contract in 5-year increments.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the lease agreement with CVIN, LLC dba VAST NETWORKS; and authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

- I.8. [19-377](#) **SUBJECT:** Approval of Agreement for Labor Relations Consulting, Labor Contract Negotiations and Employee Related Legal Services with the Law Firm of Liebert Cassidy Whitmore in the Not to Exceed Amount of \$100,000
- REPORT IN BRIEF**  
Considers approving an agreement for labor relations consulting, labor contract negotiations and employee related legal services with the law firm of Liebert Cassidy Whitmore.
- RECOMMENDATION**  
**City Council** - Adopt a motion approving an agreement for professional services with the law firm of Liebert Cassidy Whitmore for labor relations consulting, labor contract negotiations, and employee related matters and authorizing the City Manager or the Assistant City Manager to execute the necessary documents.
- I.9. [19-376](#) **SUBJECT:** Acceptance of Donation in the Amount of \$100 from Two Anonymous Donors and Appropriating the Same for Hydration Supplies for the Firefighters
- REPORT IN BRIEF**  
Considers accepting a \$100 donation from two anonymous donors, who indicated that they would like bottled water to be purchased for the firefighters.
- RECOMMENDATION**  
**City Council** - Adopt a motion accepting the \$100 donation from two anonymous citizens, increasing revenue account 001-0901-360.02-01 (Contributions and Donations) in the amount of \$100 and appropriating the same in account 001-0901-522.29.00 (Supplies and Services).
- I.10. [19-400](#) **SUBJECT:** Approval of Program Supplement No. F033 to Administering Agency State Agreement for Federal Aid Project 10-5085F15 and Approval of Summary (E-76) for a Congestion Mitigation and Air Quality Improvement (CMAQ) Grant CML-5085(051) 120043 CMAQ-SDWK Infill Olive Avenue, Parsons Avenue and Alexander Avenue in the Amount of \$70,087
- REPORT IN BRIEF**  
Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$70,087 in CMAQ

Grant funding for Preliminary Engineering for the sidewalks on Olive Avenue from Queen Circle to Parsons Avenue, on Alexander Avenue from Nottingham Lane to Parsons Avenue and on Parsons Avenue from Olive Avenue to south of Hansen Avenue.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Adopting **Resolution 2019-44**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. F033; and,

B. Accepting CMAQ grant funds and increasing revenue in account 450-1104-321-32-00 by \$70,087 and appropriating the same to account 450-1104-637-65-00 (Project No. 120043) for preliminary engineering costs associated with design of sidewalks on Olive Ave from Queen Circle to Parsons Avenue, on Alexander Avenue from Nottingham Lane to Parsons Avenue and on Parsons Ave from Olive Avenue to south of Hansen Avenue; and,

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

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

I.11. [19-418](#)

**SUBJECT:** Approval of a Professional Service Agreement Between the City of Merced and RSG Inc. for Housing Successor Agency Services in an Amount not to Exceed \$59,760.00

**REPORT IN BRIEF**

Considers approving the terms and scope of services for a professional services agreement with RSG Inc. to provide consulting services to the City of Merced and the City's Housing Successor Agency.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the professional services agreement between the City of Merced and RSG Inc. for consulting services related to the Housing Successor Agency in the amount not to exceed \$59,760.00 and authorizing the City Manager or the Assistant City Manager to execute all the necessary documents.

I.12. [19-272](#)

**SUBJECT:** Authorization to Apply for and Receive, State Senate Bill 2

Planning Grant Funding from the State of California Department of Housing  
and Community Development's (HCD) Planning Grants Program

**REPORT IN BRIEF**

Authorizes Housing Division Staff to apply for grant funding under State Bill 2 (SB 2) Planning Grants Program in association with a Notice of Funding Availability issued by the California State Department of Housing and Community Development (HCD) and authorizes the receipt of grant funds.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Adopting **Resolution 2019-27**, a Resolution of the City Council of the City of Merced, California, authorizing the submittal of an application to the California Department of Housing and Community Development for, and receipt of, SB 2 planning grant program funds; and,

B. Authorizing the City Manager or the Assistant City Manager to execute the standard agreement and other necessary documents associated with the grant application and award process.

**I.13.**    [19-413](#)

**SUBJECT:** Approval of First Amendment to the Professional Services Agreement for the Solid Waste Collection and Related Services Rate Study with R3 Consulting Group, Inc., in the Amount of \$15,000 to Provide Additional Consulting Services for Review of New Financial Information, Providing Associated Additional Rate Options and Additional In-Person Meeting(s)

**REPORT IN BRIEF**

Considers approving a First Amendment to Professional Services Agreement with R3 Consulting Group, Inc., in the amount of \$15,000, for additional consulting services for the Solid Waste Collection and Related Services Rate Study.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving a First Amendment to the professional services agreement with R3 Consulting Group, Inc., in the amount of \$15,000, to provide additional consulting services for the Solid Waste Collection and Related Services Rate Study; and

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

the necessary documents.

**I.14. [19-406](#)**

**SUBJECT:** Selection of Eligible Roadway Projects and Submittal of 2018/2019 Regional Surface Transportation Program (RSTP) Exchange Funds Claim Form in the Amount of \$980,871 to be Filed with the Merced County Association of Governments (MCAG)

**REPORT IN BRIEF**

Selects projects and authorizes staff to complete the FY 2018/2019 Regional Surface Transportation (RSTP) Claim Form in the amount of \$980,871 for submittal to the Merced County Association of Governments (MCAG).

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Selecting Project 1 - B Street Improvements, in the amount of \$500,000 and Project 2 - M and Main Street Improvements in the amount of \$480,871, to be completed utilizing the FY 2018-2019 RSTP Exchange Funds; and,

B. Directing staff to complete the 2018-2019 RSTP claim form by listing the selected projects and corresponding project costs; and,

C. Adopting **Resolution 2019-51**, a Resolution of the City Council of the City of Merced California, authorizing the City Manager to file the Regional Surface Transportation Program (RSTP) Exchange Funds claim for Fiscal Year 2018-2019; and,

D. Authorizing the Finance Officer to make necessary budget adjustments for Fiscal Year 2019-2020.

**I.15. [19-414](#)**

**SUBJECT:** Adoption of Resolution Approving the 2019/2020 Local Transportation Fund (LTF) Claim Form in the Amount of \$191,250 to be Filed with the Merced County Association of Governments (MCAG)

**REPORT IN BRIEF**

Approves and accepts \$191,250 in Local Transportation Funds (LTF) from Merced County Association of Governments (MCAG) for street and road maintenance.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Adopting **Resolution 2019-43**, a Resolution of the City Council of the City of Merced, California, approving the Local Transportation Fund (LTF) Claim to be filed with the Merced County Association of Governments (MCAG) for Fiscal Year 2019/2020; and,

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

## J. PUBLIC HEARINGS

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

### J.1. [19-393](#)

**SUBJECT:** Continued Public Hearing - Adoption of a Categorical Exemption (Environmental Review #19-04) and Introduction of Ordinance Amending Section 20.42 and Various Other Sections of the Merced Municipal Code Regarding Accessory Dwelling Units (Zoning Ordinance Amendment #19-02)

#### REPORT IN BRIEF

Considers the adoption of a Categorical Exemption and the introduction of an Ordinance (one of two options) which would modify the City's zoning regulations regarding accessory dwelling units.

#### RECOMMENDATION

**City Council** - Adopt a motion:

#### **OPTION 1 (Based on City Council Direction on July 1, 2019)**

A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and



20.90.020 ("Glossary, Definitions") of the Merced Municipal Code.

OR

**OPTION 2 (As Recommended by the Planning Commission)**

A. Adopting a Categorical Exemption (Environmental Review #19-04);  
and,

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and 20.90.020 ("Glossary, Definitions") of the Merced Municipal Code, with Section 20.42.030(G)(2) amended as outlined below.

**J.2. [19-359](#)**

**SUBJECT: Public Hearing and Adoption of Resolution Denying the Appeal of the Planning Commission's Decision to Grant a One-Year Extension to Bright Development for Vesting Tentative Subdivision Map #1291 for the Subdivision Involving 39.8 Acres Generally Located on the East Side of G Street at Merrill Place (Extended)**

**REPORT IN BRIEF**

Provides Resolution for adoption to deny the appeal filed by BP Investors, LLC, Leeco, LLC, Exposition Properties, LLC and Rick Telegan, as adjacent landowners of the Planning Commission's decision to approve a one-year extension for Vesting Tentative Subdivision Map (VTSM) #1291 per City Council direction on June 3, 2019.

**RECOMMENDATION**

**City Council** - Adopt a motion approving **Resolution 2019-38**, A Resolution of the City Council of the City of Merced, California, denying an appeal by BP Investors, LLC; Leeco, LLC; and Exposition Properties, LLC, concerning the action of the Planning Commission resulting in the approval of the extension of Vesting Tentative Subdivision Map #1291 (Modified) for Bright Development, which extended the expiration date of the Vesting Tentative Subdivision Map to January 16, 2020.

**K. REPORTS**

- K.1. [19-449](#) **SUBJECT:** Update and Final Report on Celebrate Safe Fireworks Campaign for 2019

**REPORT IN BRIEF**

Provides a final report to Council on the Celebrate Safe Fireworks Campaign from the Fire Chief and Police Chief.

**RECOMMENDATION**

Provide staff direction as needed on preparing the Celebrate Safe Fireworks Campaign for next year.

- K.2. [19-420](#) **SUBJECT:** Report to the City Council on Recommended Police and Fire Facility Sizing and Configuration, Financing Structure and Funding Requirements for the Proposed Public Facilities Bond Measure

**REPORT IN BRIEF**

City Staff will provide a report to the City Council on recommendations for facility sizing and configuration of the proposed Police Headquarters and future Fire Stations, potential framework for a financing structure and other funding requirements necessary to support a potential Public Facilities Bond Measure for the March 2020 ballot.

**RECOMMENDATION**

Provide staff direction on next steps for a proposed Ballot Measure question related to the proposed Public Facilities Bond Measure.

**L. BUSINESS**

- L.1. [19-341](#) **SUBJECT:** Discussion on Attendance and Designation of Voting Delegate and Alternates for the 2019 League of California Cities Annual Conference - Annual Business Meeting, October 16 - October 18, 2019, Long Beach, CA

**REPORT IN BRIEF**

To expedite the conduct of business at this important policy-making meeting, each City Council is asked to designate a voting representative and two alternates who will be present at the meeting.

**RECOMMENDATION**

**City Council** - Adopt a motion designating one voting delegate and two alternate voting delegates to the League of California Cities Annual

Conference General Business Meeting, scheduled for Friday afternoon, October 18, 2019 in Long Beach, CA.

**L.2. [19-423](#)      SUBJECT: Citizens' Oversight Committee - Measure C Appointments**

**REPORT IN BRIEF**

Accept recommendation to fill Citizens' Oversight Committee - Measure "C" vacancies.

**RECOMMENDATION**

**City Council** - Adopt a motion accepting recommendation from the Citizens' Oversight - Measure "C" Subcommittee and appointing one individual to the Central District to serve as a member of the Committee and one individual to the Northern District to serve as a member of the Committee.

**L.3. [19-424](#)      SUBJECT: Bicycle Advisory Commission Appointment**

**REPORT IN BRIEF**

Consider accepting nominations and appointing two individuals to the Bicycle Advisory Commission.

**RECOMMENDATION**

**City Council** - Adopt a motion accepting nominations and appointing two applicants to serve on the Bicycle Advisory Commission.

**L.4. [19-454](#)      SUBJECT: City Council Appointment to the Arts and Culture Advisory Commission for City Council District 2**

**REPORT IN BRIEF**

Considers accepting nomination and appointing one individual to Council District 2 on the Arts and Culture Advisory Commission.

**RECOMMENDATION**

**City Council** - Adopt a motion accepting nomination and appointing one individual to the Arts and Culture Advisory Commission to represent City Council District 2.

**L.5. [19-436](#)      SUBJECT: Discussion on Current Composition of the Governing Board Composition of Merced County Association of Governments and the Proposed Amendments to Governing Board Composition**

**REPORT IN BRIEF**

Mayor to provide an update on a recent Merced County Association of Government Agenda Item for consideration and to provide an opportunity for City Council to discuss the proposed Governing Board composition.

**RECOMMENDATION**

**City Council** - Information Only; to provide an opportunity for City Council to discuss the Merced County Association of Government proposed Governing Board composition.

L.6. [19-432](#)

**SUBJECT:** Request to Add Item to Future Agenda

**REPORT IN BRIEF**

Provides members of the City Council to request that an item be placed on a future City Council agenda for initial consideration by the City Council.

L.7. [19-433](#)

**SUBJECT:** City Council Comments

**REPORT IN BRIEF**

Provides an opportunity for the Mayor and/or Council Member(s) to make a brief announcement on any activity(ies) she/he has attended on behalf of the City and to make a brief announcement on future community events and/or activities. The Brown Act does not allow discussion or action by the legislative body under this section.

**M. ADJOURNMENT**



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item B.1.**

Meeting Date: 8/5/2019

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**SUBJECT:** CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION; California Department of Finance v. City of Merced, et al.; Sacramento County Superior Court Case No.34-2016-80002485; AUTHORITY: Government Code Section 54956.9(d)(1)



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item F.1.**

Meeting Date: 8/5/2019

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**SUBJECT:** Recognition of UC Merced Chancellor Dorothy Leland

### REPORT IN BRIEF

UC Merced Chancellor Dorothy Leland will be recognized for her time and contributions to UC Merced and to the City of Merced.



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item F.2.**

Meeting Date: 8/5/2019

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**SUBJECT:** Certificate of Recognition Merced School of Employees Federal Credit Union

### REPORT IN BRIEF

Mayor Murphy will present a certificate of recognition to Mary Robinson Marketing Manager from Merced School Employees Federal Credit Union for their sponsorship of the City of Merced 2019 Summer at City Hall Program.

### ATTACHMENTS

1. Certificate of Recognition



# *Certificate of Recognition*

*presented to:*

**Merced School Employees Federal  
Credit Union**

Sponsorship of the City of Merced, 2019 Summer at City Hall Program

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*Mike Murphy*  
*Mayor*

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*August 5, 2019*  
*Date*





# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item F.3.**

Meeting Date: 8/5/2019

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**SUBJECT:** Proclamation - National Health Center Week

### REPORT IN BRIEF

Presented to Yamilet Valladolid, Manager of Government Affairs Golden Valley Health Centers.

### ATTACHMENTS

1. Proclamation



# Proclamation

WHEREAS, For over 50 years, Community Health Centers have provided high-quality, affordable, comprehensive primary and preventive health care in our nation's underserved communities, delivering value to, and having a significant impact on America's health care system.

WHEREAS, As the country's largest primary care network, Health Centers are the health care home for 28 million Americans in over 11,000 communities across the nation. One in every twelve people in the United States gets their care in a community health center; and

WHEREAS, Health Centers are a critical element of the health system, serving both rural and urban communities, and often providing the only accessible and dependable source of primary care in their communities. Nationwide, Health Centers serve one in every five residents of rural areas; and

WHEREAS, Every day, Health Centers develop new approaches to integrating a wide range of services beyond primary care, including oral health, vision, behavioral health, and pharmacy services, to meet the needs and challenges of their communities; and

WHEREAS, Health Centers are governed by patient-majority boards, ensuring that the patients of each Health Center are engaged in their own health care decisions; and

WHEREAS, Health Centers are locally owned and operated small businesses that serve as critical economic engines, helping to power local economies by generating \$54.6 billion in economic activity in some of the country's most economically deprived communities; and

WHEREAS, Health Centers reduce overall costs of care by helping manage patients chronic conditions, which keeps them out of costlier health care settings like hospital emergency rooms; and

WHEREAS, Health Centers are on the front lines of emerging health care crises, providing access to care for our nation's veterans, addressing the opioid epidemic, and responding to public health threats in the wake of natural disasters.

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, do hereby proclaim August 4-10, 2019, as National Health Center Week. I encourage every resident to visit Golden Valley Health Centers and celebrate the important partnership between America's Health Centers and the communities they serve.

Signed this 5<sup>th</sup> day of August.

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*Mike Murphy, Mayor of Merced*



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

---

**Agenda Item I.1.**

Meeting Date: 8/5/2019

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

### REPORT IN BRIEF

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

### RECOMMENDATION

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



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.2.**

Meeting Date: 8/5/2019

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

**SUBJECT:** Information-Only Contracts for the Month of July 2019

### REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

### AUTHORITY

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted FY 2018-2019 threshold of \$69,833.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2018-2019 threshold of \$31,000.00, the contracts listed on the attached table were entered into by the City.

### ATTACHMENTS

1. "Information-Only" Contracts Table for July 2019

**Exhibit 1 – Table of Contracts**8/5/2019 City Council Meeting

Page 1 of 2

<b>Department/Division</b>	<b>Vendor</b>	<b>Purpose/Location</b>	<b>Amount</b>
1115 – PW - Land Application	California Natural Resources Agency – Department of Fish & Wildlife	Temporary Entry Permit (TEP) to Conduct Nutria Control on Private Lands (Access Agreement for three parcels).	(No funds.)
1201 – Recreation and Parks	Merced County, on Behalf of First 5	Joint Funding Partnership Agreement With City Recreation and Parks Department to Accept a \$3,000 Contribution for Swim Lessons. (Program duration: 6/17/2019 - 8/1/2019.)	(No funds.)
1102 – PW - Administration	AmeriPride Services, Inc.	Third Amendment to the Agreement for Professional Services to Provide Uniform Rental and Cleaning of Uniform Work Apparel and Ancillary Items (FY 2019/20).	\$ 778.67
1201 – Recreation and Parks	Daniel DuPont (DBA: DuPont Volleyball Academy)	Independent Contractor Services Agreement (Leisure Class) to Conduct a Youth Volleyball Camp in the Summer of 2019.	\$ 1,260.00
1106 – PW - Water	Water Systems Optimization, Inc.	Professional Services Agreement to Conduct a Level 1 Validation for a 2019 AWWA Water Audit Submission, per the California Department of Water Resources (DWR).	\$ 2,500.00
1108 – WWTP	Seal Analytical, Inc.	Annual Preventative Maintenance Contract on AQ1 at the Wastewater Treatment Plant (WWTP). Statement of Services (PO #134844).	\$ 4,075.00
2002 – Economic Development	Real Property Analysts (RPA; Wakefield & Hopper, Inc.)	Agreement for Professional Services for a Re-Appraisal of the Former Merced "Sun-Star" Building and Land, located at 3033 N. "G" St., to Establish Its Current Market Value.	\$ 4,500.00
2002 – Economic Development	Calen Chapman Consulting	Agreement for Professional Services to Compile and Collect Data and Generate Economic Snapshots for a Bi-Annual Set of Economic Development Reports (October 2019 and April 2020).	\$ 4,990.00
2002 – Economic Development	Christopher Consulting Group of Ohio, Inc. (DBA: DSG Advisors)	Agreement for Professional Services to Provide a "Craft Brew" Workshop in Connection With a Project to Market and Attract Nightlife Venues to the City of Merced.	\$ 5,000.00
1119 – PW - Facilities	Better Flooring, Inc.	Provide and install new carpeting for the Merced Airport Terminal waiting room and TSA Office (excludes moving of furniture). Statement of Services (PO #135309).	\$ 5,562.09
1122 – PW - Trees	Odyssey Landscaping Company, Inc.	Pruning of trees at Various Community Facilities Districts (CFD's). Statement of Services (PO #135368).	\$ 7,820.00

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

**Exhibit 1 – Table of Contracts (Continued)**8/5/2019 City Council Meeting

Page 2 of 2

1201 – Recreation and Parks	Melin Enterprises, Inc. (Valley Commercial Services)	Agreement for Janitorial Services at the Merced Senior Community Center (July 1, 2019 through June 30, 2020).	\$ 8,052.00
2002 – Economic Development	UC Merced, Central California Small Business Development Center Network, Inc. (Formerly, Valley Sierra SBDC)	Agreement for Professional Services to Provide a Specialized Support Program Targeting Small Businesses Within the City of Merced.	\$ 9,000.00
1119 – PW - Facilities	ThyssenKrupp Elevator Corporation	Elevator Full-Maintenance Service Contract for Seven (7) Hydraulic Elevators (one-year extension from 7/1/2019 to 6/30/2020).	\$12,800.00
2006 – Welcome Center	Gil Gomez-Sereno (DBA: Gil's Lawn Service)	Agreement for Professional Services for Grounds and Facility Maintenance at the Bell Station (located at 415 West 18th Street) for Fiscal Year 2019-2020.	\$13,800.00
1119 – PW - Facilities	Emcor Services Mesa Energy Systems	Maintenance Agreement for HVAC at the Merced Civic Center and at the Police Department.	\$14,402.00
0803 – Engineering	Mid Cal Pipeline & Utilities, Inc.	Potholing (approximately 24) to locate utility lines in the roadways of Buckner Road, Brimmer Road, Ballantyne Drive, and McElvaney Avenue (Project No. 113031). Statement of Services (PO #135291).	\$16,800.00
1119 – PW - Facilities	Hoffman Electronic Systems	Security System Sale and Services Agreement/Installment Agreement to Provide Security Systems, Monitoring, and Maintenance for Various City-Owned Properties.	\$18,960.00
0402 – HR - Personnel	Cordico Psychological Corporation	Client Services Agreement to Provide for the Creation and Maintenance of a Customized Mobile Wellness App Branded for the Police Department.	\$20,000.00
0803 – Engineering	Herschy Environmental, Inc.	Agreement for Professional Services to Provide Groundwater Sampling and Reporting for the Airport Hazardous Waste Site (three-year term).	\$27,226.80
1301 – Housing	Dalen Unruh (DBA: Unruh Bobcat Service)	Mowing or tilling of weeds, removing any and all debris and brush once per month at various properties (12-month term). Statement of Services (PO #135412).	\$30,828.00
1108 – WWTP	Chris Gatewood Industries, Inc. (DBA: CentriTEK)	Rebuild and balance a Flottweg Decanter Model No. Z73-4/454 at the Wastewater Treatment Plant (WWTP). Statement of Services (PO #135401).	\$34,750.00

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



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.3.**

Meeting Date: 8/5/2019

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**SUBJECT:** Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of July 1, 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 July 1, 2019.

### ALTERNATIVES

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

### ATTACHMENTS

1. Minutes of July 1, 2019



# CITY OF MERCED

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

## Minutes

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

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Monday, July 1, 2019

6:00 PM

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#### A. CLOSED SESSION ROLL CALL

**Present:** 7 - Mayor Pro Tempore Anthony Martinez, Mayor Mike Murphy, Council Member Kevin Blake, Council Member Jill McLeod, Council Member Matthew Serratto, Council Member Delray Shelton, and Council Member Fernando Echevarria

**Absent:** 0

#### B. CLOSED SESSION

Mayor MURPHY called the Closed Session to order at 5:30 PM.

##### B.1.

**SUBJECT:** CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION; California Department of Finance v. City of Merced, et al.; Sacramento County Superior Court Case No.34-2016-80002485;  
**AUTHORITY:** Government Code Section 54956.9(d)(1)

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

#### C. CALL TO ORDER

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

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

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

##### C.2. Pledge of Allegiance to the Flag

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

#### D. ROLL CALL

**Present:** 7 - Mayor Pro Tempore Anthony Martinez, Mayor Mike Murphy, Council Member Kevin Blake, Council Member Jill McLeod, Council Member Matthew Serratto, Council Member Delray Shelton, and Council Member Fernando Echevarria

**Absent:** 0



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

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

There was no report.

## **F. CEREMONIAL MATTERS**

F.1.                    **SUBJECT:** Proclamation - Merced Pride Weekend

### **REPORT IN BRIEF**

Received by a representative of the Merced LGBTQ+ Alliance.

Mayor MURPHY presented the Proclamation for Merced Pride Weekend to Adam LANE President of the LGBTQ+ Alliance.

## **G. WRITTEN PETITIONS AND COMMUNICATIONS**

There were none.

## **H. ORAL COMMUNICATIONS**

Jose CABANAS, Merced - spoke on a job site that he believed didn't have the correct permits.

Jorge GARIBAY, Merced - spoke on an issue he is having at Stephen Leonard Park.

John MICHAEL, Merced - spoke on camping at Stephen Leonard Park and road repairs.

Monica VILLA, Merced - spoke on issues with a resident at Steven Leonard Park.

## **I. CONSENT CALENDAR**

Item I.22. Authorization to Accept Volunteer Labor and Donated Materials Valued at Approximately \$4,400 from Correct Craft to Repair Applegate Park Zoo Exhibit Barrier Fencing, Touch-up Painting of the Facility, Removing and Replacing the Existing Bulletin Board, and Constructing a New Bulletin Board; was pulled for separate consideration.

## **Approval of the Consent Agenda**

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

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

**No:** 0

**Absent:** 0

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

**REPORT IN BRIEF**

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

**RECOMMENDATION**

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

**This Consent Item was approved.**

**I.2. SUBJECT: Information-Only Contracts for the Month of June 2019**

**REPORT IN BRIEF**

Notification of awarded Non-Public Works contracts under \$31,000 and of Public Works contracts under \$69,833.

**This Consent Item was approved.**

**I.3. SUBJECT: Information Only - Planning Commission Meeting Minutes of May 8, 2019**

**RECOMMENDATION**

For information only.

**This Consent Item was approved.**

**I.4. SUBJECT: Information Only - Traffic Committee Minutes of July 10, 2018, November 13, 2018, and March 12, 2019**

**RECOMMENDATION**

For information only.

This Consent Item was approved.

- I.5. **SUBJECT:** Information Only - Site Plan Review Committee Meeting Minutes of May 16, 2019

**RECOMMENDATION**

For information only.

This Consent Item was approved.

- I.6. **SUBJECT:** Information Only - Arts and Culture Advisory Commission Meeting Minutes of February 8, 2019, March 14, 2019, and April 18, 2019

**RECOMMENDATION**

For information only.

This Consent Item was approved.

- I.7. **SUBJECT:** Approval of City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of June 3, 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 June 3, 2019.

This Consent Item was approved.

- I.8. **SUBJECT:** Authorization for Retroactive Submittal of the Burners Without Borders Program Community Micro-Grant Application for Funding of a Community Art Project to the Arts and Cultural Advisory Commission and Authorization to Submit Grant Application(s) for Future Projects that do not Exceed \$5,000 Each, and Which do not Require Matching Funds on an Annual Basis

**REPORT IN BRIEF**

Considers granting retroactive authority for submittal of Burners Without Borders community micro-grant application that was due June 3, 2019

for funding of a community art project and granting the Arts and Cultural Advisory Commission to submit additional grant applications.

**RECOMMENDATION**

**City Council** - Adopt a motion granting retroactive authority to the Arts and Culture Advisory Commission for the submittal of the Burners Without Borders community micro-grant application that was due June 3, 2019 for a community art project and provide authority for the Arts and Culture Advisory Commission to submit future grant applications for projects less than \$5,000 each which do not require a match on an annual basis.

**This Consent Item was approved.**

**I.9.**

**SUBJECT:** Approval of the Property, Boiler and Machinery Insurance Renewal Through Alliant Property Insurance Programs in the Amount of \$336,652.81 for Program Year 2019/2020

**REPORT IN BRIEF**

Consider approving the renewal of the City's policy through Alliant Property Insurance Programs (APIP) at 35.44% premium increase, amounting to \$336,652.81 for program year 2019/2020.

**RECOMMENDATION**

**City Council** - Adopt a motion ratifying the renewal of the property and boiler and machinery insurance through the Alliant Property Insurance Programs (APIP), administered by Alliant Insurance Services for the period of July 1, 2019 through June 30, 2020; and authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

**This Consent Item was approved.**

**I.10.**

**SUBJECT:** Adoption of Resolution Authorizing the City Manager or His Designee to Sign a Letter of Commitment for a Multi-Jurisdictional Local Hazard Mitigation Planning (LHMP) Grant

**REPORT IN BRIEF**

Considers adopting a Resolution authorizing the City Manager or his Designee to sign a LHMP Letter of Commitment for a Multi-Jurisdictional LHMP Grant through the Merced County Operational Area (OA).

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Resolution 2019-37**, A Resolution of the City Council of the City of Merced, California authorizing the City Manager or his Designee to sign a letter of commitment for the Merced County Multi-Jurisdictional Local Hazard Mitigation Planning grant.

**This Consent Item was approved.**

**I.11.**

**SUBJECT:** Approval of Agreement for Professional Services for a One Year Term with THOR, Inc. for AS/400 Programming Consulting Services in the Amount of \$178,000

**REPORT IN BRIEF**

Authorizes the execution of a one-year professional services agreement with THOR, Inc. for \$178,000 for AS/400 programming consulting services to support Central Square (formally Sungard) application suite.

**RECOMMENDATION**

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

**This Consent Item was approved.**

**I.12.**

**SUBJECT:** Approval of a Five Year Software Maintenance Contract with Superion for Support and Hosting of the Current Enterprise Resource Planning System in the Amount of \$858,910.40 with Provisions to Reduce Costs by Completing an Annual Review of Modules Migrated to the New Enterprise Resource Planning System

**REPORT IN BRIEF**

Authorize the execution of a five year software maintenance contract with Superion for support and hosting of the current enterprise resource planning software in the amount of \$858,910.40 with provisions to reduce costs by completing an annual review of modules migrated to the new enterprise resource planning system.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the agreement with Superion and authorizing the City Manager or the Assistant City Manager to execute the necessary documents including future contract

amendments for cancelling select modules to reduce future maintenance and hosting costs; as well as future professional services contract amendments with Superion below the bid threshold as required.

**This Consent Item was approved.**

**I.13.**

**SUBJECT:** Approval of Memorandum of Understanding (MOU) Between the City of Merced and Merced Union High School District (MUHSD) for Police Services in the District's Four (4) High Schools for a Term of Three Years, Fiscal Year 2019 - 2022, with an Option to Extend the Term for One Additional Year

**REPORT IN BRIEF**

Requests council approval of a MOU between Merced Union High School District and the City of Merced to provide Police Services at the District four (4) high schools.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving a Memorandum of Understanding between the City of Merced and Merced Union High School District to provide police services in the District's four high schools; and,

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

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

**This Consent Item was approved.**

**I.14.**

**SUBJECT:** Approval of Memorandum of Understanding (MOU) Between the City of Merced and Merced City School District (MCSD) for Police Services in the District's Four (4) Middle Schools for a Term of Three Years at a Reimbursement Amount per Attached Agreement and Exhibit A

**REPORT IN BRIEF**

Requests council approval of a MOU between Merced City School District and the City of Merced to provide Police Services at the Districts four (4) middle schools for a term of three years for an amount

stated on the MOU and Exhibit A attached.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving a Memorandum of Understanding between the City of Merced and Merced City School District to provide police services in the District's four middle schools; and,

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

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

**This Consent Item was approved.**

**I.15.**

**SUBJECT:** Authorization to Accept and Appropriate a Donation of Five Hundred Dollars (\$500.00) from Benny Dfanda to be Used to Purchase Equipment and Supplies for the Merced Police K9 Unit

**REPORT IN BRIEF**

Considers accepting and appropriating a donation of five hundred dollars (\$500.00) from Benny Dfanda to offset the costs of the Merced Police K9 Program.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Accepting the donation of five hundred dollars (\$500.00) from Benny Dfanda for use in the Police K9 Program; and,

B. Depositing the five hundred dollar (\$500.00) donation to revenue account #001-1001-360-02-01 and appropriate the same amount to account #001-1027-522-29-00 to purchase equipment and supplies for the K9 Unit.

**This Consent Item was approved.**

**I.16.**

**SUBJECT:** Approval of Agreement for Professional Services with Friedman and Bruya, Incorporated, for Specialized Laboratory Services in Support of the City's Groundwater Investigation, for a Three-Year Term in the Amount of \$10,291.05 Annually

**REPORT IN BRIEF**

Considers an agreement for professional services with Friedman and Bruya, Incorporated, for laboratory services to support the City's groundwater investigation

**RECOMMENDATION**

**City Council** - Adopt a motion approving the agreement for professional services with Friedman and Bruya, Inc., for a three-year term in the amount of \$10,291.05 annually for each of the fiscal years FY 2019/20, FY 2020/21, and FY 2021/22, to provide laboratory analytical services; and authorizing the City Manager or the Assistant City Manager to execute necessary documents.

**This Consent Item was approved.**

**I.17.**

**SUBJECT:** Approval of Third Amendments to Two Separate Agreements with Provost and Pritchard Engineering Group, Incorporated for Environmental Remediation Services Including Groundwater Cleanup and Reporting for a Combined Total of \$284,700

**REPORT IN BRIEF**

Considers approving third amendment to two amendments to agreements for professional services with Provost and Pritchard Engineering Group, Incorporated for a combined amount not to exceed \$284,700.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving the third amendment to agreement for professional services (cleanup contract) with Provost and Pritchard Engineering Group, Incorporated, in the amount of \$224,400 for groundwater cleanup; and,
- B. Approving the third amendment to agreement for professional services (reporting contract) with Provost and Pritchard Engineering Group, Incorporated, in the amount of \$60,300 for report drafting; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents.



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This Consent Item was approved.

I.18.

**SUBJECT:** Adoption of Resolution Approving Program Supplement No. F031 to Administering Agency - State Agreement for Federal Aid Projects No. 10-5085F15 and Acceptance of Congestion Mitigation and Air Quality Improvement (CMAQ) Grant Funds, CML-5085(050) 119069 CMAQ-SDWK, in the Amount of \$61,336 for Preliminary Engineering for the Sidewalks Near South R, T Street Between Childs Ave and Stuart Drive and Stuart Drive and Childs Avenue and South R Street

**REPORT IN BRIEF**

Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$61,336 in CMAQ Grant funding for Preliminary Engineering for the sidewalks near South R Street, T Street between Childs Ave and Stuart Drive and Stuart Drive between Childs Avenue and South R Street.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Adopting **Resolution 2019-29**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. F031; and,

B. Accepting CMAQ grant funds and increasing revenue in account 450-1104-321-32-00 by \$61,336 and appropriating the same to account 450-1104-637-65 (Project No. 119069) for preliminary engineering costs associated with design of sidewalk near South R Street, T Street between Childs Ave and Stuart Drive and Stuart Drive between Childs Avenue and South R Street; and,

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

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

This Consent Item was approved.

I.19.

**SUBJECT:** Adoption of Resolution Approving the Administering Agency State Program Supplement No. F032 and Agreement

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Summary (E-76) for a Congestion Mitigation and Air Quality Improvement (CMAQ) Grant CML-5085(052), (Project No. 119070), CMAQ-SDWK for the Use of \$36,679 in CMAQ Grant Funding for Preliminary Engineering for the Sidewalks on 7th Street and 8th Street Between West Avenue and Linda Lane Between 7th Street and Lopes Avenue

**REPORT IN BRIEF**

Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$36,679 in CMAQ Grant funding for Preliminary Engineering for the sidewalks on 7th Street and 8th Street between West Ave, and Linda Lane between 7th Street and Lopes Avenue.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Adopting **Resolution 2019-36**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. F032; and,

B. Accepting CMAQ grant funds and increasing revenue in account 450-1104-321-32-00 by \$36,679 and appropriating the same to account 450-1104-637-65 (Project No. 119070) for preliminary engineering costs associated with design of sidewalk on 7th Street and 8th Street between West Ave, and Linda Lane between 7th Street and Lopes Avenue; and,

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

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

**This Consent Item was approved.**

**I.20.**

**SUBJECT:** Approval of Recreation and Parks Commission's Recommendation to Grant a Request by the Merced Rescue Mission for the Co-Sponsored Rental Rate for the Merced Senior Community Center on October 19, 2019 for its Annual Bingo Bash

**REPORT IN BRIEF**

Considers approving the Recreation and Parks Commission's

recommendation to approve a request for the co-sponsored rate for the rental of the Merced Senior Community Center by the Merced Rescue Mission to hold its annual Bingo Bash on October 19, 2019.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the Recreation and Park Commission's recommendation to rent the Merced Senior Community Center to the Merced Rescue Mission on October 19, 2019, at the co-sponsored rental rate.

**This Consent Item was approved.**

**I.21.**

**SUBJECT:** Approval of Recreation and Parks Commission's Recommendation to Grant a Request by the California Highway Patrol for a Rental Rate Waiver (no Charge) for the Merced Senior Community Center on July 25, 2019 for its Memorial Sign Dedication Ceremony

**REPORT IN BRIEF**

Considers approving the Recreation and Parks Commission's recommendation to approve a request for a rental rate waiver for the Merced Senior Community Center on July 25, 2019 for the California Highway Patrol Memorial Sign Dedication Ceremony.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the Recreation and Park Commission's recommendation to waive the rental rate for use of the Merced Senior Community on July 25, 2019 for the California Highway Patrol's Memorial Sign Dedication Ceremony.

**This Consent Item was approved.**

**I.22.**

**SUBJECT:** Authorization to Accept Volunteer Labor and Donated Materials Valued at Approximately \$4,400 from Correct Craft to Repair Applegate Park Zoo Exhibit Barrier Fencing, Touch-Up Painting of the Facility, Removing and Replacing the Existing Bulletin Board, and Constructing a New Bulletin Board

**REPORT IN BRIEF**

Considers approving acceptance of labor and materials valued at approximately \$4,400 for Applegate Park Zoo improvements from Correct Craft.

**RECOMMENDATION**

**City Council** - Adopt a motion accepting a donation from Correct Craft for volunteer labor and materials valued at approximately \$4,400 for improvements to Applegate Park Zoo.

Mayor MURPHY pulled this item to recognize Correct Craft for volunteering labor and materials for improvements to Applegate Park Zoo.

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

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

**No:** 0

**Absent:** 0

**J. PUBLIC HEARINGS**

**J.1.**

**SUBJECT:** Public Hearing - Adoption of a Categorical Exemption (Environmental Review #19-04) and Introduction of Ordinance Amending Section 20.42 and Various Other Sections of the Merced Municipal Code Regarding Accessory Dwelling Units (Zoning Ordinance Amendment #19-02)

**REPORT IN BRIEF**

The City Council will consider the adoption of a Categorical Exemption and the introduction of an Ordinance which would modify the City's zoning regulations regarding accessory dwelling units.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and

20.90.020 ("Glossary, Definitions") of the Merced Municipal Code."

Planning Manager Kim ESPINOSA gave a slide show presentation on Accessory Dwelling Units (Zoning Ordinance Amendment #19-02).

Mayor MURPHY opened the Public Hearing at 6:38 PM.

Gloria CONLIN, Merced - spoke on the need for owner occupancy on the property.

Christopher KEMPTON, Merced - stated that he would want the owners to occupy the property.

Mayor MURPHY closed the Public Hearing at 6:41 PM.

Council and staff discussed the pros and cons for owner occupancy, garage conversions, and parking.

**A motion was made by Mayor Murphy, seconded by Council Member Blake, to direct staff to bring back a proposed Ordinance with an R-1 (required owner occupancy) and R-2 (owner occupancy not required) option to the August 5, 2019 City Council Meeting. The motion carried by the following vote:**

**Aye:** 6 - Mayor Murphy, Council Member Blake, Council Member McLeod, Council Member Serratto, Council Member Shelton, and Council Member Echevarria

**No:** 1 - Mayor Pro Tempore Martinez

**Absent:** 0

## K. REPORTS

**K.1.** **SUBJECT: Update to the City Council on the Public Survey Results for the Proposed Public Facilities Bond Measure and Charter Amendment**

### REPORT IN BRIEF

City Staff will provide an update to the City Council on the results of a recent public option survey conducted to test the viability of a Public Facilities Bond Measure and a Charter Amendment on the March 2020 ballot.

### RECOMMENDATION

Provide staff direction on next steps for pursuing items to be placed on the March Public Facilities financing options and a Charter Amendment.

City Manager Steve CARRIGAN, Assistant City Manager Stephanie DIETZ, and Finance Officer Venus RODRIGUEZ gave a slide show

presentation on the Community Perspectives on Potential Ethics Reform Ballot Measure.

Michael BELLUOMINI, Merced - gave a presentation on the cost of the Police Station and Fire Stations.

Mayor MURPHY and Mr. BELLUOMINI discussed the potential cost of building the Police Station and the process to pass a measure for the Police Station.

Council and staff discussed the Council ethic codes, the bond measure, the needs assessment draft, taking the bond measure to the March primary election, and extending Measure C. They also discussed reopening the South Merced Police Substation.

**Clerk's Note:** Council directed staff to bring back the needs assessment results to the first meeting in August.

## L. BUSINESS

### L.1.

**SUBJECT:** Approval of Reappointments to Recreation and Parks Commission (1), Regional Airport Authority (1), and Bicycle Advisory Commission (1)

#### REPORT IN BRIEF

Considers reappointing currently seated individuals to an additional term.

#### RECOMMENDATION

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

**A motion was made by Council Member Blake, seconded by Mayor Pro Tempore Martinez, to reappoint Justin Anderson to the Recreation and Parks Commission, William Rudd to the Regional Airport Authority, and Ann Thurston to the Bicycle Advisory Commission. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 0

### L.2.

**SUBJECT:** Approval of Replacement Appointment to the Citizens

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Advisory Charter Review Committee for Vacant District 1 Seat

**REPORT IN BRIEF**

Considers the appointment of an individual to the Citizens Advisory Charter Review Committee to fill a vacancy left by the resignation of Bernadette Soares.

**RECOMMENDATION**

**City Council** - Adopt a motion accepting nomination and appointing one individual to the District 1 seat as a replacement on the Citizens Advisory Charter Review Committee.

Assistant City Clerk John TRESIDDER explained the resignation of one of the Committee members.

**A motion was made by Mayor Pro Tempore Martinez, seconded by Council Member Blake, to appoint Stephanie Butticci to the Citizens Advisory Charter Review Committee as a District 1 representative. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 0

L.3. Request to Add Item to Future Agenda

Mayor Pro Tempore MARTINEZ requested to add an item on Opportunity Zones.

Council Member SERRATTO requested to add an item on Neighborhood Improvement Project on Loughborough for the September 16, 2019 meeting.

L.4. City Council Comments

Council Member ECHEVARRIA reported on attending an event downtown, meeting with Jorge GARIBAY, and meeting with residents at Applegate Park.

Council Member SHELTON reported on attending a California League of Cities conference.

Mayor Pro Tempore MARTINEZ reported on attending the Recreation and Parks Commission meeting, the Lyon's Annual BBQ, and the California

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League of Cities conference.

Council Member MCLEOD reported on holding a Coffee with a Council Member Town Hall with residents in her district.

Council Member SERRATTO reported on meeting residents in the Loughborough area, attending the Coffee with a Council Member Town Hall, and attending the California League of Cities conference.

Mayor MURPHY reported on attending the Citizens Advisory Charter Review Committee meeting, the Juneteenth event, the Merced County Association of Governments meeting, the Measure V meeting, and the Regional Homeless meeting.

## M. ADJOURNMENT

**Clerk's Note:** The Regular Meeting adjourned at 8:01 PM.

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

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

**No:** 0

**Absent:** 0





## ADMINISTRATIVE REPORT

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### Agenda Item I.4.

Meeting Date: 8/5/2019

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*Report Prepared by: Deborah Richardson, Accountant II*

**SUBJECT:** Approval of Supplemental Appropriation to Increase the FY 2019-20 Budget in the Amount of \$825 in Fund 344 - University Capital Charge (Debt Service) for Annual Fee Expense

### REPORT IN BRIEF

Considers approving \$825 supplemental appropriation to cover annual fees in Debt Service Fund 344-University Capital Charge.

### RECOMMENDATION

**City Council** - Adopt a motion approving a supplemental appropriation in the amount of \$825 from the unappropriated, unreserved fund balance of Debt Service Fund 344 - University Capital Charge to cover annual fees.

### ALTERNATIVES

1. Approve as recommended by staff; or,
2. Return to staff with specific direction; or,
3. Deny.

### AUTHORITY

Article XI, Fiscal Administration of the Merced Municipal Code - At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members.

### CITY COUNCIL PRIORITIES

As provided in the Fiscal Year 2019-20 budget.

### DISCUSSION

In 2003, the City entered into an agreement with California Infrastructure and Economic Development Bank (CIEDB). These improvements were funded by CIEDB which consisted of water line and sewer line extended northerly from the present terminus of the City water lines, in North G Street near Cormorant Drive. The water/sewer line shall be extended north on G Street to Bellevue Road, and then east along Bellevue Road to a connection point near the boundary of Phase one UCM Campus near the intersection of Bellevue and Lake Roads.

The bond payments are collected from University of California, Merced twice a year. These payments are put into Fund 344-University Capital Charge held by the Finance Officer of the City, transferred to the Fiscal Agent and used to pay principal and interest for the bonds plus annual fees.

For fiscal year 2019-20 the annual fee was budgeted incorrectly. Per the debt service schedule, the annual fee should be \$18,157. The amount budgeted for FY 19-20 was \$17,332. The supplemental appropriation amount of \$825 is to cover the additional amount of the annual fees that was not budgeted.

**IMPACT ON CITY RESOURCES**

Debt Service Fund 344 - University Capital Charge has unreserved, unappropriated fund balance available for this supplemental appropriation.



ADMINISTRATIVE REPORT

Agenda Item I.5.

Meeting Date: 8/5/2019

*Report Prepared by: Jennifer Arellano, Recreation Supervisor, Parks and Recreation*

**SUBJECT:** Adoption of Resolutions Approving Proposition 68 Statewide Park Program Grant Round 3 - Grant Applications for Charles Ogletree Park Project, Fahren's Creek Site Park Project, and Lester K. Yoshida Park Project

**REPORT IN BRIEF**

Considers approving three Resolutions to approve three final statewide park program grant applications, and if awarded, accept contract terms.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2019-46**, a Resolution of the City Council of the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Charles Ogletree Park Project; and,
- B. Adopting **Resolution 2019-47**, a Resolution of the City Council of the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Fahren's Creek Site Park Project; and,
- C. Adopting **Resolution 2019-48**, a Resolution of the City Council of the City of Merced, California, Approving the Application for Statewide Park Development and Community Development and Community Revitalization Program Grant Funds for Lester K. Yoshida Park Project; 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. Deny; or,
- 3. Refer to staff for reconsideration of specific items; or,
- 4. Continue to a future meeting (date and time to be specified in the motion).

**AUTHORITY**

Charter of the City of Merced, Section 200.

**CITY COUNCIL PRIORITIES**

As provided for in the 2019-20 Adopted Budget.

## **DISCUSSION**

On July 15, 2019, staff presented the City Council with three park options to be considered for grant funding within the Proposition 68 program. During the meeting, Council directed staff to apply for all three proposed park programs as presented. In order to fulfill the grant requirements, staff are returning to the City Council for the adoption of the attached resolutions. The application is due August 5, 2019. Therefore, the final version of each application will be made available to the City Council and public on the evening of the Council meeting.

## **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed at this time.

## **ATTACHMENTS**

1. Resolution 2019-46
2. Resolution 2019-47
3. Resolution 2019-48

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**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING THE APPLICATION FOR  
STATEWIDE PARK DEVELOPMENT AND  
COMMUNITY REVITALIZATION PROGRAM  
GRANT FUNDS**

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Development and Community Revitalization Grant Program, setting up necessary procedures governing the application;

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and,

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the Grant Scope project.

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

SECTION 1. The submittal of an application to the State Department of Parks and Recreation to participate in the Statewide Park Development and Community Revitalization Grant Program for the Charles Ogeltree Park Project is authorized and approved.

SECTION 2. The City of Merced certifies that it has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project.

SECTION 3. If the project is awarded, the City of Merced certifies that it has or will have sufficient funds to operate and maintain the project.

SECTION 4. The City of Merced has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide.

SECTION 5. The City Manager or designee has the authority to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope.

SECTION 6. The City of Merced agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

SECTION 7. The City of Merced will consider promoting inclusion per Public Resources Code §80001(b)(8 A-G).

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2019, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

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Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

 7-18-19  
City Attorney      Date

4

**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING THE APPLICATION FOR  
STATEWIDE PARK DEVELOPMENT AND  
COMMUNITY REVITALIZATION PROGRAM  
GRANT FUNDS**

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Development and Community Revitalization Grant Program, setting up necessary procedures governing the application;

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and,

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the Grant Scope project.

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

SECTION 1. The submittal of an application to the State Department of Parks and Recreation to participate in the Statewide Park Development and Community Revitalization Grant Program for the Fahren's Creek Site Park Project is authorized and approved.

SECTION 2. The City of Merced certifies that it has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project.

SECTION 3. If the project is awarded, the City of Merced certifies that it has or will have sufficient funds to operate and maintain the project.

SECTION 4. The City of Merced has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide.



SECTION 5. The City Manager or designee has the authority to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope.

SECTION 6. The City of Merced agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

SECTION 7. The City of Merced will consider promoting inclusion per Public Resources Code §80001(b)(8 A-G).

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2019, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

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Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

Phuechu A. Nnke 7-18-19  
City Attorney Date

**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING THE APPLICATION FOR  
STATEWIDE PARK DEVELOPMENT AND  
COMMUNITY REVITALIZATION PROGRAM  
GRANT FUNDS**

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Development and Community Revitalization Grant Program, setting up necessary procedures governing the application;

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and,

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the Grant Scope project.

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

SECTION 1. The submittal of an application to the State Department of Parks and Recreation to participate in the Statewide Park Development and Community Revitalization Grant Program for the Lester K. Yoshida Park Project is authorized and approved.

SECTION 2. The City of Merced certifies that it has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project.

SECTION 3. If the project is awarded, the City of Merced certifies that it has or will have sufficient funds to operate and maintain the project.

SECTION 4. The City of Merced has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide.

SECTION 5. The City Manager or designee has the authority to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope.

SECTION 6. The City of Merced agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

SECTION 7. The City of Merced will consider promoting inclusion per Public Resources Code §80001(b)(8 A-G).

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2019, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

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Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

Shirane A. Nishi      7-18-17  
City Attorney      Date



## ADMINISTRATIVE REPORT

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### Agenda Item I.6.

Meeting Date: 8/5/2019

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*Report Prepared by: Julie Nelson, Associate Planner, Development Services*

**SUBJECT:** Acceptance of a Petitions to Annex into Community Facilities District (CFD) No. 2003-2 (Services) and Approval of Deposit and Reimbursement Agreements for the Costs of Annexing into the CFD for the Merced Gateway Shopping Center (Merced Gateway Marketplace) and the PG&E Service Center

### REPORT IN BRIEF

Considers accepting the petition to annex into CFD No. 2003-2 (Services) from Gateway Park Development Partners, LLC, and PG&E and approve a deposit and reimbursement agreement for the costs of annexing into the CFD for the Merced Gateway Shopping Center (Merced Gateway Marketplace) and the PG&E Service Center.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Accepting the petition for annexation from Gateway Park Development Partners, LLC and PG&E for annexation into Community Facilities District (CFD) No. 2003-2 (Services); and,
- B. Approving the deposit and reimbursement agreements, increasing revenue account in the amount of \$50,000 and appropriating the same in Fund 150 to reimburse the City for the cost of Community Facilities District formation and related expenditures; and,
- C. Authorizing the City Manager or the Assistant City Manager to execute the Agreements.

### ALTERNATIVES

- 1. Approve the action as recommended by staff; or,
- 2. Request modification or amendment to the documents and provide direction to City staff regarding the same;
- 3. Decline to authorize action as recommended; or
- 4. Continue to a future City Council meeting (time and date to be specified in motion).

### AUTHORITY

Annexation of property into the City's existing CFD (Services) pursuant to Merced City Charter Section 200, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of California Government Code (the "Act"), commonly known as the "Mello-Roos Community Facilities Act of 1982" and the City's Policy on new development.

## **DISCUSSION**

The City has a longstanding policy requiring all new development with the City to annex to a community facilities district pursuant to the Mello Roos Community Facilities Act of 1982, for the provision of certain services to new development. The services to be provided may include all or a portion of the following: police and fire protection services, maintenance of parks, landscaping, parkways, open space and storm drain maintenance, and other services authorized or to be authorized by the City's Municipal Code. The formation or annexation to the community facilities district is a condition of approval for new developments.

The owners of the Merced Gateway Shopping Center Project (Gateway Park Development Partners, LLC) and PG&E have requested such proceedings be initiated (see Petitions to Annex at Attachment 1) and have signed a Deposit and Reimbursement Agreement to cover the costs of the annexation process (Attachment 2). The Merced Gateway Shopping Center (now known as the Merced Gateway Marketplace Center) (Attachment 3) is generally located at Campus Parkway and Coffee Street. The new Service Center for PG&E is generally located at the northeast corner of Kibby Road and Childs Avenue (Attachment 4). The City Council is being asked to accept the Petition to Annex from Gateway Park Development Partners, LLC, and PG&E and to approve the Deposit and Reimbursement Agreement with the same, and to authorize the City Manager or Assistant City Manager to execute the Agreement. The owners have submitted a deposit of \$25,000 each to cover the costs of the annexation process. City Council is also being asked to appropriate those funds in Fund 150.

At a future City Council meeting, the Council will be asked to adopt a Resolution of Intent to initiate the annexation process and set a date for the public hearing and election to annex into the CFD.

## **IMPACT ON CITY RESOURCES**

The annexation of these properties into CFD No. 2003-2 (Services) would allow a special tax to be levied on these properties to cover a portion of the costs for Police and Fire protection services and to cover the costs of landscape and storm drain maintenance of the project area.

## **ATTACHMENTS**

1. Petitions to Annexation
2. Deposit and Reimbursement Agreements
3. Location Map for Merced Gateway Marketplace
4. Location Map for PG&E Service Center

PETITION TO THE CITY COUNCIL OF THE CITY OF MERCED  
REQUESTING INITIATION OF PROCEEDINGS FOR THE  
ESTABLISHMENT OF A COMMUNITY FACILITIES DISTRICT  
OF THE CITY OF MERCED FOR THE PROVISION OF  
SERVICES AND THE LEVY OF SPECIAL TAXES

1. As of the date hereof, Gateway Park Development Partners, LLC, a California Limited Liability Company (the "Owner") is the owner of the property located in the City of Merced described in Exhibit "A" attached hereto (the "Property") and as shown on the map on Exhibit "B" attached hereto.

2. The Owner, in fulfillment of the conditions of approval of Owner's development, Owner hereby petition the City Council of the City of Merced (the "City") requesting the initiation of proceedings pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 (commencing with Section 53311), Part 1, Division 2, Title 5 of the Government Code of the State of California (the "Act") to include the property in the formation of or annexation to one or more community facilities districts (the "CFD") pursuant to the Act for the provision of services as set forth below to development on the property.

3. The City of Merced requires that new development provide for the funding of certain public services and maintenance, including, but not limited to, public safety services, landscape maintenance, park and parkway maintenance, and flood control services. ("Services"), through the formation of a community facilities district or the annexation to an existing community facilities district sufficient to support the provision of Services to the development on the property.

4. The Owner represents to the City Council that it is the owner of all of the Property.

5. In the event the proposed formation of or annexation to the CFD is not completed, the undersigned shall be responsible for the reasonable costs and expenses incurred by the City in the preparation of such formation or annexation.

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DATED: 1.21.19

OWNER:  
GATEWAY PARK DEVELOPMENT  
PARTNERS, LLC,  
A California Limited Liability Company

  
\_\_\_\_\_  
Ron Woodall

Title: Manager

TAX PAYER ID: 27-0462071

ADDRESS: 133 Old Wards Ferry., Ste. G  
Sonora, CA 95370-7822

TELEPHONE: (209) 533-3333

EMAIL: [ron@calgolddevelopment.com](mailto:ron@calgolddevelopment.com)

**EXHIBIT "A"**

THAT CERTAIN REAL PROPERTY LOCATED IN THE CITY OF MERCED, COUNTY OF MERCED, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Lots 173, 174, 175, 228, 229 and 230 as shown on the Map "MAP OF MERCED COLONY", February 3, 1910 in the office of the County Recorder of Merced County in Vol. 4 of Official Plats, at Page 24.

EXCEPT THEREFROM that portion as condemned to the State of California by Final Order of Condemnation, recorded February 14, 2007, as Document No. 2007-010744, Official Records of Merced County.

**APN:** 061-250-092 (formerly known as 061-250-013)

Merced Gateway Shopping Center  
APN: 061-250-092

COFFEE ST  
CARLY ANNE DR  
DENISE DR  
BLUE BELLS CT  
HONEYSUCKLE AVE  
PETUNIA CT  
AZALEA CT  
LILY DR  
HYDRANGEA CT  
ZINNIA CT  
ALBERT DR  
BLIX AVE  
GARDENIA AVE  
GERARD AVE

PARSONS AVE

SUBJECT  
SITE

CAMPUS PKWY

MISSION AVE

LAWNDALE AVE

ALFAFAR RD

DOPPLER RD

HWY 99  
ON RAMP

MISSION AVE

HWY 99 OFF RAMP

HWY 99  
HWY 99 ON RAMP

EXHIBIT B



PETITION TO THE CITY COUNCIL OF THE CITY OF MERCED  
REQUESTING INITIATION OF PROCEEDINGS FOR THE  
ESTABLISHMENT OF A COMMUNITY FACILITIES DISTRICT  
OF THE CITY OF MERCED FOR THE PROVISION OF  
SERVICES AND THE LEVY OF SPECIAL TAXES

1. As of the date hereof, Pacific Gas and Electric Company, a California Corporation (the "Owner") is the owner of the property located in the City of Merced described in Exhibit "A" attached hereto (the "Property") and as shown on the map on Exhibit "B" attached hereto.

2. The Owner, in fulfillment of the conditions of approval of Owner's development, Owner hereby petition the City Council of the City of Merced (the "City") requesting the initiation of proceedings pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 (commencing with Section 53311), Part 1, Division 2, Title 5 of the Government Code of the State of California (the "Act") to include the property in the formation of or annexation to one or more community facilities districts (the "CFD") pursuant to the Act for the provision of services as set forth below to development on the property.

3. The City of Merced requires that new development provide for the funding of certain public services and maintenance, including, but not limited to, public safety services, landscape maintenance, park and parkway maintenance, and flood control services. ("Services"), through the formation of a community facilities district or the annexation to an existing community facilities district sufficient to support the provision of Services to the development on the property.

4. The Owner represents to the City Council that it is the owner of all of the Property.

5. In the event the proposed formation of or annexation to the CFD is not completed, the undersigned shall be responsible for the reasonable costs and expenses incurred by the City in the preparation of such formation or annexation.

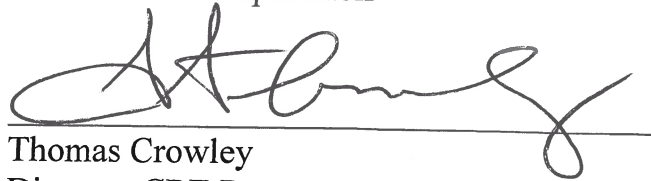
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DATED: 7/9/19

OWNER:  
PACIFIC GAS AND ELECTRIC  
COMPANY  
A California Corporation



Thomas Crowley  
Director, CRE Program Management

TAX PAYER ID: \_\_\_\_\_

ADDRESS: 245 Market St., MC N15G  
San Francisco, CA 94105  
TELEPHONE: (415) 271-7100  
EMAIL: [TFC8@pge.com](mailto:TFC8@pge.com)

## EXHIBIT A

All that certain real property identified as Exhibit "B" ADJUSTED REMAINDER of that certain Boundary Adjustment #17-04 as per Certificate of Compliance #2017-08 recorded December 26, 2018, as Document No. 2017043783, Official Records, more particularly described as follows:

All that certain real property situated in the southwest quarter of Section 26, Township 7, South, Range 14 East, Mount Diablo Base and Meridian, in City of Merced, county of Merced, State of California described as follows:

The "Remainder" Parcel as shown on that certain Parcel Map for Tri-Valley Growers filed in Book 70 of Parcel Maps at Pages 24-25, Merced County Records.

EXCEPTING THEREFROM the following described portion thereof:

BEGINNING at the northwest corner of Parcel 1 as shown on the above referenced Parcel Map; thence N. 00°26'15" E. along the northerly extension of the west line of said Parcel 1, a distance of 134.00 feet; thence N. 89°16'00" E. parallel with the north line of said Parcel 1, a distance of 650.00 feet to a point on the east line of said "Remainder" Parcel; thence S. 00°26' 15" W. along said east line, a distance of 134.00 feet to the northeast corner of said Parcel 1; thence S. 89°16'00" W. along the north line of said Parcel 1, a distance of 650.00 feet to the point of beginning.

Also known as Assessor's Parcel Number (APN): 061-033-023

**PG&E SERVICE CENTER**  
**APN: 061-033-027**

HWY 140

KIBBY RD

**SUBJECT  
SITE**

TOWER RD

CHILDS AVE

COFFEE ST

GERARD AVE

HWY 99

CAMPUS PKWY

**EXHIBIT B**



**DEPOSIT AND REIMBURSEMENT AGREEMENT  
FOR COMMERCIAL DEVELOPMENT  
(Services Only)  
(Landscaping & Other Improvements Acceptance Upon Collection of Sufficient Special  
Taxes to Support Maintenance)**

**by and between**

**CITY OF MERCED**

**and**

**GATEWAY PARK DEVELOPMENT PARTNERS, LLC,  
a California Limited Liability Company, as Developer**

**Dated as of \_\_\_\_\_, 2019**



# **DEPOSIT AND REIMBURSEMENT AGREEMENT**

(Services Only)

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the “Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Merced, a California Charter Law Municipal Corporation (“City,”) and Gateway Park Development Partners, LLC, a California Limited Liability Company (“Developer”)

## **RECITALS**

**WHEREAS**, The City Council of the City of Merced proposes to establish one or more Community Facilities Districts (the “District”) pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code of the State of California (hereinafter referred to as the “Act”). The initial boundaries of the proposed District are depicted on the map attached hereto and incorporated herein as Exhibit “A”; and,

**WHEREAS**, Developer has an approved General Plan Amendment and Zone Change covering approximately 77.5 acres (the “Property”), as shown on the map attached hereto and incorporated herein by this reference as Exhibit “B”; and,

**WHEREAS,** A condition of approval of the General Plan Amendment and Zone Change requires Developer's Property to annex to one or more of the Districts for at least the services component; and,

**WHEREAS,** Developer's Property is proposed to be developed as 601,127 square feet of commercial uses, 178 multi-family dwelling units, and a 1.53 acre fire station ("Project"); and,

**WHEREAS,** In accordance with the City's policy regarding use of the Act, the Developer is required to compensate the City for all costs incurred in connection with the formation of or annexation to the District, including the establishment of the rate and method of apportionment of the special tax (the "RMA"); and,

**WHEREAS,** Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in the formation of or annexation to a community facilities district; and,

**WHEREAS,** Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity

advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, under all of the following conditions:

- (a) The proposal to repay the advances is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act,
- (b) Any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and,
- (c) Any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election, to the person or entity advancing the funds; and,

**WHEREAS**, The District is to be formed for the purpose of funding services such as police and fire services in addition to parkway maintenance, landscaping, storm drainage, and other ongoing services attendant to the Project (the “Services”); and,

**WHEREAS**, The intent of utilizing a Community Facilities District for the Services is to replace traditional maintenance districts such as landscaping and lighting and other maintenance districts which the City would otherwise have required of Developers; and,

**WHEREAS**, Developer and City desire to enter into this Agreement in accordance with Section 53314.9 and Section 53332(b) of the Act in order to provide for the advancement of funds by the Developer to be used to pay costs incurred in connection with the formation of or annexation to the District; and,

**WHEREAS**, Developer and City wish to provide for the payment of expenses in connection with the formation of or annexation to the District; and,

**WHEREAS**, There is a substantial lag time between the creation of the CFD and the collection of sufficient special tax revenue to off-set the costs of providing certain maintenance activities associated with landscape and storm drain facilities installed by Developer to be dedicated to the City; and,

**WHEREAS**, Developer's landscaping and storm drain facilities may be eligible for acceptance prior to the collection and receipt by the City of sufficient special tax revenue to offset the costs of maintenance.

