

# CITY OF ATWATER

## CITY COUNCIL AGENDA

Council Chambers  
750 Bellevue Road  
Atwater, California

**April 25, 2016**

CALL TO ORDER:

**5:00 PM**

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

**Bergman**\_\_\_\_, **Raymond** \_\_\_\_, **Rivero**\_\_\_\_, **Vineyard** \_\_\_\_, **Price**\_\_\_\_

CLOSED SESSION:

Adjourn to Conference Room A

**Conference with Legal Counsel – Anticipated Litigation – Government Code Section 54956.9(b): Number of cases: (4)**

REGULAR SESSION: (Council Chambers)

**6:00 PM**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE TO THE FLAG:

INVOCATION:

**Invocation by Police Chaplain McClellan**

ROLL CALL:

**Bergman**\_\_\_\_, **Raymond** \_\_\_\_, **Rivero**\_\_\_\_, **Vineyard** \_\_\_\_, **Price**\_\_\_\_

MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:

SUBSEQUENT NEED ITEMS: (The City Clerk shall announce any requests for items requiring immediate action subsequent to the posting of the agenda. Subsequent need items require a two-thirds vote of the members of the City Council present at the meeting.)



**APPROVAL OF AGENDA AS POSTED OR AS AMENDED:** (This is the time for the City Council to remove items from the agenda or to change the order of the agenda.)

**Staff's Recommendation:** Motion to approve agenda as posted or as amended.

**CEREMONIAL MATTERS:**

• **Firefighter of the Year**

**Staff's Recommendation:** That Mayor Price and CAL FIRE Battalion Chief Pimentel make the presentation to Fire Captain Robert Ayuso in recognition of Firefighter of the Year.

**COMMENTS FROM THE PUBLIC:**

**NOTICE TO THE PUBLIC**

At this time any person may comment on any item which is not on the agenda. Please state your name and address for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda.

To comment on an item that is **on** the agenda, please wait until the item is read for consideration; please limit comments to a maximum of five (5) minutes.

**Civility is expected from members of the public during the meeting. For more efficient use of time, disruptive behavior will not be tolerated. While you may not agree with what an individual is saying, please treat everyone with courtesy and respect.**

**CONSENT CALENDAR:**

**NOTICE TO THE PUBLIC**

Background information has been provided on all matters listed under the Consent Calendar, and these items are considered to be routine. All items under the Consent Calendar are normally approved by one motion. If discussion is requested on any item, that item will be removed from the Consent Calendar for separate action.

**WARRANTS:**

**1. April 25, 2016**

**Staff's Recommendation:** Approval of warrants as listed.

**MINUTES:** (City Council)

**2. Regular meeting, April 11, 2016**

**Staff's Recommendation:** Approval of minutes as listed.

AGREEMENTS:

3. **CSG Consultants, Inc. for Building Department administration, Building Official, inspection, and plan review services** (Community Development Director McBride)

**Staff's Recommendation:** Approval of Professional Services Agreement, in a form approved by the City Attorney, with CSG Consultants, Inc. (CSG) for Building Department administration, Building Official, inspection, and plan review/plan check services; and authorizes and directs the City Manager to execute the agreement on behalf of the City.

**CLAIMS AGAINST THE CITY:** (Note to the Public: Portions of this claim have been redacted because they do not affect the City Council's ability to make a decision on the claim. The claim however, is a public document and can be made available upon request by members of the public. If you have any questions or would like to request this document, please contact the City Clerk's office at (209) 357-6205).

4. **Claim No. 2016-5**

**Staff's Recommendation:** After consideration and investigation, it is staff's recommendation that Claim No. 2016-5 be rejected.

PETITIONS AND COMMUNICATIONS:

5. **Amazing Grace Holiness Tabernacle for use of Ralston Park**

**Staff's Recommendation:** Approval of request from Amazing Grace Holiness Tabernacle for "City Reach" event and placement of gospel tent in Ralston Park from May 8-15, 2016.

6. **Atwater Pentecost Association for assistance with annual procession**

**Staff's Recommendation:** Approval of request from Atwater Pentecost Association for assistance with their annual Celebration of Holy Spirit Festa procession on Sunday, June 26, 2016, leaving Atwater Pentecost Club (APC) at 9:00 A.M. down Third Street, right on Broadway Avenue, right on Winton Way, and proceeding to Saint Anthony's Church and returning to APC down Winton Way, left on Grove Avenue, and right on Third Street.