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration the

receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

**SECTION 1.      INITIAL DEPOSIT AND DEVELOPERS**  
**CONTRIBUTION.**

(a) Prior to the commencement of any legal proceeding to establish or annex to the District, the Developer shall deposit with the City for the benefit of the District the amount of Twenty-Five Thousand Dollars (\$25,000.00) (the “Initial Deposit”). The City, by its execution hereof, acknowledges receipt of and accepts the Initial Deposit.

(b) The Initial Deposit, together with any subsequent deposit required to be made by the Developer pursuant to the terms hereof (collectively, the “Deposits”), are to be used to pay for any costs incurred for any authorized purpose in connection with the formation of or annexation to the District, including, without limitation, the following:

(i) The reasonable fees and expenses of any consultants to the City employed in connection with the formation of or annexation to the District, including an engineer, special tax consultant, financial advisor, special counsel, and any other consultant deemed necessary or advisable by the City; and,

- (ii) The reasonable costs of rate and method analysis, and feasibility studies and other reports deemed necessary or advisable by the City in connection with the formation of or annexation to the District; and,
- (iii) The reasonable costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other actions or proceedings undertaken in connection with the formation of or annexation to the District; and,
- (iv) Reasonable charges for City staff time incurred in connection with the formation of or annexation to the District, including a reasonable allocation of City overhead expense related thereto; and,
- (v) Any and all other actual costs and expenses incurred by the City in connection with the formation of or annexation to the District, including establishment of the RMA (collectively, the “Initial Costs”). The City may draw upon the Deposits from time to time to pay the Initial Costs.

(c) If, at any time, the unexpended and unencumbered balance of the Deposits is less than Five Thousand Dollars (\$5,000.00), the City may request, in

writing, that the Developer make an additional deposit in an amount estimated to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Initial Costs. The Developer shall make such additional deposit with the City within two weeks of the receipt by the Developer of the City's written request therefor. If the Developer fails to make any such additional deposit within such two-week period, the City is authorized to cease all work related to the formation of or annexation to the District and withhold further permits or approvals for the Project.

(d) The Deposits may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the Deposits.

(e) The City shall provide the Developer with a written monthly summary of expenditures made from the Deposits, and the unexpended balance thereof, within ten (10) business days of receipt by the City of a written request therefor submitted by the Developer, provided that the City shall not be required to provide a summary of expenditures more frequently than one time during each calendar month. The cost of providing any such summary shall be charged to the Deposits.

**SECTION 2. REIMBURSEMENT.** As provided in Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, the City shall have no obligation to repay the Developer any portion

of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, the City shall return without interest to the Developer any portion of the Deposits which have not been expended or encumbered to pay Initial Costs by the time of the election on said proposed levy of special tax and Developer shall not be entitled to develop or proceed with the Project until such time as the Property is included within a District and a special tax levied.

**SECTION 3.      AGREEMENT NOT DEBT OR LIABILITY OF CITY.** As provided in Section 53314.9(b) of the Act, this Agreement does not constitute a debt or liability of the City. The City shall not be obligated to advance any of its own funds to pay Initial Costs or any other costs incurred in connection with the formation of or annexation to the District, including the establishment of the RMA. No member of the City Council of the City and no officer, official, employee, or agent of the City shall to any extent be personally liable hereunder.

**SECTION 4.      ASSIGNMENT.** This Agreement or any right or duty hereunder may not be assigned by either the City or the Developer; provided, however, that Developer shall be entitled to assign its rights, duties, and obligations under this Agreement in connection with any sale, conveyance, or transfer of its interest in the Project.



**SECTION 5. DISCLOSURE.** Developer covenants to the City that Developer shall provide, and shall by contract require developers or merchant builders who purchase all or portions of the Property from Developer to provide, (a) the “Notice of Special Tax” as required by Section 53341.5 of the Act or any similar successor statute and (b) a notice approved by the City to be distributed and signed by prospective purchasers in a form similar to the Notice of Special Tax (the “Information Notice”). Developer agrees to include a statement in the Notice of Special Tax and/or the Information Notice that prospective purchasers acknowledge that due to the RMA and timing of the close of escrow, the special tax levy may not be levied in time to appear on the initial property tax bill for such purchaser. Developer further covenants to send copies to the City of such executed Notices within thirty (30) days after execution by a prospective purchaser. Developer expressly acknowledges that City and the District shall have no duty or obligation and shall incur no liability, jointly or severally, with respect to the foregoing covenant of Developer.

**SECTION 6. MUTUAL ASSISTANCE AND COOPERATION.** The City and Developer will assist one another mutually in the formation of or annexation to the District, the formulation of special taxes to be levied within the District, and both parties will mutually assist one another in otherwise undertaking and furthering the goals and objectives set forth in this Agreement.

**SECTION 7.      ACCEPTANCE OF LANDSCAPED AREAS AND  
STORM DRAIN FACILITIES.**

A.      City and Developer agree that it is in the best interest of the parties hereto that the landscape and storm drain facilities, which will be installed by Developer on the Property and dedicated to the City, shall be fully maintained by Developer at Developer's sole expense until at least fifty percent (50%) of the leasable area in the Project have received a certificate of occupancy from the City of Merced Inspection Services Department.

B.      Once the 50% threshold for occupancy and payment of District taxes has been met, the City shall notice Developer of the date that the City will accept the landscaped areas and storm drain facilities. On and after the date that the City actually accepts such landscaped areas and storm drain facilities, the District shall be responsible for the maintenance thereafter, except for any remaining warranty or maintenance work to be performed by the Developer, the Developer's surety or their respective agents.

**SECTION 8.      CITY TO PROVIDE ESTIMATED COSTS OF  
MAINTENANCE.**

City shall provide Developer at the time that Developer believes the landscape and storm drain facilities meet City standards for acceptance an estimate of the cost of on-going maintenance and care. Developer shall provide City with the number of building permits already pulled and estimated to be pulled

for the next six months. City shall take these numbers and estimates and make an estimate of when there may be sufficient revenues to support acceptance of the landscape areas and storm drain facilities.

**SECTION 9.      CITY ACCEPTANCE OF LANDSCAPED AREAS AND STORM DRAIN FACILITIES.** Notwithstanding any language in this Agreement to the contrary, upon written request from the Developer, the City shall review the special tax revenue and determine if sufficient special tax revenues have been received by the City to support the on-going maintenance and care of the landscaped areas and storm drain facilities, City shall notify Developer of the date City will accept the landscaped areas and storm drain facilities and thereafter be responsible for the maintenance thereof, excepting any remaining warranty or guaranty work.

**SECTION 10.      NOTICES.** All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other addresses as such party may provide to the other parties in writing from time to time, namely:

Developer:	Gateway Park Development Partners, LLC 133 Old Wards Ferry Rd., Suite G Sonora, CA 95370-7822
------------	---

City: City of Merced  
678 West 18<sup>th</sup> Street  
Merced, CA 95340  
Attention: Planning Department

with a copy to: City of Merced  
678 West 18<sup>th</sup> Street  
Merced, CA 95340  
Attention: City Attorney

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request, or other communication hereunder shall be deemed delivered to the party to whom it is addressed:

- (a) If personally served or delivered, upon delivery,
- (b) If given by electronic communication, whether by telex, telegram or telecopier upon the sender's receipt of an appropriate answerback or other written acknowledgement,
- (c) If given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail,
- (d) If given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or
- (e) If given by any other means, upon delivery at the address specified in this Section.

**SECTION 11. ATTORNEYS' FEES.** In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

**SECTION 12. SEVERABILITY.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

**SECTION 13. BINDING ON SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors-in-interest and assigns of the parties hereto.

**SECTION 14. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties with respect to the matters provided for herein. There are no oral or written representations, understandings, undertakings or agreements which are not expressly referred to or contained herein, and any such representations, understandings, undertakings, or agreements are superseded by this Agreement.

**SECTION 15. AMENDMENTS.** This Agreement may be amended or modified only in writing signed by both parties.

**SECTION 16.     GOVERNING LAW.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

**SECTION 17.     USAGE OF WORDS.** As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

**SECTION 18.     NO THIRD PARTY BENEFICIARIES.** Except as may be specifically provided herein to the contrary, no third party shall be the express or implied beneficiary of this Agreement or any of its provisions, no such third party may bring action at law or in equity with respect thereto.

**SECTION 19.     VENUE.** Any action at law or in equity arising under this Agreement brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried exclusively in the Superior Court of the County of Merced, State of California, and the parties waive all provisions of law providing for the filing, removal or change of venue to any other Court.

**SECTION 20.     APPROVAL OF AGREEMENT BY RESOLUTION.**  
This Agreement, pursuant to Section 53314.9 of the Act, shall only be effective if approved by City's City Council by Resolution thereof.

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

IN WITNESS WHEREOF, the parties have executed this Deposit and Reimbursement Agreement as of the day and year written below.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

APPROVED AS TO FORM:

BY: Kelly Timmer 1-2-19  
City Attorney Date

ACCOUNT DATA:

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

**DEVELOPER:**  
**GATEWAY PARK DEVELOPMENT**  
**PARTNERS, LLC,**  
**A California Limited Liability**  
**Company**

By:  \_\_\_\_\_  
Ron Woodall

Its: Manager

TAX PAYER ID: 27-0462071

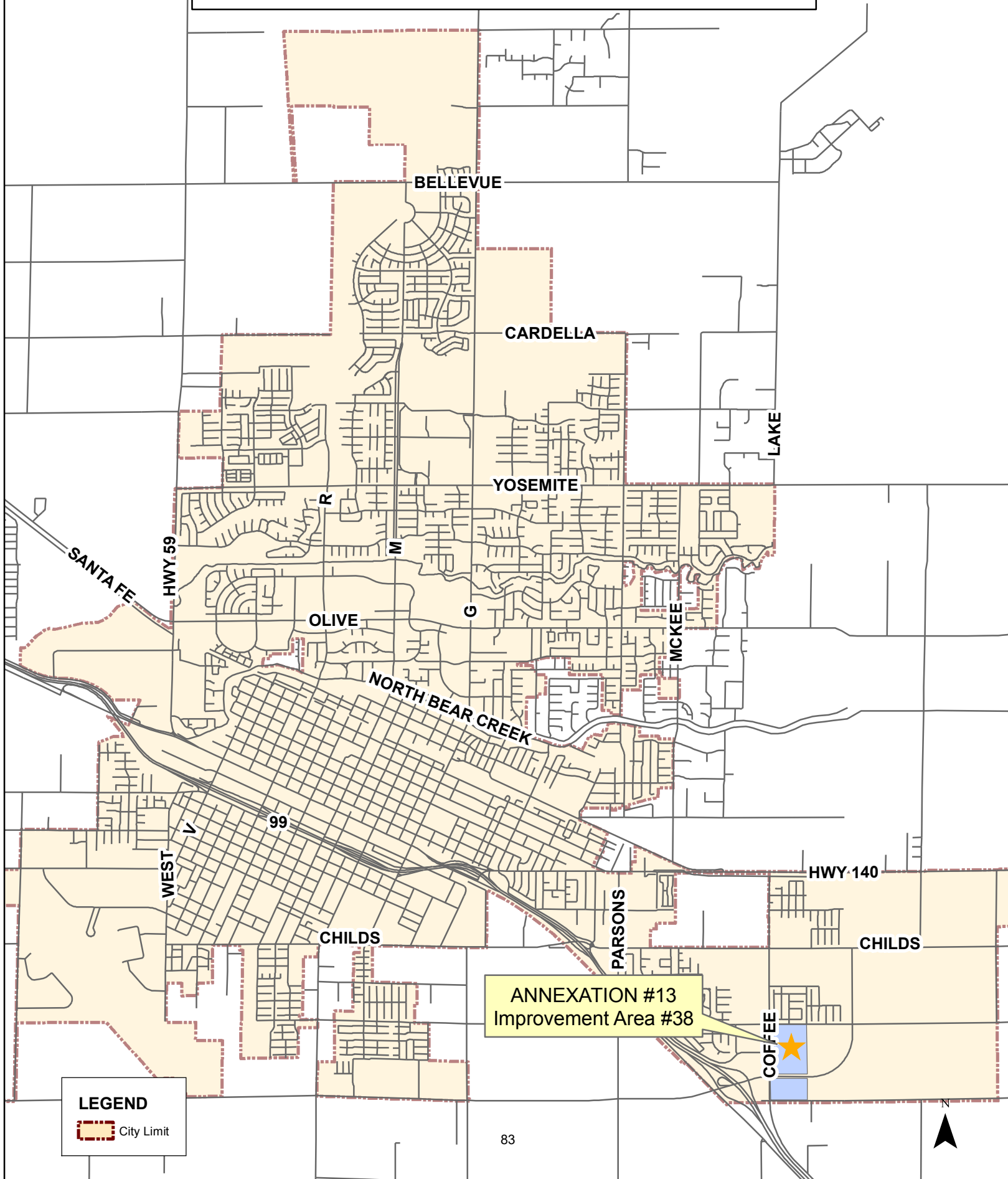
ADDRESS: 133 Old Wards Ferry Rd.,  
Suite G  
Sonora, CA 95370-7822

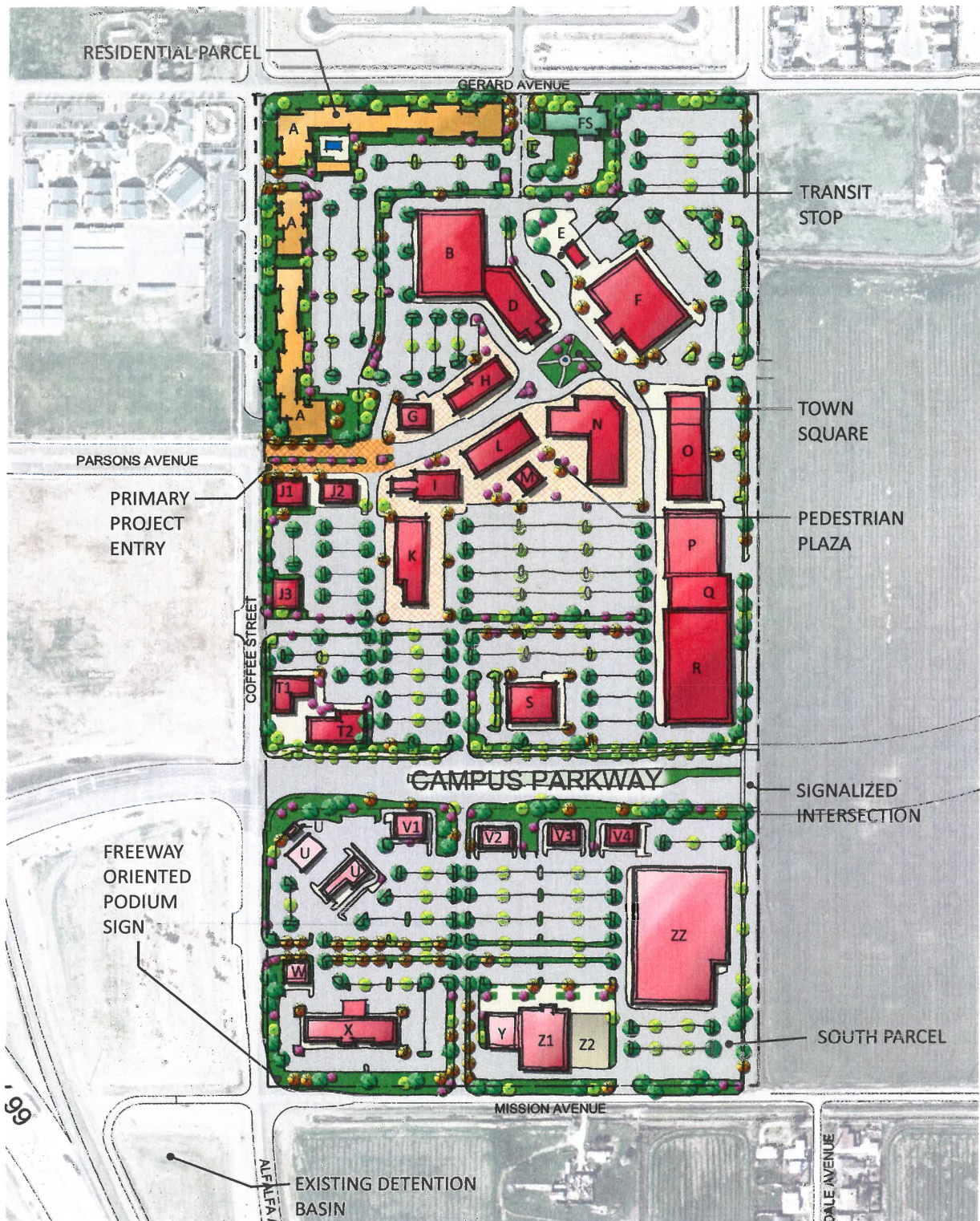
TELEPHONE: (209) 533-3333

EMAIL: [ron@calgolddevelopment.com](mailto:ron@calgolddevelopment.com)



**Exhibit A**  
**Community Facilities District No. 2003-2**  
**Annexation No. 13**





Merced Gateway Site Plan

**DEPOSIT AND REIMBURSEMENT AGREEMENT  
FOR COMMERCIAL DEVELOPMENT  
(Services Only)  
(Landscaping Improvements Acceptance Upon Collection of Sufficient Special Taxes to  
Support Maintenance)**

**by and between**

**CITY OF MERCED**

**and**

**PACIFIC GAS AND ELECTRIC COMPANY  
a California Corporation, as Developer**

**Dated as of \_\_\_\_\_, 2019**

# **DEPOSIT AND REIMBURSEMENT AGREEMENT**

(Services Only)

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Merced, a California Charter Law Municipal Corporation (“City,”) and Pacific Gas and Electric Company (PG&E), a California Corporation (“Developer”)

## **RECITALS**

**WHEREAS**, The City Council of the City of Merced proposes to establish one or more Community Facilities Districts (the “District”) pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code of the State of California (hereinafter referred to as the “Act”). The initial boundaries of the proposed District are depicted on the map attached hereto and incorporated herein as Exhibit “A”; and,

**WHEREAS**, Developer has an approved Site Plan Review (SP #418) allowing construction of a new facility on approximately 56.2 acres (the “Property”), as shown on the map attached hereto and incorporated herein by this reference as Exhibit “B”; and,



**WHEREAS,** A condition of approval of the Site Plan Review (SP #418) requires Developer's Property to annex to one or more of the Districts for at least the services component; and,

**WHEREAS,** Developer's Property is proposed to be developed as a PG&E Service Center ("Project"); and,

**WHEREAS,** In accordance with the City's policy regarding use of the Act, the Developer is required to compensate the City for all costs incurred in connection with the formation of or annexation to the District, including the establishment of the rate and method of apportionment of the special tax (the "RMA"); and,

**WHEREAS,** Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in the formation of or annexation to a community facilities district; and,

**WHEREAS,** Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity

advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, under all of the following conditions:

- (a) The proposal to repay the advances is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act,
- (b) Any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and,
- (c) Any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election, to the person or entity advancing the funds; and,

**WHEREAS,** The District is to be formed for the purpose of funding services such as police and fire services in addition to parkway maintenance, landscaping, storm drainage, and other ongoing services attendant to the Project (the “Services”); and,

**WHEREAS,** The intent of utilizing a Community Facilities District for the Services is to replace traditional maintenance districts such as landscaping and lighting and other maintenance districts which the City would otherwise have required of Developers; and,

**WHEREAS,** Developer and City desire to enter into this Agreement in accordance with Section 53314.9 and Section 53332(b) of the Act in order to provide for the advancement of funds by the Developer to be used to pay costs incurred in connection with the formation of or annexation to the District; and,

**WHEREAS,** Developer and City wish to provide for the payment of expenses in connection with the formation of or annexation to the District; and,

**WHEREAS,** There is a substantial lag time between the creation of the CFD and the collection of sufficient special tax revenue to off-set the costs of providing certain maintenance activities associated with landscape installed by Developer to be dedicated to the City; and,

**WHEREAS,** Developer's landscaping may be eligible for acceptance prior to the collection and receipt by the City of sufficient special tax revenue to offset the costs of maintenance.

**NOW THEREFORE,** for and in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration the

receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

**SECTION 1.      INITIAL DEPOSIT AND DEVELOPERS**

**CONTRIBUTION.**

(a) Prior to the commencement of any legal proceeding to establish or annex to the District, the Developer shall deposit with the City for the benefit of the District the amount of Twenty-Five Thousand Dollars (\$25,000.00) (the “Initial Deposit”). The City, by its execution hereof, acknowledges receipt of and accepts the Initial Deposit.

(b) The Initial Deposit, together with any subsequent deposit required to be made by the Developer pursuant to the terms hereof (collectively, the “Deposits”), are to be used to pay for any costs incurred for any authorized purpose in connection with the formation of or annexation to the District, including, without limitation, the following:

- (i) The reasonable fees and expenses of any consultants to the City employed in connection with the formation of or annexation to the District, including an engineer, special tax consultant, financial advisor, special counsel, and any other consultant deemed necessary or advisable by the City; and,



- (ii) The reasonable costs of rate and method analysis, and feasibility studies and other reports deemed necessary or advisable by the City in connection with the formation of or annexation to the District; and,
- (iii) The reasonable costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other actions or proceedings undertaken in connection with the formation of or annexation to the District; and,
- (iv) Reasonable charges for City staff time incurred in connection with the formation of or annexation to the District, including a reasonable allocation of City overhead expense related thereto; and,
- (v) Any and all other actual costs and expenses incurred by the City in connection with the formation of or annexation to the District, including establishment of the RMA (collectively, the “Initial Costs”). The City may draw upon the Deposits from time to time to pay the Initial Costs.

(c) If, at any time, the unexpended and unencumbered balance of the Deposits is less than Five Thousand Dollars (\$5,000.00), the City may request, in

writing, that the Developer make an additional deposit in an amount estimated to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Initial Costs. The Developer shall make such additional deposit with the City within two weeks of the receipt by the Developer of the City's written request therefor. If the Developer fails to make any such additional deposit within such two-week period, the City is authorized to cease all work related to the formation of or annexation to the District and withhold further permits or approvals for the Project.

(d) The Deposits may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the Deposits.

(e) The City shall provide the Developer with a written monthly summary of expenditures made from the Deposits, and the unexpended balance thereof, within ten (10) business days of receipt by the City of a written request therefor submitted by the Developer, provided that the City shall not be required to provide a summary of expenditures more frequently than one time during each calendar month. The cost of providing any such summary shall be charged to the Deposits.

**SECTION 2. REIMBURSEMENT.** As provided in Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, the City shall have no obligation to repay the Developer any portion

of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, the City shall return without interest to the Developer any portion of the Deposits which have not been expended or encumbered to pay Initial Costs by the time of the election on said proposed levy of special tax and Developer shall not be entitled to develop or proceed with the Project until such time as the Property is included within a District and a special tax levied.

**SECTION 3.      AGREEMENT NOT DEBT OR LIABILITY OF CITY.** As provided in Section 53314.9(b) of the Act, this Agreement does not constitute a debt or liability of the City. The City shall not be obligated to advance any of its own funds to pay Initial Costs or any other costs incurred in connection with the formation of or annexation to the District, including the establishment of the RMA. No member of the City Council of the City and no officer, official, employee, or agent of the City shall to any extent be personally liable hereunder.

**SECTION 4.      ASSIGNMENT.** This Agreement or any right or duty hereunder may not be assigned by either the City or the Developer; provided, however, that Developer shall be entitled to assign its rights, duties, and obligations under this Agreement in connection with any sale, conveyance, or transfer of its interest in the Project.

**SECTION 5.**      **DISCLOSURE.** Developer covenants to the City that Developer shall provide, and shall by contract require developers or merchant builders who purchase all or portions of the Property from Developer to provide, (a) the “Notice of Special Tax” as required by Section 53341.5 of the Act or any similar successor statute and (b) a notice approved by the City to be distributed and signed by prospective purchasers in a form similar to the Notice of Special Tax (the “Information Notice”). Developer agrees to include a statement in the Notice of Special Tax and/or the Information Notice that prospective purchasers acknowledge that due to the RMA and timing of the close of escrow, the special tax levy may not be levied in time to appear on the initial property tax bill for such purchaser. Developer further covenants to send copies to the City of such executed Notices within thirty (30) days after execution by a prospective purchaser. Developer expressly acknowledges that City and the District shall have no duty or obligation and shall incur no liability, jointly or severally, with respect to the foregoing covenant of Developer.

**SECTION 6.**      **MUTUAL ASSISTANCE AND COOPERATION.**

The City and Developer will assist one another mutually in the formation of or annexation to the District, the formulation of special taxes to be levied within the District, and both parties will mutually assist one another in otherwise undertaking and furthering the goals and objectives set forth in this Agreement.

**SECTION 7.      ACCEPTANCE OF LANDSCAPED AREAS.**

A.      City and Developer agree that it is in the best interest of the parties hereto that the landscape, which will be installed by Developer on the Property and dedicated to the City, shall be fully maintained by Developer at Developer's sole expense until at least fifty percent (50%) of the buildings within the Project area have received a certificate of occupancy from the City of Merced Inspection Services Department.

B.      Once the 50% threshold for occupancy and payment of District taxes has been met, the City shall notice Developer of the date that the City will accept the landscaped areas. On and after the date that the City actually accepts such landscaped areas, the District shall be responsible for the maintenance thereafter, except for any remaining warranty or maintenance work to be performed by the Developer, the Developer's surety or their respective agents.

**SECTION 8.      CITY TO PROVIDE ESTIMATED COSTS OF MAINTENANCE.** City shall provide Developer at the time that Developer believes the landscape areas meet City standards for acceptance an estimate of the cost of on-going maintenance and care. Developer shall provide City with the number of building permits already pulled and estimated to be pulled for the next six months. City shall take these numbers and estimates and make an estimate of

when there may be sufficient revenues to support acceptance of the landscape areas.

**SECTION 9.      CITY ACCEPTANCE OF LANDSCAPED AREAS.**

Notwithstanding any language in this Agreement to the contrary, upon written request from the Developer, the City shall review the special tax revenue and determine if sufficient special tax revenues have been received by the City to support the on-going maintenance and care of the landscaped areas, City shall notify Developer of the date City will accept the landscaped areas and thereafter be responsible for the maintenance thereof, excepting any remaining warranty or guaranty work.

**SECTION 10.      NOTICES.** All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other addresses as such party may provide to the other parties in writing from time to time, namely:

Developer:                      Pacific Gas and Electric Company  
Attn: Tom Crowley  
245 Market Street, MC N15G  
San Francisco, CA 94105

City:                              City of Merced  
678 West 18<sup>th</sup> Street  
Merced, CA 95340  
Attention: Planning Department

with a copy to:                      City of Merced  
678 West 18<sup>th</sup> Street  
Merced, CA 95340  
Attention: City Attorney

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request, or other communication hereunder shall be deemed delivered to the party to whom it is addressed:

- (a) If personally served or delivered, upon delivery,
- (b) If given by electronic communication, whether by telex, telegram or telecopier upon the sender's receipt of an appropriate answerback or other written acknowledgement,
- (c) If given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail,
- (d) If given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or
- (e) If given by any other means, upon delivery at the address specified in this Section.

**SECTION 11. ATTORNEYS' FEES.** In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover

from the other party all costs and expenses of suit, including reasonable attorneys' fees.

**SECTION 12. SEVERABILITY.** If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

**SECTION 13. BINDING ON SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors-in-interest and assigns of the parties hereto.

**SECTION 14. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties with respect to the matters provided for herein. There are no oral or written representations, understandings, undertakings or agreements which are not expressly referred to or contained herein, and any such representations, understandings, undertakings, or agreements are superseded by this Agreement.

**SECTION 15. AMENDMENTS.** This Agreement may be amended or modified only in writing signed by both parties.

**SECTION 16. GOVERNING LAW.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.



**SECTION 17. USAGE OF WORDS.** As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

**SECTION 18. NO THIRD PARTY BENEFICIARIES.** Except as may be specifically provided herein to the contrary, no third party shall be the express or implied beneficiary of this Agreement or any of its provisions, no such third party may bring action at law or in equity with respect thereto.

**SECTION 19. VENUE.** Any action at law or in equity arising under this Agreement brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried exclusively in the Superior Court of the County of Merced, State of California, and the parties waive all provisions of law providing for the filing, removal or change of venue to any other Court.

**SECTION 20. APPROVAL OF AGREEMENT BY RESOLUTION.** This Agreement, pursuant to Section 53314.9 of the Act, shall only be effective if approved by City's City Council by Resolution thereof.

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

possession of the parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have executed this Deposit and Reimbursement Agreement as of the day and year written below.

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:

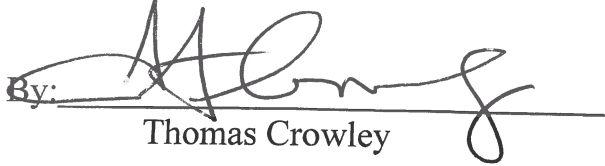
BY: Shirley A. Miller 6-25-19  
City Attorney Date

ACCOUNT DATA:

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

**DEVELOPER:**

PACIFIC GAS AND ELECTRIC  
COMPANY, A California Corporation

By:   
Thomas Crowley

Its: Director, CRE Program Management

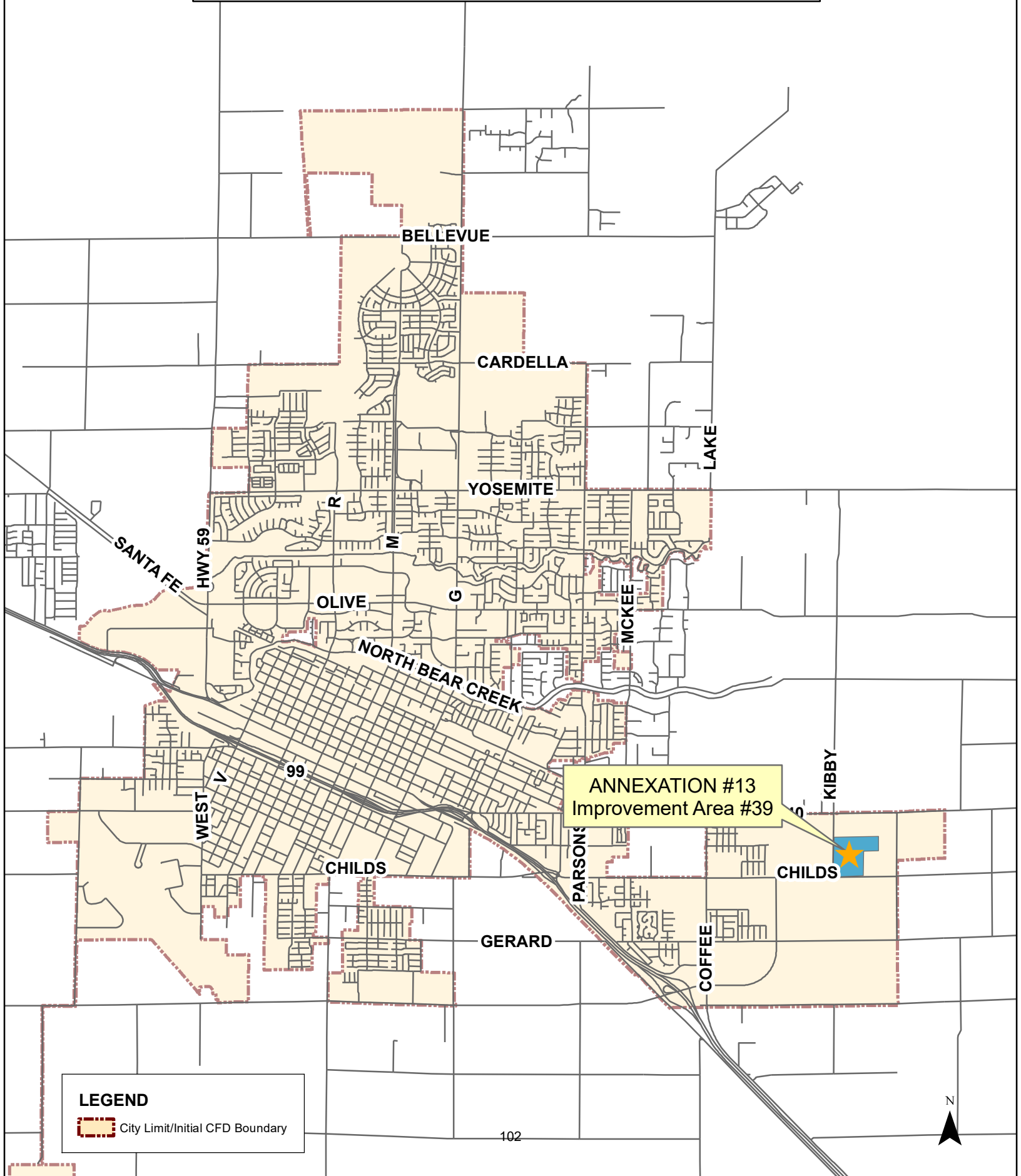
TAX PAYER ID: \_\_\_\_\_

ADDRESS: 245 Market St., MC N15G  
San Francisco, CA 94105

TELEPHONE: (415) 271-7100

EMAIL: [TFC8@pge.com](mailto:TFC8@pge.com)

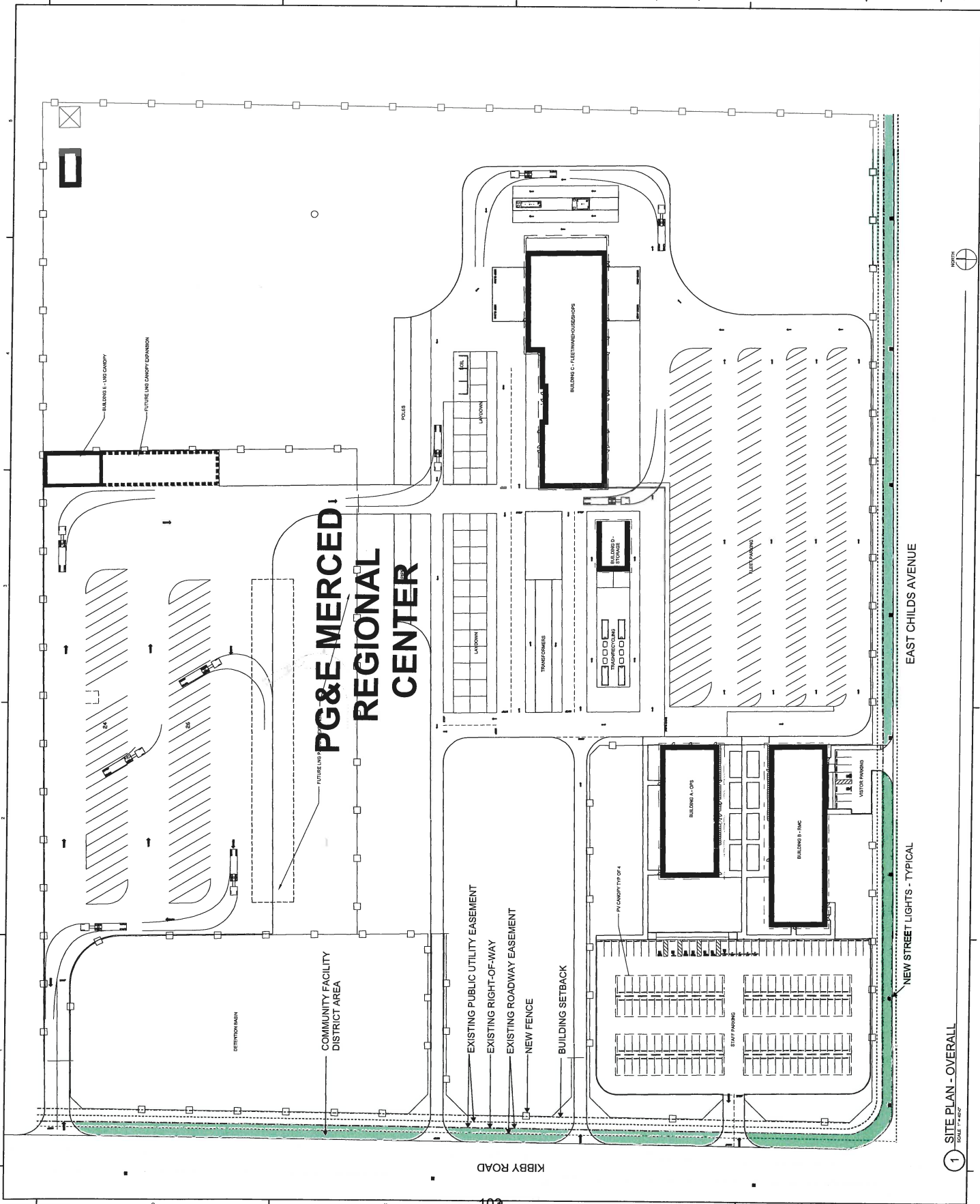
**Exhibit A**  
**Community Facilities District No. 2003-2**  
**Annexation No. 13**



**LEGEND**

 City Limit/Initial CFD Boundary

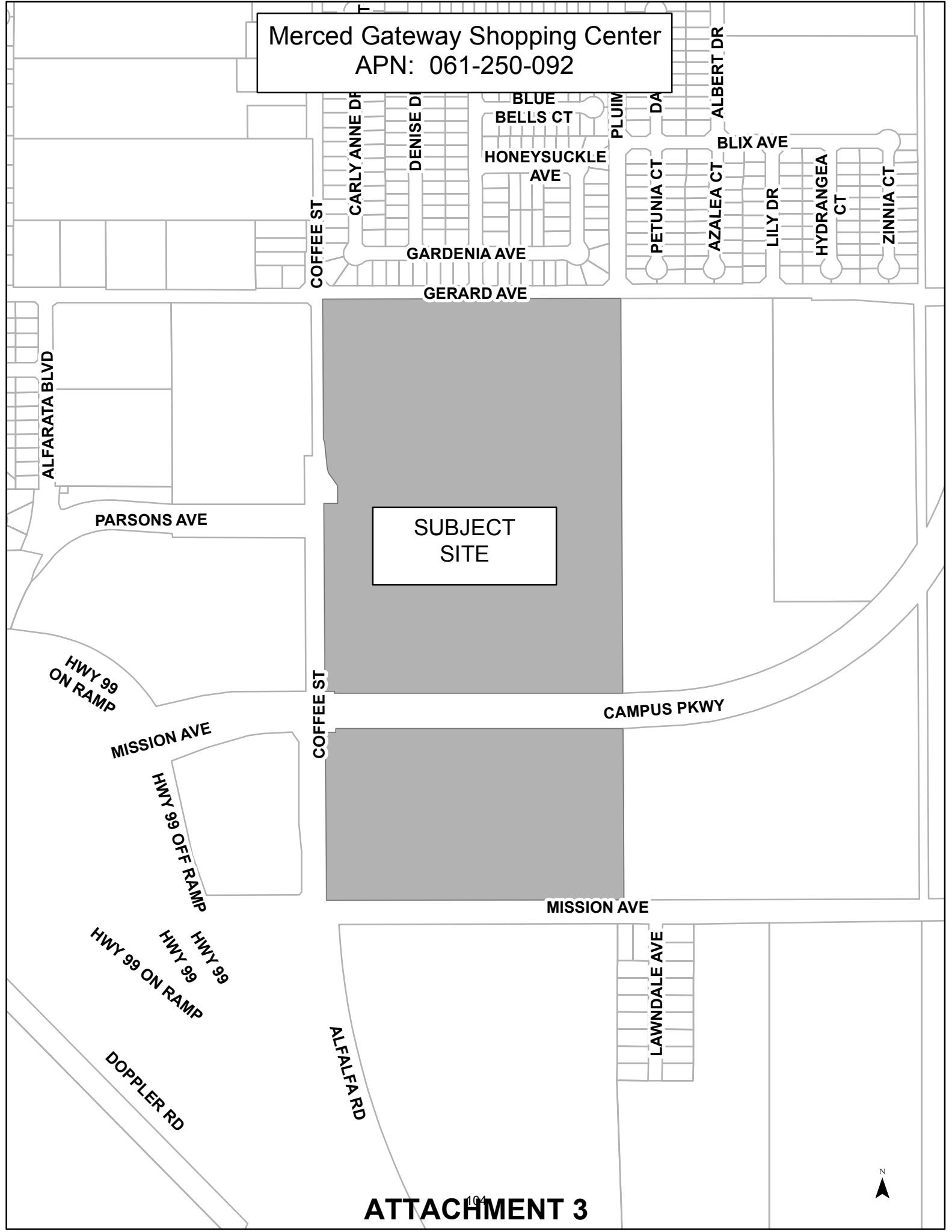




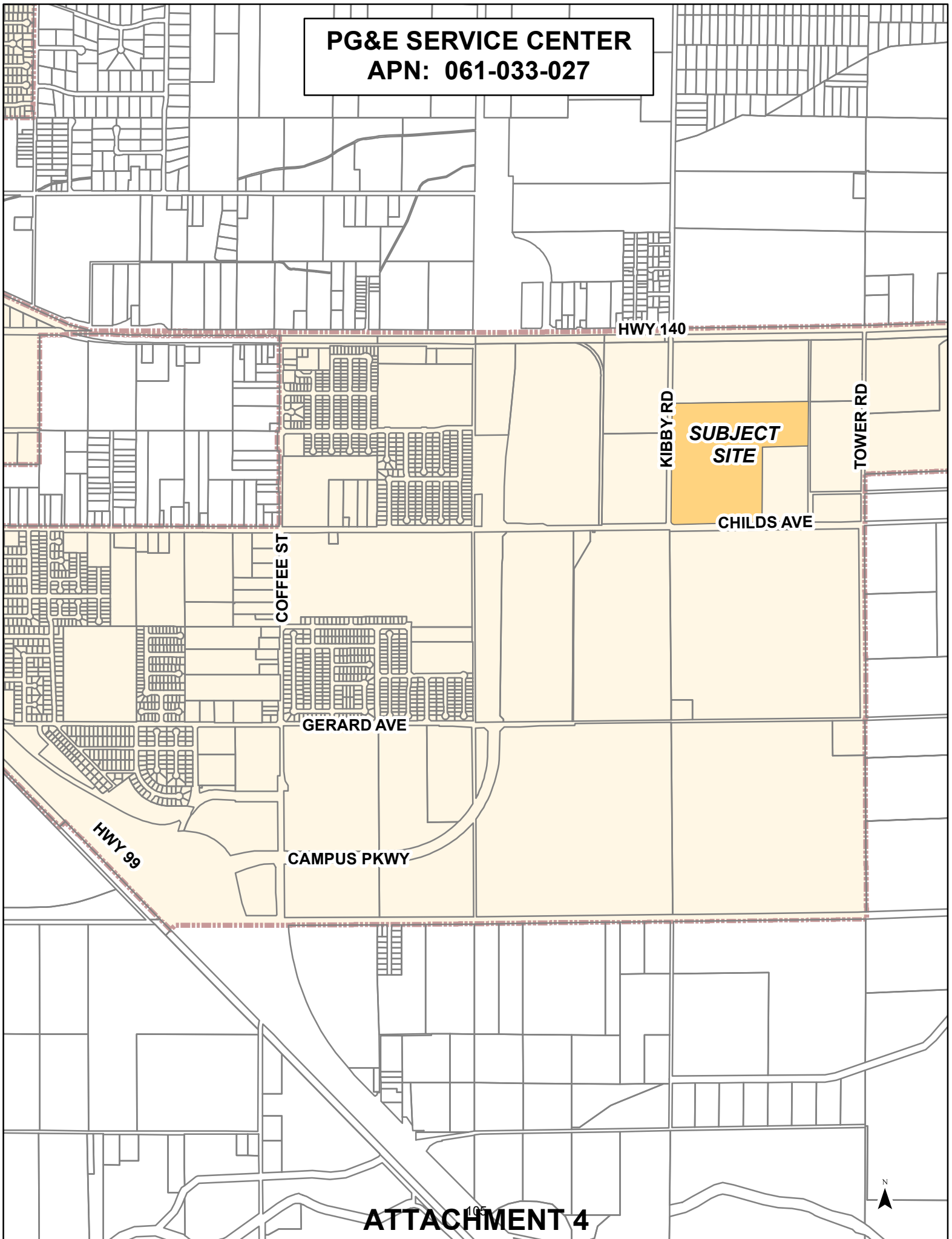
**EXHIBIT B**

**1 SITE PLAN - OVERALL**  
 SCALE: 1" = 400'

Merced Gateway Shopping Center  
APN: 061-250-092



**PG&E SERVICE CENTER**  
**APN: 061-033-027**



HWY 140

KIBBY RD

**SUBJECT  
SITE**

TOWER RD

CHILDS AVE

COFFEE ST

GERARD AVE

CAMPUS PKWY

HWY 99

**ATTACHMENT 4**





## ADMINISTRATIVE REPORT

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### Agenda Item I.7.

Meeting Date: 8/5/2019

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

**SUBJECT:** Approval of a Fifteen (15) Year Conduit Lease Agreement for the Expansion of Telecommunication Services for the City and CVIN, LLC dba VAST NETWORKS, a Competitive Local Exchange Carrier with the Option to Renew the Contract in 5 Year Increments

### REPORT IN BRIEF

Considers entering into a fifteen (15) year conduit lease agreement for the expansion of telecommunication services for the City and CVIN, LLC dba VAST NETWORKS, a Competitive Local Exchange Carrier with the option to renew the contract in 5-year increments.

### RECOMMENDATION

**City Council** - Adopt a motion approving the lease agreement with CVIN, LLC dba VAST NETWORKS; 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. Refer to staff for reconsideration of specific items or;

### AUTHORITY

Merced City Charter, Section 200

### CITY COUNCIL PRIORITIES

As Provided for in the 2019-20 Adopted Budget

### DISCUSSION

The construction of the Lowes complex in 2003 came with conditions for conduit to be installed for future telecommunication needs for the City on Olive Ave from R to Highway 59. This small isolated stretch of conduit does not connect to any existing conduit infrastructure for the City and has provided little value.

CVIN is a Competitive Local Exchange Carrier that sells internet and telecommunication services and has their own private conduit and fiber optic network between Bakersfield and Stockton. Their fiber optics network provides telecommunication services to businesses within the Merced region.



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CVIN approached the City about a conduit lease to utilize this isolated conduit on Olive to expand their internet services to underserved businesses for high speed internet services. They would like to provide internet services to blueFIRE, one of the five cannabis business permits holders.

The lease will allow CVIN access rights to put their fiber optic infrastructure inside the City's underutilized conduit while at the same time granting the City access rights to CVIN's private conduit between "M" and "R" street. This will connect the isolated conduit to the City fiber optics conduit system that currently has a distribution point on Olive Ave and M street.

This agreement will not prevent the City from utilizing the City conduit that CVIN wishes to enter. There is enough conduit space to safely operate both telecommunication infrastructures within the conduit.

At the termination of agreement CVIN would be required to remove their fiber optics cabling from the City conduit at their cost, or via mutual agreement the City can acquire and obtain ownership of the fiber optic infrastructure at no cost.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed

### **ATTACHMENTS**

1. Lease Agreement

## CONDUIT LEASE AGREEMENT

This Conduit Lease Agreement (this "Lease 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 ("City") and CVIN, LLC, a California Limited Liability Company, doing business as VAST NETWORKS ("Lessee").

### RECITALS

WHEREAS, Lessee is a registered Competitive Local Exchange Carrier (CLEC) pursuant to the provisions of Public Utilities Code Section 1013 and holds a valid full-facilities-based certificate of public convenience and necessity ("CPCN") issued by the California Public Utilities Commission; and

WHEREAS, Lessee is proposing to install a fiber system using City owned conduit that would result in distributing Broadband Fiber Network to a Commercial and Industrial locations within the City; and

WHEREAS, the system would be integrated with the Lessee's broadband system; and

WHEREAS, City owns certain PVC/high density polyethylene conduit located within City right-of-ways (the "City System"); and

WHEREAS, Lessee desires to construct, install, operate, and maintain, at no cost to City, certain fiber optic facilities to provide its services ("Lessee's Fibers"), and for that purpose desires to lease from City a portion of the City System identified and more particularly described in Exhibit A hereto (the "Leased Conduit"); and

WHEREAS, City is willing to lease a portion of its conduit, the Leased Conduit, to Lessee and allow Lessee to pull dark fiber optic cables for that purpose, subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## ARTICLE 1. LEASE

1.1 City, for and in consideration of the rents and covenants herein specified to be paid and performed by Lessee, hereby demises and leases to Lessee, and Lessee hereby hires and leases from City, the Leased Conduit, on an “as is, where is basis” without warranty for the Term and upon and subject to the terms and conditions and for the purposes herein set forth. Any and all installation and other cost, of whatever nature, for pulling Lessee Fibers through City’s System shall be at Lessee’s sole cost and expense.

## ARTICLE 2. CONSIDERATION

2.1 The consideration for this Lease Agreement shall include the City of Merced’s absolute right to access and right to use the Lessee’s conduit system listed in Exhibit B, upon City’s request, to construct, install, operate, and maintain City’s own certain fiber optic facilities within conduit owned by Lessee during the term of this agreement and/or any successive term(s).

## ARTICLE 3. TERM

3.1 Commencement. The term of this Lease (the “Term”) shall commence on the Effective Date and shall expire fifteen (15) years following the Effective Date.

3.2 Renewal. Provided that Lessee is not in default under this Lease Agreement, and the Lessee has the necessary governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, City and Lessee may negotiate in good faith to renew and/or extend this Lease Agreement in five year increments on mutually agreeable terms and conditions. Any agreed upon extension of the conduit that expands the system defined within Exhibit A and B herein, shall not increase the term of this Agreement without mutually agreement by both parties.

3.3 Holding Over. If Lessee shall hold over after the expiration of the Term, Lessee shall pay rent equal to \$3 per linear foot of conduit leased per year (exclusive of abatements, if any), together with an amount reasonably estimated by City, and shall otherwise be on the terms and conditions herein specified so far as applicable (but expressly excluding all renewal or extension rights). Lessee shall be liable to City for any loss, damages or liability of City resulting from Lessee’s failure to vacate upon the expiration or earlier termination of this Lease



Agreement. Any options granted under the terms of this Lease Agreement shall be deemed terminated and shall be of no further effect during said tenancy at sufferance. No holding over by Lessee after the Term shall operate to extend the Term. If Lessee fails to surrender the Premises or any part thereof upon the expiration or termination of this Lease Agreement despite City's demand to do so, Lessee shall indemnify, defend, protect and hold City harmless from all claims, losses, costs, expenses, damages and liabilities, including attorneys' fees, City incurs as a result of Lessee's failure to surrender, including, without limitation, any claim made by any succeeding tenant founded on or resulting from such failure.

3.4 Title. It is understood and agreed that City shall maintain legal title to the entire City Conduit System, subject to this Lease Agreement in the Leased Conduit while Lessee shall retain legal title to the fiber optic.

#### ARTICLE 4. NETWORK ACCESS

4.1 Shared Facilities. City hereby grants to Lessee a non-exclusive license, subject to the limitations and other provisions of this Lease Agreement, to any manholes and handholes (the "Ancillary Facilities") that are necessary to access the Leased Conduit of City's Fibers identified in Exhibit A and that is solely in connection with its use of the Leased Conduit or other obligations of Lessee as defined within this Lease Agreement. Lessee shall notify City at least five (5) days in advance if it wishes access to an Ancillary Facility, and City shall have the right to have a representative present during any access to an Ancillary Facility.

4.2 Costs. Lessee shall pay City its costs in connection with each access to an Ancillary Facility, within thirty (30) days of the date of Lessee's receipt of City's invoice therefore. For purposes of this Lease Agreement, "costs" means all reasonable and direct costs incurred by City in accordance with generally accepted accounting principles and incurred by City for necessary work or services performed in support of Lessee's request to use the Ancillary Facilities.

#### ARTICLE 5. PERMITS; UNDERLYING RIGHTS; RELOCATION

5.1 Governmental Approvals, Permits and Consents.

(a) Lessee at its sole cost and expense, shall obtain and maintain any and all necessary governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, including but not limited to a City Business

Tax Certificate and shall continuously comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to (1) its operation or use of the Leased Conduit; and (2) Lessee's other rights and obligations under this Lease Agreement.

(b) Lessee shall ensure that its customers obtain and maintain any and all necessary permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance and comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to the Lessee's customers' use of the services provided over the Leased Conduit.

(c) If Lessee, its customers or any permitted assignee shall at any time fail to maintain such approvals or comply with all applicable legal requirements described in paragraphs (a) and (b) above, City may terminate this Lease Agreement under Article 10, without liability and without restriction to any other legal, equitable, or administrative remedy available to City. Lessee may contest the applicability or validity of any alleged legal requirement asserted against it or its customers, provided that Lessee gives prompt notice of such contest to City, adheres to proper legal procedures applicable to any such challenge, and indemnifies and holds harmless City and its affiliates and their officers, directors, employees, agents, servants, and assigns from any loss, damage, claims or proceedings to the extent resulting from such challenge or from the failure of Lessee, its customers, their contractors or their subcontractors to comply with this Section 5.1.

5.2 Relocations. City may relocate all or any portion of the City System or any of the facilities used or required in providing Lessee with the Leased Conduit: (1) if a third party with legal authority to do so orders or threatens to order such relocation (e.g., through filing or threatening to file a condemnation suit); (2) in order to comply with federal, state or local applicable laws; (3) to prevent or abate interference with or interruption of the City System, or an unreasonable risk thereof, due to the existence of physical conditions; or (4) if City determines to do so in its reasonable business judgment City shall provide Lessee as much advance notice as possible but shall use reasonable efforts to provide at least sixty (60) calendar days prior notice of any such relocation. City shall bear the costs of relocating its facilities and the Leased Conduit unless such relocation is proximately cause in whole or part by Lessee's negligence or material violation of this Agreement. In the alternative, the City shall have the right, in its sole and unfettered discretion, to terminate this Lease Agreement.



## ARTICLE 6. USE OF LEASED CONDUIT, MAINTENANCE

6.1 Interference. Lessee shall not use the Lessee Fibers in a way that interferes in any way with or adversely affects the use of the fibers or cable of any other person using the City System or any of the other City owned facilities or infrastructure contained within City's rights-of-way. Lessee acknowledges that the City System includes or will include other participants, including City and other owners and users of fiber and telecommunication systems.

6.2 Maintenance. Lessee shall bear all costs associated with its use of the Lessees' Fibers, including without limitation the cost of installation, maintenance and repairs of the Lessees' Fibers. Such installation, maintenance and repairs shall be performed in a good and workmanlike manner, including the National Electrical Safety Code, the National Electrical Code, and any statewide electric codes adopted by the State of California or any department or agency thereof, applicable industry standards, and in accordance with laws and regulations of any federal, state or local government, or any agency or instrumentality thereof, having competent jurisdiction over Lessee, Lessees' Fibers, or the Leased Conduit including applicable General Orders of the Public Utilities Commission of the State of California and any supplements thereto and revisions thereof. Lessee shall be responsible for the proper design and maintenance of its fiber optic facilities and other equipment that occupies shared right of way systems or other facilities, and shall perform work in shared conduit systems and other facilities in a safe and workmanlike manner and at its sole cost. Lessee shall permanently identify, by tags or other suitable means, all of its cables and other equipment that are placed in shared conduit systems or other facilities. Each party agrees to take all necessary precautions to avoid damaging the other party's facilities and to protect such facilities in the same manner as such party protects its own facilities. City shall be responsible for maintenance of Leased Conduit unless such maintenance is necessary due to Lessee's negligence, omission or breach of this Lease Agreement. In the event that repair or maintenance of the Leased Conduit is due to Lessees' negligence, Lessee shall have an affirmative duty to repair and maintain at their cost.

6.3 No Sub-Lease. The Lessee may not sublease the Leased Conduit.

6.4 No Liens. The Lessee shall at all times keep the Leased Conduit or City's Conduit free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on said Leased Conduit or City's Conduit by Lessee. In the event the Leased Conduit or City's Conduit



becomes subject to a lien, claim, demand for work or materials performed or any encumbrance of title not approved by City, Lessee shall immediately take such necessary efforts to clear the encumbrance of title to the Leased Conduit or City's Conduit.

6.5 Right of Inspection. City shall have the right to inspect the Leased Conduit and the lessee Fibers installed in the Leased Conduit during the Term.

## ARTICLE 7. LIMITATION OF LIABILITY/INDEMNITY

7.1 Lessee shall indemnify, protect, defend and hold harmless City, the City System, the Leased Conduit, City's agents, employees, public officials, council members, and the respective agents and employees of each of these parties (each a "City's Party," collectively "City Parties"), from and against any and all claims, loss of rents and/or damages, losses, costs, liens, judgments, penalties, loss of permits, reasonable attorneys' and consultants' fees, expenses and/or liabilities (collectively "Claims") arising out of, involving, or in connection with this Lease; the use or occupancy of the Lease Conduit or the City System; the conduct of Lessee's business; any act, omission, fault or neglect of Lessee, its agents, employees, representatives, contractors, customers, sublessees, licensees, invitees or other visitors; and out of any default or breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease Agreement including, without limitation, any violation of or failure to comply with laws; excepting only to the extent such Claims are caused by the negligent or willful acts or omissions of City or its authorized representatives. The foregoing indemnity shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of Claims made against City and/or any City's Party) litigated and/or reduced to judgment. In case any action or proceeding is brought against City or any City's Party by reason of any of the foregoing matters, Lessee upon notice from City shall defend the same at Lessee's expense by counsel reasonably satisfactory to the indemnified party and City shall cooperate with Lessee in such defense. The indemnified party need not have first paid any such claim in order to be so indemnified. The obligations of Lessee under this Section 7.1 shall survive the expiration or termination of this Lease Agreement. Notwithstanding the foregoing provisions, Lessee shall not be obligated to indemnify City for any Claims arising (i) outside the Leased Conduit to the extent not caused by the negligence or willful misconduct of Lessee, or Lessee's employees, invitees or guests, agents or contractors, or (ii) inside the Leased Conduit to the extent arising from the negligence or willful misconduct of City, or City's employees, invitees or guests,

agents or contractors. The indemnity obligations of Lessee under this Section 7.1 are not intended to, and shall not, (i) restrict or modify Lessee's insurance and other obligations under this Lease Agreement; (ii) be restricted, limited or modified by Lessee's compliance with its insurance and other obligations under this Lease or (iii) supersede any inconsistent agreement of the parties set forth in any other provision of this Lease Agreement.

## ARTICLE 8. INSURANCE

8.1 Lessee shall obtain and maintain in force, at its own expense, and shall require each of its contractors and subcontractors to obtain and maintain in force:

- (a) Commercial General Liability Insurance, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form;
- (b) Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000.00 per accident;
- (c) Comprehensive Auto Liability coverage, including owned, non-owned and hired autos in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.; and
- (d) Any other insurance coverages specifically required or adjustment to the above coverage as set forth above in the event the City's Risk Manager determines that such adjustment is in the City's best interest.
- (e) City shall be listed as an additional insured on all commercial general liability and commercial automobile insurance policies relevant to the project and maintained by the Lessee and the Lessee's contractors and subcontractors.

8.2 Unless otherwise agreed, Lessee's insurance policies shall be obtained and maintained with companies rated "A" or better by Best's Key Rating Guide and each party shall provide the other with an insurance certificate confirming compliance with this requirement for each policy providing such required coverage.



8.3 If Lessee fails to obtain the required insurance or fails to obtain the required certificates from any contractor and a claim is made or suffered, Lessee shall indemnify and hold harmless City from any and all claims for which the required insurance would have provided coverage. Further, in the event of any such failure which continues after seven (7) days written notice thereof by City, City may, but shall not be obligated to, obtain such insurance and will have the right to be reimbursed for the cost of such insurance by the Lessee.

8.4 If coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for the insurance provided above, the Lessee shall make good faith efforts to pursue such claim with its carrier.

## ARTICLE 9. NOTICES

9.1 All notices and other communications required or permitted under this Lease Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

To Lessee: CVIN, LCC  
Attention: Mike Stewart  
7447 N Palm Bluffs Ave #105  
Fresno, CA 93711  
Phone: 559-554-9100

To City: City of Merced  
Attention: City Manager  
678 W 18th Street  
Merced, CA 95340  
Phone: (209) 385-6834

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

## ARTICLE 10. DEFAULT

10.1 Defined. A default shall be deemed to have occurred under this Lease Agreement if:

(a) In the case of a failure to pay any amount when due and payable under this Lease Agreement, the Lessee fails to pay such amount within fifteen (15) days of when due; or

(b) In the case of any other material breach of this Lease Agreement, a party fails to cure such within thirty (30) days after notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

10.2 Remedies. Upon the failure of a party to comply with Section 10.1 (a) or to timely cure any breach after notice thereof from the other party and expiration of the above cure periods as defined in Section 10.1 (b), then the non-defaulting party may, subject to the terms of Article 7 (Limitation of Liability/Indemnity), pursue all remedies provided for in this Lease Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

10.3 City Remedies. In addition to the remedies set forth in Section 10.2, if Lessee fails to cure any other default of the terms of this Lease Agreement within the cure periods described in Section 10.1 above, City may, in addition to any other remedies that it may have under this Lease Agreement or by law, in its sole discretion, take the following actions upon ninety (90) calendar days' notice:

(a) Disconnect and remove at Lessee's expense the Lessee Fibers; and/or

(b) Terminate this Lease Agreement. At the expiration or termination of this Lease Agreement subject to this Article, all rights of Lessee to use the Leased Conduit, or any part thereof, shall cease, and the Lessee shall surrender to City possession of the Leased Conduit. All rights to the use of the Leased Conduit therein shall revert to City.

10.4 No Waiver. A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

10.5 Interest. If Lessee fails to make any payment under this Lease Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at an annual rate of eighteen



percent (18%) compounded monthly or, if lower, the highest percentage allowed by law.

## ARTICLE 11. ABANDONMENT

11.1 Should Lessee, for any reason, abandon all or part of its use of capacity or facilities installed pursuant to this Lease Agreement, then the below provisions shall apply. "Abandon" shall be defined for the purposes of this Lease Agreement as failure to use the Leased Conduit for more than one (1) year or at such time that notice of abandonment is provided by Lessee.

(a) If City rejects all or a portion of the proposed transfer of abandoned facilities from Lessee, then Lessee shall remove any facilities it proposed to abandon which were rejected by City within ninety (90) days of City's rejection. If the Lessee fails to so remove the abandoned rejected facilities, then City may remove them at Lessee's expense, which shall be paid within thirty (30) days of receipt of the invoice.

(b) At the time of any accepted abandonment, Lessee shall have no further rights with respect to the abandoned facilities. At such time, City shall have the authority to remove, reuse, or resell the abandoned facilities.

(c) Unless expressly rejected by City in writing within 90 days of a written abandonment notification, Lessee's abandoned facilities shall be transferred to the ownership of City.

## ARTICLE 12. TERMINATION

12.1 Termination. If Lessee is not in default of this Lease Agreement as defined within Article 10, or has not abandoned the Leased Conduit as defined in Article 11, and if at the expiration of the Term as defined within Article 3 of this Lease Agreement or any mutually agreed upon extensions to the Term, Lessee shall have the election to do either of the following:

(a) Lessee will remove all fiber optic cable owned by Lessee within the City's conduit; or

(b) The parties if mutually agreed upon, may leave the fiber optic cable in the City's conduit wherein City will acquire and retain all proprietary and ownership interest to the fiber optic cable and conduit at no

cost to the City with no further right, title or interest by Lessee in any of the Lessees' Fiber. In the event the parties fail to mutually agree to this subsection (b), Lessee shall be obligated to comply with subsection (a) of this Article 12.

#### ARTICLE 13. TRANSFERS, ASSIGNMENTS AND EXPANSION

13.1 Lessee may not transfer or assign all or any part of its interest in this Lease Agreement or in the Leased Conduit, in whole or in part, or delegate any duties, burdens, or obligations arising hereunder, without the prior written consent of City, which consent may not be unreasonably withheld. A transfer or assignment in violation of this Article shall be void and shall constitute a material breach of this Lease Agreement.

13.2 Any desire or interest of either party to this Lease Agreement for future expansion of the system will be subject to following: 1) City shall have the initial right to expand the system by competitively bidding and paying prevailing wage through its own contractors and receiving additional lease revenue for use of that system by Lessee consistent with the compensation structure of agreement; 2) Lessee may develop, construct and lay their own conduit and hook up customers only to that part of the City System expanded in accordance with this subsection with no lease payment to City based on those revenues generated by the private line if City decides not to exercise its rights in option one; 3) Lessee and City both decide not to expand system. If City exercises its rights under option 1 of this section 13.2, all other provisions of this Lease Agreement shall apply not inconsistent with this Article.

#### ARTICLE 14. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

14.1 Each party represents and warrants that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Lease Agreement; and

(b) This Lease Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles.



14.2 City makes no warranty, express or implied with respect to the Leased Conduit, including any warranty of merchantability or fitness for a particular purpose, and all such warranties are hereby expressly disclaimed.

## ARTICLE 15. FORCE MAJEURE

15.1 Neither party shall be liable to the other party and each party's performance under this Lease Agreement shall be excused, if and to the extent that any failure or delay in such party's performance of one or more of its obligations hereunder caused by any of the following conditions, and such party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay; act of God; fire; flood; war or civil disorder; strikes or other labor disputes; or any other cause beyond the reasonable control of such party ("Force Majeure Event"). The party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said Force Majeure Event, and the party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay; PROVIDED HOWEVER THAT, the provisions of this paragraph shall not operate so as to excuse or release Lessee from the prompt payment of the ARC or other amounts due and payable under this Lease Agreement. PROVIDED FURTHER THAT, if the City System and/or the Leased Conduit are totally destroyed, or rendered unusable, by a Force Majeure Event, City may terminate this Lease Agreement, without liability to lessee, as of the date of such Force Majeure Event.

## ARTICLE 16. GENERAL

16.1 Binding Effect. The failure of either party hereto to enforce any of the provisions of this Lease Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

16.2 Taxes. City hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Lessee acknowledges that this Lease Agreement may create a possessory interest and Lessee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107. Lessee shall be responsible for and shall pay all Impositions:

(a) Imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to Lessee with respect to the ownership or use of the Leased Conduit; or

(b) Which have been separately assessed, allocated to, or imposed on the Leased Conduit; or

(c) Which are imposed, based on, or otherwise measured with respect to construction services performed by City for Lessee.

“Impositions” means all taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, possessory interest taxes, franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Lease Agreement that are imposed upon the City System by any federal, state or local government or other public taxing authority; but shall not include taxes, fees or similar levies based on income.

16.3 Attorney’s Fees. If either party brings any legal action or proceeding against the other to enforce or interpret this Lease Agreement, or otherwise arising out of this Lease Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its reasonable costs and expenses of suit and enforcing the judgment awarded to it, including reasonable attorneys’ fees, in addition to any other relief or award to which it may be entitled.

16.4 Governing Law. This Lease Agreement and all matters relating to it shall be governed by the laws of the State of California without reference to its choice of law principles and any action brought relating to this Lease Agreement shall be held exclusively in a state court in the County of Merced, State of California.

16.5 Rules of Construction. The captions or headings in this Lease Agreement are strictly for convenience and shall not be considered in interpreting this Lease Agreement or as amplifying or limiting any of its content. Words in this Lease Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

(a) Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

(b) Except as set forth to the contrary herein, any right or remedy of Lessee or City shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.



(c) Nothing in this Lease Agreement is intended to provide any legal rights to anyone not an executing party of this Lease Agreement.

(d) This Lease Agreement has been fully negotiated between and jointly drafted by the parties.

(e) All actions, activities, consents, approvals and other undertakings of the parties in this Lease Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Lease Agreement the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a party's performance.

16.6 Entire Agreement. This Lease Agreement, together with any Confidentiality Agreement entered into in connection herewith, constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Lease Agreement. To the extent that any of the provisions of any Exhibit hereto are inconsistent with the express terms of this Lease Agreement, the terms of this Lease Agreement shall prevail. This Lease Agreement may only be modified or supplemented by an instrument in writing executed by each party.

16.7 Relationship of the Parties. The relationship between Lessee and City shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Lease Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, federal income tax purposes. Lessee and City, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

16.8 Severability. If any term, covenant or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Lease Agreement, the remainder of this Lease Agreement shall not

be affected thereby, and each term, covenant or condition of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

16.9 Legislative Function of City. This is a proprietary contract and is subject to the legislative functions and power of the City and right of eminent domain and nothing within this Lease Agreement shall waive or restrict any of those legislative functions or rights of the City.

16.10 Lessee's Customer Contracts. Lessee shall provide in any contracts with third party customers a provision that holds City harmless and without liability in the event Lessee breaches any third party customer contracts, goes into bankruptcy, fails to perform or is in default under this Lease Agreement or the third party customer contracts, this Lease Agreement is terminated, or City exercises any rights it has under this Lease Agreement.

16.11 Lessees' Customers. Lessee agrees to include in all contracts with any third parties or customers of Lessee which would use Lessees' Fiber a provision that in the event Lessee breaches or fails to supply service to those third party/customer contracts, goes into bankruptcy or fails to perform either under this Lease Agreement or any contracts with their customers, the City would have no liability to their customers in exercising any rights it has under this Lease Agreement.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the Effective Date.

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: Sharon C. Miller 6-12-19  
City Attorney Date

ACCOUNT DATA:

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

CONSULTANT  
CVIN, LLC,  
A California Limited Liability Company,  
Doing business as VAST NETWORKS

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

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

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

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

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

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

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

## EXHIBIT A

Section 1a of Drawing 2 through 4 of Exhibit A

Uses conduit on North Side of Olive Drive between R Street and HWY 59. CVIN  
Fiber optic cable in Blue Microduct.

Section 1b of Drawing 5 of Exhibit A

Uses conduit On North Side of Olive Drive to South Side on Olive Drive. CVIN  
Fiber optic cable in Blue Microduct.

## EXHIBIT B

Section 1a of Drawing 1 of Exhibit A

Uses conduit on North Side of Olive Drive between M Street and R Streets.



## ADMINISTRATIVE REPORT

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**Agenda Item I.8.**

Meeting Date: 8/5/2019

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**SUBJECT:** Approval of Agreement for Labor Relations Consulting, Labor Contract Negotiations and Employee Related Legal Services with the Law Firm of Liebert Cassidy Whitmore in the Not to Exceed Amount of \$100,000

### REPORT IN BRIEF

Considers approving an agreement for labor relations consulting, labor contract negotiations and employee related legal services with the law firm of Liebert Cassidy Whitmore.

### RECOMMENDATION

**City Council** - Adopt a motion approving an agreement for professional services with the law firm of Liebert Cassidy Whitmore for labor relations consulting, labor contract negotiations, and employee related matters and authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

### ALTERNATIVES

1. Approve as recommended by staff; or,
2. Approve, subject to modification as conditioned by City Council; or,
3. Refer to staff for reconsideration for specific items; or,
4. Deny.

### AUTHORITY

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

### CITY COUNCIL PRIORITIES

As provided in the 2019-2020 adopted budget.

### DISCUSSION

The City has five bargaining units and four unrepresented groups. At the end of December 2019, all units and the unrepresented groups will have expiring labor agreements. In order to help manage such a large undertaking, the City would like to secure the services of the Liebert Cassidy Whitmore law firm. This is a common practice used by other public agencies as well. While City staff will provide substantial support in preparation for and during the negotiations processes, internal City resources are not sufficient to meet the demands associated with the bargaining processes. In addition, the City and the bargaining processes will benefit from having the specialized legal expertise offered by a law firm focusses on relations and labor negotiations to address complex legal

issues such as employee benefits, compensation, pensions and other issues that are likely to arise during the bargaining processes.

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

### **IMPACT ON CITY RESOURCES**

No additional appropriation is needed.

### **ATTACHMENTS**

1. LCW Agreement

## **AGREEMENT FOR SPECIAL SERVICES**

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

### **1. Conditions**

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

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

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

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

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

The current range of hourly rates for Attorney time is from Two Hundred Ten to Three Hundred Seventy Dollars (\$210.00 - \$370.00), Two Hundred Forty Dollars (\$240.00) for time of Labor Relations/HR Consultant and from Eighty to One Hundred Seventy Dollars (\$80.00 - \$170.00) for time of paraprofessional and litigation support staff. Attorney reviews its hourly rates on an annual basis and, if appropriate, adjusts them effective July 1. Attorney will provide the City with written notification of any



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

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

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

**4. Professional Liability Insurance**

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

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

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



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

**6. File Retention**

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

**7. Assignment**

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

**8. Independent Contractor**

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

**9. Authority**

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

**10. Term**

This Agreement is effective July 1, 2019, ongoing and may be modified by mutual agreement of the parties. This agreement shall be terminable by either party upon thirty (30) days written notice.

LIEBERT CASSIDY WHITMORE,  
A Professional Corporation

CITY OF MERCED,  
A Municipal Corporation

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

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

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

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

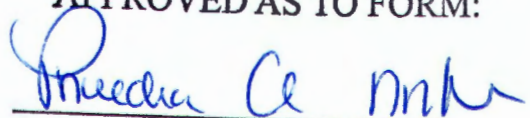
Title: \_\_\_\_\_

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

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

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

APPROVED AS TO FORM:



I. PUBLIC AGENCY FEE SCHEDULE

Hourly Rates (As of Agreement Effective Date)

Partners	\$370.00
Senior Counsel	\$320.00
Associates	\$210.00 - \$300.00
Labor Relations/HR Consultant	\$240.00
Paraprofessionals & Litigation Support	\$80.00 - \$170.00

II. COST SCHEDULE

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



## ADMINISTRATIVE REPORT

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**Agenda Item I.9.**

Meeting Date: 8/5/2019

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*Report Prepared by: Janet German, Secretary, Fire Dept.*

**SUBJECT: Acceptance of Donation in the Amount of \$100 from Two Anonymous Donors and Appropriating the Same for Hydration Supplies for the Firefighters**

### REPORT IN BRIEF

Considers accepting a \$100 donation from two anonymous donors, who indicated that they would like bottled water to be purchased for the firefighters.

### RECOMMENDATION

**City Council** - Adopt a motion accepting the \$100 donation from two anonymous citizens, increasing revenue account 001-0901-360.02-01 (Contributions and Donations) in the amount of \$100 and appropriating the same in account 001-0901-522.29.00 (Supplies and Services).

### ALTERNATIVES

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

### AUTHORITY

Charter of the City of Merced, Section 200.

### CITY COUNCIL PRIORITIES

This action is consistent with the city's operating principal to promote Public Safety, as provided for in the 2019-20 Adopted Budget.

### DISCUSSION

Two anonymous citizens have generously donated \$100 towards the cost of purchasing bottled waters for our firefighters to use as hydration when responding to emergency incidents. A letter of appreciation will be sent to the citizens who wish to remain anonymous.

### IMPACT ON CITY RESOURCES

Increase revenue account 001-0901-360.02-01 (Contributions and Donations) in the amount of \$100 and appropriate the same to 001-0901-522.29-00 (Supplies and Services).

**ATTACHMENTS**

None.



## ADMINISTRATIVE REPORT

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### Agenda Item I.10.

Meeting Date: 8/5/2019

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*Report Prepared by: Joe Cardoso, P.L.S., City Surveyor*

**SUBJECT:** Approval of Program Supplement No. F033 to Administering Agency State Agreement for Federal Aid Project 10-5085F15 and Approval of Summary (E-76) for a Congestion Mitigation and Air Quality Improvement (CMAQ) Grant CML-5085(051) 120043 CMAQ-SDWK Infill Olive Avenue, Parsons Avenue and Alexander Avenue in the Amount of \$70,087

### REPORT IN BRIEF

Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$70,087 in CMAQ Grant funding for Preliminary Engineering for the sidewalks on Olive Avenue from Queen Circle to Parsons Avenue, on Alexander Avenue from Nottingham Lane to Parsons Avenue and on Parsons Avenue from Olive Avenue to south of Hansen Avenue.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2019-44**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. F033; and,
- B. Accepting CMAQ grant funds and increasing revenue in account 450-1104-321-32-00 by \$70,087 and appropriating the same to account 450-1104-637-65-00 (Project No. 120043) for preliminary engineering costs associated with design of sidewalks on Olive Ave from Queen Circle to Parsons Avenue, on Alexander Avenue from Nottingham Lane to Parsons Avenue and on Parsons Ave from Olive Avenue to south of Hansen Avenue; and,
- C. Approving the use of pooled cash until reimbursement is received from the grant; 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. Approve, subject to conditions other than recommended by Staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- 4. Continue to a future meeting (date and time to be specified in the motion).

### AUTHORITY



Charter of the City of Merced, Section 200.

Caltrans Procedures for Administering Local Grant Projects in the State Transportation Improvement Program (STP) are used to comply with the changes to the programming and funding statutes brought about by Charter 622 of the Statutes of 1997 (SB 45, KOPP). The procedures have been modified to remain consistent with and complimentary to the various guidelines and policies adopted by the California Transportation Commission (CTC), including the current 2010 STP Guidelines (adopted on October 14, 2009).

## **CITY COUNCIL PRIORITIES**

As provided for in the 2019-20 Adopted Budget.

## **DISCUSSION**

In January 2019, City Council approved the ratification of three (3) grant applications for Congestion Mitigation and Air Quality Improvement (CMAQ) funds to install sidewalks that will either connect gaps in existing sidewalk networks or construct new sidewalks in the locations outlined below:

1. Construction of a 5' wide sidewalk along 7th Street and 8th Street from Linda Lane to West; Linda Lane from Lopes Avenue to 7th Street.
2. Construction of a 5' wide sidewalk along South R Street, South S and South T Streets from Childs Avenue to Stuart Drive.
3. Construction of a 5' side sidewalk in the areas of Olive Avenue from Queen Circle to Parsons Avenue; Parsons Avenue from Olive Avenue to south of Hansen Avenue; and Alexander Avenue from Nottingham Lane to Parsons Avenue.

On July 1, 2019, City Council approved the Program Supplement for the sidewalk on 7th Street and 8th Street from Linda Lane to West; Linda Lane from Lopes Avenue to 7th Street and for sidewalk along South R Street, South S and South T Streets from Childs Avenue to Stuart Drive.

The attached Program Supplement is for the area of Olive Avenue from Queen Circle to Parsons Avenue; Parsons Avenue from Olive Avenue to south of Hansen Avenue; and Alexander Avenue from Nottingham Lane to Parsons Avenue portion and would include approximately 2,980 linear feet of new sidewalk and approximate 4 access ramps.

This portion of the project is for Preliminary Engineering, which will allow for design, prepare engineering plans and specifications, environmental review, and public outreach. The Federal-Aid Projects Program Supplement Agreement No. F033 allows \$70,087 in grant funds and a local match of \$9,080 toward the Preliminary Engineering of this project.

## **IMPACT ON CITY RESOURCES**

Staff recommends accepting grant funds from the State of California adopted Congestion Mitigation and Air Quality Improvement (CMAQ) Program, increasing revenue in account 450-1104-321.32-00 in the amount of \$70,087 and appropriating the same to account 450-1104-637.65-00-120043 for the

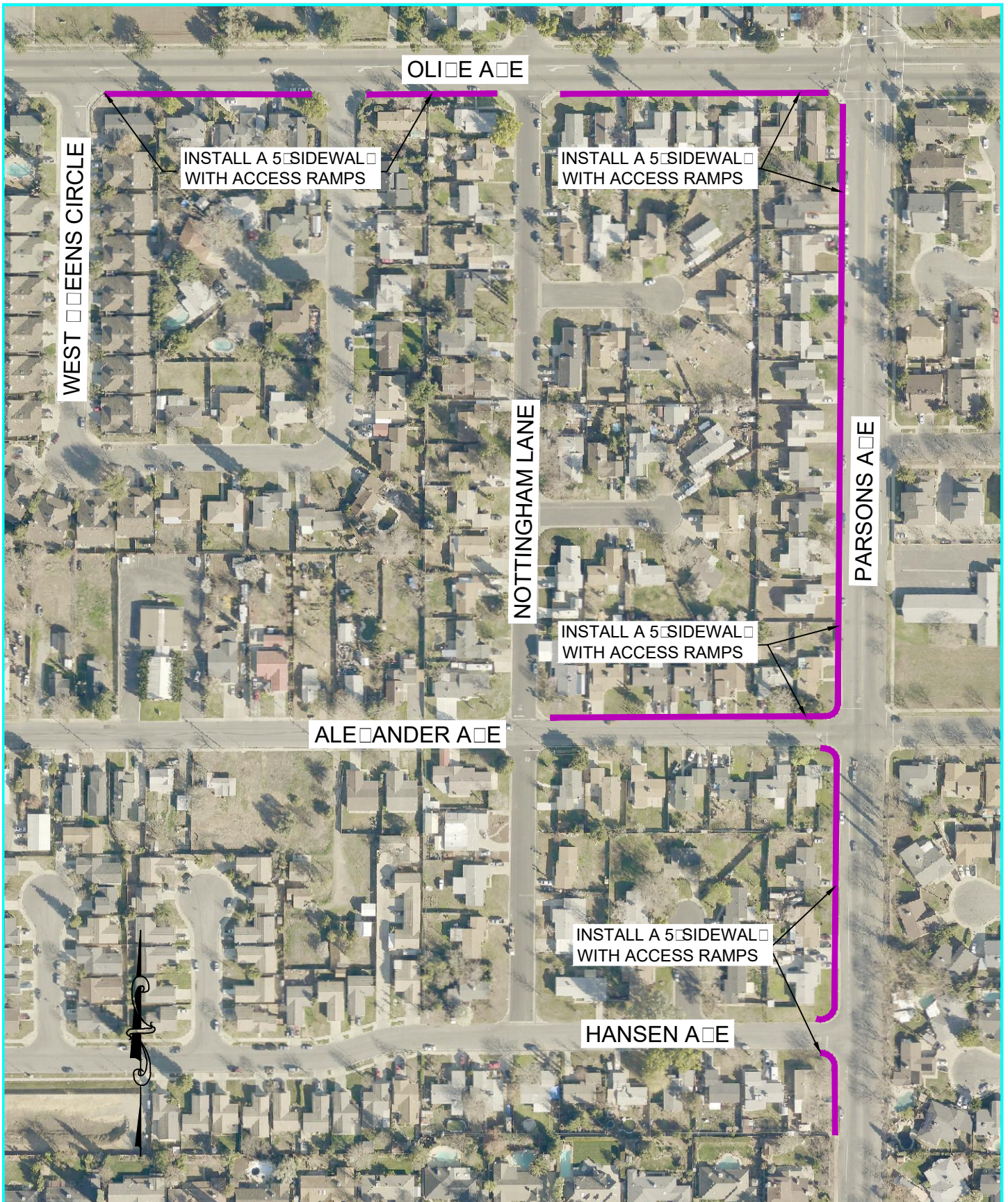
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Preliminary Engineering costs. Additionally, Fund 075-Measure V Alternative Modes will be used for the matching funds in the amount of \$9,080.

**ATTACHMENTS**

1. Location Map
2. Resolution
3. Program Supplement
4. E-76 CML-5085(051)





*City of Merced*  
"Gateway to Yosemite"

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

CMA 2018  
SIDEWALKS ALONG  
PARSONS AVE, HANSON AVE,  
ALEXANDER AVE AND OLIVE AVE

DR. BY: CARDOSO
DATE: 12/31/18
CH. BY:
DATE:
File No.
SCALE: 1"=200'



**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING FEDERAL-AID PROJECTS  
PROGRAM SUPPLEMENT AGREEMENT  
NO. F033**

WHEREAS, the City of Merced is eligible to receive Federal and/or State funding for certain transportation projects through the California Department of Transportation; and

WHEREAS, Program Supplemental Agreements need to be executed with the California Department of Transportation before such funds may be claimed.

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

SECTION 1. Program Supplement Agreement No. F033, attached hereto and made a part hereof, is hereby approved.

SECTION 2. The City Manager and the City Clerk, respectively, are hereby authorized to execute and attest said Agreement on behalf of the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2019, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kelly Kinnear 1-8-19  
City Attorney Date

PROGRAM SUPPLEMENT NO. F033  
to  
ADMINISTERING AGENCY-STATE AGREEMENT  
FOR FEDERAL-AID PROJECTS NO 10-5085F15

Adv Project ID Date: June 26, 2019  
1019000141 Location: 10-MER-0-MER  
Project Number: CML-5085(051)  
E.A. Number:  
Locode: 5085

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 07/18/18 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. approved by the Administering Agency on  
(See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

**PROJECT LOCATION:**

Olive Avenue from ~~East~~ Queen Circle to Parsons Avenue, Parsons Avenue from Olive Avenue to south of Hansen Avenue and Alexander Avenue from Nottingham Lane to Parsons Avenue

**TYPE OF WORK:** Construct Sidewalks with ADA Curb Ramps

**LENGTH:** 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds	
	Z400		LOCAL	OTHER
\$79,167.00		\$70,087.00	\$9,080.00	\$0.00

**CITY OF MERCED**

**STATE OF CALIFORNIA**  
**Department of Transportation**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Chief, Office of Project Implementation  
Division of Local Assistance

Date \_\_\_\_\_

Date \_\_\_\_\_

Attest \_\_\_\_\_

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer

Jessamine Pelos

Date

6/27/2019

\$70,087.00

**SPECIAL COVENANTS OR REMARKS**

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

**SPECIAL COVENANTS OR REMARKS**

assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at [www.sam.gov](http://www.sam.gov).

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

**SPECIAL COVENANTS OR REMARKS**

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures,

**SPECIAL COVENANTS OR REMARKS**

48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in



**SPECIAL COVENANTS OR REMARKS**

ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

3. In the event that right of way acquisition for or construction of this project of the initial federal authorization for preliminary engineering is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the ADMINISTERING AGENCY shall repay the Federal Highway Administration through Caltrans the sum of Federal funds paid under the terms of this agreement.

Account Number: \_\_\_\_\_

Amount: \_\_\_\_\_

VERIFIED

BY: \_\_\_\_\_  
Finance Officer

FINANCE ENTRY	
Contract No:	_____
Vendor Number:	_____
P.O. Number:	_____
Funds Available:	_____
07/10/19	

APPROVED AS TO FORM:

Shirley A. nlm

# AUTHORIZATION / AGREEMENT SUMMARY - (E-76)

CALIFORNIA DEPARTMENT OF TRANSPORTATION

## FEDERAL AID PROGRAM

DLA LOCATOR: 10-MER-0-MER

PREFIX: CML

PROJECT NO: 5085(051)

SEQ NO: 1

STATE PROJ NO: 1019000141L-N

AGENCY: MERCED

ROUTE:

DISASTER NO:

TIP DATA

MPO: MCAG

FSTIP YR: 18/19

STIP REF: 205-0000-0287

FSTIP ID NO: CMAQ19-08

PROJECT LOCATION: ~~Y~~

OLIVE AVENUE FROM ~~WEST~~ QUEEN CIRCLE TO PARSONS AVENUE, PARSONS AVENUE FROM OLIVE AVENUE TO SOUTH OF HANSEN AVENUE AND

TYPE OF WORK:

CONSTRUCT SIDEWALKS WITH ADA CURB RAMPS

FED RR NO'S:

PUC CODES:

PROJ OVERSIGHT: ASSUMED/LOCAL ADMIN

ENV STATUS / DT:

RW STATUS / DT:

INV RTE:

BEG MP:

END MP:

PREV AUTH / AGREE DATES:

PE:

R/W:

CON:

SPR:

MCS:

OTH:

BRIDGE NO:

PROG CODE

LINE NO

IMPV TYPE

FUNC SYS

URBAN AREA

URB/RURAL

DEMO ID

Z400

10

15

## FUNDING SUMMARY

PHASE	PROJECT COST	FEDERAL COST	AC COST
PE	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$79,167.00	\$70,087.00	\$0.00
	SUBTOTAL \$79,167.00	\$70,087.00	\$0.00
R/W	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
CON	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
OTH	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
TOTAL:		\$79,167.00	\$70,087.00
			\$0.00

## STATE REMARKS

04/29/2019 \* SEQ 1: Authorizing federal funds for PE.

\* Final design is not to start until the environmental document (NEPA) is approved.

## FEDERAL REMARKS

## AUTHORIZATION

AUTHORIZATION TO PROCEED WITH REQUEST: PRE

FOR: PRELIM ENGINEERING

DOCUMENT TYPE: AAGR

PREPARED IN FADS BY: NORIEGA, JASMINE

REVIEWED IN FADS BY: ANDERSON, PETER

SUBMITTED IN FADS BY: ANDERSON, PETER

PROCESSED IN FADS BY: SIGNATURE, NOT\_REQUIRED

E-76 AUTHORIZED DATE IN FMIS BY: JESSICA GORDON

ON 2019-05-16 948-3755

ON 2019-06-18 653-8431

ON 2019-06-18 FOR CALTRANS

ON 2019-06-18 FOR FHWA

ON 2019-06-21 16:31:55.0

SIGNATURE HISTORY FOR PROJECT NUMBER 5085(051) AS OF 07/01/2019

FHWA FMIS SIGNATURE HISTORY

MOD #	SIGNED BY	SIGNED ON
0	SHUN HUEY	06/20/2019
	SHUN HUEY	06/20/2019
	JESSICA GORDON	06/21/2019

FHWA FMIS 3.0 SIGNATURE HISTORY

CALTRANS SIGNATURE HISTORY

DOCUMENT TYPE	SIGNED BY	SIGNED ON
AUTH/AGREE	ANDERSON, PETER	06/18/2019



## ADMINISTRATIVE REPORT

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### Agenda Item I.11.

Meeting Date: 8/5/2019

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*Report Prepared by: Mark Hamilton, Housing Program Supervisor, Housing Division, Development Services Department*

**SUBJECT: Approval of a Professional Service Agreement Between the City of Merced and RSG Inc. for Housing Successor Agency Services in an Amount not to Exceed \$59,760.00**

### REPORT IN BRIEF

Considers approving the terms and scope of services for a professional services agreement with RSG Inc. to provide consulting services to the City of Merced and the City's Housing Successor Agency.

### RECOMMENDATION

**City Council** - Adopt a motion approving the professional services agreement between the City of Merced and RSG Inc. for consulting services related to the Housing Successor Agency in the amount not to exceed \$59,760.00 and authorizing the City Manager or the Assistant City Manager to execute all the necessary documents.

### 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 2019-2020.

### DISCUSSION

Staff has negotiated a professional services agreement with RSG Inc. for provision of Affordable Housing Consulting Services to the City (Attachment 1). The total cost for RSG Inc. services is not to exceed \$59,760.00.

RSG Inc. provides services to the City and the City's Housing Successor Agency through the evaluation of existing resources, development strategies, disposition of Housing Successor assets, and technical knowledge regarding the State of California's complex Housing Successor Agency

Regulations. Additionally, they assist City staff with coordinating and preparation of the Annual Housing Successor Report to ensure the City remains in compliance with State of California regulations for Housing Successor Agencies.

For the past year, RSG Inc. has assisted the City and the City's Housing Successor with reporting requirements, project reimbursement negotiations, and the development of a strategy for disposition and development of various Housing Successor Assets.

There are some tasks RSG Inc. was unable to complete under their previous agreement that are identified within this year's agreement. These task include the following:

1. Reconciliation of Residual Receipt Payments;
2. Housing Successor Annual Report for 2017-18;
3. Childs Avenue and B Street Development Proposal Compliance; and,
4. Housing Successor Real Property Development Request for Proposals.

The agreement being considered is a new scope of services and budget for Fiscal Year 2019/20 aimed at assisting the City and Housing Successor to resolve some of the issues described above. It also includes additional services to assist with negotiations and agreements related to the Childs and B Street project and the RFP to dispose of Housing Successor properties, and to provide general as-needed services for unanticipated issues as the need arises.

The tasks include:

1. Transfer of Former Redevelopment Agency Assets to the Housing Successor;
2. Merced Pacific Associates Loan Research and Advisory Services;
3. Reconciliation of Residual Receipt Payments;
4. Childs Avenue and B Street Development Negotiations and Agreements;
5. Fiscal Year 2018 -19 Housing Successor Annual Report;
6. Housing Successor Real Property Development Request for Proposals; and,
7. General As-Needed Services.

RSG Inc. will assist staff with packaging and presenting projects to the City Council. When called upon, RSG Inc. will provide one-on-one project advice and assistance when addressing legal requirements of the Housing Successor.

RSG Inc. has supported staff with addressing previous Housing Successor efforts, responding to programmatic expenditure requirements, assisting staff with valuable industry knowledge related to affordable housing questions, and providing the City with general knowledge related to development of Housing Successor assets.

## **IMPACT ON CITY RESOURCES**

Funding is available within the FY2019-20 Adopted Budget under the Professional Services account 071-1363-552-17-00.

## **ATTACHMENTS**

1. Professional Services Agreement for FY 19-20

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as "City") and RSG, Inc., a California Corporation, whose address of record is 17872 Gillette Avenue, Suite 350, Irvine, California 92614 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project seeking assistance in evaluating options to expend affordable housing monies in the Low and Moderate Income Housing Asset Fund; and,

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

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

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

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

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

3. **RESERVED.**

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

invoice detailing services performed under the Scope of Services dated May 31, 2019, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Fifty-Nine Thousand Seven Hundred Sixty Dollars (\$59,760.00).

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

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

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

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

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of



competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

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

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

b. General Liability.

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

c. Automobile Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

APPROVED AS TO FORM:

BY:  7-17-19  
City Attorney Date

ACCOUNT DATA:

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

CONSULTANT  
RSG, INC.,  
A California Corporation

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

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

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

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

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

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

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 17872 Gillette Ave  
Suite 350  
Irvine, CA 92614

TELEPHONE: (714) 541-4585

FAX: (714) 541-1175

E-MAIL: \_\_\_\_\_

CONSULTANT  
RSG, INC.,  
A California Corporation

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

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

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

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

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

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

Taxpayer I.D. No 95-3435849

ADDRESS: 17872 Gillette Ave  
Suite 350  
Irvine, CA 92614

TELEPHONE: (714) 541-4585

FAX: (714) 541-1175

E-MAIL: \_\_\_\_\_



CONSULTANT  
RSG, INC.,  
A California Corporation

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

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

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

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

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

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

Taxpayer I.D. No 95-3435849

ADDRESS: 17872 Gillette Ave  
Suite 350  
Irvine, CA 92614

TELEPHONE: (714) 541-4585

FAX: (714) 541-1175

E-MAIL: \_\_\_\_\_



BETTER COMMUNITIES.  
BOLDER FUTURES.

17872 GILLETTE AVE.  
SUITE 350  
IRVINE, CA 92614

714 541 4585  
INFO@WEBRSG.COM  
WEBRSG.COM

May 31, 2019

**Via Electronic Mail**

Scott McBride, Director of Development Services  
Mark Hamilton, Housing Program Supervisor  
CITY OF MERCED  
678 West 13<sup>th</sup> Street  
Merced, CA 95340

### **PROPOSAL FOR AFFORDABLE HOUSING CONSULTING SERVICES (MAY 2019)**

Thank you for the opportunity to present this proposal to the City of Merced ("City") and the City's Housing Successor Agency ("Housing Successor") to provide affordable housing consulting services to the City. RSG has worked with the City since July 2018 to evaluate its assets and develop a strategy to spend Housing Successor funds and develop or dispose of properties to meet the City's needs while complying with complex legal requirements.

RSG and the City executed the contract in January 2019 to assist with the following tasks:

1. Reconciliation of Residual Receipt Payments;
2. Housing Successor Annual Report for 2017-18;
3. Childs Avenue and B Street Development Proposal Compliance; and
4. Housing Successor Real Property Development Request for Proposals.

While completing this work, several unanticipated issues were discovered that required more in-depth work than expected, and that prevented RSG from completing Task 1 and beginning Task 4 under the contract budget. Under Task 1, Reconciliation of Residual Receipts, the Sierra Meadows Apartments loan had an unusual structure as a bond and the Woodbridge Apartments loan had incomplete information that was provided later by the developer. Under Task 2, Housing Successor Annual Report, it was discovered that some former Redevelopment Agency assets were never formally transferred to the City as Housing Successor and were complicated by litigation. Among other tasks, these unanticipated items required RSG to rewrite the Housing Successor's Expenditure and Disposition Options memo (completed under a July 2018 contract) to add an additional property and update the figures to make it consistent with the Housing Successor Annual Report. Addressing these matters utilized the January 2019 contract budget and prevented RSG from beginning Task 4, a Request for Proposals ("RFP").

This May 2019 proposal presents a new scope of services and budget for fiscal year 2019/20 to assist the City and Housing Successor to resolve some of the issues described above. It also includes additional services to assist with negotiations and agreements related to the Childs and

B Street project and the RFP to dispose of Housing Successor properties, and to provide general as-needed services for unanticipated issues as the need arises. The tasks include:

1. Transfer of Former Redevelopment Agency Assets to the Housing Successor;
2. Merced Pacific Associates Loan Research and Advisory Services;
3. Reconciliation of Residual Receipt Payments;
4. Childs Avenue and B Street Development Negotiations and Agreements;
5. Fiscal Year 2018-19 Housing Successor Annual Report
6. Housing Successor Real Property Development Request for Proposals; and
7. General As-Needed Services

## **SCOPE OF SERVICES**

The following details RSG's understanding of the desired services requested by the City and Housing Successor:

### **Task 1: Transfer of Former Redevelopment Agency Assets to the Housing Successor**

Upon the dissolution of redevelopment, the City was required to prepare a Housing Asset Transfer Form ("HAT") that listed former Merced Redevelopment Agency ("Former Agency") housing assets for transfer to the Housing Successor. Merced's HAT included 21 Real Properties, 4 Low-Mod Encumbrances, and 40 Loans Receivable, among other items.

The California Department of Finance ("DOF") approved the transfer of all Real Properties pending review by the State Controller's Office ("SCO"). The SCO ultimately disapproved the transfer of all real properties from the Former Agency to the Housing Successor until the City could provide documentation that the properties were purchased by the Former Agency with Low and Moderate Income Housing Funds ("Housing Funds"). In 2017, the City formally transferred nine properties to the Housing Successor, seven properties to the Designated Local Authority ("DLA"), and one property to the City with DOF's approval. This leaves three properties that were never formally transferred from the Former Agency:

- 26 W. 18<sup>th</sup> Street (Vacant Land)
- 454 W. 8<sup>th</sup> Street (Single-Family Home, Sold by Housing Successor)
- 951 W. 7<sup>th</sup> Street (Single-Family Home, Sold by Housing Successor)

RSG conducted research with the City, DLA, and attorneys confirming that the three properties were purchased by the Former Agency with Housing Funds, and that their transfer to the Housing Successor needs to be considered and ratified by the DLA, Oversight Board, and DOF for formal approval. With the City's verbal approval, RSG drafted three staff reports and nine resolutions for three different agencies (the City, DLA, and Oversight Board) to approve the transfer of these three properties to the Housing Successor. RSG will continue to coordinate with the City, DLA,

and DOF to answer any questions these agencies have during their review of the actions and supporting documents.

### **Task 2: Merced Pacific Associates Loan Research and Advisory Services**

The HAT included four items related to a Disposition and Development Agreement (“DDA”) with Merced Pacific Associates to develop the Woodbridge Apartments: one low-mod encumbrance (Exhibit C, Item 2) and three loans receivable (Exhibit D, Items 3, 4 and 5). The low-mod encumbrance was for a \$3 million Construction Loan that was retired by the issuance of a new loan agreement. Merced did not object to DOF’s determination and agreed to remove the encumbrance. The three loans receivable were for a \$3 million Construction Loan (now retired), an \$800,000 Participation Loan, and a \$4,888,500 Participation Loan. DOF denied the transfer of these loans because the Former Agency was not party to the agreements. The loan documents are between Merced Pacific Associates and the City of Merced Public Financing and Economic Development Authority (“PFEDA”). The Merced Pacific Associates loans and several other asset transfers identified in Merced’s Due Diligence Reviews continue to be litigated with DOF.

RSG and the City spoke with the City’s special legal counsel (BB&K) about the Merced Pacific Associates loans. We confirmed that the loans should continue to be accounted for as loans receivable in the Housing Successor’s Low and Moderate Income Housing Asset Fund because the DDA with Merced Pacific Associates was with the former Agency and the notes were provided from Housing Funds. RSG will continue tracking the litigation and advise staff on how to account for the Merced Pacific Associates loans in the future. BB&K has advised not spending any loan repayments received from Merced Pacific Associates while the Due Diligence Review is under litigation.

### **Task 3: Reconciliation of Residual Receipt Payments**

RSG completed a residual receipts review for the Woodbridge and Sierra Meadows Apartments. RSG discovered variances in the methodology for calculating residual receipt revenue that resulted in an overall underpayment to the Housing Successor between 2015 to 2017. RSG discussed the variances with Sierra Meadows, who agreed to pay the Housing Successor for a \$9,462 underpayment with the City’s assurance that there will be no further obligation after their 2018 payment pursuant to the loan agreement terms. RSG will prepare a letter to Sierra Meadows confirming the points of agreement. The residual receipt discussions revealed that the Sierra Meadows loan was structured as a bond. The bond trustee will require the City to return the bond note once the loan terminate. RSG will coordinate with the City and trustee to return the note.

RSG originally believed that Woodbridge made no residual receipt payments between 2015 to 2017 and owed \$36,356 for that time period. In discussing this with the developer, it was revealed that RSG had incomplete information. The developer provided more detailed information about

their payments and calculations to RSG for their 2017 payment. Our revised calculations show the developer may owe \$21,283 for 2015 to 2017. RSG will set up one in-person meeting with Woodbridge to discuss any differences in the calculations and negotiate reconciliation payments. The outcome of the process will be to reconcile methodologies that both the Housing Successor and developer will adhere to moving forward and to collect any past due payments (although none are anticipated for Woodbridge). As part of this process, RSG will update the residual receipt financial model to reflect agreed upon changes.

The residual receipt models can be used annually by the Housing Successor to verify residual receipt payments collected from developers. RSG anticipates that this will take one in-person meeting with Woodbridge and several follow-up calls with both developers. This is in addition to the one in-person meeting RSG and the City held with Sierra Meadows in March 2019 under RSG's January 2019 contract.

#### **Task 4: Childs Avenue and B Street Development Negotiations and Agreements**

The Housing Successor is in the process of evaluating an affordable housing project on Childs Avenue and B Street referred to as the Childs Court Apartments ("Project"). The Housing Successor plans to dedicate Housing Asset Funds to the Project. Housing Asset Fund expenditures must be spent in accordance with the limitations imposed by Senate Bill 341 (codified in the Health and Safety Code or "HSC"), which requires the development of extremely low income rental units and puts a cap on expenditures assisting households between 60 to 80 percent of the Area Median Income.

As part of the funding commitment needed for the AHSC application, RSG provided a cursory review of Project underwriting to ensure that it meets the required Housing Successor expenditure requirements necessary for the reporting period. RSG will assist with the next stage of preparing the necessary agreements to formally commit Housing Asset Funds to the Project and identify developer requirements related to construction and affordability.

#### **Task 5: Fiscal Year 2018-19 Housing Successor Agency Annual Report**

RSG will prepare the Housing Successor Agency Annual Report ("Annual Report") for Fiscal Year 2018-19. The Annual Report is due with the City's Housing Element Annual Report by April 1, 2020 to the California Department of Housing and Community Development ("HCD"). The Annual Report must also be presented to City Council.

The Annual Report will include all items required by Health & Safety Code Section 34176.1. It includes a summary of financial activity and affordable housing efforts. RSG will integrate financial data provided by City staff and information about affordable housing resources and activity. The Annual Report will clearly detail compliance with legal requirements and outline steps to come into compliance, if necessary. RSG's scope includes two meetings (1 call and 1

in-person): 1) a conference call to review the report with staff and 2) a City Council meeting to present the report to the City Council for its approval.

It is important to note that the City is required to prepare an independent financial audit of the Successor Housing Agency's Low and Moderate Income Housing Asset Fund, which is due to the City Council by December 31 annually. The audit may be completed as a component of the City's Annual Audited Financial Statements.

#### **Task 6: Housing Successor Real Property Development Request for Proposals**

RSG will assist staff with the preparation of an RFP notifying affordable housing developers of available Housing Successor properties. RSG will assist the Housing Successor with selecting a qualified developer by reviewing developer submittals for compliance with the Health and Safety Code and preparing necessary agreements to collaborate with developers to develop Housing Successor properties.

- **Step 1: RFP** – RSG will draft an RFP that will help the Housing Successor assess developer qualifications and detail selection criteria. Selection criteria may include, but is not limited to:
  - Expertise and experience of the development entity and team in designing and constructing high quality affordable housing projects;
  - Vision and design for a market-feasible affordable housing project that implements the City's vision for the community and promotes the community character of Merced;
  - Economic viability and financial strength of the proposed project, including marketability and feasibility;
  - Experience and ability to creatively negotiate an affordable housing agreement, or other appropriate development agreement, that provides the greatest return on investment to the City; and
  - Financial and organizational capacity of the team to successfully complete the project, including the ability to secure financing and leverage other funding sources to build the highest quality housing project.

RSG will work with staff and legal counsel to further define selection criteria that meets the community's goals. Once the RFP is finalized, RSG will also assist the Housing Successor with conducting an informational conference call wherein interested developers can get an overview and ask questions prior to submitting a response. It is anticipated that

this task will include 3 conference calls: 1) staff kick-off meeting to discuss the desired criteria, 2) meeting to review RFP with staff, and 3) an information call with interested developers. RSG will prepare any necessary staff reports or resolutions related to this task.

- **Step 2: Developer Selection** - RSG will also assist the City in evaluating RFP responses for Health and Safety Code compliance (the budget estimate assumes review of 4 developer submittals and may vary depending on the depth of review required from the RFP criteria). RSG's scope will be limited to evaluating how each submittal's proposed scope of development complies with Senate Bill 341 requirements and summarizing our recommendations in a written memo. Staff will be responsible to evaluating all other aspects such as the completeness of the proposal, qualifications, and developer cost assumptions.
- **Step 3: Developer Negotiations and Agreement Preparation** - RSG will assist in negotiating financial deal points to be included in any agreement between the selected developer and the Housing Successor. To ensure consistency between agreed upon deal points and documents, RSG will assist with preparing agreements, and review and provide comments on any agreements provided the developer. RSG's scope does not include evaluating developer pro formas or meeting with developers or City Council; this may be added as an additional optional service with staff's written authorization if desired by the City.

### **Task 7: General As-Needed Services**

The Housing Successor has multiple responsibilities related to asset management and property disposition and development, and many needs may arise that are impossible to predict in advance. RSG will assist with general as-needed services for miscellaneous items as requested by staff. This may include assisting with services under Tasks 1 through 6 that require more in-depth services than anticipated due to the complex and unpredictable nature of developer negotiations.

### **STAFFING**

Tara Matthews will serve as the Managing Principal, providing oversight for all aspects of the engagement. Suzy Kim, Senior Associate will be the Project Manager and primary contact for the engagements. Other RSG staff may be assigned as needed. RSG resumes may be viewed on our website at [www.webrsg.com](http://www.webrsg.com).

### **FEE ESTIMATE**

RSG proposes to provide the tasks described in the Scope of Services on a time-and-materials basis **not to exceed \$60,000**. The budget for each task is provided for reference, in case the Housing Successor wishes to execute approval incrementally for each task as needed based on RFP responses. Please see the following chart for a breakdown of costs by task.

Task	Principal \$235	Senior Associate \$180	Associate \$160	Analyst \$125	Total
<b><u>1: Transfer of Former Redevelopment Agency Assets to Housing Successor</u></b>					
Draft 3 Staff Reports and 9 Resolutions	3	10	5	0	\$3,305
Assist with DLA and DOF Inquiries	0	5	0	0	\$900
<b>Total</b>	<b>3</b>	<b>15</b>	<b>5</b>	<b>0</b>	<b>\$4,205</b>
<b><u>2: Merced Pacific Associates Loan Research and Advisory Services</u></b>					
Research Loan Status	0	4	0	0	\$720
Post-Litigation Advisory Services	0	4	0	0	\$720
<b>Total</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>\$1,440</b>
<b><u>3: Reconciliation of Residual Receipt Payments</u></b>					
Sierra Meadows Administration	1	0	10	0	\$1,835
Woodbridge Meeting & Preparation (1 meeting)	8	0	20	0	\$5,080
Developer Negotiation Follow-Up	1	0	20	0	\$3,435
<b>Total</b>	<b>10</b>	<b>0</b>	<b>50</b>	<b>0</b>	<b>\$10,350</b>
<b><u>4: Childs Ave and B Street Development Negotiations and Agreements</u></b>					
Agreement Preparation	20	20	0	0	\$8,300
<b>Total</b>	<b>20</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>\$8,300</b>
<b><u>5: FY 18/19 Housing Successor Annual Report</u></b>					
Draft Document	3	8	0	25	\$5,270
Meetings and Preparation (1 call/1 meeting)	2	8	0	2	\$2,160
<b>Total</b>	<b>2</b>	<b>8</b>	<b>0</b>	<b>2</b>	<b>\$7,430</b>
<b><u>6: Housing Successor Real Property Development Request for Proposals</u></b>					
<b>Step 1 - RFP</b>	<b>10</b>	<b>33</b>	<b>0</b>	<b>7</b>	<b>\$9,165</b>
Draft RFP	4	25	0	5	\$6,065
Informational Call	2	4	0	2	\$1,440
Meetings and Preparation (2 calls)	4	4	0	0	\$1,660
<b>Step 2 - Developer Selection</b>	<b>6</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>\$3,570</b>
Developer Submittal Review (4 submittals)	4	8	0	0	\$2,380
Written Recommendation	2	4	0	0	\$1,190
<b>Step 3 - Negotiations and Agreements</b>	<b>20</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>\$8,300</b>
Agreement Preparation	20	20	0	0	\$8,300
<b>Total</b>	<b>36</b>	<b>65</b>	<b>0</b>	<b>7</b>	<b>\$21,035</b>
<b><u>7: General As-Needed Services</u></b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>\$7,000</b>
<b>Total for All Tasks</b>					<b>\$59,760</b>



The services would be provided per the terms and conditions of a consulting services agreement by and between the City and RSG. A detailed billing will be submitted monthly for payment.

The Scope of Services will be billed on a time-and-materials basis at the following hourly rates:

**2019 Hourly Billing Rates & Fee Schedule**

Principal / Director	\$ 235
Senior Associate	180
Associate	160
Senior Analyst	135
Analyst	125
Research Assistant	110
Technician	80
Clerical	60
Reimbursable Expenses	Cost plus 10%

RSG does not charge clients for mileage, parking, general postage or incidental copies. However, we do charge for messenger services or overnight shipping/express mail costs. We also charge for copies of reports, documents, notices, and support material in excess of five (5) copies. These costs are charged back at the actual expense plus a 10% surcharge. RSG issues monthly invoices payable upon receipt, unless otherwise agreed upon in advance. Invoices identify tasks completed to date, hours expended, and the hourly rate. We are open to discussion and negotiation over billing options to accommodate client preferences.

We look forward to discussing our proposal with you to discuss our proposal in detail. In the meantime, should you have any questions, please feel free to contact us.

Sincerely,  
**RSG, INC.**



Tara Matthews  
Principal  
(714) 316-2111



## ADMINISTRATIVE REPORT

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### Agenda Item I.12.

Meeting Date: 8/5/2019

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*Report Prepared by: Mark Hamilton, Housing Program Supervisor, Development Services Department*

**SUBJECT:** Authorization to Apply for and Receive, State Senate Bill 2 Planning Grant Funding from the State of California Department of Housing and Community Development's (HCD) Planning Grants Program

### REPORT IN BRIEF

Authorizes Housing Division Staff to apply for grant funding under State Bill 2 (SB 2) Planning Grants Program in association with a Notice of Funding Availability issued by the California State Department of Housing and Community Development (HCD) and authorizes the receipt of grant funds.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2019-27**, a Resolution of the City Council of the City of Merced, California, authorizing the submittal of an application to the California Department of Housing and Community Development for, and receipt of, SB 2 planning grant program funds; and,
- B. Authorizing the City Manager or the Assistant City Manager to execute the standard agreement and other necessary documents associated with the grant application and award process.

### ALTERNATIVES

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

### AUTHORITY

Municipal Code Section 200; California Health and Safety Code - HSC, Sections 50470-50475 (Building Homes and Jobs Act)

### CITY COUNCIL PRIORITIES

This grant program aligns with the City Council's FY 2019/20 priority to develop housing inventory under Future Planning and Homelessness.

## DISCUSSION

The City of Merced Housing Division is requesting City Council permission to apply for Planning Grants Program funds under California State Bill 2, adopted as a part of the larger 2017 Housing Package signed by Governor Brown that year. The California State Department of Housing and Community Development (HCD) has implemented the program and is now accepting applications for funding.

### Background

The 2017 Housing Package adopted by the State Legislature included fourteen separate bills aimed to create and preserve affordable housing, streamline housing development, and address accountability and enforcement of local agencies with regards to housing.

SB 2 (Atkins), also known as the Building Jobs and Homes Act, is the first of five bills with the specific goal of creating and preserving affordable housing. Beginning January 1, 2018, it imposes a fee on the recording of real estate documents, excluding sales, for the purposes of funding affordable housing. In doing so, it establishes a permanent source of funding, with varying levels as transactions fluctuate from year-to-year.

The implementation program now in place for the first year of funding grants is being called the "Planning Grants Program (PGP)." The program makes 50% of the first-year collected revenue available to local governments for financial and technical assistance in updating planning and zoning documents and regulations, such as general plans or zoning ordinances, in order to streamline housing production.

For the Council's understanding, program objectives developed by HCD to help guide agencies in applying and using these funds include the following:

- "a) The principal goal of this program is to make funding available to all governments in California for the preparation, adoption, and implementation of plans that streamline housing approvals and accelerate housing production.*
- b) This grant program is meant to facilitate planning activities that will foster an adequate supply of homes affordable to Californians at all income levels. It is designed to help local governments meet the challenges of preparing and adopting land use plans and integrating strategies to promote housing development.*
- c) Funded activities are intended to achieve the following objectives:*
  - Accelerate housing production*
  - Streamline the approval of housing development affordable to owner and renter households at all income levels*
  - Facilitate housing affordability for all income groups*
  - Promote development consistent with the State Planning Priorities (Government Code section 65041.1)*
  - Ensure geographic equity in the distribution and expenditure of allocated funds."*

A Notice of Funding Availability (NOFA) was issued by HCD on March 29, 2019, so the application process is now open for agencies to apply for this funding (Attachment 1). The City of Merced's maximum award amount is \$310,000, based on the City's population estimates. The grant funding process is non-competitive.

### SB2 Planning Grant: Year One

Eligible activities do not necessarily have to be jurisdiction-wide and may be a more focused or defined area where funding would have a significant impact on housing production. For example, an eligible activity could be a planning study, zoning code update, and/or building permit streamlining project to encourage housing units in a focused geographical area, but with an ongoing community benefit beyond the geographical area. These funds are also not income specific. This is a significant difference from our Housing and Urban Development (HUD) funded HOME and Community Development Block Grant (CDBG) programs.

The following listed activities are options the City Council may consider. There are however other options that the Council or public may suggest which can also be considered;

- **Accessory Dwelling Unit Ordinance Update** -While this work has already been completed, the planning grant would allow staff to recover some of the staff time spent working on the ordinance. Costs can be recovered back to the date the notice of funding was issued, the end of March 2019.
- **Off-the-Shelf Plans for Cottage or ADU** - Staff would work with a vendor to draft plans allowing property owners to purchase the off-the shelf or over-the-counter plans for housing units at a reduced price. The plans would be fully plan checked. The homeowner - property owner would be issued a building permit when they purchased the plans for construction.
- **Off-the-Shelf Duplex / Triplex Plans** - Staff would work with a vender to draft plans allowing property owners to purchase the off-the-shelf or over-the-counter plans for housing units at a reduced price. The plans would be fully plan checked. The property owner would be issued a building permit when they purchased the plans for construction.
- **In-Fill Overlay Study** - Staff would work with a consultant to review where ADU, Duplex, or Triplex units could be built within the City of Merced and publish a community map showing what properties would be eligible to construct a multi-unit building with ministerial approval.
- **Tiny Home Ordinance** - Staff would work to analyze our current zoning codes and other standards and recommend changes in an ordinance allowing for Tiny Homes within the community.
- **Downtown Housing Pre-Entitlement and Environmental Review** - This study would identify an area of Downtown Merced for High Density Housing opportunities. The study would pre-approve the entitlement and environmental process for developers. The developer would only be responsible for ensuring the buildings' elevations were aesthetically acceptable, met the

goals of this study, and applied for a building permit consistent with current building and zoning codes.

- **Rental Housing Inspection Program** - The program would establish an ordinance creating a Rental Housing Inspection Program. Many communities are using this type of program to prevent housing stock from deteriorating and becoming substandard. Local examples include the cities of Madera and Fresno. The programs basically require that a registry be established for all rentals, full units and single rooms, and that there be some inspection program. Fees are also charged to provide the administration and inspection services. The program would also include public outreach and education.
- **SB2 20-Year Plan** - The purpose of the Plan would be to consider future funding uses - commitments of an annual allocation of approximately \$450,000 (see discussion below regarding “Year Two and Beyond” eligible activities). However, the Council could decide to pledge future SB 2 funding in support of the County’s Collaborate Applicant (Merced County) in support of the Continuum of Care (COC) and therefore no plan for future allocations would be necessary. An alternative could be that only a portion of future funding would be allocated to the COC. If Council decides to retain a portion or all of the anticipated SB2 funding allocation from the State, the proposed plan would create and establish policies, procedures, outreach plan, project direction, and activities guiding future expenditures.

Staff is requesting that the Council consider and prioritize the above programs for funding with the \$310,000 from the Year One allocation. Program activities must be completed and funds must be expended by June 20, 2022. Because there may not be sufficient funding to complete all the activities listed above, staff would apply for and implement the higher priority activities first and provide a future update as costs for activities becomes clear.

Once Council prioritizes the activities, staff will draft the application based upon Council’s recommendation and submit the application for consideration and authorization to the California Department of Housing and Community Development (HCD). The application deadline is November 30, 2019. Staff will provide the completed grant application once it is submitted.

#### SB2 Permanent Local Housing Allocation: Year Two and Beyond

Council has the ability to decide whether to accept the funding the City would receive each year from HCD moving forward from “Year Two and Beyond” entitlement grant allocation. Council may elect to pass some of the funds to the County’s Collaborative Applicant (County of Merced) to support efforts to address Homelessness. Alternatively, if Council wishes to retain all of the City’s anticipated entitlement funds. The funding would be administered through the Housing Division and could be used on the following eligible activities within the City of Merced:

- The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households, including necessary Operating subsidies.
- Affordable rental and ownership housing that meets the needs of a growing workforce earning

up to 120 percent of AMI, or 150 percent of AMI in high-cost areas.

- Matching portions of funds placed into local or regional housing trust funds.
  - Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.
  - Capitalized Reserves for Services connected to the preservation and creation of new Permanent supportive housing including, but not limited to, developments funded through the Veterans Housing and Homelessness Prevention Bond Act of 2014.
  - Assisting persons who are currently experiencing or at risk of homelessness including, but not limited to, providing rapid rehousing, rental assistance, navigation centers, emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
- (A) This activity may include sub-awards to Administrative Entities as defined in HSC Section 50490(a) (1-3) that were awarded CESH program funds for rental assistance to continue assistance to these households.
- (B) Applicants must provide rapid rehousing, rental assistance, navigation centers, emergency shelter, and transitional housing activities in a manner consistent with the Housing First practices described in 25 CCR, Section 8409, subdivision (b)(1)-(6). An Applicant allocating funds for the new construction, rehabilitation, and preservation of permanent supportive housing shall incorporate the core components of Housing First, as provided in WIC Section 8255, subdivision (b).
- Accessibility modifications.
  - Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.
  - Homeownership opportunities including, but not limited to, down payment assistance.
  - Matching Funds invested by a county in an affordable housing development project in a city within the county, provided that the city has made an equal or greater investment in the project. The county and the city investments must be in the form of grants or low-interest deferred loans to the project.

Many of the eligible activities identified under the SB2 Permanent Local Housing Allocation: Year Two and Beyond are similar to the current activities being implemented and funded by the Housing Division. One significant difference is SB2 is allowed to be expended on market-rate housing projects. The advantage of retaining Year Two and Beyond SB2 funds would allow the City to participate and allocate funding to projects supporting Economic Development efforts or other significant projects that have community benefits as determined by the City Council.

## **IMPACT ON CITY RESOURCES**

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Potential SB2 Planning Grant receipt of up to \$310,000 for Year One of SB2 funding. Year Two and Beyond yearly allocations estimated at approximately \$450,000 each year until the program sunsets. A local funding match is not required. Future year allocation recommendations will be made annually as part of the regular Budget process.

**ATTACHMENTS**

1. HCD's Notice of Funding Availability Issued March 29, 2019
2. Draft Resolution 2019-27

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF FINANCIAL ASSISTANCE**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2771 / FAX (916) 263-2763  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



March 28, 2019

**MEMORANDUM FOR: All Potential Applicants**

**FROM: Zachary Olmstead, Deputy Director**  
**Division of Housing Policy Development**

**SUBJECT: NOTICE OF FUNDING AVAILABILITY -**  
**SB 2 PLANNING GRANTS PROGRAM**

The Department of Housing and Community Development (Department) is pleased to announce the release of this Notice of Funding Availability (NOFA) for approximately \$123 million under the Senate Bill 2 (SB 2, 2017) Planning Grants Program (PGP). SB 2 established a permanent source of funding intended to increase the affordable housing stock in California. The legislation directs the Department to use 50 percent of the first year's revenue to establish a program that provides financial and technical assistance to local governments to update planning documents and land-use ordinances. The PGP is intended for the preparation, adoption, and implementation of plans that streamline housing approvals and accelerate housing production.

In order to be eligible for grant funding, an applicant must submit a complete, signed original application and an electronic copy on CD or USB flash drive. OTC applications will be accepted for an eight-month period ending on **November 30, 2019**. The Department will only accept applications through a postal carrier service that provides date stamp verification confirming delivery to the Department's office, such as the U.S. Postal Service, UPS, FedEx, or other carrier services. No facsimiles, late applications, incomplete applications, application revisions, electronic submittals, or walk-in application packages will be accepted. All applications must be submitted to the Department at the following address:

**Department of Housing and Community Development  
Division of Housing Policy Development  
2020 West El Camino Ave, Suite 500  
Sacramento, CA 95833**

PGP applications and forms are available on the Department's [website](#). Please refer to the [Planning Grants Program Guidelines](#) for detailed information on eligible activities, applicants, and awards. If you have questions regarding this NOFA, please email the Department at [sb2planninggrant@hcd.ca.gov](mailto:sb2planninggrant@hcd.ca.gov).

Attachment



# **PLANNING GRANTS PROGRAM (SB 2, 2017) 2019 NOTICE OF FUNDING AVAILABILITY**



**State of California  
Governor Gavin Newsom**

**Alexis Podesta, Secretary  
Business, Consumer Services and Housing Agency**

**Ben Metcalf, Director  
Department of Housing and Community Development**

**Zachary Olmstead, Deputy Director  
Department of Housing and Community Development  
Division of Housing Policy Development**

2020 West El Camino Avenue, Suite 500  
Sacramento, CA 95833  
Telephone: (916) 263-2771

Website: <http://www.hcd.ca.gov/grants-funding/active-funding/planning-grants.shtml>

Email: [sb2planninggrant@hcd.ca.gov](mailto:sb2planninggrant@hcd.ca.gov)

March 29, 2019

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# 2019 NOTICE OF FUNDING AVAILABILITY

## SB 2 PLANNING GRANTS PROGRAM

### I. Introduction

The Department is releasing this Notice of Funding Availability (NOFA) for approximately \$123 million to make funding available to all local governments in California under the Senate Bill 2 (SB 2) Planning Grants Program (PGP). The PGP program is intended for the preparation, adoption, and implementation of plans that streamline housing approvals and accelerate housing production.

The PGP is authorized by Health and Safety Code sections [50470 et seq.](#) (Chapter 364, Statutes of 2017, ([SB 2](#))). Funding is subject to the December 2018 [Planning Grants Program Guidelines](#) (hereinafter referred to as the “Guidelines”), which includes detailed information on eligibility requirements, conditions, and procedures for awarding funds.

### II. Program Summary

SB 2 (2017) is part of a [15 bill housing package](#) aimed at addressing the state’s housing shortage and high housing costs. Specifically, SB 2 established a permanent source of revenue intended to increase the affordable housing stock in California.

PGP grants are funded through 50 percent of the revenues collected during the first calendar year (January through December, 2018). The PGP program is a one-time component of SB 2 that, among other provisions, provides financial and technical assistance to local governments to update planning documents in order to:

- Accelerate housing production;
- Streamline the approval of housing development affordable to owner and renter households at all income levels;
- Facilitate housing affordability, particularly for all income groups;
- Promote development consistent with the State Planning Priorities; and
- Ensure geographic equity in the distribution and expenditure of allocated funds

The Department, in conjunction with the Governor’s Office of Planning and Research, will provide technical assistance to localities pursuant to the provisions set forth in Article VII, Section 700(a) through (e) of the Guidelines. For further information, contact the Department at [sb2planninggrant@hcd.ca.gov](mailto:sb2planninggrant@hcd.ca.gov) for details regarding local technical assistance.

Please refer to the Guidelines for other administrative provisions not summarized in this NOFA.

### III. Program Timeline

Pursuant to Section 500(a) of the Guidelines, funds will be initially available to eligible applicants on a noncompetitive, over-the-counter (OTC) basis. Applications will be accepted over an eight-month period, commencing from the date of the release of this NOFA (Section 500(b) of the Guidelines). See Table 1 below for the projected timeline for awards for the initial OTC period.

Table 1: *Projected Timeline for Awards for OTC Applications*

Event	Date(s)
NOFA release	March 28, 2019
NOFA-Application Workshops / Webinar Period	April 1 - May 1, 2019
Final due date for OTC applications	November 30, 2019
Supplemental round	TBD
Anticipated end of grant term	June 30, 2022

The Department anticipates awards in 2-3 month intervals, depending on the volume of applications, and reserves the right to make adjustments to the projected timeline at any time. If OTC funds are not fully awarded at the end of the eight-month period, the Department may extend the final OTC application due date or consider a supplemental funding round (Section 500(g) of the Guidelines). During any supplemental round, top priority will be given to localities that have not submitted a previous request for funding. All other applicants may be subject to competitive scoring criteria during any supplemental round (Section 500(g)(2) of the Guidelines).

### IV. Funding Available

The Department determined maximum award amounts for large, medium, and small localities, based on population estimates from the Department of Finance (DOF). Table 2 below shows the minimum and maximum awards available pursuant to Article IV, Section 400 of the Guidelines. Applicants can view maximum award amounts for all jurisdictions [here](#).

Table 2: *Minimum and Maximum Award Amounts*

All Localities	Large Localities – Defined as ≥ 200,000 people	Medium Localities – Defined as 60,000 to 200,000 people	Small Localities – Defined as ≤ 60,000 people
Minimum award amount:  <b>\$25,000</b>	Maximum award amount:  <b>\$625,000</b>	Maximum award amount:  <b>\$310,000</b>	Maximum award amount:  <b>\$160,000</b>

For a link to the 2018 DOF Population Estimates, E-5, see:  
<http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>

Applicants seeking partnerships with other local governments will be additive. For example, two large localities could submit a proposal for up to \$1.25 million; three small localities up to \$480,000, etc. Note: All applicants, including those who are forming partnerships, must submit separate, complete and signed application packages, pursuant to section X of this NOFA, to the Department in order to be awarded funds.