FUNDING AND BUDGET MATTERS:

7. **Treasurer's Report for the month of March, 2016** (City Treasurer Heller)

**Staff's Recommendation:** Motion to approve the Treasurer's Report for the month of March, 2016; or

Motion to approve staff's recommendation as presented.

PETITIONS AND COMMUNICATIONS:

8. **Merced County ½ cent Sales Tax Transportation Expenditure Plan** (MCAG Executive Director Marjorie Kirn)

**Recommendation:** That the City Council, by motion, consider adopting a resolution approving the Transportation Expenditure Plan for Merced County and endorsing its approval by the citizens of Atwater and Merced County as a ballot measure in November 2016. Note: The next available resolution number is 2881-16.

CITY ATTORNEY REPORTS/UPDATES:

**Update regarding medical marijuana regulations in the City of Atwater**

REPORTS AND PRESENTATIONS FROM STAFF:

9. **Financial update – Fiscal Year ended June 30, 2016** (Finance Director Deol)

**Staff's Recommendation:** Motion to accept the report on the City's financial status as of June 30, 2016.

10. **Refinancing CalPERS Side Fund for the Miscellaneous and Safety Plans** (Finance Director Deol)

**Staff's Recommendation:** Motion to adopt Resolution No. 2880-16 approving the form and authorizing the execution and delivery of certain lease financing documents in connection with the refinancing of a portion of the City's outstanding unfunded accrued actuarial liability to the California Public Employees' Retirement System, and providing for other matters properly relating thereto; or

Motion to approve staff's recommendation as presented.

11. **Approving agreements for the purchase and sale of potable water for Merced County's Emergency Water Distribution Program (EWDP)** (Interim Public Works Director Faretta)

**Staff's Recommendation:** Motion to approve an agreement with The Confidence Ridge Company, LLC and with Bezak Liquid Transport, in a form approved by the City Attorney, for the purchase and sale of potable water for Merced County's Emergency Water Distribution Program (EWDP); and authorizing and directing the Mayor to execute the Agreements on behalf of the City; or

Motion to approve staff's recommendation as presented.

CITY COUNCIL MATTERS:

**12. Discussion and possible action regarding existing Water Conservation Code**

**Staff's Recommendation:** That the City Council review the existing Water Conservation Code and provide staff with possible direction regarding any proposed changes to the Code.

**13. City Council comments and requests for future agenda items**

CLOSED SESSION:

**Continuation of Closed Session if necessary**

ADJOURNMENT:

CERTIFICATION:

I, Jeanna Del Real, City Clerk of the City of Atwater, do hereby certify that a copy of the foregoing agenda was posted at City Hall a minimum of 72 hours prior to the meeting.

  
\_\_\_\_\_  
JEANNA DEL REAL, CMC  
CITY CLERK

SB 343 NOTICE

*In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the office of the City Clerk at City Hall during normal business hours at 750 Bellevue Road.*

*If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda at 750 Bellevue Road.*



*In compliance with the Federal Americans with Disabilities Act of 1990, upon request, the agenda can be provided in an alternative format to accommodate special needs. If you require special accommodations to participate in a City Council, Commission, or Committee meeting due to a disability, please contact the City Clerk's Office at least 48 business hours in advance of the meeting at 357-6205. You may also send the request by email to [jdelreal@atwater.org](mailto:jdelreal@atwater.org).*

~ April 2016 ~

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 City Hall closed	2
3	4	5	6	7	8 City Hall closed	9
10	11 City Council Meeting - 6:00 PM	12	13	14	15 City Hall closed	16
17	18 Oversight Board of Successor Agency to ARA Meeting - 1:30 PM Citizens' Oversight Comm. for Public Safety Trans & Use Tax Mtg - 5:30 PM	19	20 Community Development & Resources Commission Meeting - 6:00 PM	21	22 City Hall closed	23
24	25 Audit & Finance Committee Mtg - 3:30 PM City Council Workshop - 4:15 PM City Council Meeting - 6:00 PM	26	27	28 Merced County District 3 Supervisor McDaniel "Mobile" Office Hours - 1:30 - 3:30 PM	29 City Hall closed	30

~ May 2016 ~

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6 City Hall closed	7
8	9 City Council Meeting - 6:00 PM	10	11	12	13 City Hall closed	14
15	16 Oversight Board of Successor Agency to ARA Meeting - 1:30 PM	17	18 Community Development & Resources Commission Meeting - 6:00 PM	19	20 City Hall closed	21
22	23 Audit & Finance Committee Meeting - 3:30 PM City Council Meeting - 6:00 PM	24	25	26 Merced County District 3 Supervisor McDaniel "Mobile" Office Hours - 1:30 - 3:30 PM	27 City Hall closed	28
29	30 City Holiday Memorial Day	31	Notes:			
31	Trash pick up delayed 1 day					