## **V. Eligible Applicants**

Pursuant to Article II, Section 200 of the Guidelines, eligible applicants are limited to local governments, i.e., cities and counties. However, local governments may partner through legally binding agreements with other forms of governments or entities where the proposal will have a direct effect on land-use or development within the locality. This includes, but is not limited to, partnerships with other localities, regional governments, housing authorities, school districts, special districts, community based organizations, or any duly constituted governing body of an Indian Reservation or Rancheria.

Multi-jurisdictional partnerships between local governments are encouraged in order to coordinate with regional governments, leverage regional and state investment, promote consistency with the sustainable communities strategy, and affirmatively further fair housing.

Note: All localities must pass the Threshold Criteria as stated in section VIII of this NOFA. To ensure compliance with section VIII, all applicants, including those who are forming partnerships, must submit separate, complete and signed application packages, including resolutions, to the Department in order to be awarded funds.

## **VI. Eligible Activities**

Applicants proposing Priority Policy Areas, as defined in section VIII of this NOFA, are automatically deemed to accelerate housing production without any documentation or demonstration to the Department.

Pursuant to Article III, Section 300 of the Guidelines, a variety of planning documents, planning activities and strategies, are considered eligible activities and must demonstrate a nexus to accelerating housing production, which may include:

- (1) Updates to general plans, community plans, specific plans, local planning related to implementation of sustainable communities strategies, or local coastal plans;
- (2) Updates to zoning ordinances;
- (3) Environmental analyses that eliminate the need for project-specific review;
- (4) Local process improvements that improve and expedite local planning;
- (5) A smaller geography with a significant impact on housing production including an overlay district, project level specific plan, or development standards modifications proposed for significant areas of a locality, such as corridors, downtown or priority growth areas;
- (6) The creation or enhancement of a housing sustainability district pursuant to AB 73 (Chapter 371, Statutes of 2017);
- (7) Workforce housing opportunity zone pursuant to SB 540 (Chapter 369, Statutes of 2017);

- (8) Zoning for by-right supportive housing, pursuant to Government Code section 65651 (Chapter 753, Statutes of 2018);
- (9) Zoning incentives for housing for persons with special needs, including persons with developmental disabilities;
- (10) Rezoning to meet requirements pursuant to Government Code Section 65583.2(c) and other rezoning efforts to facilitate supply and affordability;
- (11) Rezoning for multifamily housing in high resource areas (according to Tax Credit Allocation Committee/Housing Community Development Opportunity Area Maps);
- (12) Pre-approved architectural and site plans;
- (13) Regional housing trust fund plans;
- (14) SB 2 funding plans;
- (15) Infrastructure financing plans;
- (16) Environmental hazard assessments; data collection on permit tracking; feasibility studies, site analysis, or other background studies that are ancillary and part of a proposed activity with a nexus to accelerating housing production; and
- (17) Other planning activities demonstrating a nexus to accelerating housing production.

Eligible activities may be part of a larger planning effort (e.g., a comprehensive zoning code update) if proposed activities have not been completed prior to the NOFA date, are distinct, and demonstrate a nexus to accelerating housing production.

As part of the PGP program, HCD, in coordination with the Governor's Office of Planning and Research (OPR), will work with a team led by Placeworks to provide technical assistance (TA) to applicants throughout the application period. The TA team will work closely with regions, sub-regions, and counties to help jurisdictions identify activities and provide tools that will accelerate housing production. For further information, contact the Department at [sb2planninggrant@hcd.ca.gov](mailto:sb2planninggrant@hcd.ca.gov) for details regarding local technical assistance.

## **VII. Eligible Uses**

Pursuant to Article III, Section 302 of the Guidelines, grant funds shall be used for the costs of preparing and adopting the proposed activity. Subcontracting is allowable under conditions set forth in Section 302(c) of the Guidelines. Pursuant to Section 302(b) of the Guidelines, grant funds may not be used for administrative costs of persons employed by the grantee for activities not directly related to the proposed activity. No more than 5 percent of the grant amount may be used for administrative costs for any proposed use, to be approved by the Department upon disbursement.

Only approved and eligible costs incurred for work after the NOFA date, continued past the date of the Standard Agreement, and completed during the grant term, will be reimbursable. Approved and eligible costs incurred prior to the NOFA date are ineligible.

(Section 601(c) of the Guidelines).

Refer to Section 301 of the Guidelines for a list of all ineligible activities.

## VIII. Threshold Requirements

In accordance with Article II, Section 201 of the Guidelines, all applicants must meet the following threshold requirements:

- (1) **Housing element compliance:** The applicant must have a housing element that has been adopted by the jurisdiction's governing body by the date the applicant submits the application package, and is subsequently determined to be in substantial compliance with state housing element law pursuant to Gov. Code Section 65585 by the time of award. A jurisdiction's current housing element compliance status can be obtained by referencing the Department's website at <http://www.hcd.ca.gov/community-development/housing-element/index.shtml> or emailing the Department at [sb2planninggrant@hcd.ca.gov](mailto:sb2planninggrant@hcd.ca.gov). For more information on housing element requirements, please contact Paul McDougall at [paul.mcdougall@hcd.ca.gov](mailto:paul.mcdougall@hcd.ca.gov).

Pursuant to Section 201(a)(2) of the Guidelines, applicants not meeting housing element requirements may be considered to meet this threshold requirement at the discretion of the Department on a case by case basis by applying factors such as significant progress in meeting housing element requirements (e.g., a draft found to meet statute, rezoning near completion), proposing activities to meet housing element requirements (e.g., rezoning to accommodate housing needs pursuant to Gov. Code Section 65583(c)(1)) and adoption of a compliant element prior to the award of funds.

- (2) **Annual Progress Report (APR) on the housing element:** The applicant must submit the APR to the Department, as required by Gov. Code section 65400, for the current or prior year by the date the applicant submits the application package.
- (3) **Nexus to accelerating housing production:** The applicant must propose and document plans or processes that accelerate housing production. The application must demonstrate a significant positive effect on accelerating housing production through timing, cost, approval certainty, entitlement streamlining, feasibility, infrastructure capacity, or impact on housing supply and affordability. An application not utilizing Priority Policy Areas must include an explanation and documentation of the nexus plans or processes impact on accelerating housing production based on a reasonable and verifiable methodology and must utilize the Department's form (see Attachment 2 in the Application). A verifiable methodology may include a statement of support from a non-profit or for-profit developer that is active in the locality.

Applicants proposing Priority Policy Areas do not require a nexus demonstration and are automatically deemed to accelerate housing production without any documentation. Pursuant to Section 102(q) of the Guidelines, Priority Policy Areas means any of the following:

- (a) Rezone to Permit By-right: Rezoning for significant additional housing capacity without, or lesser, discretionary review, or establishing zoning to permit residential development by-right, particularly multifamily, without discretionary action pursuant to Government Code Section 65583.2(h) and (i).
- (b) Objective Design and Development Standards: Developing objective design standards or pre-approved site and architectural plans that facilitate non-discretionary permitting.
- (c) Specific Plans or Form based Codes Coupled with CEQA Streamlining: Designating and rezoning for additional housing capacity or preparing specific plans or form codes that include zoning and development standards and plan-level environmental analysis that can be used to streamline future housing projects and facilitate affordability.
- (d) Accessory Dwelling Units (ADU) or Other Low-Cost Building Strategies: Encouraging ADUs and other low-cost building types through actions above state law such as, outreach, fee waivers, pre-approved plans, website zoning clearance assistance, and other homeowner tools or finance tools. Also, establishing other approaches to intensify existing lower density residential areas and “missing model” typologies to encourage significantly more residential development (e.g., duplexes, triplexes) in lower density residential areas.
- (e) Expedited Processing: Speeding up approvals and permit processing, including instituting programs that streamline or consolidate the review process or create a separate process for expedited review of housing projects.
- (f) Housing Related Infrastructure Financing and Fee Reduction Strategies: Develop and implement approaches to local, regional or sub-regional housing related infrastructure financing. Create plans and programs to finance and increase infrastructure with accompanying enhanced housing capacity, such as enhanced infrastructure financing districts. Fee reduction and rationalization approaches, such as reassessing fees to adhere to best practices in reducing costs, deferrals, sliding scales or proportionate impacts fees (e.g., ADUs, transit oriented, and infill development, special needs housing), or fee transparency measures including publically available fee calculators.

**Note:** HCD will be rolling out best practice toolkits and technical assistance in these topic areas over the course of 2019.

**Note:** If the applicant is proposing only Priority Policy Areas ((PPA), as defined in section VIII, subsection (3) of the NOFA), do not fill out Attachment 2. However, if the applicant is proposing to fund PPAs AND other activities that are not considered PPAs, the application must demonstrate how these other activities have a nexus to accelerating housing production by filling out Attachment 2 of the application.

- (4) **State Planning and Other Planning Priorities:** Applicants must demonstrate that the locality is consistent with State Planning or Other Planning Priorities.



Consistency may be demonstrated through activities (not necessarily proposed for SB 2 funding) that were completed within the last five years. Applicants must self-certify utilizing the Department's form (see Attachment 1 in the Application).

## **IX. NOFA Application Workshops**

The Department will hold workshops and a webinar to review the PGP NOFA and application, and will be conducting technical assistance to aid applicants throughout the OTC period. For a list of dates, times, and locations for the workshops as well as information on technical assistance, please visit the Department's [SB 2 Planning Grants webpage](#), or [register here](#).

## **X. Application Submission Requirements**

In order to be eligible for grant funding, an applicant must submit a complete, signed original application and an electronic copy on CD or USB flash drive. Applications will be accepted on an OTC basis for an eight-month period anticipated to end **November 30, 2019**. Note: All localities must pass the threshold criteria as stated in section VIII of this NOFA. To ensure compliance with section VIII, all applicants, including those who are forming or have formed partnerships, must submit separate, complete and signed application packages, including resolutions, to the Department in order to be awarded funds.

The Department will only accept applications through a postal carrier service that provides date stamp verification confirming delivery to the Department's office, such as the U.S. Postal Service, UPS, FedEx, or other carrier services. No facsimiles, late applications, incomplete applications, application revisions, electronically submitted, or walk-in application packages will be accepted. All applications must be submitted to the Department at the following address:

**Department of Housing and Community Development  
Division of Housing Policy Development / Land Use Planning Unit  
2020 West El Camino Ave, Suite 500  
Sacramento, CA 95833**

Applications must be on Department forms and cannot be altered or modified by the applicant. Program applications and forms are available on the Department's website located at <http://www.hcd.ca.gov/grants-funding/active-funding/planning-grants.shtml#forms>.

## **XI. Application Review Process**

Each application will first be reviewed for completeness, threshold eligibility requirements, and accuracy. In order to be considered complete, an application must contain all requested information and supporting documentation. All applications must also meet the eligibility and threshold requirements as specified in this NOFA and the

Guidelines. If the application is ineligible, it will not be considered for funding. Applicants may resubmit their applications prior to the November 30, 2019 deadline. All applicants not meeting the eligibility and threshold requirements will be informed within 60 days from the date the Department receives the application.

## **XII. Applicant Notification**

Applicants will be notified within 60 days of the Department's receipt of their application regarding the status of their application and/or if any additional information is required (Section 500(e)) of the Guidelines). Applicants will receive an official letter of award after the Department approves funding recommendations (Section 500(f) of the Guidelines).

## **XIII. Award Letter and Standard Agreement**

Successful applicants will receive an Award Letter from the Department and will be awarded funds through the Standard Agreement process that will specify, among other things, the amount of funds granted, timeline for expenditure of funds, and the approved use of funds. Expenditure report dates and other requirements will also be identified in the SB 2 Planning Grants Program Standard Agreement.

## **XIV. Appeals**

### **(1) Basis of Appeals:**

- (a) Upon receipt of the Department's notice deeming an application incomplete or ineligible, applicants under this NOFA may appeal such decision(s) to the Director pursuant to this Section.
- (b) No applicant shall have the right to appeal a decision of the Department relating to another applicant's eligibility, point score, award, denial of award, or any other related matter.

### **(2) Appeals Process and Deadlines:**

- (a) Process. In order to lodge an appeal, applicants must submit to the Director by the deadline set forth in subsection (b) below, a written appeal which states all relevant facts, arguments, and evidence upon which the appeal is based. No new or additional information will be accepted. Once the written appeal is submitted to the Director, no further information or materials will be accepted or considered thereafter. Appeals are to be submitted to the Director at following address:

Department of Housing and Community Development  
Division of Housing Policy Development  
2020 W. El Camino Avenue, Suite 500  
Sacramento, California 95833  
[sb2planninggrant@hcd.ca.gov](mailto:sb2planninggrant@hcd.ca.gov)

The Director will accept appeals delivered through a carrier service such as

the U.S. Postal Service, UPS, Fed Ex, or other carrier services that provide date stamp verification of delivery. Deliveries must be received during the Department's weekday (non-state holiday) business hours of 9:00 a.m. to 5:00 p.m. Pacific Standard Time. Additionally, emails to the email address listed above will be accepted if the email time stamp is prior to the appeal deadline.

- (b) Filing Deadline. Appeals must be received by the Director no later than (5) five business days from the date of the Department's determination.

(3) Decision:

Any request to amend the Department's decision shall be reviewed for compliance with the December 2018 Guidelines and the March 29, 2019 NOFA. The Director shall render his/her decision in writing within fifteen (15) business days of receipt of the applicant's written appeal. The decision of the Director shall be the Department's final decision, and shall not be appealable to any court or tribunal.

(4) Effectiveness:

In the event that the statute and/or guidelines governing the PGP program contain an existing process for appealing decisions of the Department with respect to NOFA awards made under such programs, this Section shall be inapplicable and all appeals shall be governed by such existing authority.

## **XV. Right to Modify or Suspend**

The Department reserves the right, at its sole discretion, to suspend, amend, or modify the provisions of this NOFA at any time, including, without limitation, the amount of funds available hereunder. If such an action occurs, the Department will notify all interested parties and will post the revisions to the Department's website. You may subscribe to the Department's email list here: [http://www.hcd.ca.gov/HCD\\_SSI/subscribe-form.html](http://www.hcd.ca.gov/HCD_SSI/subscribe-form.html).

**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MERCED,  
CALIFORNIA, AUTHORIZING THE  
SUBMITTAL OF AN APPLICATION TO  
THE CALIFORNIA DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT FOR, AND RECEIPT OF,  
SB 2 PLANNING GRANT PROGRAM  
FUNDS**

WHEREAS, the State of California, Department of Housing and Community Development (Department) has issued a Notice of Funding Availability (NOFA) dated March 29, 2019, for its Planning Grants Program (PGP); and

WHEREAS, the City Council of the City of Merced desires to submit a project application for the PGP program to accelerate the production of housing and will submit a 2019 PGP grant application as described in the Planning Grants Program NOFA and SB 2 Planning Grants Program Guidelines released by the Department for the PGP Program; and

WHEREAS, the Department is authorized to provide up to \$1.2 million under the SB 2 Planning Grants Program from the Building Homes and Jobs Trust Fund for assistance to Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)) related to the PGP Program.

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

SECTION 1. The City Manager is hereby authorized to direct City staff to apply for and submit to the Department the 2019 Planning Grants Program application released March 29, 2019, in an amount of up to \$310,000.

SECTION 2. In connection with the PGP grant, if the application is approved by the Department, the City Manager, or designee is authorized to enter into, execute, and deliver a State of California Standard Agreement

(Standard Agreement) for the amount of up to \$310,000, and any and all other documents required or deemed necessary or appropriate to evidence and secure the PGP grant, the City's obligations related thereto, and all amendments thereto (collectively, the " PGP Grant Documents").

SECTION 3. The City shall be subject to the terms and conditions as specified in the Standard Agreement, the SB 2 Planning Grants Program Guidelines, and any applicable PGP guidelines published by the Department. Funds are to be used for allowable expenditures as specifically identified in the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application will be enforceable through the executed Standard Agreement. The City of Merced hereby agrees to use the funds for eligible uses in the manner presented in the application as approved by the Department and in accordance with the Planning Grants NOFA, the Planning Grants Program Guidelines, and 2019 Planning Grants Program Application.

SECTION 4. The City Manager or designee is authorized and directed to execute the City of Merced Planning Grants Program application, the PGP Grant Documents, and any amendments thereto, on behalf of the City of Merced as required by the Department for receipt of the PGP Grant.

SECTION 5. The City Manager or designee is authorized to accept funds from the Department in the amount awarded.

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

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

Kelly Finizer 5-13-19  
City Attorney Date



ADMINISTRATIVE REPORT

Agenda Item I.13.

Meeting Date: 8/5/2019

*Report Prepared by: Monique Gama, Recycling Coordinator - Public Works*

**SUBJECT:** Approval of First Amendment to the Professional Services Agreement for the Solid Waste Collection and Related Services Rate Study with R3 Consulting Group, Inc., in the Amount of \$15,000 to Provide Additional Consulting Services for Review of New Financial Information, Providing Associated Additional Rate Options and Additional In-Person Meeting(s)

**REPORT IN BRIEF**

Considers approving a First Amendment to Professional Services Agreement with R3 Consulting Group, Inc., in the amount of \$15,000, for additional consulting services for the Solid Waste Collection and Related Services Rate Study.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving a First Amendment to the professional services agreement with R3 Consulting Group, Inc., in the amount of \$15,000, to provide additional consulting services for the Solid Waste Collection and Related Services Rate Study; and
- B. Authorizing the City Manager or the Assistant City Manager to execute the necessary documents.

**ALTERNATIVES**

- 1. Approve as recommended by the Public Works Manager; or,
- 2. Refer back to staff for further study; or,
- 3. Deny.

**AUTHORITY**

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

Professional Contractual services with an estimated value greater than \$31,000, are made by written contract in accordance with Merced Municipal Code, Title 3 - Revenue and Finance, Chapter 3.04.

**CITY COUNCIL PRIORITIES**

As provided for in the Fiscal Year 2019/2020 Adopted Budget.

**DISCUSSION**

On June 4, 2018, Council approved an agreement with R3 Consulting Group, Inc., (R3) to produce

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an amended 5-year revenue program with rate adjustments structured to meet the projected needs of the City, including future growth, capital improvement projects, and achieving adequate reserves. The City's refuse and related services are accounted for as a self-supporting enterprise fund. Revenue is derived primarily from refuse, recycling, and green waste service charges and must be adequate to fund the City's operating and capital programs. The City last revised its refuse service charges in January 2015, with fixed annual increases through December 2019.

This amendment with R3 is to provide additional consulting services to review new financial information related to recycling and litter abatement programs. In addition, this amendment also provides for two additional in-person meetings, adding options for funding special programs such as services provided by Restore Merced, and review of other solid waste related information as needed.

The City Attorney's Office has prepared and approved to form the amendment (Attachment 1). Staff recommends approval of the amendment to complete the amended refuse study.

### **IMPACT ON CITY RESOURCES**

Funding for this amendment is available in the Refuse-Enterprise Fund Professional Services Account 558-1112-532.17-00. With the approval of this amendment, the total cost of the services provided will be \$79,860.

### **ATTACHMENTS**

1. First Amendment
2. Original Agreement



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

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Merced, a California Charter Municipal Corporation (“City”), and R3 Consulting Group, Inc., a California Corporation (“Consultant”).

WHEREAS, City is undertaking a project to conduct a rate study for solid waste collection and related services;

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services (“Agreement”) dated June 4, 2018; and,

WHEREAS, City and Consultant desire to amend said Agreement to provide for additional services in connection with said project.

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

1. Section 22, “ADDITIONAL WORK,” is hereby added to the Agreement to read as follows:

“SECTION 22. ADDITIONAL WORK. Consultant shall perform the additional work outlined in the proposal from Consultant to City dated June 28, 2019, attached hereto as Exhibit “1”.

2. Section 23, “ADDITIONAL COMPENSATION,” is hereby added to the Agreement to read as follows:

“SECTION 23. ADDITIONAL COMPENSATION. City shall pay to Consultant the not to exceed additional sum of Fifteen Thousand Dollars (\$15,000.00) for the additional work described in the proposal attached hereto as Exhibit “1” and in accordance with the rates set forth on Exhibit “1.”

3. Except as herein amended, the Agreement dated June 4, 2018, shall remain in full force and effect.

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

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

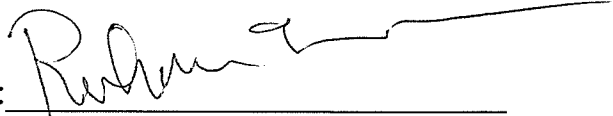
APPROVED AS TO FORM:

BY: Pruden A mmh 7-1-19  
City Attorney Date

ACCOUNT DATA:


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

CONSULTANT  
R3 CONSULTING GROUP, INC.,  
A California Corporation

BY:   
(Signature)

Richard Tagore Erwin  
(Typed Name)

Its: President  
(Title)

BY:   
(Signature)

Janet Barile  
(Typed Name)

Its: Vice-President, Operations  
(Title)

Taxpayer I.D. No. 33-1030017

ADDRESS: 1512 Eureka Rd., Ste. 200  
Roseville, CA 95661

TELEPHONE: (916) 782-7821

FAX: (916) 782-7824

E-MAIL: [gschultz@R3CGI.com](mailto:gschultz@R3CGI.com)

1512 Eureka Road, Suite 220, Roseville, CA 95661  
Tel: 916-782-7821 | Fax: 916-782-7824

2600 Tenth Street, Suite 424, Berkeley, CA 94710  
Tel: 510-647-9674

June 28, 2019

Mr. Ken Elwin, P.E.  
Director of Public Works  
City of Merced  
1776 Grogan Avenue  
Merced, CA 95341

**Subject: Proposal for Contract Amendment to Conduct Additional Rate Study Consulting Services**

Dear Mr. Elwin:

R3 Consulting Group, Inc. (R3) is pleased to submit this proposal for an amendment to the current contract between R3 and the City of Merced (City). At the request of the City, R3 proposes to provide additional rate study consulting services in the following areas, and at the corresponding estimated costs:

1. Review new financial information relevant to the City's solid waste fund and update the rate study recently completed by R3 as appropriate, including up to two rounds of revisions - \$5,500.
2. Attend up to two additional meetings at the request of the City, and subject to scheduling availability - \$4,500.
3. Provide other solid waste rate study related consulting services to the City on an as-needed basis at the request of the City, and with specific work areas determined by the city - \$5,000.

Overall, we propose a contract amendment for an amount not-to-exceed \$15,000, for a resulting total contract amount of \$79,860, including expenses, and at the hourly billable rates in our existing contract.

It our pleasure to continue to be of service to the City, and we thank you for the opportunity to provide this proposal. We further welcome the opportunity to discuss the City's plans for compliance with SB 1383 as well as the ways in which R3 might be of assistance to the City as it prepares to implement the new mandatory organics policies, if such a conversation would be of interest to the City.

Should you have any questions regarding our proposal or need any additional information please contact me by phone at (510) 292-0853 or by email at [gschultz@r3cgi.com](mailto:gschultz@r3cgi.com).

Sincerely,

**R3 CONSULTING GROUP**



Garth Schultz | Principal

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this 4<sup>TH</sup> day of JUNE, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as "City") and R3 Consulting Group, Inc., a California Corporation, whose address of record is 1512 Eureka Road, Suite 200, Roseville, California 95661, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to conduct a rate study for solid waste collection and related services; and,

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

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

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

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

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

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance

with the fee schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "B". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Sixty-Four Thousand Eight Hundred Sixty Dollars (\$64,860.00).

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

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

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

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

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System

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

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

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

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

b. General Liability.

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

c. Automobile Insurance.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

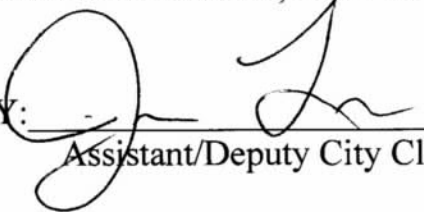
21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession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

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

CITY OF MERCED  
A California Charter Municipal  
Corporation


BY:   
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

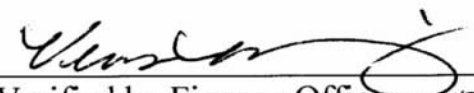
BY:   
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY:  4.24.18  
City Attorney Date

300616 PO#: 130650  
ACCOUNT DATA:

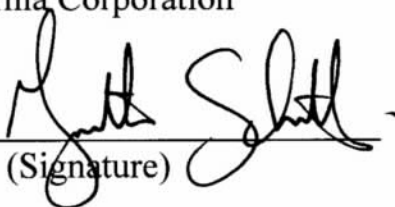
BY:   
Verified by Finance Officer 4/20

Funds Available. was 5/30/18

558-1112-532-17-00 PL 5/31/18

\$64,860.00

CONSULTANT  
R3 CONSULTING GROUP, INC.,  
A California Corporation

BY:   
(Signature)

GARTH SCHULTZ  
(Typed Name)

Its: Secretary  
(Title)

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

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

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

Taxpayer I.D. No. 33-1030017

ADDRESS: 1512 Eureka Rd., Ste. 200  
Roseville, CA 95661

TELEPHONE: (916) 782-7821

FAX: (916) 782-7824

E-MAIL: gschultz@R3CGI.COM

Section 2

Methodology  
and Scope of  
Work

## Methodology and Scope of Work

Our approach to this project, and all of our rate study engagements, is to develop a rate model that is based on sound, documented operational and financial projections. Key to that is an effective accounting of current revenues and expenses that can serve as the basis for the projections. New programs, opportunities for operational efficiencies, State legislative requirements under AB 1826 and SB 1383, and other factors also need to be considered.

As a starting point for the project, we will review the prior rate model developed by R3 for the City and determine the characteristics of that model which the City would like to include in the updated rate model, as well as potential new characteristics and capabilities that it wishes to incorporate. As part of the development of the rate model, R3 will work with the City to assure that the rate model incorporates the capabilities and characteristics needed to address the range of issues facing the City's solid waste collection operations, including but not limited to:

- Required capital reserves to replace existing vehicles and equipment on an appropriate schedule and purchase new collection vehicles, carts, containers and other equipment to handle potential future growth;
- Current diversion levels, the potential for increased diversion through multi-family, commercial and industrial programs and the impact of any such increased diversion on both revenues and expenses;
- Current system capacity to incorporate additional accounts (e.g., expanded commercial recycling; account growth) and the points at which additional collection routes will be required; and
- The reasonableness and appropriateness of the methods used to allocate revenues and operating and non-operating expenses among the various lines of business (residential, commercial and roll-off service), including street sweeping and storm drain maintenance activities that are funded through the rates.

To accomplish this objective requires a collaborative effort between the City and R3. Throughout the engagement, we will provide the City with drafts of our work products that clearly document the supporting bases for all assumptions, projections and other relevant data inputs. This allows all parties to review and comment on the data and assure that it accurately reflects current and anticipated future conditions. Our overriding objective is to provide the City with a thorough and clear analysis of rates over the five-year planning period and a documented rate model that will provide the City with an easy-to-use tool for ongoing rate analysis and rate setting needs.

### Work Scope

#### Task 1 Request for Information and Project Kick-off

##### Objectives

*Kick off the project with City staff, confirm project deliverables, schedules and processes and request data needed for subsequent analysis.*

R3

## Section 2

### Methodology and Scope of Work

#### Methodology

##### Task 1.1 Request for Information

Upon authorization to proceed, R3 will provide the City with a preliminary list of information and documents anticipated to be necessary to complete this rate study. Requested documents may include, but will not necessarily be limited to, the following:

- Current utility policies, procedures and regulatory requirements;
- List of all services and service levels for City solid waste customers;
- Customer subscription levels by customer rate class;
- List of all weekly routes and available productivity data (i.e., total weekly accounts serviced and accounts per route per day if available);
- Financial and budgetary reports;
- Historical revenue and expense line item data;
- Current fiscal year line item budget and year-to-date expenditures;
- Capital projects expense projections;
- Vehicle and equipment list;
- Equipment replacement schedules;
- Projected annual customer growth and/or City projections for business, development and population growth for the next five years;
- Current reserve accounts and balances;
- Current solid waste development fee amounts;
- Organizational chart for City solid waste operations;
- Current fiscal year revenue and expense line item budget:
  - Any one-time or periodic revenues and non-customer rate revenues should be clearly identified; and
  - Any one-time or periodic expenses that are not normal ongoing expenses should be clearly identified.
- List of all reserve accounts, with intended uses noted, and most recent Fiscal Year End (FYE) balances;
- Current and projected capital projects expenses and schedules;
- Vehicle and equipment list with type of vehicle, model year and age indicated;
- Equipment replacement schedule;
- Example financial system reports from the City's financial system to facilitate incorporation into the five-year financial plan and rate model; and
- Any other relevant data.

R3 will review the data and identify any additional requirements or issues to be discussed at the Task 1.2 Kick-Off Meeting.

R3



## Section 2

### Methodology and Scope of Work

#### Task 1.2 Kick-off Meeting

R3 believes that all successful projects begin with a mutual understanding and confirmation of key project objectives, schedules, client interests and expectations. To that end, though we have a clear understanding of all necessary tasks and requirements for this project, we suggest a kick-off meeting with City staff at the start of the project to:

- Review the scope of work, deliverables and schedule;
- Confirm City staff expectations and desires regarding project communications between R3 and the City;
- Confirm a schedule for regular biweekly updates via conference call or email to City staff;
- Confirm City's understanding of the Task 1.1 Request for Information, and discuss items for clarification;
- Discuss current rate policies and historical rate issues;
- Current and historical revenue and expenses;
- Cost-of-service expense allocations;
- Growth projections;
- Reserve funds;
- Anticipated new programs and/or changes in operations or service levels; and
- Discuss other questions and comments related to the successful completion of the project.

R3 will work with City staff to schedule the kick-off meeting, which will include key R3 project staff and should include key City staff at the City's discretion. R3 will prepare and distribute the meeting agenda and will lead the meeting in coordination with City staff.

We also anticipate reviewing the City's current rate model (previously prepared for the City by R3) and discussing the required characteristics and attributes of an updated and amended rate model. These discussions will help ensure a successful project by clarifying the objectives and expectations of the City.

#### Task 1 Deliverables

- Detailed request for information and documentation submitted to City staff via email one week prior to the kick-off meeting;
- Initial review of requested information, with follow-up as needed;
- Development of the kick-off meeting agenda; and
- Facilitation of the kick-off meeting.

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Section 2

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## Task 2 Review Current Utility Policies/Procedures and Regulatory Requirements

### Objectives

*Review current utility policies and procedures and regulatory requirements as they affect operations, capital projects, revenue program requirements, and rate structures.*

### Methodology

#### Task 2.1 Review Current Utility Policies / Procedures and Regulatory Requirements

Understanding the City's current utility policies, procedures and regulatory requirements is a critical first step to developing a five-year financial plan, rate model and five-year rates for the City. Via this task, R3 will refresh our understanding of the City's policies, procedures and requirements. One benefit of choosing R3 for this work is that we, as a firm, already have historical context for the City's policies, procedures and requirements. As such, our efforts under this task can be cost-effectively directed to updating our understanding to account for changes in policies, procedures and requirements since the completion of our last rate study for the City in 2014.

For this task, R3 will review the City's current utility policies, procedures and regulatory requirements as they relate to the City's solid waste collection operations, capital projects, revenue program requirements and the rate modeling that is to be performed as part of this engagement. We will also review the City's Municipal Code as it relates to the collection of solid waste and recyclables within the City.

#### Task 2 Deliverable

- Written summary of the City's current utility policies, procedures and regulatory requirements as they pertain to the five-year financial plan, rate model and five-year rates included in Task 6 (Reports, Presentations and Training).

## Task 3 Develop Five-Year Financial Plan

### Objectives

*Review operating costs as a result of future growth of the City and potential expansion of collection programs, such as commercial recycling and organics. Identify and summarize the City's current rate structure, operating expenses, capital costs, revenue streams, reserve funds, and billing program.*

### Methodology

The objective of this task is to develop a five-year financial plan that provides for the projection of the City's revenues and expenses for solid waste operations over a five-year planning period, accounting for the factors listed below. R3's vision for this task is to keep it cost-effective for the City by updating and/or amending the prior financial plan and rate model developed for the City by R3 and/or to use/incorporate other more recent five-year financial plans/rate models developed by R3.

The financial plan will include the City's current services and may include costs of additional services that may be recommended, and will be structured such that the impact of various rate

R3

## Section 2

### Methodology and Scope of Work

adjustment options on the City's finances over the planning period can be effectively evaluated. Factors to be reviewed and evaluated in the development of the five-year financial plan include:

- Current operating expenses;
- Projected future operating costs resulting from residential, commercial and/or development growth;
- Projected future operating costs resulting in new, changed and/or expanded collection programs such as commercial recycling and organics services;
- Vehicle and equipment replacement;
- Transfer, processing and disposal costs;
- Staffing needs;
- Capital needs including trucks, containers, facilities, and other capital expenses;
- Emergency operating reserve funds;
- The City's current rate structure, revenue streams and billing program; and
- Other elements as identified by the City and R3.

Specific methods for reviewing and evaluating the needed expenses and revenues that will be projected in the five-year financial plan are provided in the following subtasks.

#### **Task 3.1 Review Current and Projected Operational Requirements**

As part of the development of the five-year financial plan, R3 will work with City staff to document current and projected operational requirements. This will include documenting the current number of accounts and the associated workloads, routes, staffing levels and other operational factors. Estimates of future operational requirements and costs to address future growth and potential expansion of collection programs, such as commercial recycling and organics (for example in response to AB 1826 and SB 1383), will also be developed. It is assumed that as part of this task the City's existing equipment replacement schedule will be reviewed and updated as appropriate to be consistent with the projected operational requirements.

As part of this task, R3 will conduct a high-level productivity review to determine the productivity of collection operations and the level of capacity that exists within the current routes to incorporate additional accounts due to expanded programs (e.g., commercial recycling) and/or growth. This information will be used to help model the timing of new equipment requirements over the five-year planning horizon, and in particular, to help refine assumptions and estimates relating to projected growth in the City.

#### **Task 3.2 Document Current Financial Baselines**

This task involves documenting current financial baselines, including all applicable revenue and expense line items, fund reserves, capital cost estimates and any other relevant data. It is anticipated that this information will, with any appropriate adjustments, form the basis for projections over the five-year planning period. To the extent feasible, R3 will evaluate and incorporate historical information from prior rate study projects for the City to allow for review and analysis of historical trends. Any available year-to-date information will also be reviewed.

R3

## Section 2

Methodology  
and Scope of  
Work**Task 3.3 Prepare Revenue Projections**

Revenue projections will be prepared for the five-year planning period. These projections will account for both rate related revenue and non-rate related revenue (e.g., interest income, bond proceeds, grants, sale of assets, development fees, etc.), and the impact of growth and any other relevant factors. Rate revenue projections will be based on current rates, which will then be adjusted as part of the rate modeling that will be performed in a subsequent task.

**Task 3.4 Prepare Expense Projections**

The purpose of this task will be to prepare projections of the City's solid waste operation expenditures over the five-year planning period. This task will build upon the basis for projections that is established as part of Task 3.3. In developing these projections, we will coordinate with appropriate City staff, as necessary, to review the historical expenditures and discuss the assumptions, conditions and trends affecting the projections. The format for these projections will correspond to the City's existing accounting records, but will also incorporate any modifications discussed in the kick-off meeting. R3 will assume that a cash-basis accounting system is used, whereby expenditures will be included in the fiscal year in which they occur.

The expense projections that are prepared will account for anticipated inflation adjustments, and other financial planning elements for the City's solid waste operation:

- Current revenue and expenses;
- Growth projections;
- Transfer, processing and disposal costs;
- Staffing needs;
- Vehicle and equipment replacement schedules, corporation yard repairs and improvements; and
- Operating reserves.

As an element of the expense projections, R3 will prepare a cost-of-service analysis, which is a key aspect of compliance with Proposition 218 requirements. The cost-of-service analysis can be conducted on two levels:

1. Line-of-Business Cost-of-Service Analysis – The analysis of revenues and expenses among lines of business (e.g., residential, commercial, industrial) with the intent of balancing revenues and expenses to eliminate any subsidies that may exist across lines of business (e.g., commercial rates subsidizing residential rates); and
2. Individual Rate Cost-of-Service Analysis – The analysis of rates and the relationships between rates within a given rate structure to determine the extent to which an individual rate reflects the cost of the associated service level (e.g., the cost to service a 4-yard container one time per week compared to the cost to service a 1-yard container four times per week).

The purpose of this task is to evaluate the reasonableness of any cost-of-service allocations that the City has developed among the various lines of business. If the City has not allocated costs to the various lines of business, we will work with the City as part of this task to develop such projections. One specific focus of this task will be to quantify the cost of commercial recycling services and the impact of potential expansion of those services in response to the State's mandatory commercial organics recycling requirements under AB 1826. This will

R3

## Section 2

### Methodology and Scope of Work

support the determination of a specific cost-of-service rate for commercial organics recycling and various other commercial recycling rate options.

#### **Task 3.5 Prepare Capital Project Expense Projections**

To the extent that the City's solid waste operation is projecting capital project expenses, we will review available capital project expense projections and, as appropriate, make any suggestions for updating or otherwise modifying those projections based on available data, including the operational projections developed in a prior task. Any such capital project expenses will be incorporated into the rate model and five-year rates.

#### **Task 3.6 Review Operating Reserve Funds and Uses**

R3 will review the City's reserve accounts to determine if the balance of each reserve with respect to the intended purposes are sufficient to fund the necessary expenses. This review will specifically include identifying the funding necessary to replace vehicles and equipment according to an established replacement schedule, and fund any projected capital costs (e.g., growth, AB 1826 and SB 1383 programs, etc.). The rate model developed will be constructed so that rates are sufficient to generate the necessary reserve funds over the planning period, and account for the utilization of those reserves as needed to fund the associated expenses as they are expected to incur.

#### **Task 3.7 Prepare Financial Plan Model**

The various revenue and expense projections developed in the prior tasks will be used to construct a simple, easy-to-use, easy-to-modify and easy-to-update Excel-based five-year financial plan (upon which the rate model and five-year rates will also be built). As noted in the beginning of this Task 3, this five-year financial plan will be cost-effectively developed for the City based on the prior plan(s) developed for the City by R3 and/or incorporating other more recent financial plans developed by R3.

This Excel model will include results of all Task 3 subtasks as well as capabilities and components (e.g., reserve fund balances and funding requirements) identified by the City and R3 during implementation of this Task. One important component of developing such an easy-to-use five-year financial plan is that it will provide a means to evaluating various expense, revenue and rate adjustment scenarios. This financial plan will also include the City's current rate structure, operating expenses, capital costs, revenue streams and reserve funds, and projected financial performance over the five-year planning period.

#### **Task 3 Deliverables**

- Identification of current and projected operational requirements;
- Documentation of current financial baselines;
- Projections of five-year revenues and expenses;
- Projections of five-year capital needs and expenses; and
- An Excel-based five-year financial plan that is easy-to-use and update and will be the basis of the rate model and five-year rates developed in Task 4.

R3

## Section 2

Methodology  
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Work**Task 4      Develop Rate Model and Five-Year Rate Options****Objectives**

*Determine the sufficiency of the current rate structure to meet ongoing needs, including a projection of how long this may be the case. Review impact of projected new development on rates. Determine solid waste service charges. Prepare a user-friendly computer rate model and manual for City use. The model should be capable of being used by the City to plan its capital improvements program and determine impact fees and rates. Models should also provide flexibility to integrate City's financial system and to compute rates. Include a one-day training seminar for City staff.*

**Methodology****Task 4.1      Prepare Rate Model**

Using the five-year financial plan developed in Task 3, and in conjunction with City staff, R3 will analyze various rate adjustment scenarios that are sufficient to fund the City's annual operating costs over the five-year planning horizon, and provide necessary funding for vehicle replacement, residential and commercial/development growth, operating reserves, and other expense and revenue drivers identified in completing Task 2. The resultant rate model will:

- Use best industry practices to determine the ability of the current rates and current rate structure to meet the City's ongoing solid waste operational needs, and over what time frame;
- Identify the specific impact that growth and new development will have on the rates as projected;
- Use the five-year financial findings and projections to recommend solid waste rates and services charges that are cost-based, equitable and legally defensible; and
- Provide rates which meet the legal requirements of Proposition 218.

Rate adjustment scenarios may include:

- A single rate adjustment that will set rates and satisfy the revenue requirement over a set planning period without need for additional adjustment (i.e., no additional annual indexed adjustments);
- A single rate adjustment that will set rates and satisfy the revenue requirement over the set planning period, with additional planned annual CPI indexed adjustments;
- Consistent annual rate adjustments over a set amount of time to more gradually introduce the rate structure changes; and/or
- Periodic rate adjustments (e.g., rate adjustments every two or three years).

As with prior tasks, R3 will seek to utilize and build upon the prior rate model developed by R3 for the City via prior rate studies and/or use/include new rate models developed by R3 to ensure that efforts under this task are as cost-effective as possible. The model will be developed using Excel and will include the following:

- Imbedded footnotes in cells to identify the sources of data and methodologies used to develop the new data;
- Color-coding to indicate the budget items that should be modified/updated annually;

R3



## Section 2

### Methodology and Scope of Work

- Overall annual required rate adjustments needed to meet revenue needs; and
- Other components as requested by the City.

R3 will work with the City to establish how the resultant rate model can provide the flexibility to integrate information from the City's financial system into the model and thus compute rates over time. This will start with the Task 1 information request during which we will request examples of reports from the City's financial system in order to ensure that reports from the City's system can be integrated into the five-year financial plan and thus into the rate model.

#### **Task 4.2 Review Rate Structure**

As part of the development of the rate model, the City's current rate structures will be reviewed to determine if the current rate structure can meet the ongoing needs of the City. To the extent that the current rate structure appears not to be able to meet the ongoing needs of the City, alternative rate structure options will be identified and presented to City staff. A key focus of this analysis is a review of the current commercial account distribution and an assessment of that distribution in light of the associated rate structure and the rate relationships between the various service levels. Ideally, from an operational efficiency standpoint, each account would be provided with appropriate storage volume so that service frequency could be limited to one time per week. This would allow the City to meet the weekly service volume requirements with the least amount of resources at the lowest possible cost to the system users.

#### **Task 4.3 Update Rate Model and Provide Training to City Staff**

R3 will prepare (or update if feasible) a rate manual which clearly details procedures for City staff to update the five-year financial plan and rate model. The rate manual will provide City staff with the specific information necessary to effectively update and analyze various rate adjustment options and will include:

- A description of the format of the rate model, including key in-feed data points, calculations, formulas and assumptions;
- A discussion of the rate model's rate adjustment capabilities;
- A description of each of the five-year financial plan and rate model worksheets; and
- Specific steps to take for annually updating the rate model, evaluating rate adjustment scenarios, and developing specific rate adjustment recommendations.

As part of this task, R3 project staff will conduct a one-day training seminar for City staff. In addition, R3 proposes to work with City staff in advance of that training session to familiarize staff with the rate model and provide hands-on experience using the rate model to analyze various rate adjustment options and develop the recommended rate adjustments.

#### **Task 4 Deliverables**

- Excel-based rate model meeting the descriptions noted above;
- Development of up to five (5) alternative scenarios for adjusting rates to meet expense and revenue requirements over the planning period;
- Recommended rate adjustments corresponding to each of the five (5) alternative scenarios;
- Charts, tables, and graphics showing the proposed rates for each FY;

R3

## Section 2

### Methodology and Scope of Work

- Updated rate manual for City use; and
- One (1) day training seminar on the five-year financial plan, rate model, and rate manual.

## Task 5 Conduct Rates and Services Survey

### Objectives

*Survey at least five other local government agencies that provide municipal solid waste and recycling services to establish service/rate benchmarks. The list of agencies will be conducted in collaboration with the City. The survey will include a review of cans or carts, bin and drop boxes for residential, multi-family and commercial customers.*

*The survey will include an analysis, or any information, on how the jurisdictions are setting rates and allocating revenues and expenses based on Proposition 218. The survey will also include other questions the City identifies as valuable in comparing the refuse rate such as community size, special pick-up charges, disposal fees, governmental and regulatory fees, and other services (such as street sweeping) included in the rates.*

### Methodology

#### Task 5.1 Conduct Rates and Services Survey

To assist the City in placing current and potential services in the context of neighboring communities, R3 will conduct a survey of comparable service and rates for at least five other municipally operated solid waste operations. R3 regularly works to review rates and services for municipal operations, and also regularly conducts surveys of rates and services throughout the State. As such, we are well positioned to provide a cost-effective survey for the City.

R3 has a list of all the municipal solid waste operations in the State, and prior to conducting this task, we suggest that R3 and the City establish which specific cities' rates and services are most appropriate for comparison. Careful selection of comparable agencies is important – variances in rate setting methodology, potential subsidies between residential and commercial sectors, local interpretations of Proposition 218, post-collection agreement terms, disposal and processing fees, government and regulatory fees, provision of services to schools, distribution of container sizes in the community, and many other factors can make a seemingly "apples-to-apples" comparison very complex, with results that may not be representative for the purposes of this comparison and benchmarking exercise.

It is important to note that the survey will include more than a simple "rate comparison." It will also include disposal and organics processing fees, franchise fees, AB 939 Fees, Vehicle Impact Fees, services provided at "no cost" to the communities (street sweeping, collection from public schools, public buildings and facilities, etc.), diversion requirements, frequency of recycling and organic collection, methods for collecting bulky waste, fuel types used for collection vehicles, and provisions for dedicated "sustainability coordinators."

In order to select appropriate comparisons prior to conducting the survey, R3 will prepare a list of known municipal solid waste operations along with currently retained information about the rates, services, location and other conditions that will facilitate selection of appropriate comparable communities. We will provide this information to City staff and then solicit the City's input on the top 7-10 communities for inclusion in the survey.

R3

## Section 2

### Methodology and Scope of Work

R3 will then communicate with staff at the selected cities to gather information including:

- Community population, and total number of accounts for residential, commercial and industrial customers;
- Number of accounts at each service level option for residential, commercial and industrial customers (which is critical to an “apples-to-apples” comparison and not generally evaluated by others who conduct such surveys);
- Services rates for all container sizes, waste streams, and other services;
- Detailed list of services that are provided via any “bundled” service rates, and the specific service offerings for those services (e.g. bulky item pickups, extra service charges, street sweeping services, City services, services to schools, HHW service, etc.)
- Types, sizes and frequency of collection of containers provided for residential, commercial and industrial customers;
- Specific information regarding how rates are allocated with respect to the requirements of Proposition 218;
- Specific information regarding post-collection costs including disposal, organics processing, and recyclables processing fees, as applicable;
- Governmental and regulatory fees, as applicable; and
- Other information discussed and confirmed in consultation between R3 and the City.

R3 will seek this information voluntarily from the 7-10 communities selected in consultation with the City via phone, email, and written request. If we are unable to acquire complete survey information for five (5) comparable communities based on the voluntary request we may suggest that the City issue a formal Public Records Act request for the necessary information; however, we would like to avoid that being necessary because of the time, effort, and relationship impacts that can arise from making such requests.

#### Task 5 Deliverables

- Survey results for a minimum of five (5) comparable communities; and
- Incorporation of findings, tables, charts and overall survey results into our Task 6 reports.

## Task 6 Reports and Presentations

### Objectives

*Prepare a draft report for City review. Incorporate City comments in final report. Prepare and deliver presentations designed to facilitate an understanding for the financing. Presentations will be addressed to the public-at-large, developers, landowners, City staff, and City Council.*

### Methodology

#### Task 6.1 Draft and Final Report

R3's findings and recommendations will be organized in an electronic Draft Rate Report that explains the financial plan and rate study. The Draft Report will be submitted to City staff for

R3



## Section 2

### Methodology and Scope of Work

review and comment, and an electronic Final Report will be prepared based on comments received from the City.

The Draft and Final Rate Reports will include recommended rate adjustments over the five-year planning period and will summarize the findings and recommendations from Tasks 1 through 5 above, including charts showing the proposed rates, and detailed calculations of the expected solid waste expenditure budget for each year, and the expected solid waste revenue based on rates proposed via the rate study.

#### **Task 6.2 Presentations**

Our proposed cost estimate for the Tasks and deliverables proposed herein includes two (2) presentations to the City Council, with additional presentations to the public-at-large, developers, landowners, City staff and the City at an additional cost not included in the overall proposed cost estimate.

Within our proposed cost estimate, we have included the development of a PowerPoint presentation summarizing our work and based on the contents of our Draft and Final Reports. We will provide a draft copy of the presentation to City staff for review and comment, with the draft being revised into a final presentation. Our proposed cost estimate includes presenting our work, findings and recommendations to the City Council for a rate hearing and rate adoption.

R3 understands that additional presentations may be desired by the City, and R3 stands ready to provide additional presentations with the City's approval, and at additional cost above our base cost estimate and at the per presentation rates listed in the cost estimate provided separately.

#### **Task 6 Deliverables**

- One (1) electronic Draft Report and one (1) electronic copy of the Final Report, all of which will include:
  - Explanations of the Financial Plan and Rate Model, and Rate Study;
  - Charts, tables, and graphics clearly showing the proposed rates;
  - A detailed calculation of the expected solid waste expenditure budget for each year; and
  - A detailed calculation of the expected solid waste revenue based on rates proposed in the rate study.
- Two (2) presentations to the City Council:
  - One (1) City Council hearing regarding the financial plan, rate model, and five-year rates; and
  - One (1) City Council rate adoption meeting.

R3

## Section 2

### Methodology and Scope of Work

## Schedule

R3 has thoroughly reviewed the City's request for proposals and desired scope of work in preparing this proposal. We have similarly reviewed project commitments and staff availability; we are confident that staff assigned to this engagement have sufficient time available to complete the requested tasks and present our deliverables within the expected project timeline. Additional detail on our current and planned projects and staff utilization can be provided upon request.

### Compliance with Timeline Established by City

We have also noted the City's desires for:

- A complete draft report submitted to the City within 90-days after award of contract;
- A final report submitted to City within 30-days of receipt of City comments; and
- Target adoption date of new amended rate and revenue program by September 1, 2018.

As shown in the **Table 2-1** on the following page, the City would need to select R3 for award of contract by April 2, 2018 in order to fulfill each of these expectations. R3 is prepared to meet this schedule, which includes complete draft report submitted to the City within 70-days of contract award, a final report submitted to the City within 14-days of days of receipt of complete written City comments, and adoption of the new rate and revenue program prior to September 1, 2018.

### Ability to Meet City's Schedule

R3's ability to meet this schedule will be dependent on award of contract by April 2, 2018, timeliness and completeness of City's responses to requests for information necessary to completion of our scope of work, the City's ability to complete City reviews as noted in the schedule, and the City's ability to schedule the two (2) provided City Council meetings in August. Any and all changes from the above noted conditions will create unavoidable delays in what is a tight-fitting schedule requested by the City.

While R3 remains positioned to meet the City's schedule, we also understand that schedules may slide due to unforeseen circumstances experienced by our clients. Should the City wish to revise and relax the schedule for completion of project tasks, this does not pose an issue to R3. Additionally, we should note that R3 will be available as needed to match schedules to be most compatible with City staff needs for the duration of the project; however, we do request that meetings be scheduled two-weeks in advance whenever possible for best availability.

Should the City elect to revise its schedule to consider final presentation and adoption of five-year financial plan, rate model and study to occur after August, then the City may wish to consider adoption after the beginning of November. Please also note that additional presentations above the two (2) provided for in the proposal are not accounted for in this schedule.

R3

## Section 2

Methodology  
and Scope of  
WorkTable 2-1  
Project Timeline

Task		Work Starting Week Of:	Work Completion Week Of:
<b>1 Request for Information and Project Kick-off</b>			
1.1	Request for Information	2-Apr	2-Apr
1.2	Kick-off Meeting	9-Apr	9-Apr
<b>2 Review Current Utility Policies, Procedures and Regulatory Requirements</b>			
2.1	Review Current Utility Policies, Procedures and Regulatory Requirements	16-Apr	30-Apr
<b>3 Develop Five-Year Financial Plan</b>			
3.1	Review Current and Projected Operational Requirements	30-Apr	11-Jun
3.2	Document Current Financial Baselines	30-Apr	11-Jun
3.3	Prepare Revenue Projections	30-Apr	11-Jun
3.4	Prepare Expense Projections	30-Apr	11-Jun
3.5	Prepare Capital Project Expense Projections	30-Apr	11-Jun
3.6	Review Operating Reserve Funds and Uses	30-Apr	11-Jun
3.7	Prepare Financial Plan Model	14-May	11-Jun
<b>4 Develop Rate Model and Five-Year Rate Options</b>			
4.1	Prepare Rate Model	28-May	11-Jun
4.2	Review Rate Structure	28-May	11-Jun
4.3	Update Rate Manual and Provide Training to City Staff	25-Jun	6-Aug
<b>5 Conduct Rates and Services Survey</b>			
5.1	Conduct Rates and Services Survey	30-Apr	11-Jun
<b>6 Reports and Presentations</b>			
6.1	Draft Report	11-Jun	25-Jun
	City Comments Provided to R3	25-Jun	9-Jul
	Final Report	9-Jul	23-Jul
6.2	Presentations (2)	6-Aug	20-Aug
Additional Presentations May Be Scheduled at the Direction of City Staff and At Additional Cost			

R3

## Section 6

Cost Estimates  
of Consulting  
Fee

## Cost Estimates of Consulting Fee

R3 has carefully considered the requirements of this project and we have developed a cost estimate that we feel best meets the needs of the City. We propose to complete the proposed Scope of Work on a time-and-materials basis for a not-to-exceed sum of **\$64,860**, including project expenses, approximately biweekly conference calls with City staff as necessary to provide project updates, and up to three (3) in-person project meetings (with one of those being scheduled in conjunction with the training seminar and with one to occur in conjunction with on-site document review needs, if applicable). Please note that this not-to-exceed sum only includes two (2) presentations to the City Council. Additional presentations as requested by the City will be at an additional \$2,250 per presentation, and assuming that the presentation contents are based on work products developed via the main Scope of Work.

**Table 6-1  
Project Budget**

Task	R3 Consulting Group					Cost	Hours
	William Schoen (Principal and Project Director)	Garth Schultz (Principal, Project Manager and Lead Analyst)	Emily Ginsburg (Project Analyst)	Rose Radford (Project Analyst)	Ryan Calkins (Project Analyst)		
	\$ 205	\$ 205	\$ 145	\$ 145	\$ 145		
<b>1 Request for Information and Project Kick-off</b>							
1.1 Request for Information	1	1	4	0	0	\$ 990	6
1.2 Kick-off Meeting	4	4	4	0	0	\$ 2,220	12
<b>2 Review Current Utility Policies, Procedures and Regulatory Requirements</b>							
2.1 Review Current Utility Policies, Procedures and Regulatory	2	8	8	2	2	\$ 3,790	22
<b>3 Develop Five-Year Financial Plan</b>							
3.1 Review Current and Projected Operational Requirements	4	8	8	2	16	\$ 6,230	38
3.2 Document Current Financial Baselines	2	8	40	2	0	\$ 8,140	52
3.3 Prepare Revenue Projections	2	4	4	2	0	\$ 2,100	12
3.4 Prepare Expense Projections	2	2	8	2	0	\$ 2,270	14
3.5 Prepare Capital Project Expense Projections	1	6	2	0	5	\$ 2,450	14
3.6 Review Operating Reserve Funds and Uses	1	6	2	0	0	\$ 1,725	9
3.7 Prepare Financial Plan Model	2	8	8	4	0	\$ 3,790	22
<b>4 Develop Rate Model and Five-Year Rate Options</b>							
4.1 Prepare Rate Model	1	8	8	0	0	\$ 3,005	17
4.2 Review Rate Structure	1	2	2	2	0	\$ 1,195	7
4.3 Update Rate Manual and Provide Training to City Staff	1	16	20	2	0	\$ 6,675	39
<b>5 Conduct Rates and Services Survey</b>							
5.1 Conduct Rates and Services Survey	2	4	8	24	0	\$ 5,870	38
<b>6 Reports and Presentations</b>							
6.1 Draft and Final Report	6	12	24	6	2	\$ 8,330	50
6.2 Presentations (2)	8	16	6	2	0	\$ 6,080	32
<b>Total Hours</b>	<b>40</b>	<b>113</b>	<b>156</b>	<b>50</b>	<b>25</b>		<b>384</b>
<b>Total Cost</b>	<b>\$ 8,200</b>	<b>\$ 23,165</b>	<b>\$ 22,620</b>	<b>\$ 7,250</b>	<b>\$ 3,625</b>	<b>\$ 64,860</b>	

R3

## Section 6

Cost Estimates  
of Consulting  
Fee**Billing Rates**

In Table 6-2 below, we have provided the hourly billing rates for R3 Consulting Group, Inc.

**Table 6 -2  
Billing Rates**

Category	Hourly Rate
Principal / Project Director	\$205 per hour
Senior Project Manager	\$185 per hour
Project Manager	\$160 per hour
Senior Project Analyst	\$145 per hour
Project Analyst	\$135 per hour
Associate Analyst	\$120 per hour
Administrative Support	\$100 per hour
<b>Reimbursable Costs (Included in Hourly Rates)</b>	
Consultants/Subcontractors	Cost plus 10%
Lodging and meals	Direct cost
Travel — Private or company car	\$0.535 per mile
Travel — Other	Direct cost
Delivery and other expenses	Direct cost

**Payments**

Unless otherwise agreed in writing, fees will be billed monthly at the first of each month for the preceding month and will be payable within 30 days of the date of the invoice.

R3



## ADMINISTRATIVE REPORT

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**Agenda Item I.14.**

Meeting Date: 8/5/2019

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*Report Prepared by: Ken F. Elwin, PE, Director of Public Works*

**SUBJECT:** Selection of Eligible Roadway Projects and Submittal of 2018/2019 Regional Surface Transportation Program (RSTP) Exchange Funds Claim Form in the Amount of \$980,871 to be Filed with the Merced County Association of Governments (MCAG)

### REPORT IN BRIEF

Selects projects and authorizes staff to complete the FY 2018/2019 Regional Surface Transportation (RSTP) Claim Form in the amount of \$980,871 for submittal to the Merced County Association of Governments (MCAG).

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Selecting Project 1 - B Street Improvements, in the amount of \$500,000 and Project 2 - M and Main Street Improvements in the amount of \$480,871, to be completed utilizing the FY 2018-2019 RSTP Exchange Funds; and,
- B. Directing staff to complete the 2018-2019 RSTP claim form by listing the selected projects and corresponding project costs; and,
- C. Adopting **Resolution 2019-51**, a Resolution of the City Council of the City of Merced California, authorizing the City Manager to file the Regional Surface Transportation Program (RSTP) Exchange Funds claim for Fiscal Year 2018-2019; and,
- D. Authorizing the Finance Officer to make necessary budget adjustments for Fiscal Year 2019-2020.

### ALTERNATIVES

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

### AUTHORITY

The Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU) provides for the

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exchange of Local Un-obligated RSTP funds through MCAG per the Caltrans agreement.

Projects to be funded with this claim are only those projects that are defined under Section 133(b) and 133(c) of Title 23, United States Code and Article XIX of the California State Constitution, implemented in accordance with the requirements of Section 182.6(d)(I) of the Streets and Highway Code.

Monies received (and the interest earned on such monies subsequent to allocation) must be used only for the purposes for which the claim is approved. If the claimant fails to use funds received in accordance with the terms of the agreement, the exchange funds must be returned to MCAG.

### **CITY COUNCIL PRIORITIES**

Address Council's priority for improving local roads, sidewalks, and traffic.

### **DISCUSSION**

The Regional Surface Transportation Program (RSTP) portion of the Federal SAFETEA-LU Act provides for revenues and allocations to local agencies. Merced County Association of Governments (MCAG) has received authorization from Caltrans providing for fund distribution in a two-tier process. The funds allocated to the City through MCAG represent a City "Lifeline" apportionment with the remainder of the funds to be allocated by MCAG based on a mutually acceptable allocation formula.

The MCAG Board has adopted a formula based on population by jurisdiction. A summary of the apportionments is shown in Attachment 2. MCAG, on behalf of the local agencies, has entered into an agreement with Caltrans to exchange the Local Un-obligated balance of the 2018-2019 RSTP funds.

The City of Merced is entitled to a total of \$980,871 in RSTP Exchange Funds through MCAG. As part of MCAG's claim process, the City is required to submit the completed claim form containing a list of up to four projects to be funded with the exchange funds, as well as a City Council Resolution authorizing the RSTP Claim.

Staff recommends the projects below be completed utilizing the FY 2018-2019 RSTP Exchange Funds:

- B Street Improvements in the amount of \$ 500,000
- M and Main Street Improvements in the amount of \$ 480,871

The funding enhancement that is being recommended for the B Street Improvements Project is in addition to the existing \$517,000 in funding allocated by Council as part of the FY 2013/14 RSTP Claim Form. This project is being completed in concert with the recently award Childs and B Street Affordable Housing grant project.

In addition to the recommended RSTP funding, the M and Main Street Improvements project includes \$550,000 of Measure V funding.

**IMPACT ON CITY RESOURCES**

Staff is seeking Council direction to select which projects will be completed utilizing the RSTP exchange funds. Per the requirements of the RSTP claim form agreement, once the projects are listed on the RSTP claim, the City is obligated to complete the projects or return the unspent exchange funds to MCAG. The claim form must be approved by resolution and submitted to MCAG in order for the City to receive its share of the RSTP funds.

**ATTACHMENTS**

1. Resolution
2. Apportionments
3. Claim Form
4. MCAG Letter
5. Vicinity Map



**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AUTHORIZING THE CITY MANAGER TO  
FILE THE REGIONAL SURFACE  
TRANSPORTATION PROGRAM (RSTP)  
EXCHANGE FUNDS CLAIM FOR FISCAL  
YEAR 2018-2019**

WHEREAS, the Merced County Association of Governments ("MCAG") and the California Department of Transportation ("Caltrans") have entered into an agreement to exchange unobligated balances of federally funded Regional Surface Transportation Program ("RSTP") funds with non-federal State Highway Account funds; and

WHEREAS, the allocations of RSTP exchange funds to each jurisdiction have been calculated by population for Fiscal Year 2018-2019; and

WHEREAS, the City of Merced has additional RSTP exchange funds to claim in the amount of \$980,871.00 for Fiscal Year 2018-2019; and

WHEREAS, payment of the additional RSTP exchange fund claim will be subject to all conditions specified in the Agreement between MCAG and Caltrans; and

WHEREAS, a special gas tax street improvement fund account to receive the RSTP exchange funds has been established; and

WHEREAS, it is deemed in the best interest of the City of Merced that the City Manager be authorized to sign the RSTP exchange fund claim for Fiscal Year 2018-2019 and to submit said claim to MCAG for processing.

NOW, THEREFORE, be it resolved that the City Manager is authorized and directed to sign and file the above described RSTP exchange fund claim on behalf of the City of Merced for the amount of \$980,871.00.