# WARRANTS SUMMARY FOR APRIL 25, 2016 COUNCIL MEETING

TOTAL OF WARRANTS (FROM WARRANT REPORT)

\$ 3,874,456.23

ADDITIONAL WARRANTS ( THESE AMOUNTS ARE **NOT** INCLUDED IN TOTAL WARRANTS)

DATE	DESCRIPTION	AMOUNT
4/12/2016	Prewrittens included in this current warrant run.	(\$103,399.12)
4/14/2016	PERS Retirement EFT 3/24/16 - 4/6/16	\$42,043.08

TOTAL ADDITIONAL WARRANTS (\$61,356.04)

GRAND TOTAL OF WARRANTS PAID =====

\$3,813,100.19

INFORMATIONAL ONLY ( INCLUDED IN THE TOTAL WARRANTS TOTAL)

DATE	DESCRIPTION	AMOUNT
4/14/2016	Net Payroll	\$150,257.28
4/14/2016	Federal Taxes	\$51,155.19
4/14/2016	State Taxes	\$6,899.43
4/14/2016	Payroll Deductions	\$1,951.96

\$208,311.90 Total Payroll

TOTAL INFORMATIONAL WARRANTS \$210,263.86

  
CITY TREASURER

# Accounts Payable

## Checks for Approval

User: jdaniel  
 Printed: 4/20/2016 - 1:44 PM

*Prewrittens*



City of  
**Atwater**  
 Community Pride City Wide

750 Bellevue Road, Atwater CA 95301

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67495	04/12/2016	Internal Service Fund	Operations & Maintenance	CHEVRON USA INC.		208.45
					Check Total:	208.45
67496	04/12/2016	Stone Creek LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		15.80
					Check Total:	15.80
67497	04/12/2016	General Fund	Office Supplies	NEOFUNDS BY NEOPOST		1,959.67
					Check Total:	1,959.67
67498	04/12/2016	Northwood Village LD	Utilities	PACIFIC GAS & ELECTRIC		682.97
67498	04/12/2016	Orchard Park Estates LD	Utilities	PACIFIC GAS & ELECTRIC		368.95
67498	04/12/2016	Woodhaven LD	Utilities	PACIFIC GAS & ELECTRIC		43.39
67498	04/12/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		19.57
67498	04/12/2016	Shaffer Lakes East LD	Utilities	PACIFIC GAS & ELECTRIC		512.82
67498	04/12/2016	Sewer Enterprise Fund	Utilities	PACIFIC GAS & ELECTRIC		33,470.76
67498	04/12/2016	Pajaro Dunes LD	Utilities	PACIFIC GAS & ELECTRIC		74.28
67498	04/12/2016	Sewer Enterprise Fund	Utilities	PACIFIC GAS & ELECTRIC		1,942.60
67498	04/12/2016	Gas Tax/Street Improvement	Utilities	PACIFIC GAS & ELECTRIC		13,665.06
67498	04/12/2016	Cottage Gardens LD	Utilities	PACIFIC GAS & ELECTRIC		27.07
67498	04/12/2016	Atwater South LD	Utilities	PACIFIC GAS & ELECTRIC		61.82
67498	04/12/2016	Price Annexation LD	Utilities	PACIFIC GAS & ELECTRIC		1,730.88
67498	04/12/2016	Gas Tax/Street Improvement	Utilities	PACIFIC GAS & ELECTRIC		233.69
67498	04/12/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		202.11
67498	04/12/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		74.16
67498	04/12/2016	Sandlewood Square LD	Utilities	PACIFIC GAS & ELECTRIC		79.00
67498	04/12/2016	Sierra Parks LD	Utilities	PACIFIC GAS & ELECTRIC		533.53
67498	04/12/2016	Internal Service Fund	Utilities	PACIFIC GAS & ELECTRIC		173.99
67498	04/12/2016	Woodview Garland LA	Utilities	PACIFIC GAS & ELECTRIC		43.89
67498	04/12/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		518.19
67498	04/12/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		963.83
67498	04/12/2016	Airport Business Park LD	Utilities	PACIFIC GAS & ELECTRIC		957.84
67498	04/12/2016	Gas Tax/Street Improvement	Utilities	PACIFIC GAS & ELECTRIC		137.38
67498	04/12/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		74.77