PASSED AND ADOPTED by the City Council of the City of Merced  
at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 by the  
following called vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

 6-25-19  
City Attorney Date

## FY 2018/19 Regional Surface Transportation Program (RSTP)

### Apportionment Distribution

<b>FY 2018/19 Estimated Apportionments</b>	<b>\$ 3,512,189</b>	RSTP Exchanges are based on the <b>Estimated "Advance"</b> apportionment figures.
<b>Adjustments of Prior "Advance" vs. "Actual" Apportionments</b>	<b>\$ 7,708</b>	<b>"Actual"</b> apportionment figures are reported after year's end, with adjustments made subsequently.
<b>State-Mandated Merced County "Lifeline" Apportionment</b>	<b>\$ (526,686)</b>	Merced County has separate contract with Caltrans and funds are distributed direct to Merced County.
<b>Balance after State-Mandated Merced County "lifeline" Apportionment</b>	<b>\$ 2,993,211</b>	<b>Amount of MCAG RSTP State Exchange Contract</b>
<b>Total City "Lifeline" Apportionments</b>	<b>\$ (356,305)</b>	
<b>Balance after City "Lifeline" Apportionments</b>	<b>\$ 2,636,906</b>	

<b>City</b>	<b>City Lifeline Apportionment</b>	
Atwater	\$ 61,284	
Dos Palos	\$ 11,144	
Gustine	\$ 12,194	
Livingston	\$ 28,341	
Los Banos	\$ 74,341	
Merced-City	\$ 169,001	
<b>Subtotal: Total City "Lifeline" Apport.</b>	<b>\$ 356,305</b>	

<b>Jurisdiction</b>	<b>* Population based portion</b>	<b>Percentage</b>	<b>FY 2018/19 RSTP funds distributed by population</b>
Atwater	31,470	11.12%	\$ 293,302
Dos Palos	5,541	1.96%	\$ 51,643
Gustine	5,884	2.08%	\$ 54,840
Livingston	14,811	5.23%	\$ 138,039
Los Banos	41,898	14.81%	\$ 390,492
Merced	87,110	30.79%	\$ 811,870
County	96,214	34.01%	\$ 896,720
<b>Subtotal</b>	<b>282,928</b>	<b>100.00%</b>	<b>\$ 2,636,906</b>

\*May 2019 - Depart. of Finance Population Figures

<b>Jurisdiction</b>	<b>City/County Lifeline Apportionment</b>	<b>FY 2018/19 RSTP funds distributed by population</b>	<b>TOTAL FY 2018/19 RSTP funds</b>
Atwater	\$ 61,284	\$ 293,302	<b>\$ 354,586</b>
Dos Palos	\$ 11,144	\$ 51,643	<b>\$ 62,787</b>
Gustine	\$ 12,194	\$ 54,840	<b>\$ 67,034</b>
Livingston	\$ 28,341	\$ 138,039	<b>\$ 166,380</b>
Los Banos	\$ 74,341	\$ 390,492	<b>\$ 464,833</b>
Merced-City	\$ 169,001	\$ 811,870	<b>\$ 980,871</b>
<b>Merced-County</b>	<b>\$ 526,686</b>	<b>\$ 896,720</b>	\$ 1,423,406
<b>TOTAL</b>	<b>\$ 882,991</b>	<b>\$ 2,636,906</b>	<b>\$ 3,519,897</b>

**Claim to the Merced County Association of Governments  
for Regional Surface Transportation Program (RSTP) Funds in Exchange for  
State Highway Account Funds FY 2018/2019**

**Claimant:** **City of Merced**

**FY 18/19 Claim Amount:** **\$980,871**

**Claim Guidelines:**

Projects outlined in the table below to be funded with this claim are only those projects that are defined under Sections 133(b) and 133(c) of Title 23, United States Code and Article XIX of the California State Constitution, implemented in accordance with the requirements of Section 182.6(d)(1) of the Streets and Highways Code.

**Claim Instructions:**

1. List (print or type) each **INDIVIDUAL** project to be funded with this claim.
2. List the amount of funds to be used for each project.
3. If the project is not a capacity expanding project and is exempt from the air quality conformance analysis check the "Exempt" box. (☒)
4. If the project is a capacity expanding project and the "build" alternative of the air quality conformance analysis has been completed for the project as required check the "Air Quality" box. (☒)

Project	Cost of Project	Air Quality	Exempt
1.	\$	<input type="checkbox"/>	<input type="checkbox"/>
2.	\$	<input type="checkbox"/>	<input type="checkbox"/>
3.	\$	<input type="checkbox"/>	<input type="checkbox"/>
4.	\$	<input type="checkbox"/>	<input type="checkbox"/>

It is understood by this claimant (**City of Merced**) that payment of this claim is subject to approval by the MCAG Governing Board and must be in accordance with the MCAG and Caltrans Agreement. Said monies (and the interest earned on such monies subsequent to allocation) will be used only for those purposes for which the claim is approved.

The undersigned claimant, by accepting these funds agrees to establish a special account for the purpose of depositing funds received from MCAG pursuant to this agreement:

- a. For cities, within their Special Gas Tax Street Improvement Fund; or
- b. For the county, within their County Road Fund

The undersigned claimant, by accepting these funds, agrees to grant the State of California auditors access to their books and records for the purpose of verifying that funds paid hereunder are properly accounted for and proceeds are expended in accordance with the terms of this agreement. All documents will be available for inspection by authorized Caltrans agents at any time during the project development and for a four-year period from the date of completion of the project, or one year after the audit is completed or waived by Caltrans, whichever is later.

If the undersigned claimant fails to use funds received hereunder in accordance with the terms of the agreement, the claimant agrees to return the exchange funds to MCAG for credit to the special account described above.

Further, the Chief Financial Officer of the claimant certifies that the financial information contained herein, is reasonable and accurate to the best of his/her knowledge.

Authorized Representative:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

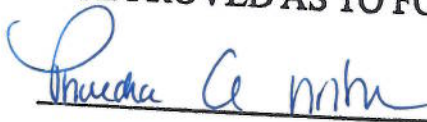
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Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Chief Financial Officer

\_\_\_\_\_  
Print Name

**APPROVED AS TO FORM:**





June 21, 2019

Joe Cardoso  
City of Merced  
678 West 18th Street,  
Merced, CA 95340

Hello Joe:

MCAG has received the fully executed FY 18/19 Regional Surface Transportation Program (RSTP) Exchange Program Standard Agreement contract from Caltrans. It is important to note that the Caltrans contract is based on an estimated RSTP apportionment figure that Caltrans has received from the Federal Highway Administration (FHWA). If the FINAL year-end RSTP figure is determined to be higher or lower than the RSTP estimate for any number of reasons, the distribution amounts can be modified (in the current contract year or future year apportionments).

On June 20, 2019, the MCAG Governing Board adopted the FY 18/19 RSTP Exchange Program Apportionment Schedule and authorized the release of RSTP Exchange Claim forms to the member agencies.

Member agencies are required to do two things to claim the RSTP funds:

- 1) Submit a signed RSTP Exchange Program Claim Form; and
- 2) Submit a city council-approved RSTP Exchange Program Resolution.

Samples of both items are included with this letter. Please return the signed RSTP Exchange Claim Form and city council-approved resolution as soon as possible.

The FY 18/19 RSTP Exchange Program amount available for City of Merced to claim is **\$980,871**.

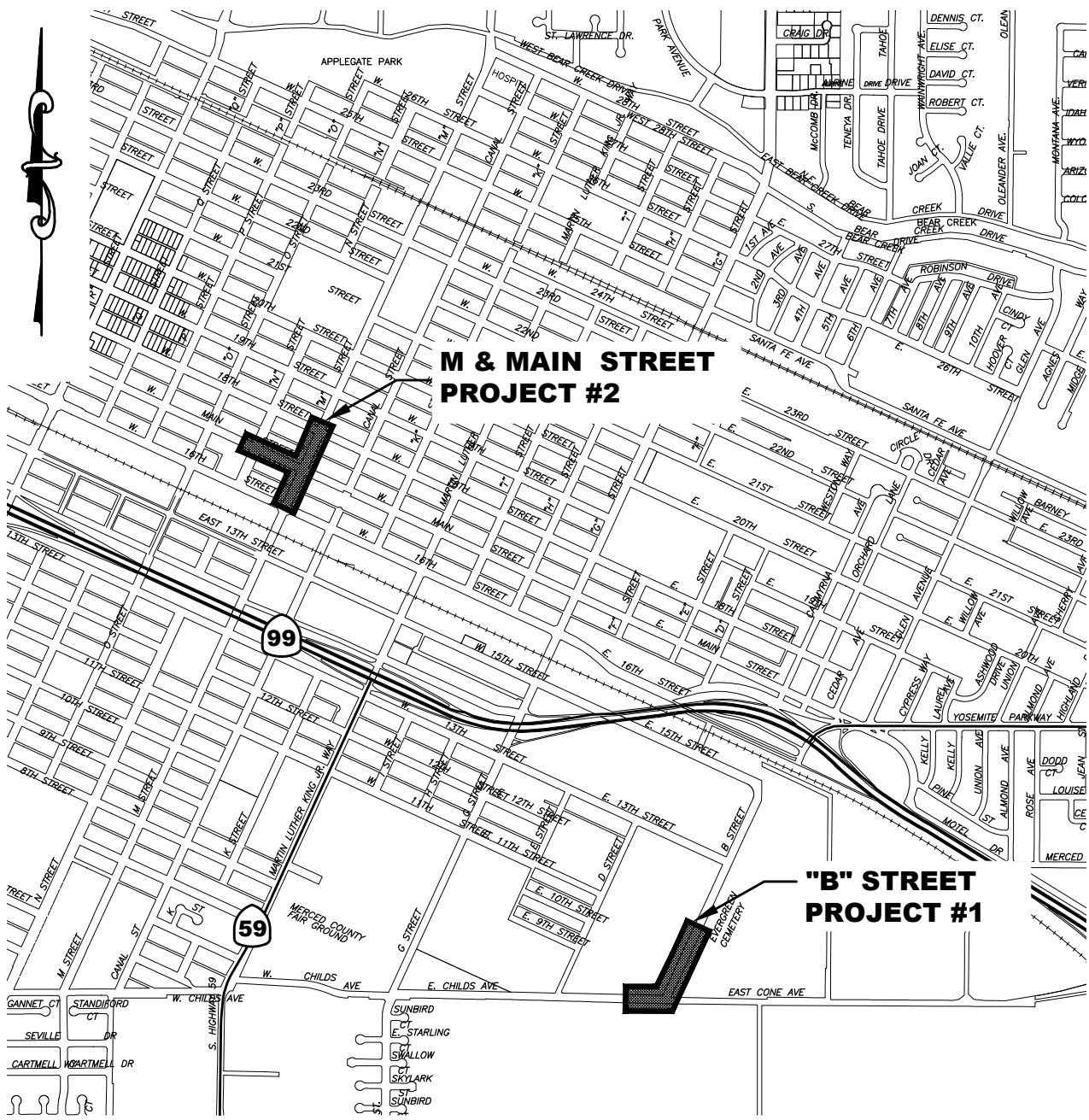
Please contact me, 723-3153 x 123 or email ([ty.phimmasone@mcagov.org](mailto:ty.phimmasone@mcagov.org)), if you have any questions.

Regards,

Ty Phimmasone  
Associate Planner

Cc: Jamie Cruz, Engineering Secretary

Enclosures: RSTP Exchange Program Claim Form  
SAMPLE Authorizing Resolution  
FY 18/19 RSTP Exchange Program Fund Apportionment Schedule



# 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

**FY 2018-2019  
 RSTP PROJECTS**

DR. BY: PAF
DATE: 07/22/10
CH. BY:
DATE:
File No.
SCALE: AS SHOWN



## ADMINISTRATIVE REPORT

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### Agenda Item I.15.

Meeting Date: 8/5/2019

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*Report Prepared by: Ken F. Elwin, PE, Director of Public Works*

**SUBJECT:** Adoption of Resolution Approving the 2019/2020 Local Transportation Fund (LTF) Claim Form in the Amount of \$191,250 to be Filed with the Merced County Association of Governments (MCAG)

### REPORT IN BRIEF

Approves and accepts \$191,250 in Local Transportation Funds (LTF) from Merced County Association of Governments (MCAG) for street and road maintenance.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2019-43**, a Resolution of the City Council of the City of Merced, California, approving the Local Transportation Fund (LTF) Claim to be filed with the Merced County Association of Governments (MCAG) for Fiscal Year 2019/2020; and,
- B. Authorizing the Finance Officer to make any necessary budget adjustments.

### ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve with modifications; or,
- 3. Deny.

### AUTHORITY

The Transportation Development Act (TDA) of 1971 provides for distribution of Local Transportation Funds (LTF) to local agencies for street and road use, granted there are no unmet transit needs in the presiding county.

### CITY COUNCIL PRIORITIES

Address Council's priority for improving local roads, sidewalks, and traffic.

### DISCUSSION

Local Transportation Funds (LTF) are administered by the State of California and allocated through the Merced County Association of Governments (MCAG). LTF funds are first designated for identified transit needs, and any remaining balance is apportioned to local agencies for non-transit uses, such as streets and roads. In previous years, the City received an annual allocation determined by a population-based formula. This is the fourth year since 2009 that this funding has



been available to the City; the City's entitlement for the 2018-2019 fiscal year was \$316,961.

Based upon population, the City of Merced's entitlement for the 2019-2020 fiscal year is \$191,250 as shown in Attachment 1 - LTF Apportionment. These funds will be used on a variety of different road projects with a priority placed on blending with Measure V and SB1 funds to support local projects. LTF funding can also be used as matching funds for grant funded projects.

As part of MCAG's claim process, the City is required to submit the completed claim form and corresponding City Council Resolution no later than September 20, 2019.

### **IMPACT ON CITY RESOURCES**

Staff recommends accepting \$191,250 of Local Transportation Funds (LTF) from the Merced County Association of Governments (MCAG). The allocation of funding has been included in the FY 2019-20 adopted budget.

### **ATTACHMENTS**

1. LTF Apportionment Schedule
2. City Council Resolution
3. 2019/2020 Claim Form

**RESOLUTION NO. 2019/06-20-03**

**RESOLUTION OF THE MERCED COUNTY ASSOCIATION OF GOVERNMENTS APPROVING  
APPORTIONMENT SCHEDULE FOR LOCAL TRANSPORTATION FUND (LTF) MONIES FOR THE  
FISCAL YEAR 2019/2020**

**WHEREAS**, Merced County Association of Governments (MCAG) is designated the Regional Transportation Planning Agency for Merced County; and

**WHEREAS**, the Transit Joint Powers Authority for Merced County (TJPA) provides consolidated transit service throughout Merced County, and provides public transportation services to the general public; and

**WHEREAS**, The TJPA as the transit service provider for Merced County proposes to serve, at a minimum, all claimant areas of Merced County within their jurisdictions at the level of public transportation services that are reasonable to meet as defined by the MCAG Governing Board; and

**WHEREAS**, Specific efforts undertaken by MCAG in the transportation planning process and approval of the unmet transit needs process were previously approved by the MCAG Governing Board by Resolution in May 2019; and

**WHEREAS**, the Yosemite Area Regional Transportation System (YARTS) provides mass transit service in the Yosemite region, including Merced County, and provides public transportation services to the general public; and

**WHEREAS**, The Merced County Auditor/Controller claims \$3,400 for administration of the LTF Apportionment distribution for FY 19/20 pursuant to PUC, Division 10, Part 11, Chapter 4, Article 4, Section 99233.1 administration allocations; and

**WHEREAS**, MCAG claims \$81,254 for administration for FY 19/20 LTF apportionment funds pursuant to PUC, Division 10, Part II, Chapter 4, Article 4, Section 99233.1 administration allocations and \$234,821 for planning pursuant to PUC, Division 10, Part 11, Chapter 4, Article 4, Section 99233.2 planning and programming allocation; and

**WHEREAS**, after the above needs there are funds remaining, which can be distributed to local jurisdictions for transportation purposes including street and road maintenance;

**NOW THEREFORE BE IT RESOLVED**, that the Local Transportation Funds (LTF) apportionment schedule for Fiscal Year 2019-2020 is:

County Auditor-Controller administrative cost	\$3,400
MCAG administrative expense	\$81,254
MCAG planning	\$234,821
Transit Joint Powers Agency Needs	\$6,121,857
YARTS Operating Needs	\$300,000
Future Passenger Rail Reserve	\$387,500
City of Atwater	\$69,092
City of Dos Palos	\$12,165
City of Gustine	\$12,918
City of Livingston	\$32,518
City of Los Banos	\$91,987
City of Merced	\$191,250
Merced County	\$211,238
<b>Total</b>	<b>\$7,750,000</b>

The above resolution was approved by the Merced County Association of Governments on June 20, 2019 by Director McDaniel, who moved its adoption, which motion was duly seconded by Director Murphy and which was adopted by the following vote:

AYES: Directors Aguilar, Creighton, Espinoza, McDaniel, McGlynn, Murphy, Oliveira, Pareira, Villalta

NOES: None

APPROVED:



Stacie Dabbs, Executive Director  
Merced County Association of Governments



Joe Oliveira, Chairperson  
Merced County Association of Governments  
Governing Board

**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF MERCED, CALIFORNIA, APPROVING  
THE LOCAL TRANSPORTATION FUND (LTF)  
CLAIM TO BE FILED WITH THE MERCED  
COUNTY ASSOCIATION OF GOVERNMENTS  
(MCAG) FOR FISCAL YEAR 2019/2020**

WHEREAS, under the Transportation Development Act (TDA) of 1971, Local Transportation Fund (LTF) monies are available to cities for public transportation, construction and maintenance of local streets and roads, and for pedestrian or bicycle facilities under certain circumstances; and

WHEREAS, the City of Merced meets all requirements to qualify for said apportionment allocated through the Merced County Association of Governments (MCAG), as the designated local transportation and planning agency; and

WHEREAS, the annual allocations of LTF monies to each jurisdiction have been calculated by population and the percentage of level of public transit service for Fiscal Year 2019/2020; and

WHEREAS, the City of Merced has LTF monies available to claim in the amount of \$191,250.00 for Fiscal Year 2019/2020; and

WHEREAS, the City's proposed expenditure of LTF monies are in conformity with the Regional Transportation Plan as prepared by MCAG; and

WHEREAS, the City has submitted a certified fiscal audit within 180 days after the end of the fiscal year, except where an extension (90 day maximum) was granted by MCAG.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Merced does hereby authorize the filing of the annual LTF claim for Fiscal Year 2019/2020 in the amount of \$191,250.00.

BE IT FURTHER RESOLVED it is deemed in the best interest of the City of Merced that the City Manager and the City Finance Officer be authorized to sign the LTF claim form for Fiscal year 2019/2020, and to submit said claim to MCAG for processing.

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

Kelly Timine      7-8-19  
City Attorney      Date

**LOCAL TRANSPORTATION FUND CLAIM**  
**FY 2019-2020**

**Claimant:** City of Merced

**Type of Claim:**

**Amount of Claim:**

☒

**STREETS & ROADS**

\$ 191,250

☐

**PEDESTRIAN & BICYCLE FACILITIES**

\$ \_\_\_\_\_

☐

**OTHER** (indicate purpose & TDA Section number \_\_\_\_\_)

\$ \_\_\_\_\_

**TOTAL**

**\$ 191,250**

*It is understood by this claimant that payment of the claim is subject to approval by MCAG, to such monies being on hand and available for distribution, and to the provision that such monies (and the interest earned on such monies subsequent to allocation) will be used only for those purposes for which the claim is approved and in accordance with the terms of the allocation instructions.*

*Further, the Chief Financial Officer of the claimant certifies that the financial information contained herein, is reasonable and accurate to the best of my knowledge.*

**Authorized Representative:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Chief Financial Officer

## LTF STREETS & ROADS CLAIM 2019-2020

Claimant: City of Merced

### Project Title, Location and Description (may use additional paper)

Street and Road Maintenance throughout the City of Merced.

### Project Cost by Funding Source

LTF	\$ 191,250
General Fund	\$
Other	\$
<b><u>TOTAL</u></b>	<b><u>\$ 191,250</u></b>

1. For entities with a population of more than 5,000, is the claim for streets and roads (exclusive of capital requirements for major new facilities) less than 50% of the total streets and roads expenditures?

☒ Yes

☐ No

2. Is the project in conformity with the MCAG Regional Transportation Plan?

☒ Yes

☐ No

Prepared by: \_\_\_\_\_

Signature

\_\_\_\_\_  
Type or print name

APPROVED AS TO FORM:



KELLY C. FINCHER

Chief Deputy City Attorney



ADMINISTRATIVE REPORT

Agenda Item J.1.

Meeting Date: 8/5/2019

*Report Prepared by: Kim Espinosa, Planning Manager, Development Services Department*

**SUBJECT:** Continued Public Hearing - Adoption of a Categorical Exemption (Environmental Review #19-04) and Introduction of Ordinance Amending Section 20.42 and Various Other Sections of the Merced Municipal Code Regarding Accessory Dwelling Units (Zoning Ordinance Amendment #19-02)

**REPORT IN BRIEF**

Considers the adoption of a Categorical Exemption and the introduction of an Ordinance (one of two options) which would modify the City's zoning regulations regarding accessory dwelling units.

**RECOMMENDATION**

**City Council** - Adopt a motion:

**OPTION 1 (Based on City Council Direction on July 1, 2019)**

A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and 20.90.020 ("Glossary, Definitions") of the Merced Municipal Code.

**OR**

**OPTION 2 (As Recommended by the Planning Commission)**

A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance 2502**, An Ordinance of the City Council of the City of Merced, California, Amending Sections 20.42 ("Second Units") as well as Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and



20.90.020 ("Glossary, Definitions") of the Merced Municipal Code, with Section 20.42.030(G)(2) amended as outlined below.

## **ALTERNATIVES**

1. Introduce the Ordinance (Option 1), per Council direction on July 1, 2019; or,
2. Introduce the Ordinance (Option 2), as recommended by the Planning Commission; or,
3. Introduce the Ordinance, subject to modifications by City Council (identify specific items to be amended in the motion; or,
4. Deny; or,
5. Refer to staff for reconsideration of specific items (to be addressed in the motion); or,
6. Continue to a future City Council meeting (date and time to be specified in motion).

## **AUTHORITY**

Merced Municipal Code Section 20.80, "Zoning Ordinance Amendments," spells out procedures for amending the Zoning Ordinance.

## **CITY COUNCIL PRIORITIES**

Infill Development and Housing are both listed as City Council Priorities for FY 2019/20.

## **DISCUSSION**

### City Council Direction/New Correspondence

On July 1, 2019, the City Council held a public hearing on the proposed Ordinance and discussed the options regarding parking and owner occupancy. Two members of the public testified and indicated that they did not favor eliminating the owner occupancy requirement for either the primary or accessory dwelling unit because of concerns about impacts on neighborhoods.

After an extensive discussion, the City Council adopted a motion to continue the public hearing to August 5, 2019, and directed staff to prepare an alternative ordinance which would allow for parking within the setback areas for accessory dwelling units only and to retain the owner occupancy requirement only within R-1 zoning districts. Option 1 (draft Ordinance seen at Attachment 8 with a red-lined version at Attachment 7) reflects the direction of the City Council from July 1 and the change addressed below. Option 2 is the same Ordinance presented on July 1 as recommended by the Planning Commission, which allows for parking for all uses within the setback areas and eliminates the owner occupancy requirement. (If Option 2 is chosen, staff recommends that it be amended as shown below.)

On July 12, 2019, the City received correspondence from Matthew Gelfand representing the Californians for Homeownership (Attachment 6). Based on the information in the letter and a review of State law requirements, Staff has determined that State law requires if an existing parking structure is converted to an ADU (which must include bathroom and kitchen facilities), then the replacement parking would need to be allowed in any configuration on the lot, including tandem spaces within the setback areas. Staff is, therefore, recommending that Merced Municipal Code Section 20.42.030(G)(2) of the proposed Ordinance (in either Option) be amended to read as follows:

2. When all or a portion of a garage, carport, or other parking structure is converted or demolished to construct an accessory dwelling unit, the parking spaces displaced by the conversion may be allowed in any configuration on the lot including, but not limited to, covered spaces, or tandem spaces, or by use of mechanical automobile parking lifts. ~~The creation of an accessory dwelling unit through the conversion of all or a portion of a garage is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).~~

The rest of this administrative report is the same as was presented on July 1, 2019, except for changes in dates in the “Next Steps” section and the addition of new Attachments 6, 7, and 8 and modifications to the presentation at Attachment 9.

### Background

The City’s existing “Second Unit” zoning standards in Chapter 20.42 of the Merced Municipal Code (and other sections of the Zoning Code) are inconsistent with the amended California Government Code provisions regarding accessory dwelling units. Therefore, in order to retain some degree of local control over ADU construction, the City must amend the Zoning Ordinance to conform to state law. (See Attachment B of the Planning Commission Staff Report at Attachment 3 for a summary of recent State law changes.)

On September 17, 2018, the City Council directed staff to review the City’s Zoning Ordinance to determine what changes were needed in order to comply with the new State laws regarding Accessory Dwelling Units (ADU’s), and to consider alternative approaches to facilitate the development of ADU’s in the City of Merced.

On November 19, 2018, the City Council reviewed the proposed changes as outlined in Finding D of the Planning Commission Staff Report (Attachment 3) and possible new Housing Division programs that might be implemented to encourage the development of ADU’s. The City Council, by unanimous vote, directed staff to prepare the changes to the Ordinance, but prior to presenting the draft Ordinance, return to the City Council in late January 2019 for further policy direction regarding parking and the owner occupancy requirements. The City Council also directed Housing staff to move forward with a program similar to the Clovis model of providing pre-approved plans for ADU’s. (This Housing Division program is not part of the Ordinance revision so it is not discussed in this report.)

On January 22, 2019, City staff presented the City Council with the information provided in Findings E and G of the Planning Commission Staff Report (Attachment 3) regarding the parking and owner occupancy requirements. After discussion, the City Council, in general, indicated support for allowing required parking spaces to be in the front yard setback for both the primary unit and the accessory unit. However, the City Council was split on whether the owner occupancy requirement should remain. City staff indicated that staff would provide further information about this requirement at the time the revisions were proposed, so the Planning Commission could weigh in on the issue as part of

its recommendation. Since that time, staff has done further research on the owner occupancy and parking requirements summarized in Findings F and H of the Planning Commission Staff Report and below.

### General Overview of Proposed Changes to the Zoning Ordinance

The City of Merced is proposing to adopt an Ordinance to amend the Zoning Code to provide amended regulations for accessory dwelling units in conformance with changes in State law. A red-lined version of the Draft Ordinance that shows all the changes from the current ordinance is at Attachment A of the Planning Commission Resolution at Attachment 1 while a clean copy of the Draft Ordinance is at Attachment 5. Major modifications include:

- 1) The terms “Second Units” or “Secondary Dwelling Units” will need to be changed to “Accessory Dwelling Units” throughout the Zoning Ordinance, including the following chapters: Residential Zoning Districts, Urban Village Zoning District, Urban Transition Zoning District, Off-Street Parking, Second Units, and the Glossary. (See Sections 1, 2, 3, 4, 5, 6, 7, and 8.)
- 2) The maximum size of an attached ADU shall be changed from 1,000 to 1,200 square feet. [See Section 6, new MMC 20.42.030(C)(1) and (2).]
- 3) Remove the “maximum number permitted” section as State law does not allow the number of ADU’s to be capped per parcel although local ordinances should specify that “ADU’s cannot exceed the allowable density for the lot.” [See Section 6, previous MMC 20.42.030(C).]
- 4) Clarify that the standard that the ADU “be clearly subordinate to the primary dwelling” would not preclude an ADU from being located in the front of the property. [See Section 6, new MMC 20.42.030(D)(3).]
- 5) Clarify the setback requirements for ADU’s. [See Section 6, new MMC 20.42.030(E)(1).]
- 6) Change the parking requirements for ADU’s with more than 3 bedrooms from 2 to 1 space as State law only allows the requirement for 1 parking space for all ADU’s regardless of size. [See Section 5, Table 20.38-1, and Section 6, new MMC 20.42.030(G)(2).]
- 7) Add a provision that “parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns.” [See Section 6, new MMC 20.42.030(G)(1).]
- 8) Add a provision that states that the parking requirements do not apply in the five instances stated in State law, which include in official historic districts, within ½ mile of public transit, the ADU is part of an existing structure, on-street parking permits are required, or car share vehicles are located within one block. [See Section 6, new MMC 20.42.030(G)(3).]
- 9) Add provisions regarding fees, including:
  - (a) ADU’s are not considered “a new residential use for the purpose of calculating connection fees or capacity charges for utilities, including water and sewer service.” [See Section 6, new MMC 20.42.040(C)(1).]
  - (b) Any utility fee or charge imposed “must not exceed the cost of providing the service.” [See Section 6, new MMC 20.42.040(C)(1).]
  - (c) The City “cannot require applicants creating ADU’s within the existing space of a single-family dwelling or accessory structure...to install a new or separate utility connection or impose a related connection fee or capacity charge.” [See Section 6, new MMC 20.42.040(C)(2).]

There are some optional changes that could be made to the Zoning Ordinance in order to further

encourage the development of ADU's in the City of Merced. Those changes are not required to conform to current State law, but may provide additional incentives to spur ADU development. Below is a summary of the information presented to the Planning Commission and City Council on those issues. A more extensive discussion can be found in Findings E, F, G and H of the Planning Commission Staff Report (Attachment 3).

#### Policy Direction regarding Parking

*The following is a summary of the information first presented to City Council in January 2019:*

Per the current parking requirements for single-family homes in the City Zoning Ordinance, each home is required to have 1 required parking space per unit and that "required" parking space cannot be within the required exterior setback areas in R-1 (single-family) and R-2 (duplex) zones. The driveway on a single-family home is usually within the front yard/exterior setback, and although there is nothing that prohibits the occupants from parking on the driveway, it cannot be counted as the legal required parking space. The parking space within the garage is the legal required space since it is outside of the setback area.

Because of this requirement, if an owner wants to convert the garage into living space, they must either leave enough space for a legal 10 foot by 20 foot parking space within the garage (if it is a 2- or 3- car garage) or find another location within the lot (not within an exterior setback area) to install another parking space. On smaller lots especially, it can often be difficult to find such a location and this discourages garage conversions.

The Planning Commission/City Council could consider making broader changes to the Zoning Ordinance that would allow legal parking spaces for all uses to be in the exterior setback areas for all R-1 and R-2 zones throughout the City or a special exception could be granted for accessory dwelling units only. The special exception would meet the requirements of State law for ADU's and would likely have less impacts on single-family neighborhoods as City staff receives many more requests for garage conversions than for accessory dwelling units."

*The following additional information was provided to the Planning Commission on May 8, 2019, and is a summary of Finding F of the Planning Commission Staff Report (Attachment 3):*

In January 2019, the City Council showed a preference for allowing required parking spaces for all uses (not just ADU's) in the exterior setback area, which is generally the driveway in the front yard, but can also be a side yard that is adjacent to the street. A summary of what other California cities have done regarding the parking requirements for ADU's (along with the owner occupancy requirement) is provided in Attachment C of the Planning Commission Staff Report at Attachment 3.

This proposed change could lead to significantly more garage conversions and could potentially lead to more vehicles being parked on the streets in neighborhoods due to the reduced amount of on-site parking. More on-street parking can lead to more issues on trash collection days and more conflicts among neighbors regarding on-street parking. A restriction against covering those parking spaces (car ports, etc.) would reduce possible aesthetic concerns and reduce conflicts with utility lines and street trees.

After the January Council meeting, staff received an email (Attachment D of the Planning Commission Staff Report) from former Council Member Belluomini. He felt that the Council discussion had been too broad and simply should have focused on any possible fire and life safety issues of allowing the driveway to be widened for an ADU. State law requires that parking for ADU's be allowed on the front driveway unless there were fire and life safety concerns.

Two options were presented to the Planning Commission on May 8, 2019 (summarized in Finding F of the Planning Commission Staff Report). After an extensive discussion, the Planning Commission voted 4-1-2 (4 ayes, 1 no, 2 absent) to recommend to the City Council Option 1B, which would allow uncovered parking for all uses within the exterior yard setback area. Most Commissioners expressed support for this Option as it could potentially add to the City's housing stock by encouraging garage conversions for ADU's or simply for additional living space. The Commissioner that voted "no" was concerned about the increase in on-street parking. The Draft Ordinance at Attachment 5 reflects the Planning Commission's recommendation in Section 2, amendments to MMC 20.08.030(F)(1).

#### Policy Direction regarding Owner Occupancy

*The following is a summary of the information first presented to City Council in January 2019:*

Merced Municipal Code Section 20.42.040(A) requires that "the owner of a parcel occupied by a second unit (to be changed to "accessory dwelling unit") shall reside in either the primary dwelling unit or the second unit." MMC 20.42.040(B) further goes on to require that a deed restriction be recorded that specifies that the ADU cannot be sold separately and that the property owner must reside in either the primary or accessory unit. There is nothing in current State law that requires the City to change the above requirements.

While eliminating the requirement might encourage the development of more ADU's, it might have impacts on the character of single-family neighborhoods throughout the City. If the property owner is not required to live in one of the units, that would allow both units to be rentals, thereby creating two "apartment" units on each lot with no landlord onsite. The occupancy requirement is thought to encourage property owners to minimize possible negative impacts (such as excessive noise, or lack of property upkeep) because they are living on the same property as their tenants.

*The following additional information was provided to the Planning Commission on May 8, 2019, and is a summary of Finding H of the Planning Commission Staff Report (Attachment 3):*

City staff reviewed the Accessory Dwelling Unit Ordinances adopted by 28 California cities and also referred to a survey done in 2018 for 7 cities in San Mateo County. A summary of the provisions in these ordinances regarding owner occupancy, short-term rentals, parking, and other special provisions of note can be seen in Attachment C of the Planning Commission Staff Report at Attachment 3. Regarding owner occupancy, 28 cities retained a requirement for either the primary or accessory unit be owner occupied while 7 cities and 1 county did not have such a requirement. According to [www.accessorydwellings.org](http://www.accessorydwellings.org), although Portland, Oregon eliminated its owner occupancy requirement in 1998, 30 of 46 Oregon cities still retained the requirement in 2013.

Some reasons cited for retaining the requirement were concerns with “absentee landlords” and retaining the character of single-family neighborhoods. There could also be disputes around the fact that the City only allows one sewer and water meter and trash collection service per single-family lot. If there are issues with tenants contaminating the green waste container, violating the rules regarding excessive watering, or even paying their fair share of the bill, this could cause problems for the City in trying to impose fines or cutting off service for non-payment. Many Merced neighborhoods are already experiencing some of these issues with single-family homes being rented to multiple tenants. (More traditional apartments would have on-site managers and consolidated billing to deal with such issues.)

However, there are also reasons cited by various sources in favor of eliminating the owner occupancy requirement, chief among them that the restrictions tend to discourage the construction of ADU’s. One article notes that the owner occupancy requirement makes it difficult to secure home loans to construct ADU’s while another notes that it sharply limits the value appraisers can assign to a house and the ADU and makes property less valuable for loan collateral. Another article indicates that owner occupancy requirements can badly hurt the market for ADU’s, make them hard to finance, and create obstacles for “mom and pop” landlords that are trying to provide affordable housing options.

Given the above, there seems to be good reasons on both sides. However, all this may be a moot point in the future since there is currently a bill, SB 13, being considered in the California Legislature which, if passed, would prohibit a local agency from requiring owner occupancy of either the primary or accessory unit.

Two options were presented to the Planning Commission on May 8, 2019 (summarized in Finding H of the Planning Commission Staff Report). After an extensive discussion, the Planning Commission voted 4-1-2 (4 ayes, 1 no, 2 absent) to recommend to the City Council Option 2B, which would remove the requirement for owner occupancy for both the primary and accessory unit and the corresponding deed restriction. Most Commissioners expressed support for this Option as they believed that the State would likely adopt legislation that would prohibit the City from requiring owner occupancy and felt that removing the requirement would encourage the construction of ADU’s in the City. The Commissioner who voted “no” was concerned about the possible effect on property maintenance and appearance. The Draft Ordinance at Attachment 5 reflects the Planning Commission’s recommendation to remove the requirements for owner occupancy and a deed restriction which were formerly in MMC 20.42.040. This section now only contains provisions regarding fees and addressing.

### Planning Commission Recommendation

As noted above, on May 8, 2019, the Planning Commission held a public hearing on the proposed Ordinance changes. No one from the public testified, but staff did receive one email from former City Council Member Michael Belluomini regarding the changes (Attachment 4). After an extensive discussion, the Planning Commission voted to recommend approval to the City Council of the Draft Ordinance with revisions by a 4-1-2 vote (4 ayes, 1 no, 2 absent). The revisions were as noted above regarding allowing parking in the front setback area and removing the requirement for owner occupancy along with a few other minor revisions. The Draft Ordinance in Attachment 5 reflects the

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Planning Commission's recommended changes as does the red-lined version attached to the Planning Commission Resolution at Attachment 1. (Planning Commission minute excerpts can be seen at Attachment 2.)

#### Timetable/Next Steps

If the Council introduces the Ordinance at tonight's meeting (August 5, 2019), the second reading and adoption of the Ordinance would be at the next City Council meeting on August 19, 2019. The Ordinance would then be effective 30 days later or on approximately September 20, 2019.

#### Environmental Clearance

The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (i.e., no further environmental review is required) is being recommended (see Attachment E of the Planning Commission Staff Report at Attachment 3).

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

### **ATTACHMENTS**

1. Planning Commission Resolution #4020 with Red-lined Ordinance
2. Planning Commission Minute Excerpts
3. Planning Commission Staff Report #19-13
4. Correspondence Received Prior to Planning Commission Meeting
5. Draft Ordinance (Option 2-As Recommended by the Planning Commission)
6. Correspondence from Californians for Homeownership (July 12, 2019)
7. Draft Ordinance (Option 1-Redlined Version)
8. Draft Ordinance (Option 1-Based on City Council Direction from July 1, 2019)
9. Presentation

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

**Resolution #4020**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of May 8, 2019, held a public hearing and considered **Zoning Ordinance Amendment #19-02**, 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 20.42 (“Second Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through J of Staff Report #19-13; 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 #19-04, and approval of Zoning Ordinance Amendment #19-02, as set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

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



PLANNING COMMISSION RESOLUTION #4020

Page 2

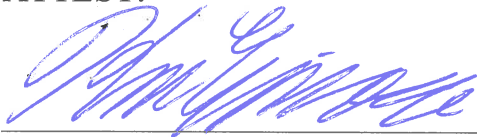
May 8, 2019

Adopted this 8<sup>th</sup> day of May 2019



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Draft Ordinance

n:\shared\planning\PC Resolutions\ZOA#19-02

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Table 20.08-1, “Permitted Land Uses in the Residential Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 2. AMENDMENT TO CODE.** Section 20.08.030(F)(1), “Development Standards for Residential Zoning Districts, Parking” of the Merced Municipal Code is hereby amended to read as follows:

**“20.08.030-“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS**

**F. PARKING**

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may ~~not~~ be located within any required exterior setback area, but these spaces may not be covered.”

**SECTION 3. AMENDMENT TO CODE.** Table 20.16-1, “Permitted Land Uses in the Urban Village Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 4. AMENDMENT TO CODE.** Section 20.20.010(C)(3), “Urban Transition Zoning District, Development Standards, Residential Density,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.20.010 - Urban Transition (U-T) Zoning District**

**C. Development Standards \_\_\_\_\_**

3. **Residential Density.** Except for ~~secondary units~~ accessory dwelling units permitted under Chapter 20.42 (~~Second Units- Accessory Dwelling Units~~), residential density of the lot may not be increased.”

**SECTION 5. AMENDMENT TO CODE.** Table 20.38-1, “Off-Street Parking Requirements,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’) is replaced by “Accessory Dwelling Units” and the corresponding “Required Number of Parking Spaces” is amended to read as follows:

**“One or ~~two~~ more bedrooms: 1 per unit;  
~~Three or more bedrooms: 2 per unit”~~**

**SECTION 6. AMENDMENT TO CODE.** Chapter 20.42, “Second Units,” of the Merced Municipal Code is hereby repealed and amended to read as follows:

**“20.42 Accessory Dwelling Units ~~Second Units~~**

**Sections:**

**20.42.010 Purpose**

**20.42.020 Minor Use Permit Required**

**20.42.030 Site and Design Standards**

**20.42.040 ~~Occupancy Standards~~ Fees and Other Requirements**

**20.42.010 Purpose**

This chapter establishes standards for the location and construction of ~~second units (also known as “secondary~~

~~dwelling units~~) accessory dwelling units (“ADU’s”) in conformance with Government Code Section 65852.2. These standards are intended to allow for ~~second~~ accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

#### **20.42.020 Minor Use Permit Required**

Approval of a Minor Use Permit is required prior to the establishment of any ~~second~~ accessory dwelling unit or a subdivision with multiple ~~second~~ accessory dwelling units.

#### **20.42.030 Site and Design Standards**

**A. Location.** ~~Second-Accessory dwelling~~ units shall be permitted in ~~residential zoning districts~~ districts zoned to allow single-family or multi-family use as provided in Part 2 (Zoning Districts).

#### **B. Site Requirements**

1. ~~Second-Accessory dwelling~~ units that comply with this chapter shall be permitted on all legally established residential parcels, regardless of parcel size so long as the parcel size permits at least an ‘efficiency unit’ to be constructed in compliance with local design standards. [An ‘efficiency unit’ provides for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.]
2. An accessory dwelling ~~second~~-unit may only be established if a single-family dwelling unit (“primary dwelling”) exists on the parcel or is being built at the same time.

#### **~~C. Maximum Number Permitted~~**

- ~~1. Only one second unit shall be allowed on a single parcel.~~
- ~~2. A second unit is not permitted on parcels already containing two or more dwelling units.~~

#### **DC. Size**

1. *Attached ~~Second~~ Accessory Dwelling Units.* The floor area of an attached second unit shall not exceed 50 percent of the living area of the primary dwelling or ~~1,000~~1,200 square feet, whichever is ~~greater~~less. Garages and carports are excluded from floor area calculations for both the primary dwelling and ~~second~~ accessory unit.
2. *Detached ~~Second~~ Accessory Dwelling Units.* The floor area of a detached ~~second~~accessory dwelling unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

**ED. Relationship to Primary Dwelling**

1. *An accessory dwelling ~~second~~-unit* may be within, attached to, or detached from the primary dwelling, or within an attached or detached accessory structure. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.
2. *An accessory dwelling ~~second~~-unit* shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The ~~secondary~~accessory dwelling unit shall be clearly subordinate to the primary dwelling by size, ~~appearance, and location on the parcel.~~

**FE. Development Standards**

1. *An accessory dwelling ~~second~~-unit* shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, with certain exceptions, discussed herein. As long as existing setbacks are sufficient for fire safety, no setback shall be required for an accessory dwelling unit contained within the existing space of a single-family residence or accessory structure, including an existing garage, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.
2. The ~~secondary~~accessory dwelling unit in compliance with this section shall not be considered to

exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot.

3. No lot line adjustment, subdivision of land, air rights or condominium shall be allowed to enable the sale, transfer, or disposal of the ~~second~~-accessory dwelling unit independently of the primary dwelling unit or any portion of the property. This stipulation shall be included in a recorded deed restriction on the property.

4. The ~~secondary~~-accessory dwelling unit must be eligible to receive City sewer and water services. Creation of a detached accessory dwelling unit may require installation of a new or separate utility connection.

#### **GF. Design Requirements**

1. An accessory dwelling ~~second~~-unit shall be compatible with the primary dwelling and the surrounding neighborhood with respect to structure height, scale, and massing.

2. The architectural design and detailing, roof color and material, and exterior color and finish materials of an ~~second~~-accessory dwelling unit shall match the primary dwelling to the extent possible.

3. The parcel shall retain a single-family appearance and the ~~second~~-accessory dwelling unit shall be integrated into the design of the existing improvements of the property.

4. The addresses of both the primary dwelling and the ~~second~~-accessory dwelling unit shall be displayed and clearly visible from the street.

#### **HG. Parking**

1. ~~Second-Accessory dwelling~~ units with ~~one or two~~ at least one bedrooms shall provide one additional off-street parking space in addition to those spaces required for the primary dwelling. Off-street parking may be provided in the setback areas or as tandem parking on a driveway, unless the City determines that such options

are not feasible on the existing property, based on fire and life safety conditions.

~~2. If the second unit has three or more bedrooms, two off-street parking spaces shall be provided in addition to those spaces required for the primary dwelling.~~

~~32. The creation of an accessory dwelling ~~second~~ unit through the conversion of all or a portion of a garage is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).~~

~~3. The parking standards provided in this section and otherwise in this code does not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile of public transit; (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; and, (e) a car share vehicle is located within one block of the accessory dwelling unit. To qualify for any of the above exemptions, the applicant shall provide supporting evidence as part of a Minor Use Permit or building permit application.~~

#### **20.42.040 Occupancy Standards Fees and Other Requirements**

~~A. *Owner Occupancy.* The owner of a parcel occupied by a second unit shall reside in either the primary dwelling or the second unit.~~

~~B. *Deed Restrictions.* Prior to the issuance of a building permit for a second unit, a covenant of restriction to run with the land shall be recorded which specifies that the second unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or second unit, and that these restrictions shall be binding on successors in ownership.~~

~~C. *Other Requirements.*~~

A. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service; the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system; and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

B. Accessory dwelling units contained within the existing space of a single family residence or accessory structure that have an independent exterior access and setbacks that meet fire safety requirements are not required to install a new or separate utility connection and cannot be charged for a related connection fee or capacity charge.

1. Prior to occupancy of the second unit, a new address shall be assigned by Department of Development Services.

2C. A new ~~second~~ accessory dwelling unit shall be required to pay all applicable fees, including impact fees.

D. Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services.

**SECTION 7. AMENDMENT TO CODE.** Section 20.46.010, “Residential Design Standards, Purpose,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.46.010 -Purpose**

This chapter establishes design standards for residential uses, in addition to regulations set forth in Chapter 20.08 (Residential Zones), except that parking, location, and address requirements in Section 20.46.020 do not apply to accessory dwelling units.”



**SECTION 8. AMENDMENT TO CODE.** Section 20.90.020, “Definitions,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.90.020 - Definitions**

~~1861a.~~ ~~Second Units or Secondary Accessory Dwelling Units.~~ Attached or detached accessory residential dwelling units, which provide complete independent living facilities for one or more persons. ~~Secondary Accessory~~ dwelling units provide permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel occupied by a primary dwelling. A single attached suite of rooms (consisting of living, sleeping, cooking, and sanitation facilities) but with unimpeded access to the rest of the dwelling unit, no separate ~~address, lease, or utility service,~~ and still functioning as one “household” per 20.90.020(99) may not be considered to be ~~an accessory unit, second unit.~~ See Chapter 20.42 (~~Second Units- Accessory Dwelling Units~~).

186. *Second Units or Secondary Dwelling Units.* See Accessory Dwelling Units (#1a).”

**SECTION 9. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 10. 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 11. 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**

**PUBLIC NOTICE OF ADOPTION OF ORDINANCE**

**CITY OF MERCED**

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

NOTICE IS HEREBY GIVEN that on \_\_\_\_\_, 2019, the City Council of the City of Merced adopted Ordinance No. \_\_\_\_\_, entitled:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE**

**Ordinance No. \_\_\_\_\_ amends Merced Municipal Code Section 20.42 (“Second Units”), which regulates Accessory Dwelling Units (previously known as “second units”), as well as other sections of the Municipal Code which make reference to Accessory Dwelling Units.**

Ordinance No. \_\_\_\_\_ was adopted by the following roll call vote of the City Council:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

A copy of the full text of Ordinance No. \_\_\_\_\_ is available for review in the Office of the City Clerk, City of Merced, 678 West 18<sup>th</sup> Street, Merced, California, and on the City's website at [www.cityofmerced.org](http://www.cityofmerced.org).

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ASSISTANT CITY CLERK

PUBLISH:

**Planning Commission Draft Minutes Excerpts**

**MAY 8, 2019**

*(Subject to Approval by the Planning Commission)*

- 4.1 Zoning Ordinance Amendment #19-02, 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 20.42 (“Second Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees.

Planning Manager ESPINOSA reviewed the report on this item. She noted a memo from staff amending Section 20.080.0303(F)(1), Section 20.20.010(F)(1), Section 20.42.040(C)(1), and Section 20.090.020, which was provided to the Commission prior to the meeting. For further information, refer to Staff Report #19-13 and memo dated May 8, 2019.

There was no one present wishing to speak regarding this project; therefore, public testimony was opened and closed at 7:37 p.m.

Commissioner PADILLA wondered if there was a way to isolate the Accessory Dwelling Unit from the Primary Unit to avoid utility-related disputes.

Planning Manager ESPINOSA clarified that city standards only allow one connection per single family home, and that they would be treated as a single unit when discussing fees.

Commissioner CAMPER asked for clarifications about whether or not an Accessory Dwelling Unit could be located in the front of a property.

Ms. ESPINOSA shared some examples of Accessory Dwelling Units in the City that are located in front of the Primary Dwelling Unit, and emphasized that setbacks would still apply.

Chairperson DYLINE asked for clarification regarding the language “subordinate appearance” and suggested that language be removed from the ordinance.

Commissioners HARRIS and PADILLA expressed concern that requiring owner occupancy as a condition of Accessory Dwelling Units would hinder their development in the City.

Commissioner RASHE observed that removing the owner occupancy requirement from the ordinance would be a great opportunity to improve the housing situation in Merced.

Commissioner CAMPER expressed her desire for owner occupancy to remain in the ordinance, and expressed concern over property maintenance and the amount of on-street parking in neighborhoods without owner occupancy.

Commissioner PADILLA felt that parking and maintenance was an issue with landlords and that it was discriminatory to require owner occupancy.

Commissioner RASHE explained that part of the issue with parking was related to the lack of affordable housing and the rising population.

Chairperson DYLINEA stated that the spirit of Accessory Dwelling Units was to create housing as quickly as possible. He also expressed concern over the parking requirements and its effect on garage conversions.

Ms. ESPINOSA explained that many more people ask to convert garages than to build traditional Accessory Dwelling Units, and what limits garage conversions is the requirements to provide an additional parking space. Ms. ESPINOSA explained that the owner occupancy requirement has likely slowed the growth of Accessory Dwelling Units in the City.

Commissioner PADILLA expressed concerns over garage conversions, but noted that in order to increase the housing stock, it would be necessary.

Chairperson DYLINEA asked for clarification regarding the Option 1B in Finding F regarding parking.

Planning Manager ESPINOSA clarified that both primary and secondary residents would be able to park in the setback.

M/S HARRIS-PADILLA, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #19-04, and to recommend approval of Zoning Ordinance Amendment #19-02 as outlined in Planning Commission Staff Report #19-13, with revisions as shown in Option 1B of Finding F, and revisions shown in Option 2B of Finding H of Planning Commission Staff Report #19-13, and with the amendments to Section 20.080.030(F)(1), Section 20.20.010(C)(3), Section 20.42.040(C)(1), Section 20.42.030(D)(3), and Section 20.90.020 as follows (RESOLUTION #4020):

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

**“20.08.030-“DEVELOPMENT STANDARDS FOR  
RESIDENTIAL ZONING DISTRICTS**

**F. Parking**

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may ~~not~~ be located within any required exterior setback area, but these spaces may not be covered.”

**“20.20.010 URBAN TRANSITION (U-T) ZONING  
DISTRICT**

**C. Development Standards**

3. **Residential Density.** Except for ~~secondary units~~ accessory dwelling units permitted under Chapter 20. 42 (~~Second Units~~ Accessory Dwelling Units), residential density of the lot may not be increased. ~~However the accessory dwelling unit may not exceed the allowable density for the lot.~~”

**“20.42 ACCESSORY DWELLING UNITS**

**20.42.030-Site and Design Standards**

***ED. Relationship to Primary Dwelling***

1. An accessory dwelling ~~second~~ unit may be within, attached to, or detached from the primary dwelling, or within an attached or detached accessory structure. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.
2. An accessory dwelling ~~second~~ unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.

3. ~~The secondary accessory dwelling unit shall be clearly subordinate to the primary dwelling by size, appearance, and location on the parcel.”~~

**“20.42.040 Occupancy Standards**

**C. Fees and Other Requirements.**

1. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service; **the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system;** and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.”

**“20.90.020 - DEFINITIONS**

~~1861a. Second Units or Secondary Accessory Dwelling Units.~~

Attached or detached accessory residential dwelling units, which provide complete independent living facilities for one or more persons. ~~Secondary Accessory~~ dwelling units provide permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel occupied by a primary dwelling. A single attached suite of rooms (consisting of living, sleeping, cooking, and sanitation facilities) but with unimpeded access to the rest of the dwelling unit, no separate lease, or utility service, and still functioning as one “household” per 20.90.020(99) may not be considered to be a ~~second unit~~ **an accessory unit**. See Chapter 20.42 (~~Second Units~~ Accessory Dwelling Units).

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



**CITY OF MERCED**  
**Planning & Permitting Division**

**STAFF REPORT: #19-13**

**AGENDA ITEM: 4.1**

**FROM &** Kim Espinosa,  
**PREPARED BY:** Planning Manager

**PLANNING COMMISSION**  
**MEETING DATE:** May 8, 2019

**CITY COUNCIL**  
**MEETING DATE:** June 17, 2019  
(Tentative)

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**SUBJECT:** **Zoning Ordinance Amendment #19-02**, 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 20.42 (“Second Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees.  
\*PUBLIC HEARING\*

**ACTION:** **PLANNING COMMISSION:**

Recommendation to City Council

- 1) Environmental Review #19-04 (Categorical Exemption)
- 2) Zoning Ordinance Amendment #19-02

**CITY COUNCIL:**

Approve/Disapprove/Modify

- 1) Environmental Review #19-04 (Categorical Exemption)
- 2) Zoning Ordinance Amendment #19-02

**SUMMARY**

Based on changes in State law and recent City Council policy direction to try to encourage the construction of accessory dwelling units (ADU’s) in the City of Merced, the City’s Zoning Ordinance needs to be amended. This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees. Some optional changes regarding the location of parking in the exterior setback areas on the lot and the requirement that either the primary unit or accessory unit be owner occupied are also discussed. Staff is recommending approval of the revised Ordinance as outlined in Attachment A and is asking the Planning Commission to make a recommendation on the parking location and owner occupancy options.

**RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend approval to the City Council of a Categorical Exemption (Environmental Review #19-04—Attachment E) and Zoning Ordinance Amendment #19-02 (including the adoption of the Resolution at Attachment F) as

described in Attachment A, and recommending either Option 1A or Option 1B as described in Finding F regarding parking and either Option 2A or Option 2B as described in Finding H regarding owner occupancy.

## **PROJECT DESCRIPTION**

This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.42 (“Second Units”). This amendment would modify the City’s requirements for “accessory dwelling units” (previously known as “second units” or “secondary dwelling units”) to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees. Amendments are also proposed to Tables 20.08-1 (“Permitted Land Uses in the Residential Zoning Districts”), 20.16-1 (“Permitted Land Uses in the Urban Village Zoning Districts”), and 20.38-1 (“Off-Street Parking Requirements”); and Sections 20.08.030.F.1 (“Development Standards for Residential Zoning Districts, Parking”), 20.20.010.C.3 (“Urban Transition Zoning District, Development Standards”); 20.46.010 (“Residential Design Standards, Purpose”), and 20.90.020 (“Glossary, Definitions”).

## **BACKGROUND**

### **State of California**

The California Legislature has declared that allowing accessory dwelling units (ADU’s) in single-family and multi-family zones is an essential component in addressing housing needs in California. In 1982, the State enacted Government Code Section 65852.2 establishing a mandate that every local agency adopt provisions for permitting accessory dwelling units (then known as “secondary dwelling units” or “second units”). The intent of the legislation was to encourage housing for extended family members and to increase the availability of rental housing. In 2003, AB 1866 was adopted, requiring all local governments to allow ADU’s within single-family residential zones.

In 2016, Senate Bill 1069 and Assembly Bill 2299 were adopted which made specific amendments to State law to promote the production of ADU’s. Also in 2016, AB 2406 added provisions for the creation of “junior accessory dwelling units.” These bills amended various sections of the State Government Code (§ 65852.2.) related to ADU regulations and were intended to reduce barriers and streamline approval. Among other things, the new laws permit ADUs in all residential zoning districts, create two classes of ADUs for which different regulations apply (interior vs. new structure), eliminate off-street parking requirements in certain circumstances, regulate the unit size, and establish the review process and approval timelines. A brief summary of these three bills can be seen at Attachment B.

The amended Government Code section 65852.2 also contains a provision rendering null and void any local ordinance regulating ADU construction that does not comply with its provisions. The State laws also provide that until the time at which the agency adopts an ordinance that complies with the State laws, the agency must apply the State standards for the approval of ADUs. Local jurisdictions are required to submit their revised ordinances to the State Department of Housing and Community Development (HCD) within 60 days of adoption.

### City of Merced

The City's existing "Second Unit" zoning standards in Chapter 20.42 of the Merced Municipal Code (and other sections of the Zoning Code) are inconsistent with the amended Government Code provisions regarding accessory dwelling units. Therefore, in order to retain some degree of local control over ADU construction, the City must amend the Zoning Ordinance to conform to state law.

On September 17, 2018, the City Council directed staff to review the City's Zoning Ordinance to determine what changes were needed in order to comply with the new State laws regarding Accessory Dwelling Units (ADU's), and to consider alternative approaches to facilitate the development of ADU's in the City of Merced. On November 19, 2018, the City Council reviewed the proposed changes as outlined in Finding D and possible new Housing Division programs that might be implemented to encourage the development of ADU's. The City Council, by unanimous vote, directed staff to prepare the changes to the Ordinance for consideration by the Planning Commission and City Council at public hearings in the early months of 2019, but prior to presenting the draft Ordinance, return to the City Council in late January 2019 for further policy direction regarding parking and the owner occupancy requirements for accessory dwelling units. The City Council also directed Housing staff to move forward with a program similar to the Clovis model presented at the meeting. (This Housing Division program is not part of the Ordinance revision so it is not discussed in this staff report.)

On January 22, 2019, City staff presented the City Council with the information provided in Findings E and G below regarding the parking and owner occupancy requirements. After discussion, the City Council, in general, indicated support for allowing required parking spaces to be in the front yard setback for both the primary unit and the accessory unit. However, the City Council was split on whether the owner occupancy requirement should remain. City staff indicated that staff would provide further information about this requirement at the time the revisions were proposed, so the Planning Commission could weigh in on the issue as part of its recommendation. Since that time, staff has done further research on the owner occupancy and parking requirements summarized in Findings F and H below.

### **FINDINGS/CONSIDERATIONS:**

#### **General Plan Policies Related to This Application**

- A) The proposed zoning ordinance amendment would make changes in response to City Council direction. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

#### **Accessory Dwelling Units**

- B) Although accessory dwelling units have been around for a long time (the City's Zoning Ordinance has allowed for them with certain restrictions since at least the early 1980's), there has recently been a lot of attention paid to them, especially in California. Accessory dwelling units (ADU's) have been called "in-law units," "granny flats," "casitas," "second units," and "secondary dwelling units," but whatever you call them, they are basically separate dwelling units on single-family lots. Some are converted garages or other living space completely within the primary dwelling unit, and some are separate structures in the

back or side yard. Most have cooking facilities and bathrooms, separate entrances, and their own address. Most have separate electrical utilities/meters, but not separate water or sewer utility connections or meters. (The City only allows one such water or sewer connection per lot.) For many years, the City of Merced allowed these units for family members, but they were not allowed to be rented out separately. In the late 1990's, the City began to let the units be rented, but either the primary unit or the accessory unit had to be owner occupied. The City's current ordinance still has the owner occupancy requirement (see Findings G and H below for a discussion of this issue).

- C) As noted above, accessory dwelling units have attracted a lot of attention lately. California lawmakers have addressed ADU's through legislation as noted in the Background section. According to a recent article in the L.A. Times, ADU's have exploded in popularity with Los Angeles receiving 25 times as many applications in 2017 as it did the previous 2 years, and Oakland, San Francisco, and San Jose also seeing major jumps. Backyard units are especially popular with older California families looking to downsize and rent out their main property. Such units are seen to be more affordable and also provide an income source for homeowners to help cover mortgage costs. They are also a popular option among college students. Portland, Oregon has been promoting ADU's for many years and in 2014, almost 8 percent of new housing units built are ADU's (only 0.5 percent of their total housing stock are ADU's.) The website, [www.accessorydwellings.org](http://www.accessorydwellings.org), contains a lot of research and information about ADU's nationwide. In California, San Mateo County also has a lot of information about ADU's on their website, [www.secondunitcentersmc.org](http://www.secondunitcentersmc.org).

### **General Overview of Proposed Changes to the Zoning Ordinance**

- D) The City of Merced is proposing to adopt an Ordinance (Attachment A) to amend the Zoning Code to provide amended regulations for accessory dwelling units in conformance with changes in State law. Major modifications include:
- 1) The terms "Second Units" or "Secondary Dwelling Units" will need to be changed to "Accessory Dwelling Units" throughout the Zoning Ordinance, including the following chapters: Residential Zoning Districts, Urban Village Zoning District, Urban Transition Zoning District, Off-Street Parking, Second Units, and the Glossary. (See Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Attachment A.)
  - 2) The maximum size of an attached ADU shall be changed from 1,000 square feet to 1,200 square feet. [See Section 6, new MMC 20.42.030(C)(1) and (2), of Attachment A.]
  - 3) Remove the "maximum number permitted" section as State law does not allow the number of ADU's to be capped per parcel although local ordinances should specify that "ADU's cannot exceed the allowable density for the lot." [See Section 6, previous MMC 20.42.030(C), of Attachment A.]
  - 4) Clarify that the standard that the ADU "be clearly subordinate to the primary dwelling" would not preclude an ADU from being located in the front of the property. [See Section 6, new MMC 20.42.030(D)(3), of Attachment A.]
  - 5) Clarify the setback requirements for ADU's. [See Section 6, new MMC 20.42.030(E)(1), of Attachment A.]

- 6) Change the parking requirements for ADU's with more than 3 bedrooms from 2 to 1 space as State law only allows the requirement for 1 parking space for all ADU's regardless of size. [See Section 5, Table 20.38-1, and Section 6, new MMC 20.42.030(G)(2), of Attachment A.]
- 7) Add a provision that "parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns." [See Section 6, new MMC 20.42.030(G)(1), of Attachment A.]
- 8) Add a provision that states that the parking requirements do not apply in the five instances stated in State law, which include in official historic districts, within ½ mile of public transit, the ADU is part of an existing structure, on-street parking permits are required, or car share vehicles are located within one block. [See Section 6, new MMC 20.42.030(G)(3), of Attachment A.]
- 9) Add provisions regarding fees, including :
  - (a) ADU's are not considered "a new residential use for the purpose of calculating connection fees or capacity charges for utilities, including water and sewer service." [See Section 6, new MMC 20.42.040(C)(1), of Attachment A.]
  - (b) Any utility fee or charge imposed "must not exceed the cost of providing the service." [See Section 6, new MMC 20.42.040(C)(1), of Attachment A.]
  - (c) The City "cannot require applicants creating ADU's within the existing space of a single-family dwelling or accessory structure...to install a new or separate utility connection or impose a related connection fee or capacity charge." [See Section 6, new MMC 20.42.040(C)(2), of Attachment A.]

*(Note: These provisions may also require changes to the Merced Municipal Code sections relating to the water and sewer connection fees as well. These provisions are not part of the Zoning Ordinance so they are not addressed in this amendment.)*

Findings E, F, G and H below discuss some optional changes that could be made to the Zoning Ordinance in order to further encourage the development of ADU's in the City of Merced. Those changes are not required to conform to current State law, but may provide additional incentives to spur ADU development.

### **Policy Direction regarding Parking**

E) *The following information was provided to the City Council on January 22, 2019:*

"One of the changes noted above is to add a provision that "parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns." Per the current parking requirements for single-family homes in the Zoning Ordinance, each home is required to have 1 required parking space per unit and per Merced Municipal Code Section 20.08.030(F)(1), that "required" parking space cannot be within the required exterior setback areas in R-1 (single-family) and R-2 (duplex) zones. (However, those spaces are allowed to be in the setback area within R-3 and R-4 zones, which allow apartment units and have more traditional parking lot areas for tenants to park in.)

The driveway on a single-family home is usually within the front yard/exterior setback, and although there is nothing that prohibits the occupants from parking on the driveway, it cannot be counted as the legal required parking space. That legal required space is the one within the garage. Because of this requirement, if an owner wants to convert the garage into living space, they must either leave enough space for a legal 10 foot by 20 foot parking space within the garage (if it is a 2- or 3- car garage) or find another location within the lot (not within an exterior setback area) to install another parking space. The Ordinance also requires that any such uncovered space must be designed and located so that it can later be converted to a covered space. (This requirement means that the parking space cannot be within a required side yard setback area either.) On smaller lots especially, it can often be difficult to find such a location and this discourages garage conversions. It should be noted that this concern was brought up as part of the comprehensive Zoning Ordinance Update in 2015, but ultimately the Zoning Ordinance Focus Group (made up of 25 citizens), the Planning Commission, and City Council opted to remain with the existing requirements.

The Planning Commission/City Council could consider making broader changes to the Zoning Ordinance that would allow legal parking spaces for all uses to be in the exterior setback areas for all R-1 and R-2 zones throughout the City or a special exception could be granted for accessory dwelling units only. The special exception would meet the requirements of State law for ADU's and would likely have less impacts on single-family neighborhoods as City staff receives many more requests for garage conversions than for accessory dwelling units."

- F) Since the January 22, 2019, City Council meeting, City staff has done additional research on the parking issue which is summarized below for the Planning Commission's consideration.

As indicated previously, the City Council showed a preference for allowing required parking spaces for all uses (not just ADU's) in the exterior setback area, which is generally the driveway in the front yard, but can also be a side yard that is adjacent to the street. As noted above, the City's current Ordinance does not allow required parking spaces to be located in the front yard setback area in R-1 and R-2 zones. In order to amend the ordinance to meet State law, an exception to that provision would need to be made for ADU's at the very least. A summary of what other California cities have done regarding the parking requirements (along with the owner occupancy requirement) is provided in Attachment C.

City staff still has some concerns about making the broader change which could lead to significantly more garage conversions and could potentially lead to more vehicles being parked on the streets in neighborhoods due to the reduced amount of on-site parking. More on-street parking can lead to more issues on trash collection days and more conflicts among neighbors. Although no one owns the on-street parking spot directly in front of their house, most people feel it should be left for their use instead of being used by one of their neighbors. At the very least, if parking for all uses is allowed in the front yard, City staff believes there should still be a restriction against covering those parking spaces so as not to have a proliferation of car ports and other such structures in the front yard which can be unsightly and can cause conflicts with utility lines, street trees, and required setbacks in the Building and Fire Codes.

After the Council meeting, staff received an email (Attachment D) from former Council Member Belluomini. He felt that the Council discussion had been too broad and simply should have focused on any possible fire and life safety issues of allowing the driveway to be widened for an ADU. As mentioned above, State law requires that parking for ADU's be allowed on the front driveway unless there were fire and life safety concerns.

The Draft Ordinance (see Section 2, MMC 20.08.030, of Attachment A) has been prepared with the following language, which would allow for the parking for ADU's only in the exterior setback areas (**Option 1A**):

**“20.08.030-“DEVELOPMENT STANDARDS FOR  
RESIDENTIAL ZONING DISTRICTS**

**F. PARKING**

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may not be located within any required exterior setback area, except for required parking spaces for accessory dwelling units on the property.”

However, if the Planning Commission wishes to recommend parking allowed for all uses in the exterior setback areas, the following alternative language should be adopted (**Option 1B**):

**“20.08.030-“DEVELOPMENT STANDARDS FOR  
RESIDENTIAL ZONING DISTRICTS**

**F. PARKING**

2. Within the R-1 and R-2 zoning districts, required off-street parking spaces may ~~not~~ be located within any required exterior setback area, but these spaces may not be covered.”

**Policy Direction regarding Owner Occupancy**

G) *The following information was provided to the City Council on January 22, 2019:*

“Merced Municipal Code Section 20.42.040(A) requires that “the owner of a parcel occupied by a second unit (to be changed to “accessory dwelling unit”) shall reside in either the primary dwelling unit or the second unit.” MMC 20.42.040(B) further goes on to require that a deed restriction be recorded that specifies that the ADU cannot be sold separately and that the property owner must reside in either the primary or accessory unit.

There is nothing in State law that requires the City to change the above requirements. However, at the November 19, 2018, meeting, the City Council asked for a discussion of options regarding this requirement. At the Council meeting, at least one citizen testified that they would be concerned about eliminating this requirement.

Some cities have eliminated this occupancy requirement in recent years in order to encourage the development of ADU's and others are considering that now. The City of

Chico is one of those, but specifically in response to the Camp Fire that destroyed much of the nearby City of Paradise. However, from a limited survey by City staff, it appears that most communities, including Modesto, Turlock, Burlingame, Redwood City, San Bruno, San Carlos, etc., still retain this requirement.

While eliminating the requirement might encourage the development of more ADU's, it might have impacts on the character of single-family neighborhoods throughout the City. If the property owner is not required to live in one of the units, that would allow both units to be rentals, thereby creating two "apartment" units on each lot with no landlord onsite.

The occupancy requirement is thought to encourage property owners to minimize possible negative impacts (such as excessive noise, or lack of property upkeep) because they are living on the same property as their tenants. For many years, the City required ADU occupants to be "related by blood or marriage" (generally elderly relatives or teenagers). That requirement was eliminated a number of years ago to allow homeowners to rent ADU's to anyone to generate extra income and to give more housing choices to college students or others."

- H) Since the January 2, 2019, City Council meeting, City staff has done additional research on the owner occupancy issue which is summarized below for the Planning Commission's consideration.

City staff reviewed the Accessory Dwelling Unit Ordinances adopted by 28 California cities and also referred to a survey done in 2018 for 7 cities in San Mateo County. A summary of the provisions in these ordinances regarding owner occupancy, short-term rentals, parking, and other special provisions of note can be seen in Attachment C. Regarding owner occupancy, 28 cities retained a requirement for either the primary or accessory unit be owner occupied while 7 cities and 1 county did not have such a requirement. According to [www.accessorydwellings.org](http://www.accessorydwellings.org), although Portland, Oregon eliminated its owner occupancy requirement in 1998, 30 of 46 Oregon cities still retained the requirement in 2013.

Some reasons cited for retaining the requirement were as noted in Finding G above regarding "absentee landlords" and concerns for retaining the character of single-family neighborhoods. There could also be disputes around the fact that the City only allows one sewer and water meter and trash collection service per single-family lot. If there are issues with tenants contaminating the green waste container, violating the rules regarding excessive watering, or even paying their fair share of the bill, this could cause problems for the City in trying to impose fines or cutting off service for non-payment. Many Merced neighborhoods are already experiencing some of these issues with single-family homes being rented to multiple tenants. (More traditional apartments would have on-site managers and consolidated billing to deal with such issues.)

However, there are also reasons cited by various sources in favor of eliminating the owner occupancy requirement, chief among them that the restrictions tend to discourage the construction of ADU's. An article from [www.sightline.org](http://www.sightline.org), notes that the owner occupancy requirement "gives bankers the jitters, which prevents many homeowners from securing home loans to finance ADU construction. Owner occupancy sharply limits the



value appraisers can assign to a house and the ADU and makes property less valuable for loan collateral. If a bank forecloses on a house and ADU covered by an owner occupancy rule, it cannot rent out both units.” Another article from [www.accessorydwellings.org](http://www.accessorydwellings.org) indicates “Owner occupancy requirements make properties with ADU’s unsuitable for income-based valuation by appraisers, constraining their value, and making them difficult to finance.” It goes on to indicate that owner occupancy requirements can badly hurt the market for ADU’s and create obstacles for “mom and pop” landlords that are trying to provide affordable housing options.

Given the above, there seems to be good reasons on both sides. However, since the City currently has the owner occupancy restriction in place, City staff has included it in the proposed Ordinance. It should be noted that this all may be a moot point in the future since there is currently a bill, SB 13, being considered in the California Legislature which, if passed, would prohibit a local agency from requiring owner occupancy of either the primary or accessory unit. (This same bill would also limit the impact fees that could be charged to ADU’s and prohibit local agencies from requiring the replacement of parking spaces eliminated by converting a garage into an ADU.)

The Draft Ordinance (see Section 6, MMC 20.42.040, of Attachment A) has been prepared with the following language, which would still require owner occupancy and is almost the same language as the current ordinance with a few modifications (**Option 2A**):

**20.42.040          Occupancy Standards**

A. *Owner Occupancy.* The owner of a parcel occupied by ~~a~~ an accessory dwelling second unit shall reside in either the primary dwelling or the accessory dwelling second unit.

B. *Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling second unit, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the ~~second~~ accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.

However, if the Planning Commission would like to recommend that the owner occupancy requirement be removed, the following alternative language should be adopted (**Option 2B**):

**20.42.040          Occupancy Standards Fees and Other Requirements**

A. ~~Owner Occupancy.~~ The owner of a parcel occupied by ~~a~~ an accessory dwelling second unit shall reside in either the primary dwelling or the accessory dwelling second unit.

B. ~~Deed Restrictions.~~ Prior to the issuance of a building permit for an accessory dwelling second unit, a covenant of restriction to run with the land shall be recorded by the property owner which

~~specifies that the second accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.~~

(Note: Section C as described in Attachment A would now become Section A of MMC 20.42.040)

### **Timetable/Next Steps**

- I) After the Planning Commission makes a recommendation on the Draft Ordinance, a public hearing will be scheduled before the City Council, tentatively scheduled for June 17, 2019. If the Council introduces the Ordinance at that meeting, the 2<sup>nd</sup> reading and adoption of the Ordinance would be at the next City Council meeting on July 1, 2019, and then the Ordinance would be effective 30 days later or on approximately August 1, 2019.

### **Environmental Clearance**

- J) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption (i.e., no further environmental review is required) is being recommended (see Attachment E).

### **Attachments:**

- A) Draft Ordinance
- B) Summary of California Legislation RE: ADU's
- C) Survey of Other Cities' Accessory Dwelling Unit Ordinances
- D) Email from Former Council Member Belluomini
- E) Environmental Review #19-04 (Categorical Exemption)
- F) Draft Planning Commission Resolution

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Table 20.08-1, “Permitted Land Uses in the Residential Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 2. AMENDMENT TO CODE.** Section 20.08.030(F)(1), “Development Standards for Residential Zoning Districts, Parking” of the Merced Municipal Code is hereby amended to read as follows:

**“20.08.030-“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS**

**F. PARKING**

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may not be located within any required exterior setback area, except for required

parking spaces for accessory dwelling units on the property.”

**SECTION 3. AMENDMENT TO CODE.** Table 20.16-1, “Permitted Land Uses in the Urban Village Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 4. AMENDMENT TO CODE.** Section 20.20.010(C)(3), “Urban Transition Zoning District, Development Standards, Residential Density,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.20.010 - Urban Transition (U-T) Zoning District**

**C. Development Standards \_\_\_\_\_**

3. **Residential Density.** Except for ~~secondary units~~ accessory dwelling units permitted under Chapter 20.42 (~~Second Units~~-Accessory Dwelling Units), residential density of the lot may not be increased. However, the accessory dwelling unit may not exceed the allowable density for the lot.”

**SECTION 5. AMENDMENT TO CODE.** Table 20.38-1, “Off-Street Parking Requirements,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’) is replaced by “Accessory Dwelling Units” and the corresponding “Required Number of Parking Spaces” is amended to read as follows:

**“One or ~~two~~ more bedrooms: 1 per unit;  
~~Three or more bedrooms: 2 per unit”~~**

**SECTION 6. AMENDMENT TO CODE.** Chapter 20.42, “Second Units,” of the Merced Municipal Code is hereby repealed and amended to read as follows:

**“20.42 Accessory Dwelling Units ~~Second Units~~**

**Sections:**

- 20.42.010 Purpose**  
**20.42.020 Minor Use Permit Required**  
**20.42.030 Site and Design Standards**  
**20.42.040 Occupancy Standards**

#### **20.42.010 Purpose**

This chapter establishes standards for the location and construction of ~~second units (also known as “secondary dwelling units”)~~ accessory dwelling units (“ADU’s”) in conformance with Government Code Section 65852.2. These standards are intended to allow for ~~second~~ accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

#### **20.42.020 Minor Use Permit Required**

Approval of a Minor Use Permit is required prior to the establishment of any ~~second~~ accessory dwelling unit or a subdivision with multiple ~~second~~ accessory dwelling units.

#### **20.42.030 Site and Design Standards**

**A. Location.** ~~Second~~ Accessory dwelling units shall be permitted in ~~residential zoning districts~~ districts zoned to allow single-family or multi-family use as provided in Part 2 (Zoning Districts).

#### **B. Site Requirements**

1. ~~Second~~ Accessory dwelling units that comply with this chapter shall be permitted on all legally established residential parcels, regardless of parcel size so long as the parcel size permits at least an ‘efficiency unit’ to be constructed in compliance with local design standards. [An ‘efficiency unit’ provides for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.]
2. An accessory dwelling ~~second~~ unit may only be established if a single-family dwelling unit (“primary dwelling”) exists on the parcel or is being built at the same time.

#### **~~C. Maximum Number Permitted~~**

- ~~1. Only one second unit shall be allowed on a single parcel.~~

~~2. A second unit is not permitted on parcels already containing two or more dwelling units.~~

**DC. Size**

1. *Attached ~~Second~~ Accessory Dwelling Units.* The floor area of an attached second unit shall not exceed 50 percent of the living area of the primary dwelling or ~~1,000~~1,200 square feet, whichever is ~~greater~~less. Garages and carports are excluded from floor area calculations for both the primary dwelling and ~~second~~ accessory unit.
2. *Detached ~~Second~~ Accessory Dwelling Units.* The floor area of a detached ~~second~~accessory dwelling unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

**ED. Relationship to Primary Dwelling**

1. An accessory dwelling ~~second~~ unit may be within, attached to, or detached from the primary dwelling, or within an attached or detached accessory structure. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.
2. An accessory dwelling ~~second~~ unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The ~~secondary~~accessory dwelling unit shall be clearly subordinate to the primary dwelling by size and~~;~~ appearance~~;~~ and location on the parcel.

**FE. Development Standards**

1. An accessory dwelling ~~second~~ unit shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, with certain exceptions, discussed herein. As long as existing setbacks are sufficient for fire safety, no setback shall be required for an accessory dwelling unit contained within the existing space of a single-family residence or accessory structure, including an existing garage, and a setback of no more than five

feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.-

2. The ~~secondary~~-accessory dwelling unit in compliance with this section shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot.

3. No lot line adjustment, subdivision of land, air rights or condominium shall be allowed to enable the sale, transfer, or disposal of the ~~second~~-accessory dwelling unit independently of the primary dwelling unit or any portion of the property. This stipulation shall be included in a recorded deed restriction on the property.

4. The ~~secondary~~-accessory dwelling unit must be eligible to receive City sewer and water services. Creation of a detached accessory dwelling unit may require installation of a new or separate utility connection.

#### **GF. Design Requirements**

1. An accessory dwelling ~~second~~-unit shall be compatible with the primary dwelling and the surrounding neighborhood with respect to structure height, scale, and massing.

2. The architectural design and detailing, roof color and material, and exterior color and finish materials of an ~~second~~-accessory dwelling unit shall match the primary dwelling to the extent possible.

3. The parcel shall retain a single-family appearance and the ~~second~~-accessory dwelling unit shall be integrated into the design of the existing improvements of the property.

4. The addresses of both the primary dwelling and the ~~second~~-accessory dwelling unit shall be displayed and clearly visible from the street.

#### **HG. Parking**

1. ~~Second~~-Accessory dwelling units with ~~one or two~~ at least one bedrooms shall provide one additional off-street parking space in addition to those spaces required



for the primary dwelling. Off-street parking may be provided in the setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety conditions.

2. ~~If the second unit has three or more bedrooms, two off-street parking spaces shall be provided in addition to those spaces required for the primary dwelling.~~

32. The creation of an accessory dwelling ~~second~~ unit through the conversion of all or a portion of a garage is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).

3. The parking standards provided in this section and otherwise in this code does not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile of public transit; (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; and, (e) a car share vehicle is located within one block of the accessory dwelling unit. To qualify for any of the above exemptions, the applicant shall provide supporting evidence as part of a Minor Use Permit or building permit application.

#### **20.42.040 Occupancy Standards**

A. *Owner Occupancy.* The owner of a parcel occupied by an accessory dwelling ~~second~~ unit shall reside in either the primary dwelling or the ~~second~~ accessory dwelling unit.

B. *Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling ~~second~~ unit, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the ~~second~~ accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall



reside in either the primary or ~~second~~ accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.

*C. Fees and Other Requirements.*

1. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

2. Accessory dwelling units contained within the existing space of a single family residence or accessory structure that have an independent exterior access and setbacks that meet fire safety requirements are not required to install a new or separate utility connection and cannot be charged for a related connection fee or capacity charge.

1. — Prior to occupancy of the second unit, a new address shall be assigned by Department of Development Services.

23. A new ~~second~~ accessory dwelling unit shall be required to pay all applicable fees, including impact fees.

4. Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services.

**SECTION 7. AMENDMENT TO CODE.** Section 20.46.010, “Residential Design Standards, Purpose,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.46.010 -Purpose**

This chapter establishes design standards for residential uses, in addition to regulations set forth in Chapter 20.08 (Residential Zones), except that parking, location, and address requirements in Section 20.46.020 do not apply to accessory dwelling units.”

**SECTION 8. AMENDMENT TO CODE.** Section 20.90.020, “Definitions,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.90.020 - Definitions**

~~1861a.~~ ~~Second Units or Secondary Accessory Dwelling Units.~~ Attached or detached accessory residential dwelling units, which provide complete independent living facilities for one or more persons. Secondary dwelling units provide permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel occupied by a primary dwelling. A single attached suite of rooms (consisting of living, sleeping, cooking, and sanitation facilities) but with unimpeded access to the rest of the dwelling unit, no separate ~~address,~~ lease, or utility service, and still functioning as one “household” per 20.90.020(99) may not be considered to be a ~~second unit.~~ See Chapter 20.42 (~~Second Units~~ Accessory Dwelling Units).

186. *Second Units or Secondary Dwelling Units.* See Accessory Dwelling Units (#1a).”

**SECTION 9. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 10. 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 11. 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**

**PUBLIC NOTICE OF ADOPTION OF ORDINANCE**

**CITY OF MERCED**

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

NOTICE IS HEREBY GIVEN that on \_\_\_\_\_, 2019, the City Council of the City of Merced adopted Ordinance No. \_\_\_\_\_, entitled:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE**

**Ordinance No. \_\_\_\_\_ amends Merced Municipal Code Section 20.42 (“Second Units”), which regulates Accessory Dwelling Units (previously known as “second units”), as well as other sections of the Municipal Code which make reference to Accessory Dwelling Units.**

Ordinance No. \_\_\_\_\_ was adopted by the following roll call vote of the City Council:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

A copy of the full text of Ordinance No. \_\_\_\_\_ is available for review in the Office of the City Clerk, City of Merced, 678 West 18<sup>th</sup> Street, Merced, California, and on the City's website at [www.cityofmerced.org](http://www.cityofmerced.org).

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ASSISTANT CITY CLERK

PUBLISH:

## SUMMARY OF RECENT CALIFORNIA LEGISLATION RE: ACCESSORY DWELLING UNITS

The following is a brief summary of each of the three accessory dwelling unit bills that took effect on January 1, 2017.

**Summary of SB 1069 (Wieckowski):** This law makes several changes to address barriers to the development of accessory dwelling units (ADUs), including parking requirements, utility fees, and existing single-family space repurposed as an ADU.

***Parking:*** SB 1069 reduces maximum parking requirements to one space per bedroom or unit, and authorizes off street parking to be tandem or in setback areas unless specific findings such as fire and life safety conditions are made. SB 1069 also prohibits parking requirements if the ADU meets any of the following:

- Is within a half mile from public transit.
- Is within an architecturally and historically significant historic district.
- Is part of an existing primary residence or an existing accessory structure.
- Is in an area where on-street parking permits are required, but not offered to the occupant of the ADU.
- Is located within one block of a car share area.

***Fees:*** SB 1069 provides that ADUs shall not be considered new residential uses for the purpose of calculating utility connection fees or capacity charges, including water and sewer service. The bill prohibits a local agency from requiring an ADU applicant to install a new or separate utility connection or impose a related connection fee or capacity charge for ADUs that are contained within an existing residence or accessory structure. For attached and detached ADUs, this fee or charge must be proportionate to the burden of the unit on the water or sewer system and may not exceed the reasonable cost of providing the service.

***Fire Requirements:*** SB 1069 provides that fire sprinklers shall not be required in an accessory unit if they are not required in the primary residence.

***ADUs within Existing Space:*** Local governments must ministerially approve an application to create an ADU on a single-family lot if the unit is:

- Contained within an existing residence or accessory structure.
- Has independent exterior access from the existing residence.
- Has side and rear setbacks that are sufficient for fire safety.

No additional parking or other development standards can be applied except for building code requirements.

***No Total Prohibition:*** SB 1069 prohibits a local government from adopting an ordinance that precludes ADUs.

**Summary of AB 2299 (Bloom):** This law requires a local government to ministerially approve ADUs if the unit complies with certain parking requirements, and establishes maximum size and setback requirements, as follows:

- The unit is not intended for sale separate from the primary residence and may be rented.
- The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.
- The unit is either attached to an existing dwelling or located within the living area of the existing dwelling or detached and on the same lot.
- The increased floor area of an attached ADU does not exceed 50% of the existing living area, with a maximum floor area of 1,200 square feet.
- The total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet.
- No passageway can be required.
- No setback can be required from an existing garage that is converted into an ADU.
- Compliance with local building code requirements.
- Approval by the local health officer where private sewage disposal system is being used .

**Summary of AB 2406 (Thurmond):** This law creates more flexibility for housing options by authorizing local governments to permit junior accessory dwelling units (JADU) through an ordinance. The bill defines JADUs to be a unit that cannot exceed 500 square feet and must be completely contained within the space of an existing residential structure. In addition, the bill requires specified components for a local JADU ordinance.

*Required Components:* The ordinance authorized by AB 2406 must include the following parameters:

- Limit to one JADU per residential lot zoned for single-family residences with a single-family residence already built on the lot.
- The single-family residence in which the JADU is created or JADU must be occupied by the owner of the residence.
- The owner must record a deed restriction stating that the JADU cannot be sold separately from the single-family residence and restricting the JADU to the size limitations and other requirements of the JADU ordinance.
- The JADU must be located entirely within the existing structure of the single-family residence and JADU must have its own separate entrance.
- The JADU must include an efficiency kitchen which includes a sink, cooking appliance, counter surface, and storage cabinets that meet minimum building code standards. No gas or 220V circuits are allowed.
- The JADU may share a bath with the primary residence or have its own bath.

*Prohibited Components:* This bill prohibits a local JADU ordinance from requiring:

- Additional parking as a condition to grant a permit.
- Applying additional water, sewer and power connection fees.

## Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqs
Barstow	Yes	Yes	Yes	No	None	Adopted 2015
Carmel	Yes	Yes	Allows Tandem Parking on Driveway for ADU per State Law	Yes	Retains Limitation of 1 ADU per lot (despite state law reqts which seem to limit this);	Adopted April 2017
Chico	Yes (but currently considering removing due to Camp Fire impacts on local housing)	Yes (but currently considering removing reqt)	Allows Tandem Parking for Primary Dwelling & ADU on an existing driveway	Yes (no mention of removing this reqt)	Currently considering ADU fee reductions and other incentives that would require affordability covenants	Amended March 2018 but considering further amendments (Jan 2019)
Clovis	Yes	Yes	Requires 3 parking spaces for ADU & primary unit (does not appear to meet current State reqts)	No	Cottage Home Program of providing pre-approved building plans for ADU's in Central Clovis	Adopted October 2014
Citrus Heights	No	No	Allows driveway parking within setback areas to count for all single-family residences, not just ADU's, and does not require any additional parking for ADU's since 80% of City would likely qualify for an exemption	No	None	Adopted May 2017



## Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqs
Colma	Yes	Yes	Allows parking within the setback for the primary dwelling & ADU but only if the garage is being converted to an ADU	Yes	None	Adopted March 2017
Davis	No	No	Unclear	No	None	Amended Feb 2019
Diamond Bar	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	None	Amended May 2017
Dublin	Yes	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	None	Adopted January 2017
Emeryville	Yes	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	ADU cannot have more bedrooms than the primary unit; Requires at least 200 SF of open space	Amended November 2017
Fremont	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Allow "Junior ADU's" of 500 SF or less (one bedroom) entirely within the primary structure with an efficiency kitchen and access to a bathroom; No outside stairs to the ADU on the front of the house.	Amended Feb 2017

## Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqs
Fresno	Yes	Yes	Parking for ADU cannot impede access to required parking for primary unit	No	None	Has not been amended since 2015
Gilroy	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	None	Amended January 2018
Los Altos	No (Removed in June 2018)	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	None	Amended June 2018
Los Angeles	No	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	None	2017
Modesto	Yes	Yes	Does not allow parking for the ADU in the front setback (State law requires this be allowed for at least the ADU)	No, but affordability restrictions would make it difficult to do such short-term rentals	Requires that ADU's and the primary unit meet affordability restrictions for at least 30 years	Doesn't appear to have been amended per new State reqs
Napa	No (But required for Junior ADU's)	No (But required for Junior ADU's)	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Provides for "Junior ADU's" similar to Fremont above	Adopted April 2017
Orinda	No	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	None	Amended in 2017 & 2018

## Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqs
Redondo Beach	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	No (Recommended by Planning Commission but not included)	Appeared to be controversial as several public hearings were held by both the Planning Commission and City Council	Adopted February 2019
San Dimas	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Requires that ADU's that are rented be "affordable" for 50 years	Amended December 2016
Santa Barbara	Yes (Actually requires that it be the owner's "primary place of residence")	Yes (have very specific reqts for these covenants)	Parking for ADU's allowed in setback areas but only in non "high fire hazard" areas	Yes (Does not allow rental terminations prior to at least 31 days expiring)	Allows "Hardship Waivers" of no more than 3 years for the owner occupancy reqt; Requires minimum open space be provided based on lot size; special design standards for 2-story units	Amended May 2018
Santa Fe Springs	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Includes provisions for "Junior ADU's"	Amended February 2017
Santa Rosa	Yes (unless owned by a governmental agency or non-profit housing agency)	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Includes provisions for "Junior ADU's"; and requires affordability covenants	Circa 2018

## Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqs
Simi Valley	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	Yes	Includes provisions for "Junior ADU's"; and specifically prohibits the rental of "guest houses"	Adopted November 2017
Turlock	Indicates that ADU may be rented but doesn't mention otherwise	No	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	Requires architectural review of ADU's	Adopted May 2015
Visalia	Yes	Yes	Doesn't allow tandem parking for ADU's	No	None	Adopted 2017
Walnut Creek	Yes	Yes	Parking for ADU only may be provided in the setback area or in tandem arrangements	No	Includes restrictions on 2nd story windows	Amended January 2019
Whittier	Yes	Yes	Requires 2 covered, non-tandem spaces for ADU's if on a lot of 20,000 SF or greater, except as where exempt from parking under State Law	No	None	Adopted June 2017
<b>SUMMARY</b>	<b>21-Yes; 7-No</b>	<b>19-Yes; 9-No</b>	<b>N/A</b>	<b>14-Yes; 14-No</b>	<b>N/A</b>	<b>N/A</b>

## Survey of Other Cities' Accessory Dwelling Unit Ordinances

(April 2019--Merced City Staff)

City	Require Owner Occupancy of ADU or Primary Unit	Deed Restriction Required	Special Exemption for Parking in Setback for ADU's Only	Prohibits Short-Term Rentals (Less than 30 days) of ADU's	Any Special Provisions of Note	Amended Recently to Meet State Law Reqs
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<b>San Mateo County :</b>						<i>From 2018 Survey Performed by Others</i>
Burlingame	Yes	Yes	Information Not Included in Survey ("Not Included")	"Not Included"	Junior ADU's Not Allowed	"Not Included"
Daly City	Yes	Yes	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
Redwood City	Yes	No	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
San Bruno	Yes	Yes	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
San Carlos	Yes	Yes	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
San Mateo (City)	Yes	Yes	"Not Included"	"Not Included"	Allows "Junior ADU's"	"Not Included"
San Mateo County	No	No	"Not Included"	"Not Included"	Allows "Junior ADU's"	"Not Included"
South San Francisco	Yes	Yes	"Not Included"	"Not Included"	Junior ADU's Not Allowed	"Not Included"
<b>SUMMARY</b>	<b>7-Yes; 1-No</b>	<b>6-Yes; 2-No</b>	N/A	N/A	N/A	N/A

**From:** [Michael Belluomini](#)  
**To:** [Murphy, Mike](#); [Serratto, Matthew](#); [Blake, Kevin](#); [Shelton, Delray](#); [Echevarria, Fernando](#); [McLeod, Jill](#); [Martinez, Anthony](#)  
**Cc:** [Carrigan, Steve](#); [Norton, Phaedra](#); [McBride, Scott](#); [Espinosa, Kim](#); [Dietz, Stephanie](#); [Alcorn, Billy](#)  
**Subject:** PARKING FOR ACCESSORY DWELLING UNITS  
**Date:** Friday, January 25, 2019 9:30:32 AM

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There seemed to be confusion regarding regulating parking for accessory dwelling units at the last council meeting. Perhaps rephrasing the basic question will clarify the issue.

The state law on ADUs states that parking for ADUs is allowed in the front yard setback (enlarged driveway) unless not feasible based on fire and life safety concerns.

So the question for the council is: Are there fire and life safety concerns with allowing widening of the driveway to create a parking space for an ADU ?

That is the only question that needs to be answered. Garage conversions, or the parking requirements for the main dwelling or other issues are irrelevant, and confuse the issue.

Fire and life safety concerns associated with widening a driveway exist in steep mountain home developments with concerns about snow/ice and forest fires/trees falling, and mudslides. I do not believe there is a life safety or fire issue with widening driveways for one additional parking space for an ADU in Merced.

If the city attorney agrees with this interpretation then one version of the draft ordinance presented to the council could make revisions necessary for ADU parking with a widened driveway and not change any of the other parking requirements of the zoning ordinance which were mentioned at the council meeting.

I hope this helps. Michael Belluomini

## NOTICE OF EXEMPTION

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

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

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

**Project Title:** Zoning Ordinance Amendment #19-02/Environmental Review #19-04

**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 20.42 ("Second Units"). This amendment would modify the City's requirements for "accessory dwelling units" (previously known as "second units" or "secondary dwelling units") to meet the modified requirements of State Law in regards to dwelling unit size, parking requirements, location, occupancy standards, and fees. Amendments are also proposed to Tables 20.08-1 ("Permitted Land Uses in the Residential Zoning Districts"), 20.16-1 ("Permitted Land Uses in the Urban Village Zoning Districts"), and 20.38-1 ("Off-Street Parking Requirements"); and Sections 20.08.030.F.1 ("Development Standards for Residential Zoning Districts, Parking"), 20.20.010.C.3 ("Urban Transition Zoning District, Development Standards"); 20.46.010 ("Residential Design Standards, Purpose"), and 20.90.020 ("Glossary, Definitions").

**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: \_\_\_\_\_  
☒ General Rule (Sec. 15061 (b)(3))

**Reasons why Project is Exempt:** The proposed Ordinance has been reviewed by City staff in accordance with the Environmental Checklist Form (Appendix G of the CEQA Guidelines) to determine if there would be any possibility that the proposed ordinance would create any significant environmental impacts, and City staff has determined that the amendment of regulations for accessory dwelling units do 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:** Kim Espinosa

**Area Code/Telephone:** (209) 385-6858

**Signature:**  **Date:** April 18, 2019 **Title:** Planning Manager

  X   Signed by Lead Agency

Date Received for Filing at OPR:   n/a    
(If applicable)

## Espinosa, Kim

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**From:** Michael Belluomini [REDACTED]  
**Sent:** Friday, May 03, 2019 9:59 PM  
**To:** Espinosa, Kim  
**Cc:** Norton, Phaedra; McBride, Scott  
**Subject:** Re: ADU Ordinance Revisions BELLUOMINI COMMENTS  
**Attachments:** Item 4.1 ZOA #19-02 & ERC #19-04.pdf

Thank you for providing me the opportunity to comment on the ADU ordinance changes. I think I can help. Suggested corrections are as follows:

- 1) Sec. 20.90.020 still uses the old term "secondary dwelling unit" instead of "accessory dwelling". Please correct.
- 2) Sec. 20.90.020 ends in an incomplete sentence fragment, please change to a complete sentence.
- 3) Sec. 20..42.040 C.1 states "water and sewer or utility fees or charges imposed on ... detached accessory dwellings may not exceed the reasonable cost of **providing the service**." Interpreted to mean the cost of actually running a utility pipe from the street in front of the house to the accessory dwelling, this is likely within the new law on ADUs. Interpreted to mean the cost of plant capacity costs to handle the new sewer connection to the ADU , I believe this is not legal under the new law on ADUs. There is significance to the renaming of secondary dwellings to accessory dwellings, it is not just different words. An accessory dwelling is allowed by right just as other "accessories" such as a garage or green house or pool house is allowed to an existing house. Would you charge sewer or water plant capacity charges if someone wanted to add a wash sink and or toilet to there existing garage ? Be clear.
- 4) When providing alternatives in the staff report, there is an Option 2A with new language followed by an Option 2B which states "The following alternative language is Option 2B" then there is NO language that follows, only strikeouts of the existing wording, and a reference to a section in attachment A which has nothing to do with this option. Please add Option 2B wording.
- 5) In the ordinance section about ADUs generally there is the correct language from the state law that ADUs shall not be considered to exceed the allowable density for the lot and shall be considered consistent with the general plan. However in the ordinance section where the Urban Transition Zone language is amended Section 20.20.010 subsection 4 it still says "the accessory dwelling unit may not exceed allowable density for the lot." This is contrary to the state law and the concept of accessory
- 6) Finally I understand the staff position on ownership, one of the dwellings on the lot must be occupied by the owner of the lot. How will this effect the new homes being built in Merced by Lennar, and Hovanesian that include an attached ADU as part of the house design. Will the city require these subdivision developers to tell people that these houses **cannot be purchased by investors** who do not intend to live in the houses, and that they need to notify potential buyers of that local law ?

Michael Belluomini

On Friday, May 3, 2019, 05:57:02 PM EDT, Espinosa, Kim <ESPINOSAK@cityofmerced.org> wrote:

Michael,



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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Table 20.08-1, “Permitted Land Uses in the Residential Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 2. AMENDMENT TO CODE.** Section 20.08.030(F)(1), “Development Standards for Residential Zoning Districts, Parking” of the Merced Municipal Code is hereby amended to read as follows:

**“20.08.030-“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS**

**F. PARKING**

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may not be located within any required exterior setback area, except for required parking spaces for accessory dwelling units on the property.”

## OPTION 2--PLANNING COMMISSION RECOMMENDATION

**SECTION 3. AMENDMENT TO CODE.** Table 20.16-1, “Permitted Land Uses in the Urban Village Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 4. AMENDMENT TO CODE.** Section 20.20.010(C)(3), “Urban Transition Zoning District, Development Standards, Residential Density,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.20.010 - Urban Transition (U-T) Zoning District**

**C. Development Standards \_\_\_\_\_**

3. **Residential Density.** Except for accessory dwelling units permitted under Chapter 20. 42 ( Accessory Dwelling Units), residential density of the lot may not be increased.”

**SECTION 5. AMENDMENT TO CODE.** Table 20.38-1, “Off-Street Parking Requirements,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’) is replaced by “Accessory Dwelling Units” and the corresponding “Required Number of Parking Spaces” is amended to read as follows:

**“One or more bedrooms: 1 per unit”**

**SECTION 6. AMENDMENT TO CODE.** Chapter 20.42, “Second Units,” of the Merced Municipal Code is hereby repealed and amended to read as follows:

**“20.42 Accessory Dwelling Units**

**Sections:**

- 20.42.010 Purpose**  
**20.42.020 Minor Use Permit Required**  
**20.42.030 Site and Design Standards**  
**20.42.040 Occupancy Standards and Fee Requirements**

**20.42.010 Purpose**

This chapter establishes standards for the location and construction of accessory dwelling units (“ADUs”) in conformance with Government Code Section 65852.2. These standards are intended to allow for accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

**20.42.020 Minor Use Permit Required**

Approval of a Minor Use Permit is required prior to the establishment of any accessory dwelling unit or a subdivision with multiple accessory dwelling units.

**20.42.030 Site and Design Standards**

**A. Location.** Accessory dwelling units shall be permitted in districts zoned to allow single-family or multi-family use as provided in Part 2 (Zoning Districts).

**B. Site Requirements**

1. Accessory dwelling units that comply with this chapter shall be permitted on all legally established residential parcels, regardless of parcel size so long as the parcel size permits at least an ‘efficiency unit’ to be constructed in compliance with local design standards. [An ‘efficiency unit’ provides for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.]
2. An accessory dwelling unit may only be established if a single-family dwelling unit (“primary dwelling”) exists on the parcel or is being built at the same time.

**C. Size**

1. *Attached Accessory Dwelling Units.* The floor area of an attached second unit shall not exceed 50 percent of the living area of the primary dwelling or 1,200 square feet, whichever is less. Garages and carports are excluded from floor area calculations for both the primary dwelling and accessory unit.
2. *Detached Accessory Dwelling Units.* The floor area of a detached accessory dwelling unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

**D. Relationship to Primary Dwelling**

1. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling, or within an attached or detached accessory structure. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.
2. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The accessory dwelling unit shall be clearly subordinate to the primary dwelling by size.

**E. Development Standards**

1. An accessory dwelling unit shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, with certain exceptions, discussed herein. As long as existing setbacks are sufficient for fire safety, no setback shall be required for an accessory dwelling unit contained within the existing space of a single-family residence or accessory structure, including

## OPTION 2--PLANNING COMMISSION RECOMMENDATION

an existing garage, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.

2. The accessory dwelling unit in compliance with this section shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot.

3. No lot line adjustment, subdivision of land, air rights or condominium shall be allowed to enable the sale, transfer, or disposal of the accessory dwelling unit independently of the primary dwelling unit or any portion of the property. This stipulation shall be included in a recorded deed restriction on the property.

4. The accessory dwelling unit must be eligible to receive City sewer and water services. Creation of a detached accessory dwelling unit may require installation of a new or separate utility connection.

### **F. Design Requirements**

1. An accessory dwelling unit shall be compatible with the primary dwelling and the surrounding neighborhood with respect to structure height, scale, and massing.

2. The architectural design and detailing, roof color and material, and exterior color and finish materials of an accessory dwelling unit shall match the primary dwelling to the extent possible.

3. The parcel shall retain a single-family appearance and the accessory dwelling unit shall be integrated into the design of the existing improvements of the property.

## OPTION 2--PLANNING COMMISSION RECOMMENDATION

4. The addresses of both the primary dwelling and the accessory dwelling unit shall be displayed and clearly visible from the street.

### **G. Parking**

1. Accessory dwelling units with at least one bedroom shall provide one additional off-street parking space in addition to those spaces required for the primary dwelling. Off-street parking may be provided in the setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety conditions. These spaces may not be covered if located within the setback areas.
2. The creation of an accessory dwelling unit through the conversion of all or a portion of a garage is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).
3. The parking standards provided in this section and otherwise in this code do not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile of public transit; (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; and, (e) a car share vehicle is located within one block of the accessory dwelling unit. To qualify for any of the above exemptions, the applicant shall provide supporting evidence as part of a Minor Use Permit or building permit application.

### **20.42.040 Occupancy Standards and Fee Requirements**

## OPTION 2--PLANNING COMMISSION RECOMMENDATION

A. *Owner Occupancy.* The owner of a parcel with an accessory dwelling unit shall reside in either the primary dwelling or the accessory dwelling unit, if the accessory dwelling unit is located within an R-1 Zoning District only. This requirement does not apply to any other Zoning District.

B. *Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling unit in an R-1 Zoning District, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.

C. *Fees and Other Requirements.*

1. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service; and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

2. Accessory dwelling units contained within the existing space of a single family residence or accessory structure that have an independent exterior access and setbacks that meet fire safety requirements are not required to install a new or separate utility connection and cannot be charged for a related connection fee or capacity charge.

3. A new accessory dwelling unit shall be required to pay all applicable fees, including impact fees.

4. Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services.”

## OPTION 2--PLANNING COMMISSION RECOMMENDATION

**SECTION 7. AMENDMENT TO CODE.** Section 20.46.010, “Residential Design Standards, Purpose,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.46.010 -Purpose**

This chapter establishes design standards for residential uses, in addition to regulations set forth in Chapter 20.08 (Residential Zones), except that parking, location, and address requirements in Section 20.46.020 do not apply to accessory dwelling units.”

**SECTION 8. AMENDMENT TO CODE.** Section 20.90.020, “Definitions,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.90.020 - Definitions**

1a. *Accessory Dwelling Units.* Attached or detached accessory residential dwelling units, which provide complete independent living facilities for one or more persons. Accessory dwelling units provide permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel occupied by a primary dwelling. A single attached suite of rooms (consisting of living, sleeping, cooking, and sanitation facilities) but with unimpeded access to the rest of the dwelling unit, no separate lease or utility service, and still functioning as one “household” per 20.90.020(99) may not be considered to be an accessory unit. See Chapter 20.42 (Accessory Dwelling Units).

186. *Second Units or Secondary Dwelling Units.* See Accessory Dwelling Units (#1a).”

**SECTION 9. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 10. 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



## OPTION 2--PLANNING COMMISSION RECOMMENDATION

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 11. 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)**

OPTION 2--PLANNING COMMISSION RECOMMENDATION

**APPROVED AS TO FORM:**

Shirley A. Smith      7-10-19  
City Attorney      Date



July 12, 2019

**VIA EMAIL AND U.S. MAIL**

Mayor & City Council  
City of Merced  
678 West 18th Street  
Merced, CA 95340

Email: [citycouncil@cityofmerced.org](mailto:citycouncil@cityofmerced.org); [murphym@cityofmerced.org](mailto:murphym@cityofmerced.org);  
[martineza@cityofmerced.org](mailto:martineza@cityofmerced.org); [echevarria@cityofmerced.org](mailto:echevarria@cityofmerced.org);  
[mcleodj@cityofmerced.org](mailto:mcleodj@cityofmerced.org); [blakek@cityofmerced.org](mailto:blakek@cityofmerced.org);  
[serrattom@cityofmerced.org](mailto:serrattom@cityofmerced.org); [sheltond@cityofmerced.org](mailto:sheltond@cityofmerced.org)

RE: August 5, 2019 City Council Meeting  
File No. 19-271 (Ordinance Regarding Accessory Dwelling Units)

To the Mayor and City Council:

Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California's housing crisis. I am writing as part of our work monitoring local compliance with Government Code Section 65852.2, California's revised law regarding Accessory Dwelling Units ("ADUs").

At your July 1, 2019 meeting, you discussed a draft ordinance that aims to bring the City of Merced into compliance with Section 65852.2, and you continued the hearing on the ordinance to your August 5, 2019 meeting to allow staff to redraft portions of the ordinance. I was impressed by your thoughtful, informed discussion about ADUs and the Legislature's work to facilitate the development of new housing in the form of ADUs. With that in mind, I hope that you will welcome some additional information about the limits on local ADU ordinances under Section 65852.2, which might better inform your discussion on August 5.

While most of the information you received from staff was accurate, the information about garage conversions and replacement parking was not. Staff correctly explained that under Government Code Section 65852.2(a)(1)(D)(x)(II), *new parking* for an ADU must be allowed in a variety of configurations, and the City is not permitted to require that new covered parking be

provided. But they omitted to mention Section 65852.2(a)(1)(D)(xi), which applies the same substantive rule to *replacement parking* when an existing garage is converted or demolished in connection with the construction of an ADU:

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, and the local agency requires that those off-street parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

Under this rule, cities are allowed to require replacement parking following a garage conversion, but they may not require that the replacement parking be covered or enclosed in a garage. And a city is not permitted to use other aspects of its development code as an end-run around this limitation. Gov. Code § 65852.2(a)(5) (“No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.”). The City’s current draft ordinance appears to require that replacement parking comply with the City’s standard parking requirements. If the ordinance is adopted in its current draft form, broadly permissive state ADU standards will continue to apply in Merced because the ordinance does not comply with state law. Gov. Code § 65852.2(a)(4) (a city must “apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until [it] adopts an ordinance that complies with [Section 65852.2].”).

The State Department of Housing and Community Development (HCD) has issued guidance to this effect, and has sent non-compliance letters to the small number of cities that have adopted non-complaint ordinances. For example, just a short time ago, HCD sent a letter to the city of Duarte that had this to say about replacement parking:<sup>1</sup>

***Conversion of a Garage, Carport or Other Parking Structure:*** When a garage, carport or other parking structure is converted to an ADU, the parking spaces displaced by the conversion must be allowed in any configuration on the lot, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. The purpose of this requirement is to provide flexibility in allowing the ADU. Limiting replacement parking to only enclosed parking spaces, regardless of the number of bedrooms on the property is inconsistent with this requirement. The ordinance should be revised to allow additional configurations of replacement parking as described above.

Most cities have been informed of this replacement parking rule before adopting an ADU ordinance—either by staff or by the public—and have adopted lawful replacement parking rules in their ordinances. The experience of the City of Chula Vista is illustrative. There, city staff originally drafted an ordinance that did not properly account for the replacement parking provisions in Government Code Section 65852.2(a)(1)(D)(xi). At the Chula Vista Planning

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<sup>1</sup> [www.hcd.ca.gov/policy-research/docs/ordinance-review-letters/duarteADUJul2019.pdf](http://www.hcd.ca.gov/policy-research/docs/ordinance-review-letters/duarteADUJul2019.pdf)

July 12, 2019

Page 3

Commission's November 8, 2017 meeting, a member of the public raised the same concerns about replacement parking that I raise above. Before the ADU ordinance came before the Chula Vista City Council, staff amended it to comply with Section 65852.2(a)(1)(D)(xi), explaining to the Council that the amendment was necessary to comply with state law. The amendment was incorporated into the final ordinance.

If Merced passes the ADU ordinance in its current form, it risks facing litigation to vindicate the state-law rights of its homeowners to develop ADUs. ADUs—and garage conversions in particular—form an important part of the state's effort to solve the severe housing access and affordability crisis. The development of these new, relatively low-cost housing units has tremendous potential for increasing the supply of naturally affordable housing. And it can help cities meet their RHNA allocations without rezoning. We urge the City pass a revised ADU ordinance that is consistent with its legal obligations.

Sincerely,



Matthew Gelfand

cc: Phaedra Norton, City Attorney (by email to [nortonp@cityofmerced.org](mailto:nortonp@cityofmerced.org))

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Table 20.08-1, “Permitted Land Uses in the Residential Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 2. AMENDMENT TO CODE.** Section 20.08.030(F)(1), “Development Standards for Residential Zoning Districts, Parking” of the Merced Municipal Code is hereby amended to read as follows:

**“20.08.030-“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS**

**F. PARKING**

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may not be located within any required exterior setback area, ~~but these spaces may not be covered~~ except for required parking spaces for accessory dwelling units on the property.”

## OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

**SECTION 3. AMENDMENT TO CODE.** Table 20.16-1, “Permitted Land Uses in the Urban Village Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 4. AMENDMENT TO CODE.** Section 20.20.010(C)(3), “Urban Transition Zoning District, Development Standards, Residential Density,” of the Merced Municipal Code is hereby amended to read as follows:

### **“20.20.010 - Urban Transition (U-T) Zoning District**

#### **C. Development Standards \_\_\_\_\_**

3. **Residential Density.** Except for accessory dwelling units permitted under Chapter 20. 42 ( Accessory Dwelling Units), residential density of the lot may not be increased.”

**SECTION 5. AMENDMENT TO CODE.** Table 20.38-1, “Off-Street Parking Requirements,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’) is replaced by “Accessory Dwelling Units” and the corresponding “Required Number of Parking Spaces” is amended to read as follows:

**“One or more bedrooms: 1 per unit”**

**SECTION 6. AMENDMENT TO CODE.** Chapter 20.42, “Second Units,” of the Merced Municipal Code is hereby repealed and amended to read as follows:

### **“20.42 Accessory Dwelling Units**

#### **Sections:**

**20.42.010 Purpose**

**20.42.020 Minor Use Permit Required**

**20.42.030 Site and Design Standards**

**20.42.040 ~~Fees~~Occupancy Standards and ~~Other Fee~~Requirements**



**20.42.010 Purpose**

This chapter establishes standards for the location and construction of accessory dwelling units (“ADUs”) in conformance with Government Code Section 65852.2. These standards are intended to allow for accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

**20.42.020 Minor Use Permit Required**

Approval of a Minor Use Permit is required prior to the establishment of any accessory dwelling unit or a subdivision with multiple accessory dwelling units.

**20.42.030 Site and Design Standards**

**A. Location.** Accessory dwelling units shall be permitted in districts zoned to allow single-family or multi-family use as provided in Part 2 (Zoning Districts).

**B. Site Requirements**

1. Accessory dwelling units that comply with this chapter shall be permitted on all legally established residential parcels, regardless of parcel size so long as the parcel size permits at least an ‘efficiency unit’ to be constructed in compliance with local design standards. [An ‘efficiency unit’ provides for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.]
2. An accessory dwelling unit may only be established if a single-family dwelling unit (“primary dwelling”) exists on the parcel or is being built at the same time.



## OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

### **C. Size**

1. *Attached Accessory Dwelling Units.* The floor area of an attached second unit shall not exceed 50 percent of the living area of the primary dwelling or 1,200 square feet, whichever is less. Garages and carports are excluded from floor area calculations for both the primary dwelling and accessory unit.
2. *Detached Accessory Dwelling Units.* The floor area of a detached accessory dwelling unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

### **D. Relationship to Primary Dwelling**

1. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling, or within an attached or detached accessory structure. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.
2. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The accessory dwelling unit shall be clearly subordinate to the primary dwelling by size.

### **E. Development Standards**

1. An accessory dwelling unit shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, with certain exceptions, discussed herein. As long as existing setbacks are sufficient for fire safety, no setback shall be required for an accessory dwelling unit contained within the existing space of a single-family residence or accessory structure, including

## OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

an existing garage, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.

2. The accessory dwelling unit in compliance with this section shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot.

3. No lot line adjustment, subdivision of land, air rights or condominium shall be allowed to enable the sale, transfer, or disposal of the accessory dwelling unit independently of the primary dwelling unit or any portion of the property. This stipulation shall be included in a recorded deed restriction on the property.

4. The accessory dwelling unit must be eligible to receive City sewer and water services. Creation of a detached accessory dwelling unit may require installation of a new or separate utility connection.

### **F. Design Requirements**

1. An accessory dwelling unit shall be compatible with the primary dwelling and the surrounding neighborhood with respect to structure height, scale, and massing.

2. The architectural design and detailing, roof color and material, and exterior color and finish materials of an accessory dwelling unit shall match the primary dwelling to the extent possible.

3. The parcel shall retain a single-family appearance and the accessory dwelling unit shall be integrated into the design of the existing improvements of the property.

## OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

4. The addresses of both the primary dwelling and the accessory dwelling unit shall be displayed and clearly visible from the street.

### G. Parking

1. Accessory dwelling units with at least one bedroom shall provide one additional off-street parking space in addition to those spaces required for the primary dwelling. Off-street parking may be provided in the setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety conditions. These spaces may not be covered if located within the setback areas.

2. ~~The creation of an accessory dwelling unit through the conversion of~~ When all or a portion of a garage ~~is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).~~ carport, or other parking structure is converted or demolished to construct an accessory dwelling unit, the parking spaces displaced by the conversion may be allowed in any configuration on the lot, including, but not limited to, covered spaces, uncovered spaces, or tandem spaces, or by use of mechanical automobile parking lifts.

3. The parking standards provided in this section and otherwise in this code do not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile of public transit; (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; and, (e) a car share vehicle is located within one block of the accessory dwelling unit. To qualify for any of the above exemptions, the applicant shall provide supporting

## OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

evidence as part of a Minor Use Permit or building permit application.

### 20.42.040 ~~Fees~~Occupancy Standards and ~~Other Fee~~Requirements

A. *Owner Occupancy.* The owner of a parcel with an accessory dwelling unit shall reside in either the primary dwelling or the accessory dwelling unit, if the accessory dwelling unit is located within an R-1 Zoning District only. This requirement does not apply to any other Zoning District.

B. *Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling unit in an R-1 Zoning District, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.

#### C. *Fees and Other Requirements.*

1. Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service; ~~the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system;~~ and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

~~B.2.~~ Accessory dwelling units contained within the existing space of a single family residence or accessory

## OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

structure that have an independent exterior access and setbacks that meet fire safety requirements are not required to install a new or separate utility connection and cannot be charged for a related connection fee or capacity charge.

~~C.3.~~ A new accessory dwelling unit shall be required to pay all applicable fees, including impact fees.

~~D.4.~~ Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services.”

**SECTION 7. AMENDMENT TO CODE.** Section 20.46.010, “Residential Design Standards, Purpose,” of the Merced Municipal Code is hereby amended to read as follows:

### **“20.46.010 -Purpose**

This chapter establishes design standards for residential uses, in addition to regulations set forth in Chapter 20.08 (Residential Zones), except that parking, location, and address requirements in Section 20.46.020 do not apply to accessory dwelling units.”

**SECTION 8. AMENDMENT TO CODE.** Section 20.90.020, “Definitions,” of the Merced Municipal Code is hereby amended to read as follows:

### **“20.90.020 - Definitions**

1a. *Accessory Dwelling Units.* Attached or detached accessory residential dwelling units, which provide complete independent living facilities for one or more persons. Accessory dwelling units provide permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel occupied by a primary dwelling. A single attached suite of rooms (consisting of living, sleeping, cooking, and sanitation facilities) but with unimpeded access to the rest of the dwelling unit, no separate lease or utility service, and still functioning as one “household” per 20.90.020(99) may not be

## OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

considered to be an accessory unit. See Chapter 20.42 (Accessory Dwelling Units).

186. *Second Units or Secondary Dwelling Units. See Accessory Dwelling Units (#1a).*”

**SECTION 9. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 10. 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 11. 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:**

OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

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**Mayor**

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

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

**(SEAL)**

**APPROVED AS TO FORM:**

---

**City Attorney**

**Date**

## OPTION 1--CITY COUNCIL DIRECTION (REDLINED)

Document comparison by Workshare Professional on Thursday, July 18, 2019  
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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING SECTIONS 20.42 (“SECOND UNITS”) AS WELL AS TABLES 20.08-1 (“PERMITTED LAND USES IN THE RESIDENTIAL ZONING DISTRICTS”), 20.16-1 (“PERMITTED LAND USES IN THE URBAN VILLAGE ZONING DISTRICTS”), AND 20.38-1 (“OFF-STREET PARKING REQUIREMENTS”); AND SECTIONS 20.08.030.F.1 (“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS, PARKING”), 20.20.010.C.3 (“URBAN TRANSITION ZONING DISTRICT, DEVELOPMENT STANDARDS”); 20.46.010 (“RESIDENTIAL DESIGN STANDARDS, PURPOSE”), AND 20.90.020 (“GLOSSARY, DEFINITIONS”) OF THE MERCED MUNICIPAL CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Table 20.08-1, “Permitted Land Uses in the Residential Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 2. AMENDMENT TO CODE.** Section 20.08.030(F)(1), “Development Standards for Residential Zoning Districts, Parking” of the Merced Municipal Code is hereby amended to read as follows:

**“20.08.030-“DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS**

**F. PARKING**

1. Within the R-1 and R-2 zoning districts, required off-street parking spaces may not be located within any required exterior setback area, except for required parking spaces for accessory dwelling units on the property.”

## OPTION 1--CITY COUNCIL DIRECTION

**SECTION 3. AMENDMENT TO CODE.** Table 20.16-1, “Permitted Land Uses in the Urban Village Zoning Districts,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced with “Accessory Dwelling Units.”

**SECTION 4. AMENDMENT TO CODE.** Section 20.20.010(C)(3), “Urban Transition Zoning District, Development Standards, Residential Density,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.20.010 - Urban Transition (U-T) Zoning District**

**C. Development Standards \_\_\_\_\_**

3. **Residential Density.** Except for accessory dwelling units permitted under Chapter 20. 42 ( Accessory Dwelling Units), residential density of the lot may not be increased.”

**SECTION 5. AMENDMENT TO CODE.** Table 20.38-1, “Off-Street Parking Requirements,” of the Merced Municipal Code is hereby amended so that “Secondary Dwelling Units (‘Second Units’)” is replaced by “Accessory Dwelling Units” and the corresponding “Required Number of Parking Spaces” is amended to read as follows:

**“One or more bedrooms: 1 per unit”**

**SECTION 6. AMENDMENT TO CODE.** Chapter 20.42, “Second Units,” of the Merced Municipal Code is hereby repealed and amended to read as follows:

**“20.42 Accessory Dwelling Units**

**Sections:**

- 20.42.010 Purpose**  
**20.42.020 Minor Use Permit Required**  
**20.42.030 Site and Design Standards**  
**20.42.040 Occupancy Standards and Fee Requirements**

## OPTION 1--CITY COUNCIL DIRECTION

### **20.42.010 Purpose**

This chapter establishes standards for the location and construction of accessory dwelling units (“ADUs”) in conformance with Government Code Section 65852.2. These standards are intended to allow for accessory dwelling units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods within the City.

### **20.42.020 Minor Use Permit Required**

Approval of a Minor Use Permit is required prior to the establishment of any accessory dwelling unit or a subdivision with multiple accessory dwelling units.

### **20.42.030 Site and Design Standards**

**A. Location.** Accessory dwelling units shall be permitted in districts zoned to allow single-family or multi-family use as provided in Part 2 (Zoning Districts).

#### **B. Site Requirements**

1. Accessory dwelling units that comply with this chapter shall be permitted on all legally established residential parcels, regardless of parcel size so long as the parcel size permits at least an ‘efficiency unit’ to be constructed in compliance with local design standards. [An ‘efficiency unit’ provides for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities.]

2. An accessory dwelling unit may only be established if a single-family dwelling unit (“primary dwelling”) exists on the parcel or is being built at the same time.

## OPTION 1--CITY COUNCIL DIRECTION

### C. Size

1. *Attached Accessory Dwelling Units.* The floor area of an attached second unit shall not exceed 50 percent of the living area of the primary dwelling or 1,200 square feet, whichever is less. Garages and carports are excluded from floor area calculations for both the primary dwelling and accessory unit.
2. *Detached Accessory Dwelling Units.* The floor area of a detached accessory dwelling unit shall not exceed 1,200 square feet, excluding any space devoted to a carport or garage.

### D. Relationship to Primary Dwelling

1. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling, or within an attached or detached accessory structure. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof.
2. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
3. The accessory dwelling unit shall be clearly subordinate to the primary dwelling by size.

### E. Development Standards

1. An accessory dwelling unit shall comply with all current development and design standards of the General Plan and Zoning Ordinance that are applicable to the primary dwelling, including, but not limited to, building setbacks, parcel coverage, building height, and architectural design, with certain exceptions, discussed herein. As long as existing setbacks are sufficient for fire safety, no setback shall be required for an accessory dwelling unit contained within the existing space of a single-family residence or accessory structure, including

## OPTION 1--CITY COUNCIL DIRECTION

an existing garage, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit constructed above a garage.

2. The accessory dwelling unit in compliance with this section shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot.

3. No lot line adjustment, subdivision of land, air rights or condominium shall be allowed to enable the sale, transfer, or disposal of the accessory dwelling unit independently of the primary dwelling unit or any portion of the property. This stipulation shall be included in a recorded deed restriction on the property.

4. The accessory dwelling unit must be eligible to receive City sewer and water services. Creation of a detached accessory dwelling unit may require installation of a new or separate utility connection.

### **F. Design Requirements**

1. An accessory dwelling unit shall be compatible with the primary dwelling and the surrounding neighborhood with respect to structure height, scale, and massing.

2. The architectural design and detailing, roof color and material, and exterior color and finish materials of an accessory dwelling unit shall match the primary dwelling to the extent possible.

3. The parcel shall retain a single-family appearance and the accessory dwelling unit shall be integrated into the design of the existing improvements of the property.

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4. The addresses of both the primary dwelling and the accessory dwelling unit shall be displayed and clearly visible from the street.

### **G. Parking**

1. Accessory dwelling units with at least one bedroom shall provide one additional off-street parking space in addition to those spaces required for the primary dwelling. Off-street parking may be provided in the setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety conditions. These spaces may not be covered if located within the setback areas.
2. When all or a portion of a garage, carport, or other parking structure is converted or demolished to construct an accessory dwelling unit, the parking spaces displaced by the conversion may be allowed in any configuration on the lot, including, but not limited to, covered spaces, uncovered spaces, or tandem spaces, or by use of mechanical automobile parking lifts.
3. The parking standards provided in this section and otherwise in this code do not apply to an accessory dwelling unit in any of the following instances: (a) it is located within one-half mile of public transit; (b) it is located within an official architecturally and historically significant historic district; (c) it is part of the proposed or existing primary residence or an accessory structure; (d) on-street parking permits are required but not offered to occupants of an accessory dwelling unit; and, (e) a car share vehicle is located within one block of the accessory dwelling unit. To qualify for any of the above exemptions, the applicant shall provide supporting evidence as part of a Minor Use Permit or building permit application.

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### **20.42.040    Occupancy Standards and Fee Requirements**

A.    *Owner Occupancy.* The owner of a parcel with an accessory dwelling unit shall reside in either the primary dwelling or the accessory dwelling unit, if the accessory dwelling unit is located within an R-1 Zoning District only. This requirement does not apply to any other Zoning District.

B.    *Deed Restrictions.* Prior to the issuance of a building permit for an accessory dwelling unit in an R-1 Zoning District, a covenant of restriction to run with the land shall be recorded by the property owner which specifies that the accessory dwelling unit cannot be sold separately, transferred, or otherwise disposed of independently from the primary dwelling unit that the property owner shall reside in either the primary or accessory dwelling unit, and that these restrictions shall be binding on successors in ownership.

C.    *Fees and Other Requirements.*

1.    Accessory dwelling units are not a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service; and any utility fee or charge imposed on the creation of a detached accessory dwelling unit must not exceed the reasonable cost of providing the service.

2.    Accessory dwelling units contained within the existing space of a single family residence or accessory structure that have an independent exterior access and setbacks that meet fire safety requirements are not required to install a new or separate utility connection and cannot be charged for a related connection fee or capacity charge.

3.    A new accessory dwelling unit shall be required to pay all applicable fees, including impact fees.

## OPTION 1--CITY COUNCIL DIRECTION

4. Prior to occupancy of the accessory dwelling unit, a new address shall be assigned by Department of Development Services.”

**SECTION 7. AMENDMENT TO CODE.** Section 20.46.010, “Residential Design Standards, Purpose,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.46.010 -Purpose**

This chapter establishes design standards for residential uses, in addition to regulations set forth in Chapter 20.08 (Residential Zones), except that parking, location, and address requirements in Section 20.46.020 do not apply to accessory dwelling units.”

**SECTION 8. AMENDMENT TO CODE.** Section 20.90.020, “Definitions,” of the Merced Municipal Code is hereby amended to read as follows:

**“20.90.020 - Definitions**

1a. *Accessory Dwelling Units.* Attached or detached accessory residential dwelling units, which provide complete independent living facilities for one or more persons. Accessory dwelling units provide permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel occupied by a primary dwelling. A single attached suite of rooms (consisting of living, sleeping, cooking, and sanitation facilities) but with unimpeded access to the rest of the dwelling unit, no separate lease or utility service, and still functioning as one “household” per 20.90.020(99) may not be considered to be an accessory unit. See Chapter 20.42 ( Accessory Dwelling Units).

186. *Second Units or Secondary Dwelling Units.* See Accessory Dwelling Units (#1a).”

**SECTION 9. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.



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**SECTION 10. 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 11. 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:**

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**Mayor**

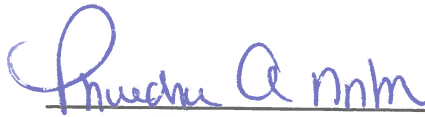
OPTION 1--CITY COUNCIL DIRECTION

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

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

**(SEAL)**

**APPROVED AS TO FORM:**

 7-18-19  
**City Attorney** **Date**

## **ZONING ORDINANCE AMENDMENT #19-02 RE: ACCESSORY DWELLING UNITS**



**CITY COUNCIL MEETING—AUGUST 5, 2019**

**KIM ESPINOSA, PLANNING MANAGER**

## **JULY 1, 2019 CITY COUNCIL MEETING**

- On July 1, 2019, the City Council held a public hearing on the proposed Ordinance and discussed the options regarding parking and owner occupancy.
- Two members of the public testified and indicated that they did not favor eliminating the owner occupancy requirement for either the primary or accessory dwelling unit because of concerns about impacts on neighborhoods.
- After an extensive discussion, the City Council adopted a motion to continue the public hearing to August 5, 2019, and directed staff to prepare an alternative ordinance which would allow for parking within the setback areas for accessory dwelling units only and to retain the owner occupancy requirement only within R-1 zoning districts.
- After tonight's public hearing, the City Council will have an option of adopting one of two draft ordinances.

LETTER FROM CALIFORNIANS FOR HOMEOWNERSHIP

- On July 12, 2019, the City received correspondence from Matthew Gelfand representing the Californians for Homeownership (Attachment 6).
- State law requires if an existing parking structure is converted to an ADU (which must include bathroom and kitchen facilities), then the replacement parking would need to be allowed in any configuration on the lot, including tandem spaces within the setback areas.
- Section 20.42.030(G)(2) should be amended as follows (in either Option 1 or 2):

2. When all or a portion of a garage, carport, or other parking structure is converted or demolished to construct an accessory dwelling unit, the parking spaces displaced by the conversion may be allowed in any configuration on the lot, including, but not limited to, covered spaces, or tandem spaces, or by use of mechanical automobile parking lifts. The creation of an accessory dwelling unit through the conversion of all or a portion of a garage is prohibited unless replacement parking is provided elsewhere on the property in conformance with required parking standards as defined in Chapter 20.38 (Parking and Loading).

OPTIONS FOR CITY COUNCIL ACTION

OPTION 1

- A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance \_\_\_\_**, Per City Council Direction on July 1, 2019, which would allow for parking within the setback areas for accessory dwelling units only and to retain the owner occupancy requirement within R-1 zoning districts only.

OR

OPTION 2

- A. Adopting a Categorical Exemption (Environmental Review #19-04); and,

B. Introducing **Ordinance 2502**, As Recommended by the Planning Commission, which would allow parking for all uses within setback areas and would eliminate the owner occupancy requirement in all zones, with amendments to 20.42.030(G)(2).

Any Questions?

## **SLIDES FROM JULY 1, 2019 CITY COUNCIL MEETING**

### **BACKGROUND—STATE OF CA**

- The California Legislature has declared that allowing accessory dwelling units (ADU's) in single-family and multi-family zones is an essential component in addressing housing needs in California.
- In 1982, the State enacted a mandate that every local agency adopt provisions for permitting accessory dwelling units (then known as "secondary dwelling units" or "second units"). The intent was to encourage housing for extended family members and to increase the availability of rental housing.
- In 2003, AB 1866 was adopted, requiring all local governments to allow ADU's within single-family residential zones.
- In 2016, Senate Bill 1069, Assembly Bill 2299, and Assembly Bill 2406 were adopted which made specific amendments to State law to promote the production of ADU's. These bills were intended to reduce barriers and streamline approval.

# BACKGROUND—CITY OF MERCED

- September 2018—City Council asked for review of Accessory Dwelling Unit Ordinance.
- November 19, 2018—City Council Directed Staff to:
  - Prepare Ordinance Changes for Public Hearings before Planning Commission & City Council.
  - Develop a Housing program similar to the Clovis Cottage model of having pre-approved plans for ADU's to make it easier for Property Owners to Develop ADU's.
  - Return to City Council in January 2019 to discuss Policy Issues regarding Parking and Owner Occupancy Requirements.
- January 22, 2019—City Council reviewed Policy Issues and Generally Supported changes to the Location of Required Parking for all uses, but asked for further information on the Owner Occupancy issue.

# PROPOSED CHANGES TO MERCED ZONING ORDINANCE FOR ACCESSORY DWELLING UNITS





## ZONING ORDINANCE CHANGES

- Change “Second Units” or “Secondary Dwelling Units” to “Accessory Dwelling Units” throughout the Zoning Ordinance.
- The maximum size of an attached ADU shall be changed from 1,000 square feet to 1,200 square feet.
- Remove the “maximum number permitted” section, but include that “ADU’s cannot exceed the allowable density for the lot.”
- Clarify that the standard that the ADU “be clearly subordinate to the primary dwelling” would not preclude an ADU from being located in the front of the property.
- Clarify the setback requirements for ADU’s.

## ZONING ORDINANCE CHANGES (CONT.)

- Change the parking requirements for ADU’s with more than 3 bedrooms from 2 to 1 space as State law only requires 1 parking space for all ADU’s regardless of size.
- Add a provision that “parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns.”
- Add a provision that states that the parking requirements do not apply in these cases:
  - Official Historic districts
  - Within ½ mile of public transit
  - Part of an existing structure
  - On-street parking permits are required
  - Car share vehicles are located within one block



## ZONING ORDINANCE CHANGES (CONT.)

- Add provisions regarding fees, including:
  - ADU's are not considered "a new residential use for the purpose of calculating connection fees or capacity charges for utilities, including water and sewer service."
  - Any utility fee or charge imposed "must not exceed the cost of providing the service."
  - The City "cannot require applicants creating ADU's within the existing space of a single-family dwelling or accessory structure...to install a new or separate utility connection or impose a related connection fee or capacity charge."
  - *These provisions may also require changes to the Merced Municipal Code sections relating to the water and sewer connection fees as well.*

**See Attachment 5 for Draft Ordinance.**

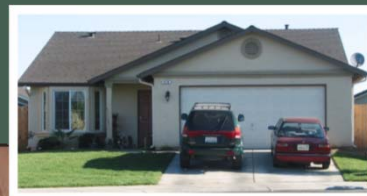
## PARKING AND OWNER OCCUPANCY REQUIREMENTS FOR ACCESSORY DWELLING UNITS





## PARKING

- State Law requires that “parking may be allowed in setback areas or as tandem parking on a driveway, unless the City determines that such options are not feasible on the existing property, based on fire and life safety concerns.”
- Each Single-Family Home requires one parking space (10' x 20'), but that space cannot be within the exterior setback area in R-1 and R-2 zones.
- Parking is **NOT** prohibited in the Driveway, but it does **NOT COUNT** as the Legal Required Parking Space. That Space is usually Located within the Garage.
- This Provision can make it difficult to convert the garage into living space.
- Survey showed that Most Cities Opt for Special Exemptions for ADU Parking Only.



## PARKING (CONT.)

- In January 2019, the City Council Expressed Preference for Allowing Legal Required Parking Within the Setback Areas for All Uses, Not Just the ADU.
- Some Concerns about this change which could:
  - Lead to More Garage Conversions
  - Lead to More Vehicles being Parked On the street in neighborhoods
  - Lead to More Conflicts on Trash Collection Days
  - Lead to More Conflicts between Neighbors about the Use of On-Street Parking
  - Covered Parking could conflict with Street Trees and Utility Lines
- The Majority of the Planning Commission felt that Allowing for Parking in the Setback area could help Add to the City's Housing Stock by encouraging their Conversion to ADU's or Just Additional Living Space, and Recommended that Uncovered Parking be allowed in the Setback Area/Driveway.

## OWNER OCCUPANCY

- The City's current Ordinance requires "the owner of a parcel occupied by a second unit (now ADU) shall reside in either the primary dwelling unit or the second unit."
- A Deed Restriction is also Required to be Recorded to Implement the Above.
- State Law does NOT require the City to Eliminate this Requirement, but some Cities are considering it in order to encourage the construction of ADU's.
- Survey of 35 California Cities found that 28 still require owner occupancy while 7 Cities and 1 County did not have such a requirement.
- Survey in Oregon showed 30 of 46 cities retained the requirement while Portland eliminated it in 1998.



## OWNER OCCUPANCY—REASONS FOR

- Eliminating the Requirement May Have Impacts on Single-Family Neighborhoods in that Both Units could be Rentals with No Landlord Onsite.
- The Occupancy Requirement is thought to Minimize Negative Impacts (i.e. excessive noise, lack of property upkeep, etc.) because the Property Owner is Living on the Same Property as Their Tenants.
- Possible Disputes Regarding Sewer, Water, and Trash Collection Service since City only allows one such service per single-family lot. Issues Could Arise with Tenants Contaminating the Green Waste Container, Violating the Watering Rules, or Paying their Fair Share of the Bill, which Could Cause Problems for the City in Collecting Fines or Cutting off Service for Non-Payment.
- Many Merced Neighborhoods are already Experiencing Some of these Issues with Single-Family Homes Being Rented to Multiple Tenants.

## **OWNER OCCUPANCY—REASONS AGAINST**

- Owner Occupancy Restrictions Tend to Discourage the Construction of ADU's.
- Makes It Harder to Secure Home Loans to Finance ADU Construction.
- Limits the Value Appraisers Can Assign to a House and Makes the Property Less Valuable for Loan Collateral.
- If such a Home and ADU is Foreclosed on, the Bank Can't Rent Out Both Units.
- Make Properties with ADU's Unsuitable for Income Based Valuation by Appraisers, Constraining Their Value, and Making Them Difficult to Finance.
- Hurts the Market for ADU's and Creates Obstacles for "Mom and Pop" Landlords Trying to Provide Affordable Housing Options.
- All of This May Be a Moot Point if Current SB 13 Being Considered at the State is Passed...It would Prohibit Local Agencies from Requiring Owner Occupancy.

## **OWNER OCCUPANCY—PLANNING COMMISSION RECOMMENDATION**

- After an extensive discussion at its May 8, 2019 public hearing, the Planning Commission voted 4-1-2 (4 ayes, 1 no, 2 absent) to recommend that the Owner Occupancy Requirement Be Removed.
- The Majority of the Planning Commissioners felt that the State was very likely to Pass Legislation which would Remove the City's Discretion to Require Owner Occupancy and that the Removal of the Requirement would Encourage the Construction of ADU's in Merced.
- The Planning Commissioner who voted "No" was Concerned about the Effect of "Absentee Landlords" on the Maintenance and Appearance of the Property.

## **PLANNING COMMISSION & CITY COUNCIL ACTION**



## **PLANNING COMMISSION ACTION**

- On May 8, 2019, the Planning Commission held a public hearing on the Draft Ordinance.
- No one from the Public testified at the hearing but One Email was received prior to the meeting.
- After extensive discussion, the Planning Commission voted (4-1-2) to Recommend Adoption of the Draft Ordinance with Revisions, including Allowing for Required Parking Spaces in the Front Yard Setback Area for All Uses (not just ADU's) and Eliminating the Owner Occupancy requirement for both the Primary and Accessory Unit.
- The Commissioner who voted "No" did not agree with Eliminating the Owner Occupancy Requirement or Allowing Required Parking in the Setback due to Increased Numbers of Vehicles Parked On the Street.

# CITY COUNCIL ACTION

After the public hearing, the City Council should consider adopting a motion:

- Adopting a Categorical Exemption (Environmental Review #19-04); and,
- Introducing Ordinance No. \_\_\_\_ amending the City's zoning requirements for Accessory Dwelling Units as recommended by the Planning Commission.

**Any Questions?**



## ADMINISTRATIVE REPORT

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### Agenda Item J.2.

Meeting Date: 8/5/2019

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*Report Prepared by: Julie Nelson, Associate Planner, Development Services*

**SUBJECT:** Public Hearing and Adoption of Resolution Denying the Appeal of the Planning Commission's Decision to Grant a One-Year Extension to Bright Development for Vesting Tentative Subdivision Map #1291 for the Subdivision Involving 39.8 Acres Generally Located on the East Side of G Street at Merrill Place (Extended)

### REPORT IN BRIEF

Provides Resolution for adoption to deny the appeal filed by BP Investors, LLC, Leeco, LLC, Exposition Properties, LLC and Rick Telegan, as adjacent landowners of the Planning Commission's decision to approve a one-year extension for Vesting Tentative Subdivision Map (VTSM) #1291 per City Council direction on June 3, 2019.

### RECOMMENDATION

**City Council** - Adopt a motion approving **Resolution 2019-38**, A Resolution of the City Council of the City of Merced, California, denying an appeal by BP Investors, LLC; Leeco, LLC; and Exposition Properties, LLC, concerning the action of the Planning Commission resulting in the approval of the extension of Vesting Tentative Subdivision Map #1291 (Modified) for Bright Development, which extended the expiration date of the Vesting Tentative Subdivision Map to January 16, 2020.

### ALTERNATIVES

1. Approve the resolution; or,
2. Refer back to staff for reconsideration of specific items as requested by Council; or
3. Continue item to a future Council meeting (date and time to be specified in City Council motion).

### AUTHORITY

City of Merced Zoning Ordinance Section 20.74 - Appeals addresses the procedure for appealing a decision made by the Planning Commission.

### DISCUSSION

#### Summary

On June 3, 2019, the City Council held a duly noticed public hearing concerning the appeal of the Planning Commission's decision to approve the extension of Vesting Tentative Subdivision Map (VTSM) #1291 for Bright Development (Attachment 2). The Planning Commission's action extended the map to January 16, 2020.



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At the public hearing, the City Council heard testimony from Rick Telegan, appellant for BP Investors, LLC; Leeco, LLC; and Exposition Properties, LLC. Testimony was also provided by Mark Beisswanger, representative for Bright Development.

After the public hearing, the City Council directed staff to prepare Findings to deny the appeal and uphold the Planning Commission's decision. The attached resolution sets forth those Findings based on the discussion and direction by the City Council on June 3, 2019, (refer to Exhibit C of the Draft Resolution at Attachment 3).

#### City Council Action

The City Council should open a public hearing and hear any additional testimony on this matter. Once the public hearing is closed, the City Council should adopt the Resolution at Attachment 3, thereby denying the appeal and upholding the Planning Commission's decision to grant a one-year extension of VTSM #1291 for Bright Development. However, if after hearing the additional testimony, the Council determines they wish to uphold the appeal, the Council should provide that direction to staff along with Findings to support the upholding of the appeal and continue the public hearing to a specified date to allow time for staff to prepare a revised resolution with Findings to uphold the appeal.

#### **ATTACHMENTS**

1. Location Map
2. Vesting Tentative Subdivision Map #1291 - Modified
3. Draft City Council Resolution to Deny Appeal
4. Opposition Letter from BP Investors





# EXTENSION OF VTSM #1291 (MODIFIED) CEB HOLDINGS, LLC (BRIGHT DEVELOPMENT)

Disclaimer: This document was prepared for general inquiries only. The City of Merced is not liable for errors or omissions that might occur. Official information concerning specific parcels should be obtained from recorded or adopted City documents.

**ATTACHMENT 1**

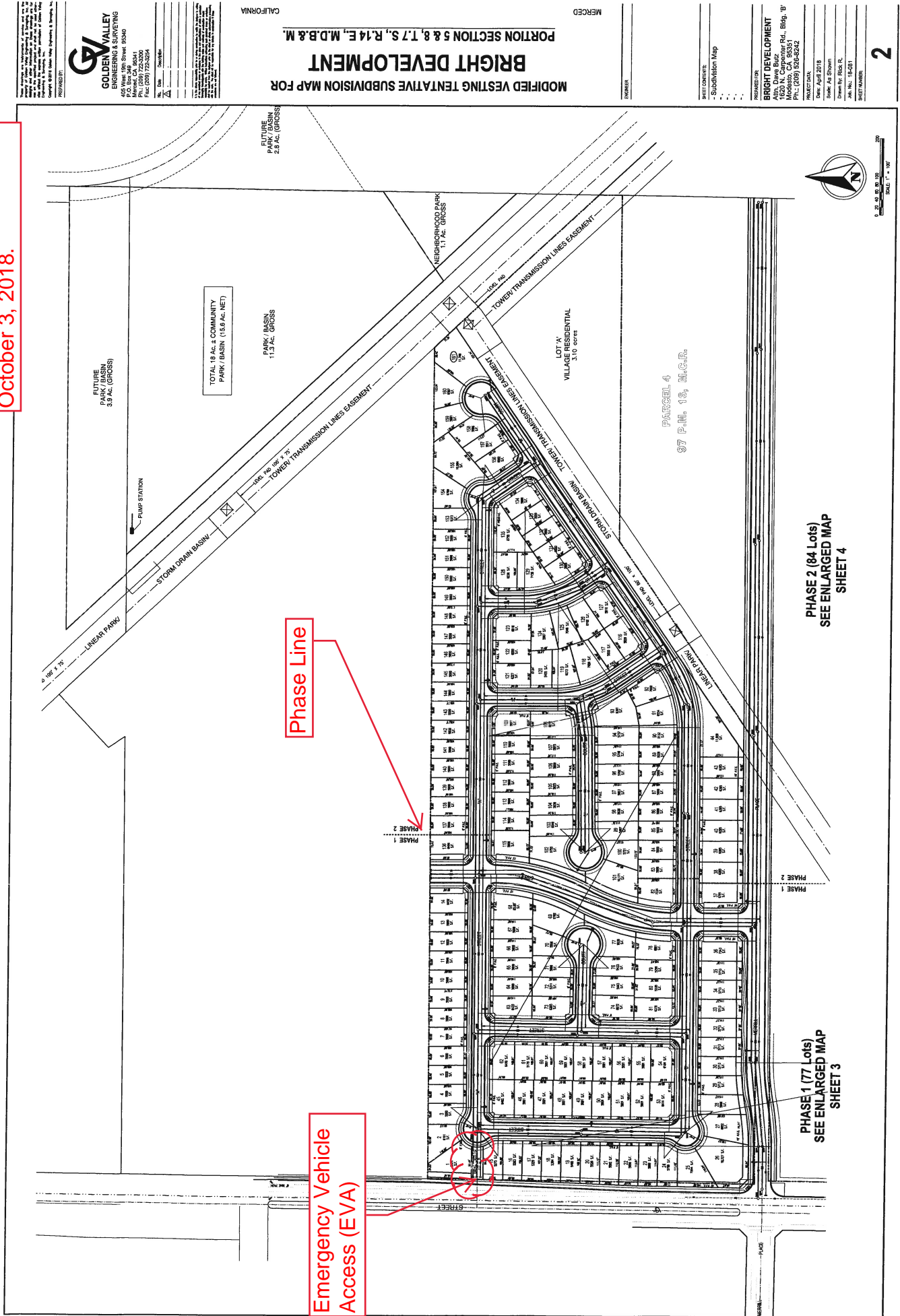


Subject Site





Modified Map Approved by  
the Planning Commission  
October 3, 2018.



Modified Map Approved by  
the Planning Commission  
October 3, 2018.

These drawings are instruments of service and are the property of Golden Valley Engineering & Surveying, Inc. All surveys and other information on these drawings are for use on the specified project and shall not be used otherwise without the express written permission of Golden Valley Engineering & Surveying, Inc.

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PREPARED BY:

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CALIFORNIA

MODIFIED VESTING TENTATIVE SUBDIVISION MAP FOR  
**BRIGHT DEVELOPMENT**  
PORTION SECTION 5 & 8, T.17 S., R.14 E., M.D.B.& M.  
CALIF.

MERCED

ENGINEER

**SHEET CONTENTS:**

**Subdivision Map**

**BRIGHT DEVELOPMENT**  
Attn: Dave Buiz  
620 N. Carpenter Rd., Bldg. 'B'  
Foster, CA 95351  
Ph: (209) 526-8242

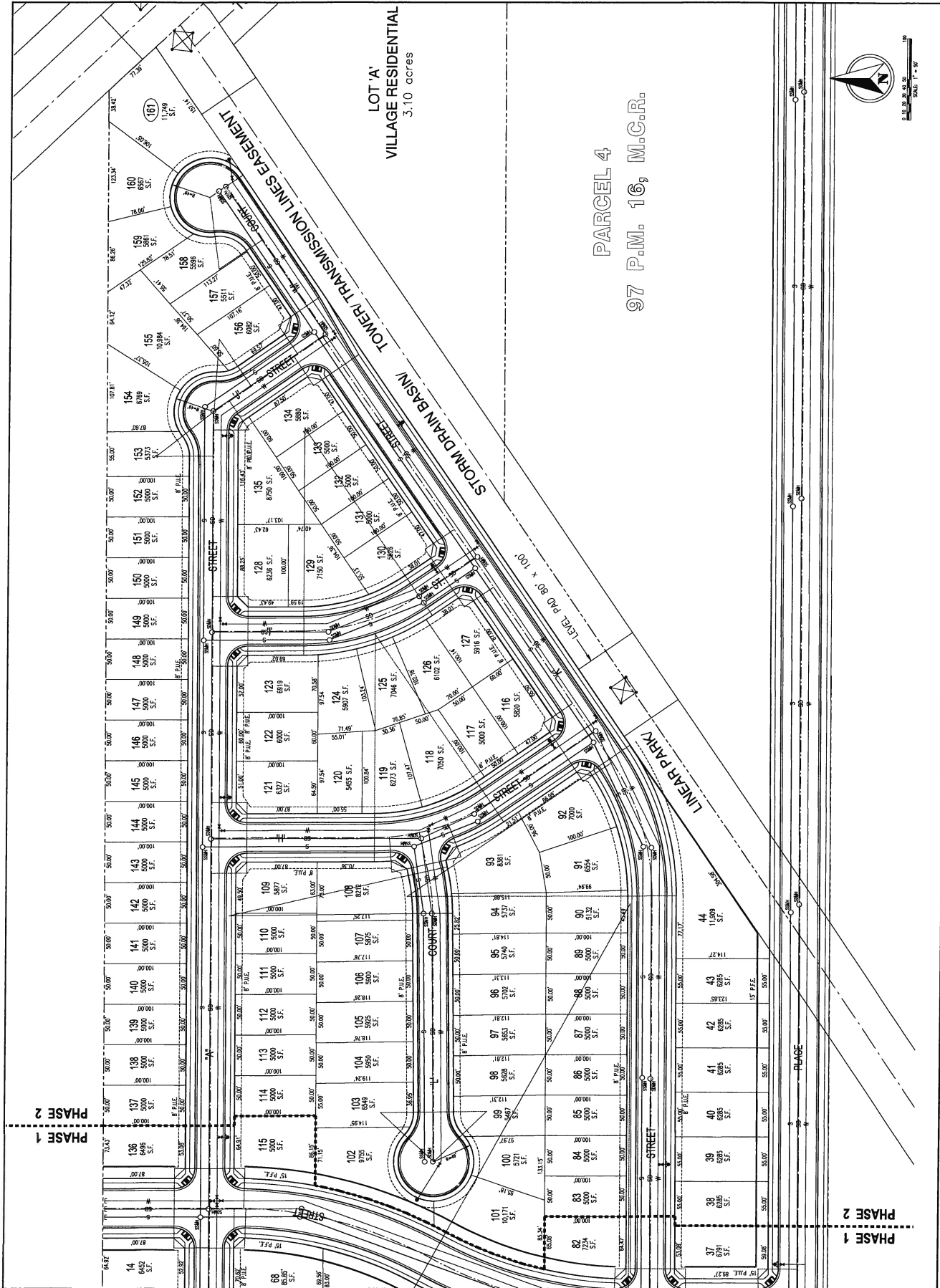
PROJECT DATA  
Date: April 2018  
Scale: As Shown  
Drawn By: Rick R.  
File No.: 18-081  
SHEET NUMBER:



ATTACHMENT 2 - Page 3

[illegible]

ATTACHMENT 2 - Page 4





Modified Map Approved by  
the Planning Commission  
October 3, 2018.

**NOTES:**

- 1. This map is a tentative subdivision map and is not a final map. It is subject to change without notice.
- 2. The map is based on the latest available aerial photography and field data.
- 3. The map is not to be used for any purpose other than the one for which it was prepared.
- 4. The map is not to be used for any purpose other than the one for which it was prepared.

**PROJECT INFORMATION:**

**PROJECT NAME:** BRIGHT DEVELOPMENT

**PROJECT LOCATION:** 1000 N. Capitol Rd., Bldg. 8, Merced, CA 95341

**PROJECT NUMBER:** PH-200-024-024

**PROJECT OWNER:** BRIGHT DEVELOPMENT

**PROJECT ENGINEER:** GOLDEN VALLEY ENGINEERING & SURVEYING

**PROJECT DATE:** 10/03/2018

**PROJECT SCALE:** 1" = 40'

**PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B. & M.**

**BRIGHT DEVELOPMENT**

**MODIFIED VESTING TENTATIVE SUBDIVISION MAP FOR**

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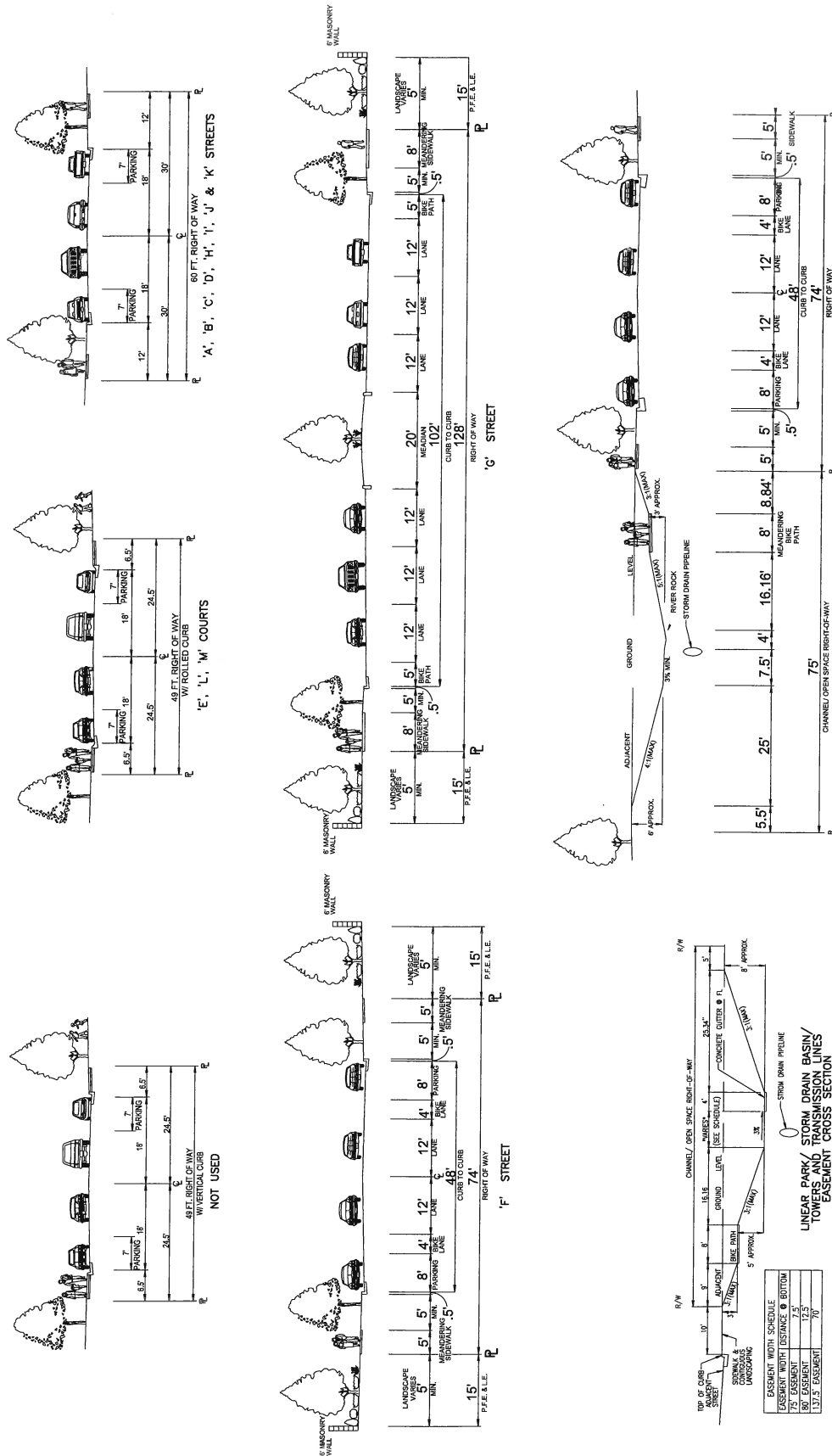
**PROJECT NUMBER:** PH-200-024-024

**PROJECT OWNER:** BRIGHT DEVELOPMENT

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**PROJECT DATE:** 10/03/2018

**PROJECT SCALE:** 1" = 40'



Modified Map Approved by  
the Planning Commission  
October 3, 2018.



**GOLDEN VALLEY**  
**ENGINEERING & SURVEYING**  
 405 West 10th Street, Suite 100  
 Modesto, CA 95351  
 Phone: (209) 524-2200  
 Fax: (209) 524-2204  
 www.gveng.com

Project: Modified Map for Bright Development  
 Date: 10/3/2018  
 Drawn by: [Name]  
 Checked by: [Name]  
 Project Engineer: [Name]

CALIFORNIA

PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B. & M.

**BRIGHT DEVELOPMENT**

MODIFIED VESTING TENTATIVE SUBDIVISION MAP FOR

MERCED

DATE: 10/3/2018

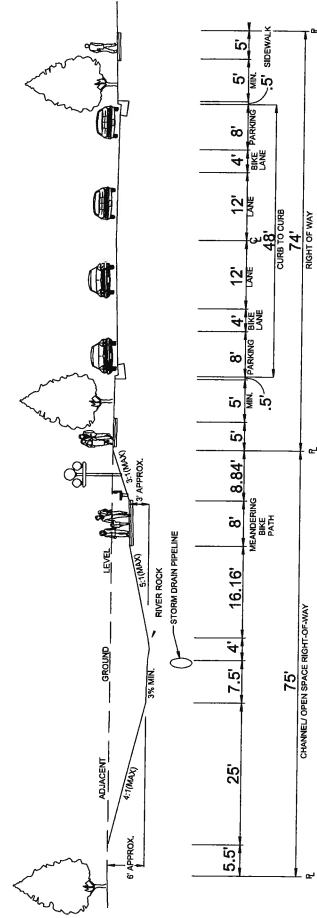
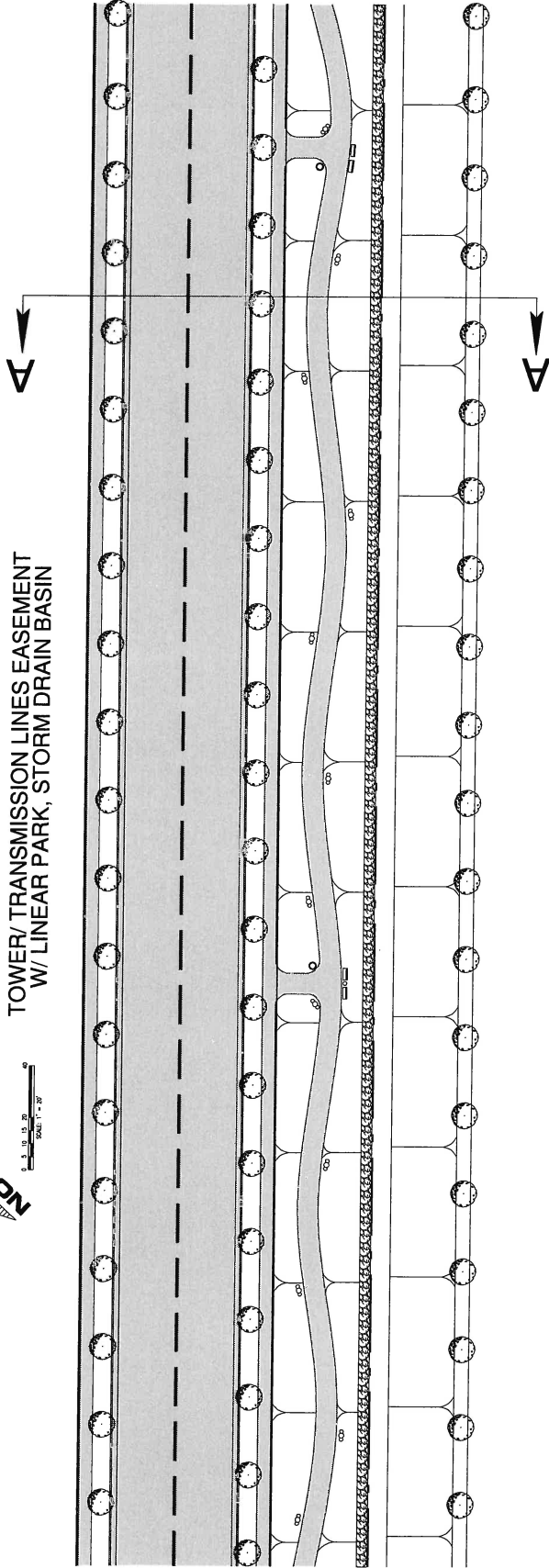
PROJECT: Bright Development  
SHEET: 6 OF 6

PROJECT: BRIGHT DEVELOPMENT  
1620 N. Carpenter Rd., Bldg. 8  
Modesto, CA 95351  
Tel: (209) 524-2200

PROJECT: BRIGHT DEVELOPMENT  
1620 N. Carpenter Rd., Bldg. 8  
Modesto, CA 95351  
Tel: (209) 524-2200



TOWER/TRANSMISSION LINES EASEMENT  
W/ LINEAR PARK, STORM DRAIN BASIN



SECTION 'A-A'  
75' WIDE LINEAR PARK/ STORM DRAIN BASIN/  
TOWERS AND TRANSMISSION LINES  
ADJACENT TO A 74' R.O.W.

CROSS SECTION

SCALE: 1"=10'

**RESOLUTION NO. 2019-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
DENYING AN APPEAL BY BP INVESTORS, LLC;  
LEECO, LLC; AND EXPOSITION PROPERTIES,  
LLC, CONCERNING THE ACTION OF THE  
PLANNING COMMISSION RESULTING IN THE  
APPROVAL OF THE EXTENSION OF VESTING  
TENTATIVE SUBDIVISION MAP #1291  
(MODIFIED) FOR BRIGHT DEVELOPMENT,  
WHICH EXTENDED THE EXPIRATION DATE OF  
THE VESTING TENTATIVE SUBDIVISION MAP  
TO JANUARY 16, 2020**

WHEREAS, the Planning Commission of the City of Merced (“Planning Commission”) at its regular meeting of April 3, 2019, held a public hearing, and considered a request for a one year extension of Vesting Tentative Subdivision Map #1291 (Modified) for Bright Development, which would extend the expiration date of the map to January 16, 2020;

WHEREAS, Vesting Tentative Subdivision Map #1291 (modified) would allow the subdivision of approximately 39.8 acres of land generally located on the east side of G Street at Merrill Place (extended) into 161 single-family lots as described in Exhibit A, and shown on the approved Vesting Tentative Subdivision Map #1291 in Exhibit B;

WHEREAS, after hearing all evidence and testimony and after exercising its independent judgment, the Planning Commission approved the extension of Vesting Tentative Subdivision Map #1291 extending the expiration date of the map to January 16, 2020;

WHEREAS, the Planning Commission’s action granting the extension was appealed by BP Investors, LLC; Leeco, LLC; and Exposition Properties, LLC, on April 12, 2019; and

WHEREAS, THE City Council held a public hearing on June 3, 2019, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application.

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

SECTION 1. EXTENSION OF VESTING TENTATIVE SUBDIVISION MAP #1291. Based upon the record evidence including, but not limited to, the administrative report, attachments thereto, comments, testimony and other information provided during the public hearing, the City Council exercising its independent judgment and making its own decision, hereby denies the appeal and adopts the Findings for Approval described in Exhibit C, attached hereto, thereby sustaining and affirming the Planning Commission's approval of the extension of Vesting Tentative Subdivision Map #1291.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2019, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

---

Mayor



ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

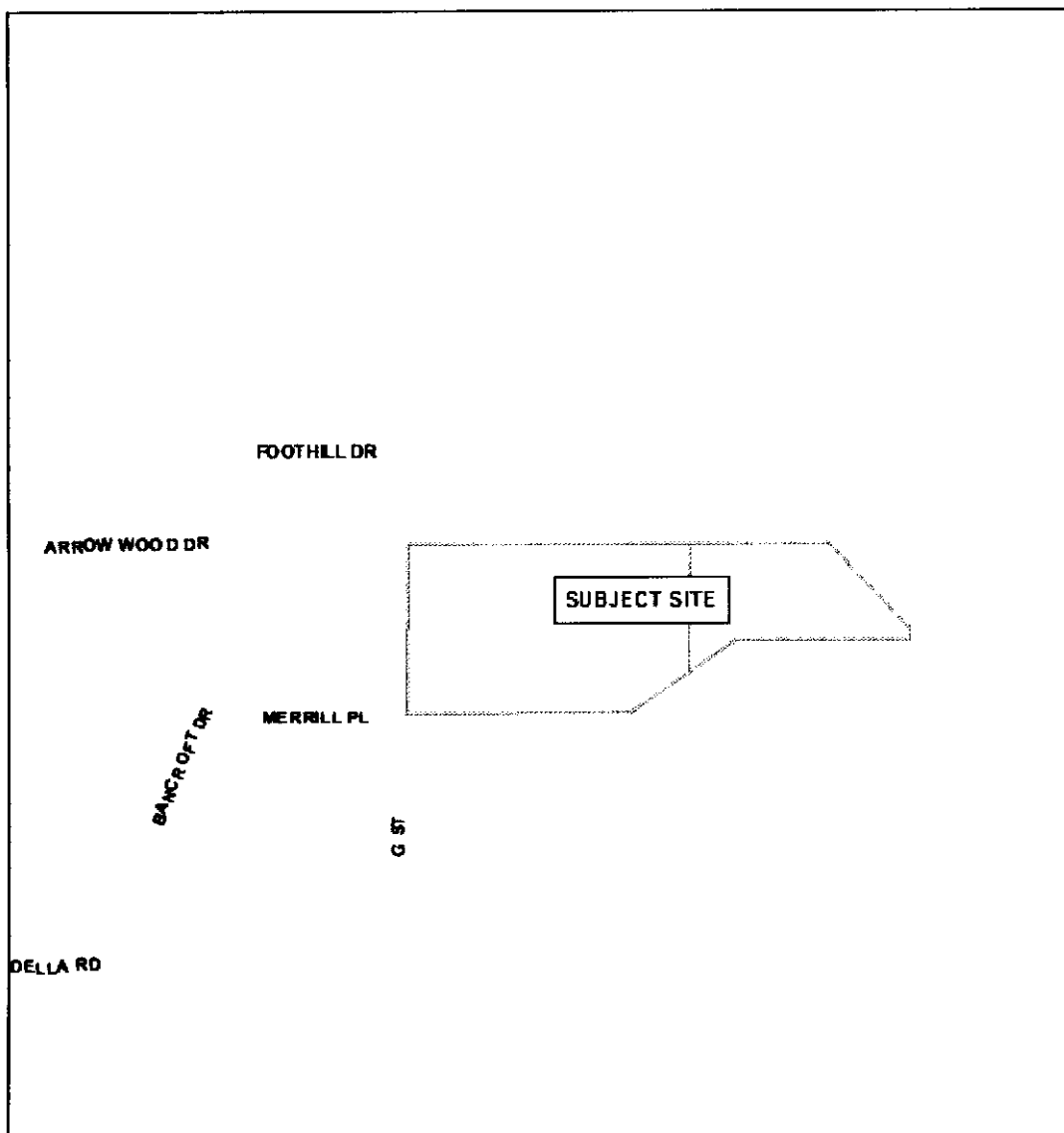
(SEAL)

APPROVED AS TO FORM:

Phaedra A. Doherty      7-23-19  
City Attorney      Date

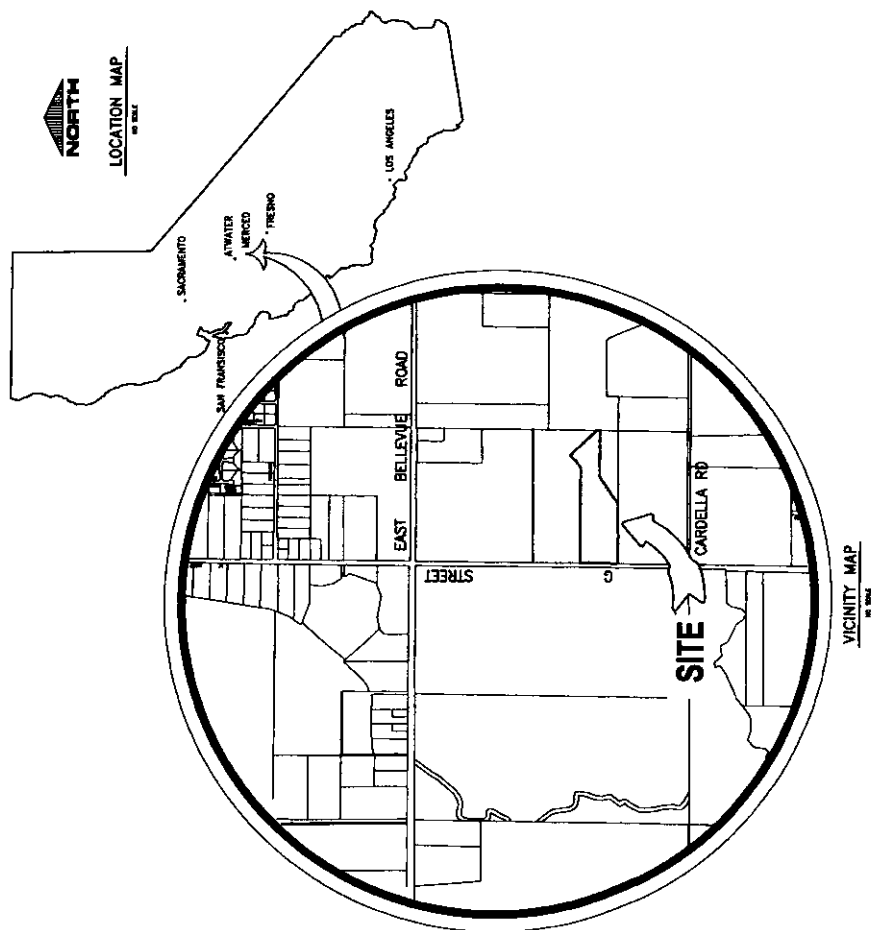
**EXHIBIT A  
LEGAL DESCRIPTION**

Lot 2 and a portion of Lot 3 as shown on that map entitled "Parcel Map for Benber Property," recorded in Book 97, Page 17 of Merced County Records on September 2, 2004; also known as Assessor's Parcel Number (APN) 060-030-037 and a portion of 060-030-038.



**MODIFIED VESTING TENTATIVE SUBDIVISION MAP FOR  
BRIGHT DEVELOPMENT  
PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B.& M.**

**PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B.&M.**



**SUBDIVISION MAP NOTES:**

INFORMATION REQUIRED PER MERCED MUNICIPAL  
CODE SECTION 18.18.060

- [illegible]

**SHEET INDEX:**

- |   |                                 |
|---|---------------------------------|
| 1 | TITLE SHEET                     |
| 2 | OVERALL SUBDIVISION MAP         |
| 3 | ENLARGED SUBDIVISION MAP (WEST) |
| 4 | ENLARGED SUBDIVISION MAP (EAST) |
| 5 | STREET SECTIONS                 |
| 6 | TRANSMISSION LINES PARK BASIN   |

**LEGEND:**

- [illegible]

**BRIGHT DEVELOPMENT**  
PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B. & M.



**GOLDEN VALLEY**  
ENGINEERING & SURVEYING

1988 Year 1988 Street 902-04  
 P.O. Box 249  
 Portland, CA 95241  
 Tel: (509) 723-5300  
 Fax: (509) 723-5854

1980-1981

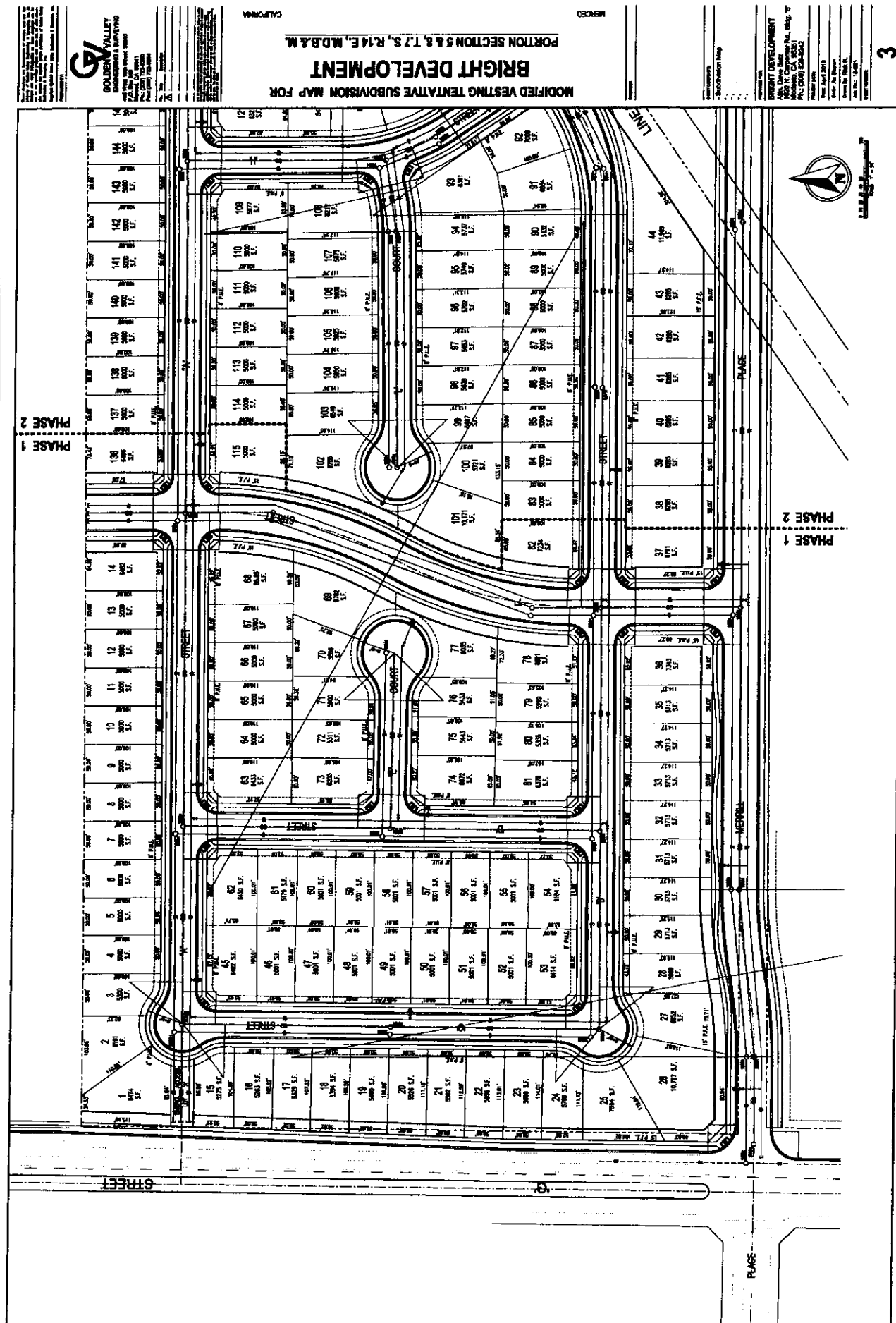
**CEANE**

**BRIGHT DEVELOPMENT**  
 Alan Davis Ruiz  
 1820 N. Carpenter Rd., Ste. 1  
 Modesto, CA 95351  
 P: (209) 528-4242

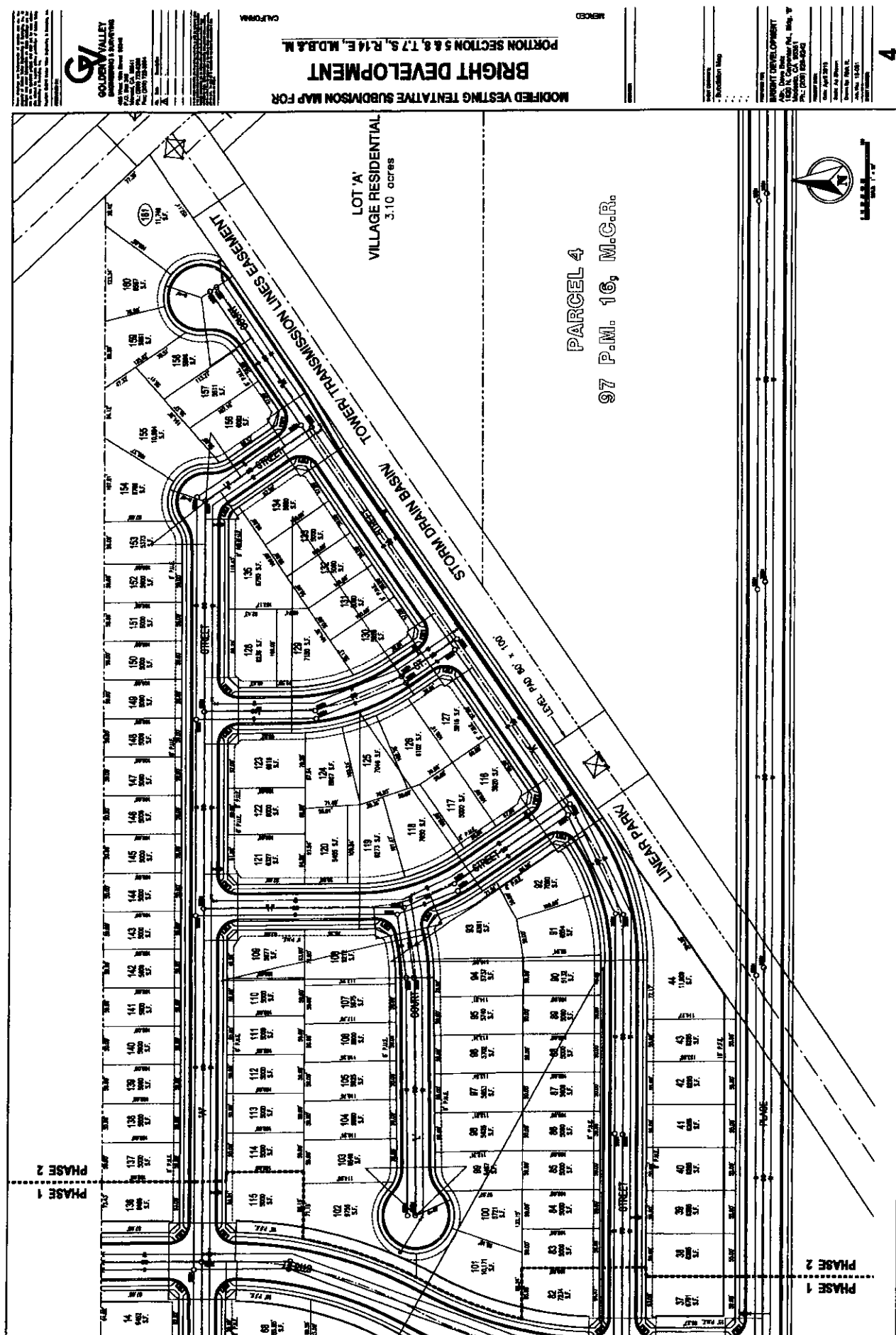
**PROJECT NAME**  
 Date: April 2018  
 Name: Joe Williams  
 Design by: Frank R.  
 Art. No.: 18-021  
 Survey Station:

[illegible]

**Modified Map Approved by the Planning Commission October 3, 2018.**

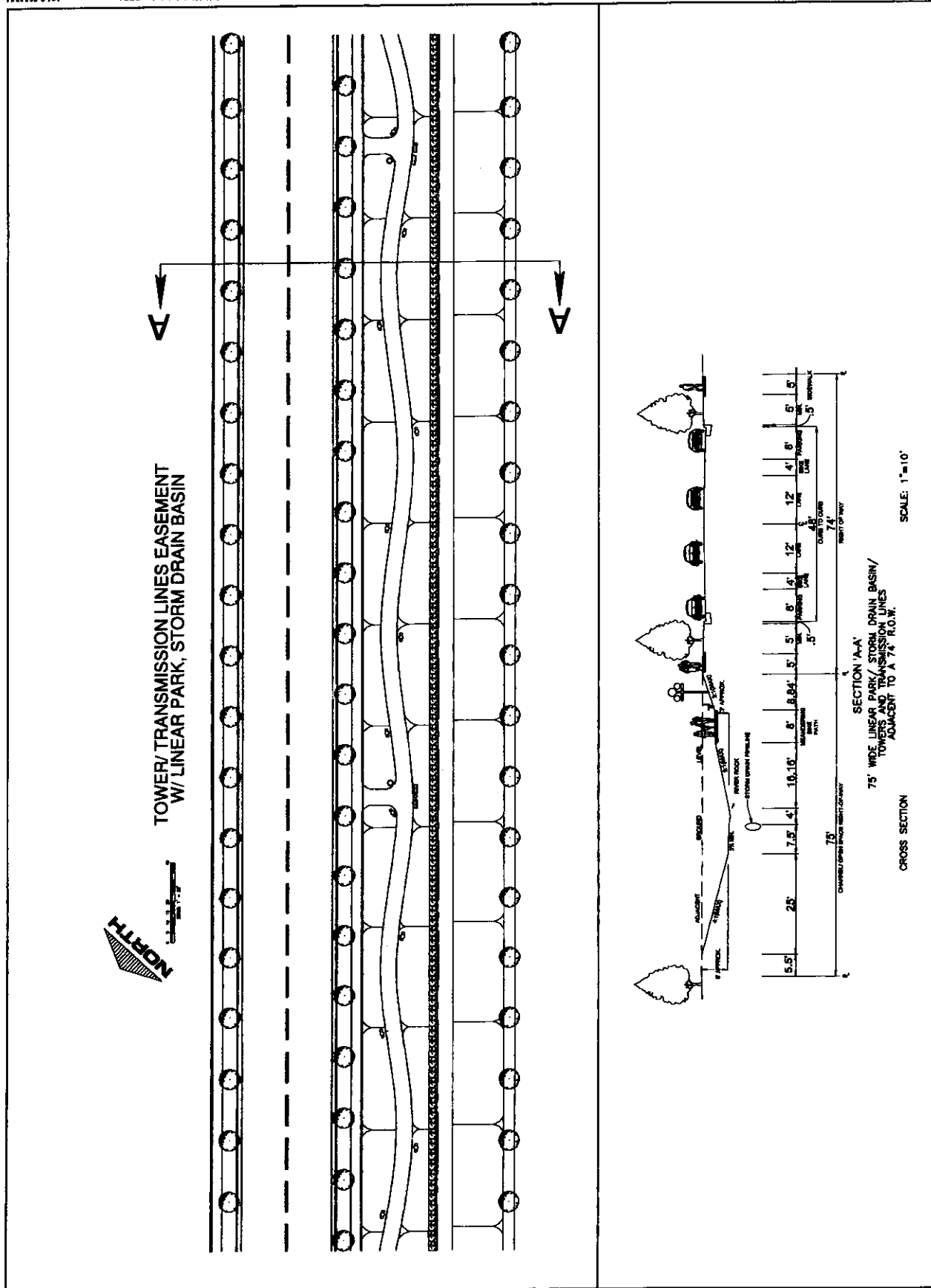


**Modified Map Approved by the Planning Commission October 3, 2018.**





**Modified Map Approved by the Planning Commission October**





FINDINGS FOR APPROVAL OF  
EXTENSION OF VESTING TENTATIVE SUBDIVISION MAP #1291  
FOR BRIGHT DEVELOPMENT

**Subdivision Map Act**

- A) Section 66498.1 of California Government Code sets forth the determinations that would permit the City to further condition or deny an extension of an approved vesting tentative subdivision map.

Pursuant to Section 66498.1, the local agency may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

1. A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.
  2. The condition or denial is required in order to comply with state or federal law.
- B. After presentation of the administrative report and attachments thereto, comments, testimony and other information and evidence presented during the public hearing and having considered the same, the City Council, in its discretion, finds and determines that Vesting Tentative Subdivision Map#1291 for Bright Development shall be extended to January 16, 2020.
- C. The City Council further finds and determines, based upon the administrative report and attachments thereto, comments, testimony, and other information and evidence submitted during the Public Hearing, June 3, 2019, that the extension of the vesting tentative subdivision map would not place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both. In fact, the project was reviewed by various City departments including the Engineering, Police, and Fire Departments and no health or safety concerns related to traffic, turning movements, the Emergency Vehicle Access, or any other matter was identified. In addition, there was no evidence submitted by technical professionals to support the dangerous health and safety finding set forth in Section 66498.1 as they related to traffic, turning movements, the Emergency Vehicle Access, or any other health and safety concerns raised at the public hearing. Finally, there was no evidence submitted that the denial is required to comply with state or federal law.

**EXHIBIT C**

3<sup>RD</sup> MILLENNIUM INVESTMENTS

2206 East Muncie Avenue

Fresno, CA 93720

559.298.9300

Email: fresno3rdm@aol.com

July 26, 2019

City of Merced  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340  
Attn: City Clerk

Re: Objection to Approval of Final Resolution (Staff File #19-359)  
Extension of VTSM #1291 (Bright Development)  
Notice of Breach of Pre-Annexation Development Agreement  
Reservation of Rights to Enforce Agreement  
City Council Hearing Date: August 5, 2019

Honorable Mayor Mike Murphy and Members of the Merced City Council:

Notice is given on behalf of Leeco, LLC; BP Investors, LLC; Exposition Properties, LLC, and the undersigned that we renew our objections to the approval and adoption of the Final Resolution described above by the City of Merced based on all grounds and arguments previously communicated to the City both orally and in writing. As we have previously made clear, the application for extension by Bright Development should be denied for several reasons, including the fact that Bright Development's delays have adversely impeded the development of the balance of the project described in the Pre-Annexation Development Agreement ("PADA"). While the application for extension should be denied on the other grounds previously discussed, the focus of this letter is to explain to the City the adverse impact of the multiple extensions of the VTSM #1291, especially in its current form.

Some context is important for the City to consider regarding Bright Development's VTSM #1291 and its impact on the PADA and the project to the east. Specifically, Merrill Place is planned to be extended from "G" Street east along the southern border of the 100 acre Absolute-Leeco annexation area. Both Bright and BP Investors own land along this southern border.

In August 2015, the City approved Conditional Use Permit #1200 for BP Investors, LLC to construct a 216-unit apartment complex on a 9.8-acre parcel located on the north side of Merrill Place ("Student Housing Project"). The Student Housing Project is located on the parcel of land designated as Village Residential under the PADA. As a condition of approval of the conditional use permit for the Student Housing Project, BP Investors is required to construct Merrill Place, curb to curb, from its most easterly point to "G" Street. This requirement is consistent with the PADA which requires the "Owner" (including Bright Development) to improve/upgrade/replace all existing County infrastructure within the Project, including acquiring and dedicating the

### 3<sup>RD</sup> MILLENNIUM INVESTMENTS

2206 East Muncie Avenue

Fresno, CA 93720

559.298.9300

Email: [fresno3rdm@aol.com](mailto:fresno3rdm@aol.com)

necessary rights-of-way. (See Requirement 2 on Exhibit D to PADA.) BP Investors has been willing and ready to construct Merrill Place, thereby connecting its Student Housing Project with “G” Street. However, in order to do so, Bright must dedicate its right-of-way along its portion of Merrill Place.

Bright has also sought the City’s approval regarding its subdivision contemplated by the PADA (“The Bright Subdivision”). The Bright Subdivision sits between the Student Housing Project and “G” Street, along the northern portion of Merrill Place. The Bright subdivision likewise contemplates use of the Merrill Place access to “G” Street. VTSM #1291, the tentative subdivision map for the Bright Subdivision, has been extended multiple times since its original approval in 2007, shortly after the approval of the PADA. In its current form, VTSM #1291 requires Bright to dedicate the north ½ of the future Merrill Place right of way (that portion owned by Bright) upon the recordation of their FINAL MAP (Attachment 2 to the Administrative Report). However, Bright has to date refused to dedicate it before recordation of a Final Map even though the failure to dedicate has prevented our Student Housing Project from moving forward. Our Conditional Use Permit approved by the City required us to fully improve Merrill Place, including that portion fronting Bright’s planned subdivision, at no cost to Bright. Bright’s failure to dedicate the right-of-way, choosing instead to successively renew VTSM #1291 with no end in sight, has essentially blocked the Student Housing Project’s access to “G” Street, thereby undermining the PADA, Conditional Use Permit #1200, and sound land use planning. Bright has not provided us with any reasonable justification for not dedicating the Merrill Place right of way at this time, and we are unaware of any explanation that Bright has provided to the City. Such actions by Bright demonstrate a lack of commitment to their VTSM #1291 and subverts the intent of the PADA. Any actions to facilitate and condone Bright’s unwarranted delays likewise violates the intent of the parties to the PADA, one of which is the City.

The actions of the City in approving an extension allows Bright to further delay honoring its obligations under the PADA which constitutes a breach of the terms and covenants of the PADA referred to in our previous written communications and objections, including, without limitation, the failure of the City and the Applicant to comply with the requirement to obtain our prior written consent to the approvals given and actions taken to grant the permits and entitlements incorporated in the Final Resolution that are in direct conflict with the PADA, including but not limited to, sections 22.3, 22.6, and 22.7. As a result of Bright’s actions and the City’s apparent capitulation to Bright, the project contemplated by the PADA is becoming more and more remote and less and less feasible. The fundamental purpose of the PADA has been frustrated and the full consideration for which we bargained has failed. Accordingly, the PADA should be terminated or bifurcated between Bright and us, so that Bright can no longer stand in the way of

3<sup>RD</sup> MILLENNIUM INVESTMENTS

2206 East Muncie Avenue

Fresno, CA 93720

559.298.9300

Email: fresno3rdm@aol.com

the development originally contemplated by the PADA. The City is therefore encouraged to give serious consideration to a termination of the PADA.

Under the circumstances discussed above, we expressly reserve our rights under the PADA to seek specific performance, cancellation, or termination of the PADA and/or other remedies in law or equity from the Merced County Superior Court, in the event that the Merced City Council approves and adopts the Final Resolution included as part of Staff File #19-359 without adequately addressing the actions of Bright and their impact on the PADA.

Very truly yours,



Rick Telegan  
Partner

CC: Lee J. Kolligian  
James Ardaiz, Esq.  
Marshall Whitney, Esq.  
John Dunn, Esq.



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item K.1.**

Meeting Date: 8/5/2019

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*Report Prepared by: Fire Chief Billy Alcorn and Police Chief Chris Goodwin*

**SUBJECT:** Update and Final Report on Celebrate Safe Fireworks Campaign for 2019

### REPORT IN BRIEF

Provides a final report to Council on the Celebrate Safe Fireworks Campaign from the Fire Chief and Police Chief.

### RECOMMENDATION

Provide staff direction as needed on preparing the Celebrate Safe Fireworks Campaign for next year.

### ATTACHMENTS

1. Presentation





# Celebrate Safe Illegal Fireworks Enforcement Campaign 2019 Report



# Campaign Objectives

- Public Outreach
  - Banners, Posters, Stickers, Utility Bill Insert, Radio Interviews, Radio Ads, Social Media Campaign, Press Conference.
- Safe Surrender / Seizure of Illegal Fireworks
  - Provide the public the opportunity to dispose of fireworks, both legal and illegal fireworks without fear of prosecution.

A decorative graphic on the left side of the slide. It features a dark blue background with white stars, reminiscent of the American flag. Overlaid on this are several bursts of white and yellow fireworks, suggesting a celebration. The graphic is curved and flows from the top left towards the bottom right.

# Campaign Objectives

- Tip Lines
  - Provided multiple methods to report illegal fireworks instead of inundating 9-1-1 system.
  - Celebrate Safe hotline, Merced Connect App and dedicated email address.
  - Expanded dispatch center on July 3 and 4<sup>th</sup> staffed with volunteers from the community.
- Enforcement
  - Increased enforcement and community presence by Police and Fire Department personnel on July 3<sup>rd</sup> and 4<sup>th</sup>.



# Enforcement Activities

- Arrested two (2) people for possession of illegal fireworks.
- One hundred and fifty one (151) pounds of illegal fireworks were taken off the streets.





# Safe Surrender

- Allowed the public to dispose of any fireworks (safe and sane or illegal) safely and without any fear of prosecution.

	2018	2019	Percentage Change
Surrendered Fireworks	2	1	-50.0%

Respect Neighbors,  
Veterans & Pets!

★ ★ ★ ★ ★ ★ ★ ★

THE CITY OF MERCED HAS  
**ZERO TOLERANCE**  
for use/sales/possession of  
**DANGEROUS &  
ILLEGAL FIREWORKS**  
**\$1,000 FINE**

Report using the Merced Connect App

**209  
388-SAFE**

  
Merced Connect APP

[celebratesafe@cityofmerced.org](mailto:celebratesafe@cityofmerced.org)



# Requests for Service at Celebrate Safe Hotline

373

	July 3, 2018	July 4, 2018	July 3, 2019	July 4, 2019	Percent Change (2018 vs. 2019)
Celebrate Safe Hotline (388-SAFE)	38	302	59	594	92.1%
Merced Connect	34	76	4	47	-53.6%
Email	9	11	5	25	50.0%
Total	81	389	68	666	56.2%





# Calls for Service

Calls for Service	July 3 <sup>rd</sup>	July 4 <sup>th</sup>	July 5 <sup>th</sup>
Calls 2018	36	206	27
Calls 2019	51	230	23
% change	41.7%	11.7%	-14.8%

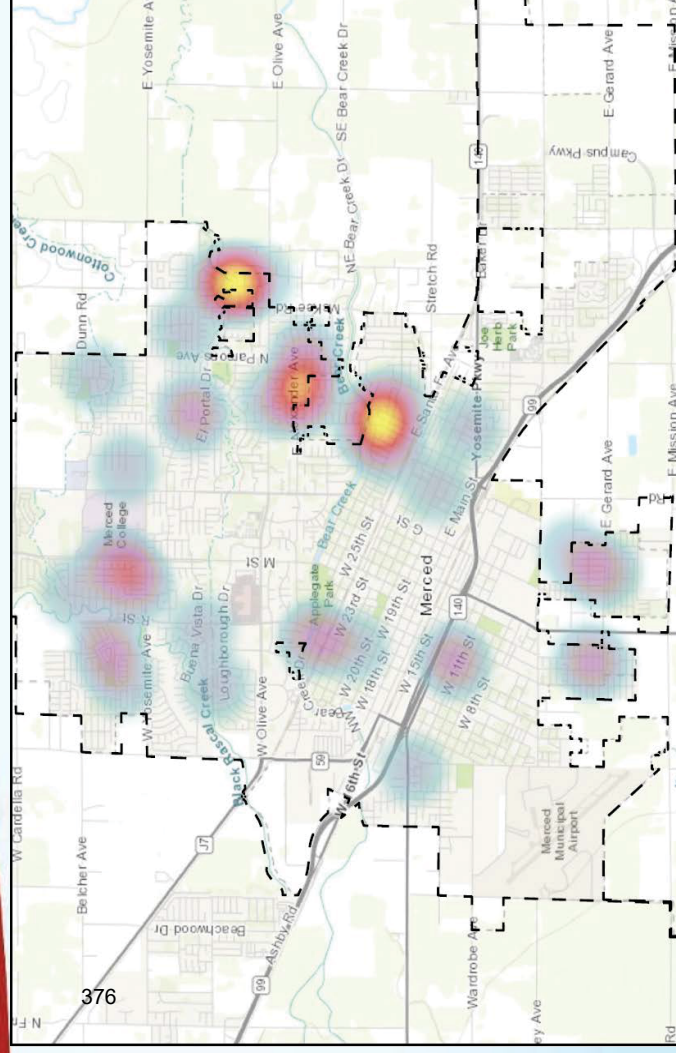
A decorative graphic on the left side of the slide. It features a dark blue background with a series of white stars arranged in a curved path. To the left of the stars, there are several bursts of white fireworks or sparkles. The entire graphic is set against a light blue background that has a subtle gradient.

# Celebrate Safe Hotline Results

- The Celebrate Safe hotline answered 587 calls (340 calls in 2018), representing a 72.7% increase in calls this year. Without the hotline, the calls would have been made directly into our dispatch center on 9-1-1 lines or other emergency/business numbers.
- These statistics validate that the public outreach campaign was effective and the program is valued by the community.

# Heat Maps of Illegal Fireworks Reports

- Information technology produced maps of the City showing the areas highest call (Complaint) volume.
- This assisted with enforcement.
- Provides good data for subsequent year's efforts.
- PD used these map to target areas weeks prior.





# Reporting Period: June 28 through July 6th

Incident Type	2017	2018	2019	Percentage Change (2018 vs. 2019)
<b>Fire</b>	<b>37</b>	<b>20</b>	<b>27</b>	<b>35.0%</b>
Overpressure Rupture, Explosion, Overheat (No Fire)	0	1	0	-100.0%
Rescue & EMS	124	155	163	5.2%
Hazardous Condition (No Fire)	4	4	8	100.0%
Service Call	10	13	18	38.5%
Good Intent	33	38	36	-5.3%
False Alarm & False Call	10	11	7	-36.4%



# Fire Cause

- **Twelve (12) fire incidents occurred on July 4<sup>th</sup>.**
- **Five (5) fires were fireworks related.**
- **Six (6) outside rubbish, trash, dumpster, or waste fires.**
- **Six (6) bush / vegetation fires.**



A decorative graphic on the left side of the slide. It features a dark blue background with white stars, overlaid with a red and white wavy banner. Bright, colorful fireworks are exploding in the background.

# Enforcement on July 3<sup>rd</sup> and 4<sup>th</sup>

- **Staffing on July 3<sup>rd</sup>**

- One (1) Fire Chief, two (2) Deputy Fire Chiefs, five (5) engine companies and one (1) truck company.
- Police Chief, 2 sergeants, 6 officers, 2 dispatchers, and 1 explorer scout.

- **Staffing on July 4<sup>th</sup>**


- One (1) Deputy Fire Chief, One (1) Fire Battalion Chief, five (5) engine companies and one (1) truck company.
- 2 Sergeant , 6 officers, 2 dispatchers.

- **Citations**

- The Fire and Police Department personnel issued 28 administrative citations, completed several parole/probation search, booked 2 gang members for VOP and confiscated illegal fireworks.







# Community Feedback

**City of Merced Fire Department**  
Published by Janet German [?] · July 3 at 8:15 PM · 🌐

City of Merced Fire Department and Merced Police Department and City of Merced CA - Home are on the streets right now patrolling for illegal fireworks.

If you hear or see illegal fireworks, call us right now 209-388-SAFE and we will answer your phone call and send someone out immediately.



<b>24,843</b> People Reached	<b>8,424</b> Engagements	<b>Boost Post</b>
    272	118 Comments	130 Shares

**City of Merced Fire Department**  
Published by Janet German [?] · July 4 at 6:23 AM · 🌐



**25,515**  
People Reached **7,937** Engagements | **Boost Unavailable** || 712 | 149 Comments | 220 Shares |

380





# Community Feedback



City of Merced Fire Department  
@MercedFire

Home

About

Posts

Photos

Videos

Community

Events

Promote

Manage Promotions



Keith Pelowski Great job, how about coming to Atwater  
Like Reply Message 2w 3



Mary Ann Love Thank you for keeping me safe  
Like Reply Message 2w



Darlene Buettgenbach In the last week I have heard illegal fireworks every night. But last night I heard none. Please be safe this weekend and keep up the good work.  
Like Reply Message 2w 8 Replies



Belinda Webb Great job! Keep at it.  
Like Reply Message 2w



Kay McKee Thank you!!!  
Like Reply Message 2w



Teresa Apodaca Stay safe and thank you.  
Like Reply Message 2w



Anne Stevens Thank you to each and every officer, every person behind the scenes. It would not happen without each and every one of you.  
Like Reply Message 2w 2



Ruth-Anne Harblison Thank you, wish they were doing that in Madera.  
Like Reply Message 2w 1



Jennifer M. Jones Thank you, my 3 year old nephew thanks you. My sleep thanks you, because every time he hears the random pops, he is running into my room, but not last night!!!!  
Like Reply Message 2w 1



Amanda Roach I love illegal fireworks but I actually agree with this. Go watch them for FREE at Castle or the high school or something. Many families homes have caught on fire. Those families lose their belongings, money & comfort at the expense of someones night of "fun".  
Enjoy your 4th, be safe && keep others in mind when making choices this evening  
Like Reply Message 2w 6 1 Reply



Melissa Skehan Dunn Somebody needs to tell Winton Fire Dept to take notice and notify Authorities  
Like Reply Message 2w



Matthew Trowbridge So when did it become illegal for people to have fun. Wow 1,000 dollars, why not teach people the proper way light/discard fireworks instead of trying to take everything away from people.  
And yes I fully understand what fireworks can do but what about mother nature you gonna fine her every time a lightning struck hits the ground and starts a fire?  
Like Reply Message 2w 3



Charlotte Hart Matthew Trowbridge it's not the occasional fun. It's the all hours of the night blasting. People work. Respect. You don't have it. You'll get some at the tune of 1k  
Like Reply Message 2w 2

381



# Lessons Learned

- Enforcement of the sale and use of illegal fireworks should increase next year to reduce the use of Illegal Fireworks.
- The tip line, Merced Connect, and email assisted the public in reporting the sale and use of illegal fireworks for the 3<sup>rd</sup> and the 4<sup>th</sup>. This has become a major issues leading up to the holiday.
- Additional staffing in the secondary dispatch center, especially on July 4<sup>th</sup>.
- Expanded dispatch continues to greatly reduce the number of calls into the 9-1-1 center.

A decorative graphic on the left side of the slide. It features a stylized American flag with a blue field containing white stars and red and white stripes. Overlaid on the flag are several bursts of fireworks in white and yellow. The background of the slide is a light blue gradient.

# Lessons Learned

- Consider shortening the sales and use period of safe and sane fireworks.
- Continue the issuance of administrative citations.
- Create a multi-agency task force to saturate neighborhoods vs. being spread thin throughout each of our communities.
- Have one central tip line leading up to the holiday to take fireworks related calls (countywide approach to celebrate safe).
- This will be a multi-year effort to obtain desired results.



# Countywide Follow-up



- County debrief meeting on July 24, 2019
- Every agency and the D.A.'s office working together
- Met with Senator Caballero
- Funding for central valley public safety agencies





# Celebrate Safe 2019



## ADMINISTRATIVE REPORT

---

**Agenda Item K.2.**

Meeting Date: 8/5/2019

---

*Report Prepared by: Stephanie Dietz, Assistant City Manager*

**SUBJECT: Report to the City Council on Recommended Police and Fire Facility Sizing and Configuration, Financing Structure and Funding Requirements for the Proposed Public Facilities Bond Measure**

### **REPORT IN BRIEF**

City Staff will provide a report to the City Council on recommendations for facility sizing and configuration of the proposed Police Headquarters and future Fire Stations, potential framework for a financing structure and other funding requirements necessary to support a potential Public Facilities Bond Measure for the March 2020 ballot.

### **RECOMMENDATION**

Provide staff direction on next steps for a proposed Ballot Measure question related to the proposed Public Facilities Bond Measure.

### **ALTERNATIVES**

None.

### **AUTHORITY**

City of Merced Charter, Section 200

### **CITY COUNCIL PRIORITIES**

FY 2019/20 City Council Priorities

### **DISCUSSION**

On August 21, 2017, staff provided the Council with an update on the current condition of all City-owned facilities and presented options for construction financing. During this meeting, direction was provided to staff to take the initial step of conducting an opinion survey to determine if the community would support a ballot initiative that would directly fund the construction of a new Police Headquarters Station, two new Fire Stations, an expansion of the Corporation Yard, and the remodeling of ten existing bathrooms within City of Merced parks.

At the Council's direction, staff worked quickly to secure professional services to develop and conduct a public opinion survey. The survey was conducted between October 24<sup>th</sup> and October 29<sup>th</sup> and the results were posted on the City's website on December 7, 2017. Based on the findings of the survey, it was recommended to continue education and outreach efforts with a goal of performing



a second survey in the Spring 2018.

On January 2, 2018, the Council approved an amendment to the Professional Services Agreement with the Lew Edwards Group to develop ballot language and put together an aggressive outreach strategy to educate the community about the need for enhanced public facilities within the City of Merced. As part of the education strategy, priority surveys were conducted, staff attended meetings and shared information with service clubs and neighborhood watch groups, and educational material was mailed to residents. At the conclusion of the education efforts, a second survey was conducted between the dates of June 14<sup>th</sup> through June 18<sup>th</sup>.

Staff presented the findings of the public opinion survey on July 2, 2018. During that meeting, Council provided direction to forgo efforts to place a measure on the ballot related to Public Facilities and to pursue conducting a professional Needs Assessment of the Police Department to better determine the space configuration and cost estimates of building a new facility.

During the fall of 2018, staff conducted a Request for Proposal to evaluate consultants to perform a needs assessment. On January 22, 2019, the Council awarded the Needs Assessment contract LPA, Inc. in partnership with MWL, Inc. A draft report of the space needs for a Police Headquarters was provided to the City this June. Staff are currently working through the initial draft to develop a final document. Staff will provide preliminary findings to the City Council for direction on how to finalize the needs assessment. Once this determined, LPA, Inc. will completed the needs assessment and present the final document for beginning design.

During the June 17, 2019 meeting, the Council requested that staff return with options and choices on level of future staffing, facility configuration, location and property sale proceeds, future Impact Fee collection, Assessed Value growth rates, and General Obligation Bond types and structure. Staff are seeking direction on all six points in order to return to the Council on August 19, 2019 with a final per \$100,000 figure to be potentially tested in September for viability on a March 2020 Ballot.

## **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

## **ATTACHMENTS**

1. Presentation



# PUBLIC FACILITIES UPDATE

City Council Meeting - August 5, 2019

# Public Facilities Background

- June 18, 2018 – Council direction to not move forward with ballot item
- July 10, 2018 – Issued RFP for Police Headquarters Needs Assessment
- January 22, 2019 – Council approved Needs Assessment Contract with LPA, Inc.
- February – May 2019 – Data collection and meetings with Police Department
- October 2018 – March 2019 – Negotiated sale of Mansionette property
- June 2019 – Draft report with initial sizing data received from LPA, Inc.
- August 5, 2019 – Options for Council's Consideration

# Decision Points

- Police/Fire Project Scope
  - *Staffing*
  - *Building Size*
  - *Property Sales Proceeds & Location Direction*
- Financing Structure Assumptions
  - *Impact Fee Inclusion*
  - *Assessed Value*
  - *Bond Issuance Amount, Number and Type*

# Future Fire Stations

Station 54 Relocation - Gateway Shopping Center				
Building	7,000 sqft	\$653/sqft		\$4,571,000
Response Vehicle				\$350,000
Total				\$4,921,000
Station 56 - Merced College				
Building	7,000 sqft	\$653/sqft		\$4,571,000
Engine				\$875,000
Response Vehicle				\$350,000
Total				\$5,796,000
Station 57 - Bellevue Ranch/UC Merced				
Building	7,000 sqft	\$653/sqft		\$4,571,000
Ladder Truck				\$1,700,000
Engine				\$875,000
Total				\$7,146,000
Grand Total				\$17,863,000

Total cost at \$725/sqft is approx. \$19.4 mil

# Police Station Options

	Option 1		Option 2		Option 3	
Sworn/Non	201	72	154	55	98	39
Facility Size	74,938 sqft		66,000 sqft		56,000 sqft	
\$653/sqft	\$49.0 mil		\$43.1 mil		\$36.6 mil	
\$725/sqft	\$54.4 mil		\$47.9 mil		\$40.6 mil	

# Property Value & Location Direction

Property	Cash Value
Mansionette Property	\$2,100,000
Sun-Star Property (est.)	\$2,000,000
Central Station - 23 <sup>rd</sup> Street (est.)	\$800,000
Total	\$4,900,000

Direction to staff on what locations to evaluate



# Future Impact Fee Estimate

	Option 1		Option 2		Option 3	
Sworn/Non-sworn	201	72	154	55	98	39
Building Size	74,938 sqft		66,000 sqft		56,000 sqft	
Est. Cost @ \$653/sqft	\$49.0 mil		\$43.1 mil		\$36.6 mil	
Growth Factor of 35%	\$17.1 mil		\$15.1 mil		\$12.8 mil	
Est. Collected by 2035	\$12.8 mil		\$11.3 mil		\$9.5 mil	

Assumes that Impact fees are increased to support future cost of facility and that development continues at current pace.

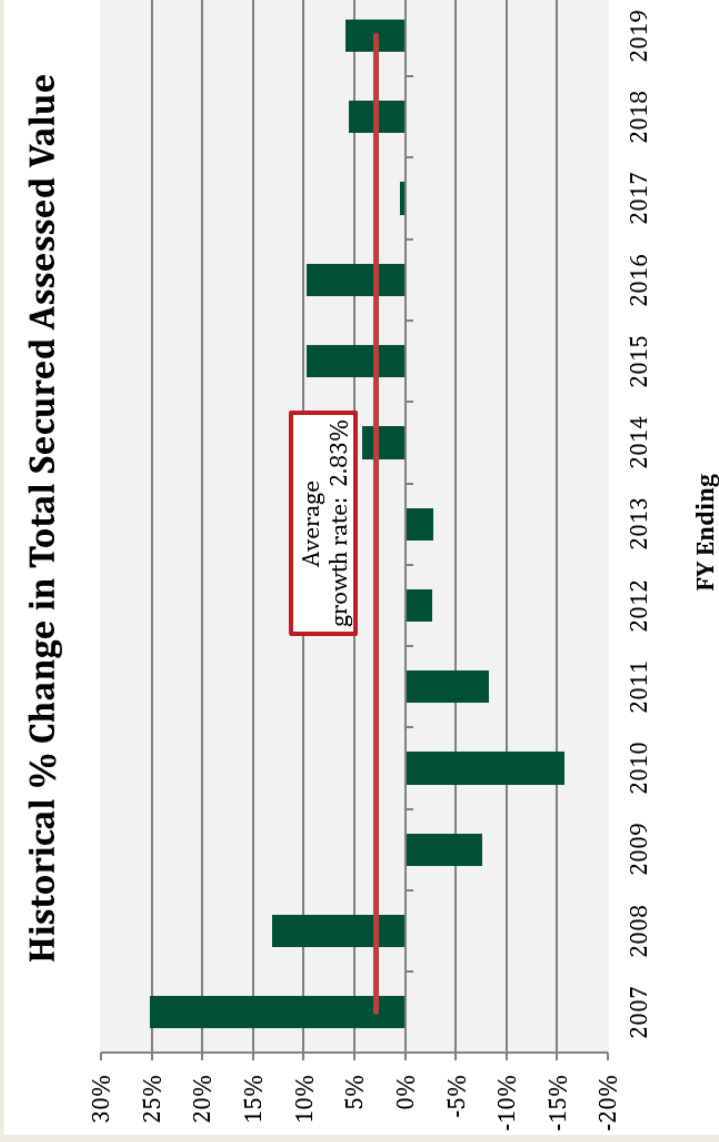
# Current Impact Fee Totals

	Fire PFFP	Police PFFP
Current Total	\$2,509,229	\$2,998,146
10 Year Average	\$126,201	\$131,900

- Impact Fees are not viewed as marketable for bond issuance
- Impact Fees will only account for 35% of total project cost
- Would require separate bond issuance and secured by the General Fund

# Property Tax Value – AV Growth Rate

FY Ending	Assessed Valuation - Secured	% Change
2006	\$3,635,277,414	NA
2007	\$4,549,673,676	25.15%
2008	\$5,147,434,121	13.14%
2009	\$4,756,208,583	-7.60%
2010	\$4,006,604,309	-15.76%
2011	\$3,675,277,149	-8.27%
2012	\$3,578,058,132	-2.65%
2013	\$3,477,103,589	-2.82%
2014	\$3,625,924,130	4.28%
2015	\$3,978,742,419	9.73%
2016	\$4,363,186,847	9.66%
2017	\$4,383,007,366	0.45%
2018	\$4,626,630,714	5.56%
2019	\$4,898,077,136	5.87%
<b>Average since 2006</b>		<b>2.83%</b>



Source: County of Merced – Fieldman Rolapp & Associates

# Financing Structure Assumptions

- What Impact Fees to include
- Assessed Value growth factor
- Level Debt v. Escalating Debt Service Structure
- Number of Bond Issuances

# Summary of Decision Points

- Police/Fire Project Scope
  - *Staffing*
  - *Building Size*
  - *Property Sales Proceeds & Location Direction*
- Financing Structure Assumptions
  - *Impact Fee Inclusion*
  - *Assessed Value*
  - *Bond Issuance Amount, Number and Type*

# Upcoming Meetings

- August 8 – National Night Out in Applegate Park, 6pm
- August 9 – Breakfast Rotary at Paul’s Place, 6:30am
- August 12 – Kiwanis at Elk’s Lodge, 12pm
- August 13 – Merced Business Exchange at Jantz Bakery, 8am
- August 13 – Neighborhood Watch Block Captain’s meeting at Central Station, 6pm
- August 28 – Merced Boosters, 7pm, tbd
- August 29 – Breakfast Lions, Merced College Cafeteria, 7am
- Additional meetings include: Merced Parent Café, Merced Realtors

## Next Steps

- Staff to develop rate per \$100,000 and return to Council with an update on August 19<sup>th</sup>
- Staff to return to Council on August 19<sup>th</sup> with following amendments
  - *LEG contract to allow for March ballot items (Charter Amendment and/or Facility Measures)*
  - *FM3 contract to conduct second tracking survey in September with results available to Council in October*





## ADMINISTRATIVE REPORT

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**Agenda Item L.1.**

Meeting Date: 8/5/2019

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

**SUBJECT:** Discussion on Attendance and Designation of Voting Delegate and Alternates for the 2019 League of California Cities Annual Conference - Annual Business Meeting, October 16 - October 18, 2019, Long Beach, CA

### REPORT IN BRIEF

To expedite the conduct of business at this important policy-making meeting, each City Council is asked to designate a voting representative and two alternates who will be present at the meeting.

### RECOMMENDATION

**City Council** - Adopt a motion designating one voting delegate and two alternate voting delegates to the League of California Cities Annual Conference General Business Meeting, scheduled for Friday afternoon, October 18, 2019 in Long Beach, CA.

### ALTERNATIVES

1. Designate voting representatives as outlined in the staff report; or
2. Designate other City officials attending the conference; or
3. Take no action.

### AUTHORITY

The membership takes action on conference resolutions at the Annual Business Meeting. Annual Conference resolutions guide cities and the League in efforts to improve the quality, responsiveness, and vitality of local government in California. Therefore, it is very important that all cities be represented at the Business Meeting on Friday, October 18, 2019, in Long Beach.

### CITY COUNCIL PRIORITIES

Not applicable.

### DISCUSSION

To expedite the conduct of business at this important policy-making meeting, each City Council is asked to designate a voting representative and two alternates who will be present at the Annual Business meeting. The League by-laws provide that each city is entitled to one vote in matters affecting municipal or League policy.

If the Mayor or a member of the City Council is in attendance at the Annual Business Meeting, it is expected that one of these officials will be designated as the voting delegate. However, if the City

Council does not have a registered delegate at the conference, but will be represented by other City officials, one of the other officials can be designated the voting delegate or alternate.

**IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

**ATTACHMENTS**

1. Letter from League of California Cities

Council Action Advised by August 30, 2019

RECEIVED

JUN 12 2019

CITY MANAGER'S OFFICE

June 10, 2019

**TO: Mayors, City Managers and City Clerks**

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES**  
**League of California Cities Annual Conference – October 16 - 18, Long Beach**

The League's 2019 Annual Conference is scheduled for October 16 – 18 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for 12:30 p.m. on Friday, October 18, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

**Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, October 4. This will allow us time to establish voting delegate/alternate records prior to the conference.**

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: [www.cacities.org](http://www.cacities.org). In order to cast a vote, at least one voter must be present at the

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.





## Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



**CITY:** \_\_\_\_\_

**2019 ANNUAL CONFERENCE  
VOTING DELEGATE/ALTERNATE FORM**

**Please complete this form and return it to the League office by Friday, October 4, 2019. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.**

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

**Please note:** Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

**1. VOTING DELEGATE**

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

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

**2. VOTING DELEGATE - ALTERNATE**

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

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

**3. VOTING DELEGATE - ALTERNATE**

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

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

**PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.**

**OR**

**ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).**

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

Email: \_\_\_\_\_

Mayor or City Clerk \_\_\_\_\_  
(circle one) (signature)

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

**Please complete and return by Friday, October 4, 2019**

League of California Cities  
**ATTN: Darla Yacub**  
1400 K Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

**FAX: (916) 658-8240**  
E-mail: [dyacub@cacities.org](mailto:dyacub@cacities.org)  
(916) 658-8254



## ADMINISTRATIVE REPORT

**Agenda Item L.2.**

Meeting Date: 8/5/2019

*Report Prepared by: Jennifer Levesque, Deputy City Clerk, City Clerk's Office*

**SUBJECT:** Citizens' Oversight Committee - Measure C Appointments

### REPORT IN BRIEF

Accept recommendation to fill Citizens' Oversight Committee - Measure "C" vacancies.

### RECOMMENDATION

**City Council** - Adopt a motion accepting recommendation from the Citizens' Oversight - Measure "C" Subcommittee and appointing one individual to the Central District to serve as a member of the Committee and one individual to the Northern District to serve as a member of the Committee.

### ALTERNATIVES

1. Approve, as recommended by Citizens' Oversight Committee; or,
2. Approve, subject to other than recommended by Citizens' Oversight Committee; or,
3. Deny; or,
4. Direct the Clerk's Office to continue recruitment for the vacancies.

### AUTHORITY

Charter of the City of Merced, Section 3.38.050.

### DISCUSSION

The purpose of the Citizens' Oversight - Measure "C" Committee is to review projected revenues created by the voter approved Measure "C", a one-half cent Sales Tax. The Committee recommends proposed expenditures to City Council. The Committee consists of three voting members from each of the three existing Policing Districts of the City, for a total of nine voting members, who serve four-year terms of office. There are also ex-officio members representing the various recognized municipal employee bargaining units.

As outlined in Section 3.38.050 of the Charter, any vacancy for a voting member on the Citizens' Oversight Committee shall be filled by having the Citizens' Oversight Committee make nominations to the City Council for consideration as a whole.

The Measure C Subcommittee has recommended Yesenia Curiel for the Central District and Dorothea Lynn White for the Northern District.

### ATTACHMENTS

1. Measure C Roster

2. Application of Yesenia Curiel (Central District)
3. Application of Kahlyn Moody (Central District)
4. Application of Dorothea Lynn White (Northern District)
5. Application of Jose Delgadillo (Northern District)



# CITIZENS' OVERSIGHT COMMITTEE - MEASURE C

City of Merced

<b><u>Name</u></b>	<b><u>Term</u> / <i>Appt.</i></b>
<b>Cody Bijou</b> <i>Northern District</i>	<u>1/1/2023</u> ( <i>appt. 1/7/2019</i> )
<b>Spencer Davies</b> <i>Central District</i>	<u>1/1/2020</u> ( <i>appt. 5/1/2017</i> )
<b>Glenn Davis</b> <i>Northern District</i>	<u>1/1/2022</u> ( <i>appt. 7/16/2018</i> )
<b>Cristina Garcia</b> <i>Southern District</i>	<u>1/1/2023</u> ( <i>appt. 1/7/2019</i> )
<b>Michael Harris</b> <i>Central District</i> Chair	<u>1/1/2023</u> ( <i>appt. 5/1/2017; reappt. 1/7/2019</i> )
<b>Michelle Lee</b> <i>Southern District</i>	<u>1/1/2022</u> ( <i>appt. 7/16/2018</i> )
<b><u>Ex-Officio Members</u></b>	<b><u>Organizations</u></b>
VACANT	AFSCME
James Evans	International Fire Fighters Association
Corey Plagenza	Merced Assoc. of City Employees (MACE)
William Avery	Merced Police Officers Association
Alan Ward	Merced Police Sergeants Association

All Committee members may be contacted by mail at 678 West 18th Street, Merced, California 95340, or by calling (209) 388-8650.

*Updated on July 31, 2019*

*Page 1 of 1*

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**Profile**

Yesenia

First Name

Curiel

Middle Initial

Last Name

UC Merced

Employer

Campus Advocacy, Resource &  
Education Director

Job Title

Email AddressPrimary PhoneAlternate Phone

---

**Are you 18 years of age or older? (Required)**☒ Yes ☐ No

Question applies to multiple boards

---

**Do you live within the City Limits of Merced? (Required)**☒ Yes ☐ NoStreet AddressCitySuite or AptStatePostal Code

Question applies to multiple boards

---

**Are you a registered voter in the City of Merced? (Required)**☒ Yes ☐ No

---

**Which Council district do you live in?**

---

None Selected

---

**Are you currently serving on a Board or Commission? If so, please list:**

---

Yes. RECREATION AND PARKS COMMISSION

---

**Which Boards would you like to apply for?**

---

Citizens Oversight Committee - Measure C: Submitted

**Highest Level of Education Completed: \***

- ☒ Master's Degree  
☒ Professional Degree

---

**Communication**

**The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?**

☒ Yes ☐ No

**If you selected no, please identify how you would like to be contacted:**

---

**Interests & Experiences**

**Tell us about yourself, and why you are applying for this particular Board or Commission:**

I live in the City of Merced with my husband and two rescue dogs. I am a licensed Marriage and Family therapist and director of the UC Merced Campus Advocacy, Resource, and Education (CARE) department which provides the prevention of gender-based violence and crisis intervention services. I am applying for the Central representative to serve on the Measure C- Citizens Oversight Committee. I am interested in the success of the City of Merced, and I am confident that I will be an asset to this committee. I would like to contribute to this commission by providing my years of civic services and employment history.

**Please list your current employer and relevant volunteer experience.**

---

I currently work at UC Merced. Below are my most recent volunteer experiences: September 2017 – Present City of Merced Recreations and Park Commission Merced, CA Commissioner Participate in monthly meetings. Acts in an advisory capacity to the City Council in all matters pertaining to recreation and parks. Review of annual budget for recreation and parks. Promotes and assists in the planning of a recreation program for the citizens of Merced. September 2010-Feb 2018 California Coalition Against Sexual Assault Sacramento, CA Board President, Board Secretary, and Member Participate in monthly meeting. Provide oversight and leadership of an agency. Provide financial oversight and monitoring. Promote a positive work environment. Engage with the membership of anti-sexual assault movement. Advocate for Rape Crisis Center in California. Networks and participates in coalition work. Participate in state and national events. September 2009-June 2016 City of Santa Barbara Human Service Committee Santa Barbara, CA Latina Representative Represent advocate for the Latin@ community. Completed analytical review based on scoring scales of 65-78 grants annually. Participate in monthly meetings. Conduct interviews of non-profit agencies and city departments. Conducted site visits to evaluate programs and outcomes. May 2002-May 2016 YMCA: Isla Vista Teen Center Santa Barbara, CA Tutor/Mentor/Facilitador Facilitate presentations on anti-gang involvement. Conducted house visits to parents. Facilitated workshops and meetings. Provided referrals and links to other community agencies. Mentored youth, parents, and staff members. Conducted fundraiser for holiday events. September 2004-Dec 2015 Santa Barbara Women's Political Committee Santa Barbara, CA Vice President of Policy Participate in monthly meetings. Engage in political evaluation of local elections. Provided Team Building activities to the group members. Facilitated member programs. Participated in Candidate Assessment Interviews and provided reports. Organized silent auctions. Member of Board development, Membership and Fundraising. September 2008- July 2015 California Coalition Against Sexual Assault Sacramento, CA Woman of Color South Representative Facilitated monthly meetings. Team building activities. Provided outreach and retention activities. Provided leadership to members from Southern California Rape Crisis Centers (most are dual agencies such as Domestic Violence and Rape Crisis programs). Provided support and referrals to members. Networks and participates in coalition work. Participate in state and national events. December 2009- January 2011 California Coalition Against Sexual Assault Sacramento, CA Queer Caucus Facilitator Facilitated monthly meetings. Provided leadership to members from Southern California Rape Crisis Centers. Provided support and referrals to members. September 2004-June 2010 The Fund for Santa Barbara Santa Barbara, CA Chair, Co-chair and member of Grant Making Committee Read and evaluate 35-45 grant proposals during spring and fall cycles. Provided analytical and need base oversight of proposals. Generated follow-up questions for proposals. Conduct site evaluations. Team building activities. Conflict resolution and mediation. Submit recommendations to board. September 2001-July 2004 Santa Barbara Rape Crisis Center Santa Barbara, CA Volunteer Advocate Cover 6-hour shift during the week. Provide crisis counseling on 24-hour hotline. Focus on adolescent clients and counseled 2-5 client's month.

**What is your understanding of the roles and responsibilities of this Board or Commission?**

---

The role of the committee is to review the spending of the City's half-cent sales tax (2006) and advises the City Council on ways to budget the funds. The expectation is for me to cooperate and collaborate with committee members to make sure the funds will be used to improve conditions for citizens in Merced.

**Do you have experience or special knowledge pertaining to this Board or Commission?**

---

I have experience budget and fiscal responsibility. Please refer to my resume or above for more information about my experience. In fall 2017, I also participated in the City of Merced Police Department Citizens Academy which gave me an opportunity to better understand the role of law enforcement in the city. I also participated in a 4-hour police ride-along.

Any other comments you would like to add that may assist the City Council in their decision?

I am excited to contribute my time to this commision. I am committed to making sure the City of Merced is successful.



Upload a Resume

Requirements

Question applies to multiple boards

AB 1234 Ethics Training

☒ I Agree \*

Question applies to multiple boards

Attendance Policy

☒ I Agree \*

Statement of Economic Interests - FPPC Form 700

☒ I Agree \*

Question applies to multiple boards

Oath of Office

☒ I Agree \*

Question applies to multiple boards

Public Scrutiny

☒ I Agree \*

How did you hear about this vacancy? \*

☒ City Website

If you selected other, please indicate how you learned about the vacancy:

Demographics

Ethnicity

☒ Other

Gender

☒ Female

Date of Birth

Submission

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.

yc

---

**Profile**

Kahynnicole

First Name

M

Middle Initial

Moody

Last Name

Costco Wholesale

Employer

Supervisor

Job Title

Email AddressPrimary PhoneAlternate Phone

---

**Are you 18 years of age or older? (Required)**☒ Yes ☐ No

Question applies to multiple boards

---

**Do you live within the City Limits of Merced? (Required)**☒ Yes ☐ NoStreet AddressCitySuite or AptStatePostal Code

Question applies to multiple boards

---

**Are you a registered voter in the City of Merced? (Required)**☐ Yes ☒ No

---

**Which Council district do you live in?**

---

None Selected

---

**Are you currently serving on a Board or Commission? If so, please list:**

---

**Which Boards would you like to apply for?**

Recreation and Parks Commission: Submitted

Personnel Board: Submitted

Building and Housing Board of Appeals: Submitted

Regional Airport Authority: Submitted

Bicycle Advisory Commission: Submitted

Citizens Oversight Committee - Measure C: Submitted

Planning Commission: Submitted



**Highest Level of Education Completed: \***

☒ Some College, No Degree

---

**Communication**

**The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?**

☒ Yes ☐ No

**If you selected no, please identify how you would like to be contacted:**

---

**Interests & Experiences**

**Tell us about yourself, and why you are applying for this particular Board or Commission:**

I just moved to Merced and I would like join the board to help make decisions today for tomorrow. I have small children and they are going to grow up here and I want to make it a better place for them and all of the residents of Merced.

**Please list your current employer and relevant volunteer experience.**

I work for Costco Wholesale as a Supervisor. I would volunteer at my church before I moved here. I am currently looking for a new church home to continue my volunteer work for the community.

**What is your understanding of the roles and responsibilities of this Board or Commission?**

Going to meeting and voting on new laws/policy and bring new ideas to the table and being a voice for the people of Merced.

**Do you have experience or special knowledge pertaining to this Board or Commission?**

No

**Any other comments you would like to add that may assist the City Council in their decision?**

---

Upload a Resume

---

**Requirements**

☒ I Agree \*

☒ I Agree \*

**Statement of Economic Interests - FPPC Form 700**

☒ I Agree \*

☒ I Agree \*

☒ I Agree \*

**How did you hear about this vacancy? \***

☒ City Website

**If you selected other, please indicate how you learned about the vacancy:**

**Demographics**

**Ethnicity**

---

☒ Other

**Gender**

---

☒ Female



Date of Birth

---

**Submission**

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.

---

KM

---

**Profile**

Dorothea Lynn

First Name

White

Middle Initial

Last Name

California Department of  
Corrections and Rehabilitation

Employer

Employee Relations Officer

Job Title

Email AddressPrimary PhoneAlternate Phone

---

**Are you 18 years of age or older? (Required)**☒ Yes ☐ No

Question applies to multiple boards

---

**Do you live within the City Limits of Merced? (Required)**☒ Yes ☐ NoStreet AddressCitySuite or AptStatePostal Code

Question applies to multiple boards

---

**Are you a registered voter in the City of Merced? (Required)**☒ Yes ☐ No

---

**Which Council district do you live in?**☒ District 3

---

**Are you currently serving on a Board or Commission? If so, please list:**

---

No

---

**Which Boards would you like to apply for?**

Personnel Board: Submitted

Building and Housing Board of Appeals: Submitted

Regional Airport Authority: Submitted

Citizens Oversight Committee - Measure C: Submitted

Arts and Culture Advisory Commission: Submitted

Citizens Advisory Charter Review Committee: Submitted

Question applies to multiple boards

**Highest Level of Education Completed: \***

☒ Some College, No Degree

---

## Communication

The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?

☒ Yes ☐ No

If you selected no, please identify how you would like to be contacted:

---

## Interests & Experiences

**Tell us about yourself, and why you are applying for this particular Board or Commission:**

---

Currently the Employee Relations Officer (ERO), Staff Services Manager I (SSMI) with the California Department of Corrections and Rehabilitation (CDCR) at Valley State Prison (VSP) in Chowchilla, California with twenty-two years of State Service. As the ERO, I provide guidance to management and supervisors involving employee job performance and administer the department's disciplinary process for VSP. Prior to becoming the ERO, I served as the Labor Relations Advocate where I was responsible for managing all areas involving employee grievances, arbitrations, and labor negotiations and acted as the liaison between Management and the Unions. Received the California Department of Human Resources (CalHR) Credentialing Certificates in Employee Performance Management and Civil Rights. In addition, is certified as a Training for Trainers (T4T) Instructor, Cultural Diversity in the Workplace Master Trainer, Equal Employment Opportunity Counselor, and Certified Skelly Hearing Officer. I is the recipient of the Employee of the year in 2014 for outstanding job performance contributing to the mission of VSP. Prior to working for CDCR, I worked for the California Department of Motor Vehicles (DMV) for 16 years. I was the Administrative/Operations Manager II in the Merced Field Office where I was responsible for the administrative duties and daily operations of the office. I helped develop, mentor, and train new employees and managers as well as training existing managers in use of newly developed programs and reports used in the region. In Addition, I represented DMV at the quarterly CDCR, Division of Adult Parole Operations (DAPO), Parole and Community Team (PACT) meetings held to assist parolee's transition into the community and lead DMV's team at the Annual Stand Down Events to assist homeless and in-need veterans and their families. I received the Supervisors Recognition Award in 2013 for Outstanding Job Performance that contributed to the mission and goals of the Department. I has served as California Organization of Licensing Registration Examiners (COLRE) Vice-President, an affiliate within the California Statewide Law Enforcement Association that represents approximately 7,000 California State employees in bargaining unit 7 (BU07). I represented BU07 employees at State Legislative Hearing before the Committee on public employees, retirement, and social security on Senate Bill 9 - State employees' retirement, and State safety membership. As a civically engaged member in her community is serving as the Community Relations Committee chairperson for the Merced branch of the National Association for the Advancement of Colored People (NAACP), Merced County District 2 Participatory Budget Committee member, and Chicano Correctional Workers Association (CCWA) member. I was selected to serve on the current Proposition 47 Scoring Panel for The Board of State and Community Corrections. In which; "The Board of State and Community Corrections has released a Request for Proposals for a grant program that will be funded by the second round of savings from Proposition 47. Under the voter-approved initiative, eligible applicants are public agencies that partner with local community-based organizations to provide mental health services, substance-use disorder treatment or diversion programs for people involved with the criminal justice system. Additional legislation (AB 1056, Chap. 438, Stats. of 2015) requires that the grants be awarded competitively, that funds may serve both adults and juveniles, and that funds be used for housing-related assistance and other community-based supportive services, including job skills training, case management or civil legal services. The BSCC further requires that at least 50 percent of the award made to grantees be passed through to community-based service providers. About \$96 million will be available for a grant cycle scheduled to run Aug. 15, 2019 through May 15, 2023. This cycle will be funded from Prop 47 savings deposits in Fiscal Years 2019-20 and 2020-21." I am also the proud mother of three children, one that works with adults with developmental disabilities with a history of forensic involvement, one that manages a level twelve girl's group home and the youngest recently graduated from high school.

**Please list your current employer and relevant volunteer experience.**

---

**What is your understanding of the roles and responsibilities of this Board or Commission?**

The commission has the responsibility of providing recommendations to the City Council and other appointed bodies and City departments. The purpose of the Measure C- Citizens' Oversight Committee is to review projected revenues created by the voter-approved Measure C, a one-half cent Sales Tax. The Personnel Board, created by the City Charter, recommends to the City Council the adoption, amendment, or repeal of civil service rules and regulations, hears appeals of any person in the classified service relative to any suspension, demotion or dismissal, and makes any investigation which it may consider desirable concerning the administration of personnel in the municipal service and reports its findings to the City Council and the City Manager. The Committee reviews requests related to traffic issues, including matters relating to parking regulations, speed limits, traffic signs, loading zones, safety, and handicapped zones. The Traffic Committee may approve or deny these requests or may make recommendations to the City Council.

**Do you have experience or special knowledge pertaining to this Board or Commission?**

**Any other comments you would like to add that may assist the City Council in their decision?**



Upload a Resume

**Requirements**

Question applies to multiple boards

**AB 1234 Ethics Training**

☒ I Agree \*

Question applies to multiple boards

**Attendance Policy**

☒ I Agree \*

**Statement of Economic Interests - FPPC Form 700**

☒ I Agree \*



Question applies to multiple boards

## Oath of Office

☒ I Agree \*

Question applies to multiple boards

## Public Scrutiny

☒ I Agree \*

How did you hear about this vacancy? \*

☒ A Friend

If you selected other, please indicate how you learned about the vacancy:

## Demographics

### Ethnicity

☒ African American

### Gender

☒ Female

Date of Birth

## Submission

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.

DLW

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**Profile**

JOSE

First Name

J

Middle Initial

DELGADILLO

Last Name

Employer

Job Title

Email Address

Primary Phone

Alternate Phone

---

**Are you 18 years of age or older? (Required)**☒ Yes ☐ No

Question applies to multiple boards

---

**Do you live within the City Limits of Merced? (Required)**☒ Yes ☐ No

Street Address

Suite or Apt

City

State

Postal Code

Question applies to multiple boards

---

**Are you a registered voter in the City of Merced? (Required)**☒ Yes ☐ No

---

**Which Council district do you live in?**☒ District 6

---

**Are you currently serving on a Board or Commission? If so, please list:**

MCAG-CAC

---

**Which Boards would you like to apply for?**

Citizens Oversight Committee - Measure C: Submitted

Question applies to multiple boards

---

**Highest Level of Education Completed: \***☒ Bachelor's Degree

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## Communication

The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?

☒ Yes ☐ No

If you selected no, please identify how you would like to be contacted:

---

---

## Interests & Experiences

Tell us about yourself, and why you are applying for this particular Board or Commission:

I HAVE LIVED IN MERCED FOR THE LAST 13 YEARS. SINCE, I HAVE SERVED IN THE CIVIL GRAND JURY FOR FIVE YEARS AND AS A COMMISSIONER FOR THE HOUSING AUTHORITY FOR THE COUNTY OF MERCED. I WAS A MEMBER OF THE ONE VOICE TEAM LAST YEAR.

Please list your current employer and relevant volunteer experience.

I AM CURRENTLY SERVING IN A CATHOLIC RELATED ORGANIZATION: GRAND KNIGHT FOR THE KNIGHTS OF COLUMBUS. THIS ORGANIZATION PERFORMS IN SO MANY WAYS WITH TIME TALENT AND TREASURE NOT ONLY TO THE CATHOLIC CHURCH, BUT TO MANY CIVIL ORGANIZATIONS.

What is your understanding of the roles and responsibilities of this Board or Commission?

YOUTH, SCHOOLS, ROADS, TRANSPORTATION AND ENVIRONMENT

Do you have experience or special knowledge pertaining to this Board or Commission?

NO

Any other comments you would like to add that may assist the City Council in their decision?

I AM A VIETNAM VETERAN AND A FORMER RAILROAD OFFICIAL

 Upload a Resume

---

## Requirements

Question applies to multiple boards

**AB 1234 Ethics Training**

---

☒ I Agree \*

Question applies to multiple boards

Attendance Policy

☒ I Agree \*

Statement of Economic Interests - FPPC Form 700

☒ I Agree \*

Question applies to multiple boards

Oath of Office

☒ I Agree \*

Question applies to multiple boards

Public Scrutiny

☒ I Agree \*

How did you hear about this vacancy? \*

☒ A Friend

If you selected other, please indicate how you learned about the vacancy:

Demographics

Ethnicity

☒ Hispanic

Gender

☒ Male

Date of Birth

Submission

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.

---

JJD



## ADMINISTRATIVE REPORT

**Agenda Item L.3.**

Meeting Date: 8/5/2019

**SUBJECT:** Bicycle Advisory Commission Appointment

### REPORT IN BRIEF

Consider accepting nominations and appointing two individuals to the Bicycle Advisory Commission.

### RECOMMENDATION

**City Council** - Adopt a motion accepting nominations and appointing two applicants to serve on the Bicycle Advisory Commission.

### ALTERNATIVES

1. Accept nomination and appoint two applicant to serve on the Bicycle Advisory Commission; or,
2. Refer to staff with direction to resume recruitment of applicants for this commission.

### AUTHORITY

Article VII, Sections 700, 702, 702.1, and 705 of the Merced City Charter.

### CITY COUNCIL PRIORITIES

Not Applicable.

### DISCUSSION

The Bicycle Advisory Commission (BAC) serves as an advisory body to the City of Merced advising the City Council on matters relating to improving conditions for bicyclists, promoting bicycling as a means of transportation with the associated benefits of improved air quality, and improving safety conditions for bicyclists.

The Commission consists of seven registered City of Merced voting members, with two ex-officio members appointed at City Council discretion. Ex-officio members are non-voting members who may be non-City residents who live within the City's sphere of influence or persons who otherwise demonstrate a strong concern for bicycle-related issues within the City. Regular meetings are held on the fourth Tuesday of every even numbered month during normal business hours.

Currently the Bicycle Advisory Commission has four (4) vacancies and one (1) Ex-Officio Member vacancy.

In accordance with Council direction, the Clerk's Office has noticed vacancies for all boards and commissions in a local newspaper and maintains an updated vacancy notice for all boards and commissions outside City Hall, at the entrance of the Council Chamber and on the City's website. Additionally, in accordance with Government Code 54972, the Clerk's Office posts the Local

Appointments List yearly.

The Clerk's Office has received two qualified applications for the vacancies. The applications of Dwight Ewing, Kahlyn Moody, and a current Bicycle Advisory Commission roster are attached.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds necessary.

### **ATTACHMENTS**

1. Current Bicycle Advisory Commission Roster
2. Application of Dwight Ewing
3. Application of Kahlyn Moody

# BICYCLE ADVISORY COMMISSION

City of Merced

<u>Name</u>	<u>Term</u>
<b>Mitchell Vanagten</b>  <i>Ex-Officio</i>	  <i>(appt. 4/1/2019)</i>
<b>Greg Friedman</b> <i>Vice-Chair</i>	<u>7/1/2021</u> <i>(appt. 7/17/2017)</i>
<b>Ann Thurston</b>	<u>7/1/2023</u> <i>(appt. 9/6/2016; reappt. 7/1/2019)</i>
<b>Tom Hothem</b> <i>Chair</i>	<u>7/1/2021</u> <i>(appt. 08/05/2013; reappt. 07/05/2017)</i>

All Committee members may be contacted by mail at 678 West 18th Street, Merced, California 95340, or by calling (209) 385-6858.

*Updated on July 2, 2019*

*Page 1 of 1*



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**Profile**

Dwight

First Name

M

Middle Initial

Ewing

Last Name

Kevin's Bikes

Employer

Mechanic

Job Title

Email AddressPrimary PhoneAlternate Phone

---

**Are you 18 years of age or older? (Required)**☒ Yes ☐ No

Question applies to multiple boards

---

**Do you live within the City Limits of Merced? (Required)**☒ Yes ☐ NoStreet AddressCitySuite or AptStatePostal Code

Question applies to multiple boards

---

**Are you a registered voter in the City of Merced? (Required)**☒ Yes ☐ No

---

**Which Council district do you live in?**☒ District 1

---

**Are you currently serving on a Board or Commission? If so, please list:**

---

No

---

**Which Boards would you like to apply for?**

---

Bicycle Advisory Commission: Submitted

Question applies to multiple boards

---

**Highest Level of Education Completed: \***☒ Associate's Degree

---

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## Communication

The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?

☒ Yes ☐ No

If you selected no, please identify how you would like to be contacted:

---

---

## Interests & Experiences

Tell us about yourself, and why you are applying for this particular Board or Commission:

I have lived in Merced all of my life and I would like to see bicycling infrastructure improvements so more people can ride their bicycles and feel safe.

Please list your current employer and relevant volunteer experience.

Employer: Kevin's Bikes - Bicycle Mechanic Volunteer: Merced Bicycle Coalition - Various positions such as Chair, Vice Chair and Member at Large

What is your understanding of the roles and responsibilities of this Board or Commission?

To advise the city from a cyclist's perspective about improvements and best practices regarding infrastructure.

Do you have experience or special knowledge pertaining to this Board or Commission?

My experience as an everyday cyclist commuter, as well as an employee of the local bicycle shop have helped me to gain knowledge about cycling conditions and practices here in Merced County. Additionally, my work with the Merced Bicycle Coalition keeps me informed and aware of the interests of the cycling community.

Any other comments you would like to add that may assist the City Council in their decision?

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[Upload a Resume](#)

---

## Requirements

Question applies to multiple boards

**AB 1234 Ethics Training**

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☒ I Agree \*

Question applies to multiple boards

Attendance Policy

☒ I Agree \*

Statement of Economic Interests - FPPC Form 700

☒ I Agree \*

Question applies to multiple boards

Oath of Office

☒ I Agree \*

Question applies to multiple boards

Public Scrutiny

☒ I Agree \*

How did you hear about this vacancy? \*

☒ A Friend

If you selected other, please indicate how you learned about the vacancy:

Demographics

Ethnicity

☒ Caucasian/Non-Hispanic

Gender

☒ Male

Date of Birth

Submission

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.

---

DE

---

**Profile**

Kahynnicole

First Name

M

Middle Initial

Moody

Last Name

Costco Wholesale

Employer

Supervisor

Job Title

Email AddressPrimary PhoneAlternate Phone

---

**Are you 18 years of age or older? (Required)**☒ Yes ☐ No

Question applies to multiple boards

---

**Do you live within the City Limits of Merced? (Required)**☒ Yes ☐ NoStreet AddressCitySuite or AptStatePostal Code

Question applies to multiple boards

---

**Are you a registered voter in the City of Merced? (Required)**☐ Yes ☒ No

---

**Which Council district do you live in?**

---

None Selected

---

**Are you currently serving on a Board or Commission? If so, please list:**

---

**Which Boards would you like to apply for?**

Recreation and Parks Commission: Submitted

Personnel Board: Submitted

Building and Housing Board of Appeals: Submitted

Regional Airport Authority: Submitted

Bicycle Advisory Commission: Submitted

Citizens Oversight Committee - Measure C: Submitted

Planning Commission: Submitted

**Highest Level of Education Completed: \***

☒ Some College, No Degree

---

**Communication**

**The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?**

☒ Yes ☐ No

**If you selected no, please identify how you would like to be contacted:**

---

**Interests & Experiences**

**Tell us about yourself, and why you are applying for this particular Board or Commission:**

I just moved to Merced and I would like join the board to help make decisions today for tomorrow. I have small children and they are going to grow up here and I want to make it a better place for them and all of the residents of Merced.

**Please list your current employer and relevant volunteer experience.**

I work for Costco Wholesale as a Supervisor. I would volunteer at my church before I moved here. I am currently looking for a new church home to continue my volunteer work for the community.

**What is your understanding of the roles and responsibilities of this Board or Commission?**

Going to meeting and voting on new laws/policy and bring new ideas to the table and being a voice for the people of Merced.

**Do you have experience or special knowledge pertaining to this Board or Commission?**

No

**Any other comments you would like to add that may assist the City Council in their decision?**

---

Upload a Resume

---

**Requirements**

☒ I Agree \*

☒ I Agree \*

**Statement of Economic Interests - FPPC Form 700**

☒ I Agree \*

☒ I Agree \*

☒ I Agree \*

**How did you hear about this vacancy? \***

☒ City Website

**If you selected other, please indicate how you learned about the vacancy:**

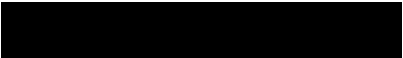
**Demographics**

**Ethnicity**

☒ Other

**Gender**

☒ Female



Date of Birth

---

**Submission**

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.

---

KM





## ADMINISTRATIVE REPORT

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**Agenda Item L.4.**

Meeting Date: 8/5/2019

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*Report Prepared by: Jennifer Levesque, Deputy City Clerk, City Clerk's Office*

**SUBJECT:** City Council Appointment to the Arts and Culture Advisory Commission for City Council District 2

### REPORT IN BRIEF

Considers accepting nomination and appointing one individual to Council District 2 on the Arts and Culture Advisory Commission.

### RECOMMENDATION

**City Council** - Adopt a motion accepting nomination and appointing one individual to the Arts and Culture Advisory Commission to represent City Council District 2.

### ALTERNATIVES

1. Accept nomination and appoint individual to serve as a member of the Arts and Culture Advisory Commission; or,
2. Refer to staff with direction to resume recruitment of applicants for this Commission.

### AUTHORITY

Article VII, Sections 700, 702, 702.1, and 705 of the Merced City Charter and Chapter 2.54 of the Merced Municipal Code.

### DISCUSSION

The Arts and Culture Advisory Commission, created by Ordinance, acts in an advisory capacity to the City Council on matters pertaining to public art, art projects, cultural programs and activities, and the promotion of the arts within the City of Merced. This Commission consists of seven members who are qualified electors of the City of Merced. Six voting members are appointed one each to the six City Council Districts and a seventh voting member is appointed "at-large". Additionally, the Council may appoint four Ex-Officio (non-voting) members, three of which may live in the City or within its sphere of influence and the fourth being a sitting Council Member.

All individuals appointed are eligible for reappointment at the end of their respective terms, provided they continue to meet the requirements set forth in the Charter.

In accordance with Council direction, the Clerk's Office notices vacancies for all boards and commissions in a local newspaper and maintains an updated vacancy notice for all boards and commissions outside City Hall, at the entrance of the Council Chamber, on social media, and on the

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City's website. Additionally, in accordance with Government Code 54972, the Clerk's Office posts the Local Appointments List (Maddy Act) yearly.

The City Clerk's Office has received one application from an individual who is a qualified voter of the City of Merced in District 2. A copy of their respective application is attached for your reference.

**ATTACHMENTS**

1. Application of Maria Del Zaragoza

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**Profile**

MARIA DEL

First Name

R

Middle Initial

ZARAGOZA

Last Name

Mercy Outpatient Therapy  
Services

Employer

Patient Registrar

Job Title

Email AddressPrimary PhoneAlternate Phone

---

**Are you 18 years of age or older? (Required)**☒ Yes ☐ No

Question applies to multiple boards

---

**Do you live within the City Limits of Merced? (Required)**☒ Yes ☐ NoStreet AddressCitySuite or AptStatePostal Code

Question applies to multiple boards

---

**Are you a registered voter in the City of Merced? (Required)**☒ Yes ☐ No

---

**Which Council district do you live in?**☒ Unknown

---

**Are you currently serving on a Board or Commission? If so, please list:**

no

---

**Which Boards would you like to apply for?**

Arts and Culture Advisory Commission: Submitted

Question applies to multiple boards

---

**Highest Level of Education Completed: \***☒ Some College, No Degree

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## Communication

The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?

☒ Yes ☐ No

If you selected no, please identify how you would like to be contacted:

---

---

## Interests & Experiences

Tell us about yourself, and why you are applying for this particular Board or Commission:

I am looking to be more involved with improving our community. I love the arts and paint at home myself. I have a positive and creative outlook in life.

Please list your current employer and relevant volunteer experience.

I currently work for Mercy Therapy Service on the Outpatient department and has been working here for about 15 years now. Before that I worked as a Spanish Interpreter for Health House. I have also been part of the Winton Rotatory Club in the past. I did also participate in the Merced/ Somoto Nicaragua sister cities in 1993 and then again about 6 years ago.

What is your understanding of the roles and responsibilities of this Board or Commission?

To help improve our community by participating as a citizen on finding answers as a group. The input of the members help to shape the policies under which the city operates. Willingness to function as a team member. Maintaining firm conviction on what I believe in and for the best interest of all. Also recognizing conflict of interests and willing to resolve issues

Do you have experience or special knowledge pertaining to this Board or Commission?

I do not have experience but I am very much interested to be part of the Board or Commission in carrying out its vision and mission

Any other comments you would like to add that may assist the City Council in their decision?

I am passionate and very dedicated to my job and what I do. I am self-motivated and work well under pressure. Having said this, I believe I have the commination and leadership skills need for this position.

  
Upload a Resume

---

## Requirements

Statement of Economic Interests - FPPC Form 700

☒ I Agree \*

How did you hear about this vacancy? \*

☒ Other

If you selected other, please indicate how you learned about the vacancy:

Flyers

Demographics

Ethnicity

☒ Hispanic

Gender

☒ Female

Date of Birth

Submission

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.

Maria Del Rocio Zaragoza



## ADMINISTRATIVE REPORT

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**Agenda Item L.5.**

Meeting Date: 8/5/2019

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

**SUBJECT:** Discussion on Current Composition of the Governing Board Composition of Merced County Association of Governments and the Proposed Amendments to Governing Board Composition

### REPORT IN BRIEF

Mayor to provide an update on a recent Merced County Association of Government Agenda Item for consideration and to provide an opportunity for City Council to discuss the proposed Governing Board composition.

### RECOMMENDATION

**City Council** - Information Only; to provide an opportunity for City Council to discuss the Merced County Association of Government proposed Governing Board composition.

### AUTHORITY

City of Merced Charter, Section 200.

### CITY COUNCIL PRIORITIES

Fiscal Year 2019/20 Adopted Goals and Priorities - Agency Partnerships

### DISCUSSION

On July 11, 2019, the Merced County Association of Governments (MCAG) considered an item to allow for staff to research and return to the board for further direction related to the composition of the Governing Board within the existing joint powers agreement. This item was approved for further research and will return to the MCAG Board at the next regular meeting.

Attached for the City Council's consideration is the MCAG staff report from July 11, 2019 and a matrix summarizing the Governing Board composition of other counties within the Central Valley.

### IMPACT ON CITY RESOURCES

None at this time.

### ATTACHMENTS

1. Merced County Association of Governments July 11, 2019 Staff Report
2. Central Valley County Governing Board Composition Matrix

**ITEM 22****MEMORANDUM**

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DATE: July 11, 2019

TO: MCAG Governing Board

FROM: Stacie Dabbs, Executive Director

RE: Proposed Agenda Items for Consideration

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**SUMMARY**

At the June 20, 2019 Governing Board meeting, Director Mike Murphy requested an agenda item to discuss the composition of the Governing Board. Additionally, Director Rodrigo Espinoza requested an agenda item to discuss a later start time for Governing Board meetings. Per the MCAG agenda item request policy, such requests are placed on the next board meeting agenda "at which time the Governing Board will consider whether there is a majority consensus to have staff expend time on the issue and to have it considered at a future meeting."

**PAST ACTION TAKEN**

The MCAG Agenda Item Request Policy was adopted by the Governing Board on March 16, 2017 and is attached.

**REQUESTED ACTION**

Determine if there is majority support for the following items to be researched by staff and brought back to the Governing Board at a future meeting for consideration:

- a. MCAG/TJPA/RWA Governing Board Composition
- b. MCAG/TJPA/RWA Governing Board Meeting Time

**ATTACHMENT**

MCAG/TJPA/RWA Agenda Item Request Policy – Adopted March 16, 2017

Central Valley County	Governing Board Structure
San Joaquin	Comprised of 9 mayors and Councilmembers from each of the incorporated cities in San Joaquin County, 3 representatives from the County Board of Supervisors, 1 ex-officio member representing Caltrans District 10, 1 ex-officio member representing San Joaquin Regional Transit District, and 1 ex-officio member representing the Port of Stockton.
Stanislaus	Comprised of 3 council members representing the City of Modesto, 1 representative from each of the other 8 city councils in Stanislaus County, 5 County Supervisors, and 1 ex-officio member representing Caltrans District 10.
Merced	Comprised of a supervisor from each of the 5 county districts and an elected official from each of the 6 incorporated cities in Merced County.
Madera	Comprised of 2 members representing the City of Madera, 1 member representing the City of Chowchilla, and 3 members representing the Madera County Board of Supervisors.
Fresno	Comprised of 15 members who represent the incorporated cities within Fresno County, and 1 member who represents the Chairman of the Fresno County Board of Supervisors. The Board has a “double-weighted” voting system, which provides for an urban/rural balance. Each member has a percentage vote based upon population. To approve any action, a majority of board members must vote in the affirmative (9 out of 16) and the affirmative voting members must represent at least 40% of the county's population.
Tulare	Comprised of 8 mayors and council members representing each of the incorporated cities within Tulare County, 5 County Supervisors, 3 members at large, and 1 ex-officio member representing Caltrans District 6.
Kings	Comprised of 4 members representing the incorporated cities in Kings County and 2 Kings County Supervisors.
Kern	Comprised of 1 elected official from each of the 11 incorporated cities in Kern County, 2 Kern County Supervisors, 1 ex-officio member representing Caltrans District 6, and 1 ex-officio member representing Golden Empire Transit District.

Data source: <https://www.calcog.org/index.php>





# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item L.6.**

Meeting Date: 8/5/2019

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**SUBJECT:** Request to Add Item to Future Agenda

### REPORT IN BRIEF

Provides members of the City Council to request that an item be placed on a future City Council agenda for initial consideration by the City Council.



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item L.7.**

Meeting Date: 8/5/2019

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**SUBJECT:** City Council Comments

### REPORT IN BRIEF

Provides an opportunity for the Mayor and/or Council Member(s) to make a brief announcement on any activity(ies) she/he has attended on behalf of the City and to make a brief announcement on future community events and/or activities. The Brown Act does not allow discussion or action by the legislative body under this section.