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67498	04/12/2016	Water Enterprise Fund	Utilities	PACIFIC GAS & ELECTRIC		20,560.65
67498	04/12/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		381.24
67498	04/12/2016	Internal Service Fund	Utilities	PACIFIC GAS & ELECTRIC		3,450.62
67498	04/12/2016	Internal Service Fund	Utilities	PACIFIC GAS & ELECTRIC		947.80
67498	04/12/2016	Shaffer Lakes West LD	Utilities	PACIFIC GAS & ELECTRIC		150.09
67498	04/12/2016	General Fund	Utilities	PACIFIC GAS & ELECTRIC		1,289.44
67498	04/12/2016	Water Enterprise Fund	Utilities	PACIFIC GAS & ELECTRIC		11,043.89
67498	04/12/2016	Wildwood Estates LD	Utilities	PACIFIC GAS & ELECTRIC		185.85
Check Total:						94,602.13
67499	04/12/2016	Internal Service Fund	Special Departmental Expense	WESTAMERICA BANK		8.62
67499	04/12/2016	General Fund	Memberships & Subscriptions	WESTAMERICA BANK		250.00
67499	04/12/2016	General Fund	Memberships & Subscriptions	WESTAMERICA BANK		250.00
67499	04/12/2016	General Fund	Special Departmental Expense	WESTAMERICA BANK		119.94
67499	04/12/2016	Police Grants Fund	Special Departmental Expense	WESTAMERICA BANK		1,405.76
67499	04/12/2016	Water Enterprise Fund	Training	WESTAMERICA BANK		1,442.88
67499	04/12/2016	General Fund	Professional Services	WESTAMERICA BANK		216.98
67499	04/12/2016	Sewer Enterprise Fund	Training	WESTAMERICA BANK		20.93
67499	04/12/2016	General Fund	Special Departmental Expense	WESTAMERICA BANK		21.82
67499	04/12/2016	Gas Tax/Street Improvement	Training	WESTAMERICA BANK		150.00
67499	04/12/2016	Internal Service Fund	Professional Services	WESTAMERICA BANK		224.18
67499	04/12/2016	General Fund	Training	WESTAMERICA BANK		50.00
67499	04/12/2016	General Fund	Travel\Conferences\Meetings	WESTAMERICA BANK		500.00
Check Total:						4,661.11
67500	04/15/2016	General Fund	Miscellaneous Union Dues	AFSCME DISTRICT COUNCIL 57		737.68
Check Total:						737.68
67501	04/15/2016	General Fund	Garnishments	FRANCHISE TAX BOARD		236.84
67501	04/15/2016	General Fund	Garnishments	FRANCHISE TAX BOARD		45.61
Check Total:						282.45
67502	04/15/2016	General Fund	Pre-Paid Legal	PRE-PAID LEGAL SERVICES		28.91
Check Total:						28.91
67503	04/15/2016	General Fund	Garnishments	STATE DISBURSEMENT UNIT		852.92
Check Total:						852.92
67504	04/15/2016	General Fund	Deferred Compensation	VANTAGEPOINT TRANSFER AGT-457		50.00
Check Total:						50.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
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Report Total:

103,399.12

# Accounts Payable

## Checks for Approval

User: jdaniel  
 Printed: 4/20/2016 - 1:46 PM



City of  
**Atwater**  
 Community Pride City Wide  
 750 Bellevue Road, Atwater CA 95301

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
0	04/25/2016	Sewer Enterprise Fund	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		465,000.00
0	04/25/2016	Sewer Enterprise Fund	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		441,890.63
0	04/25/2016	Sewer Enterprise Fund	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		1,297,515.00
0	04/25/2016	Sewer Enterprise Fund	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		271,850.00
0	04/25/2016	Sewer Enterprise Fund	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		650,000.00
0	04/25/2016	Sewer Enterprise Fund	Cash with Fiscal Agent	THE BANK OF NEW YORK MELLON		140,000.00
Check Total:						3,266,255.63
67505	04/25/2016	General Fund	Adult Co-Ed Volleyball	SABRINA ALVARADO		30.00
Check Total:						30.00
67506	04/25/2016	General Fund	Adult Co-Ed Volleyball	SYLVIA ALVARADO		30.00
Check Total:						30.00
67507	04/25/2016	Internal Service Fund	Utilities	AMERIGAS - MODESTO		74.52
Check Total:						74.52
67508	04/25/2016	Sewer Enterprise Fund	Special Departmental Expense	APPLIED INDUSTRIAL TECH.		659.11
Check Total:						659.11
67509	04/25/2016	General Fund	Communications	AT and T		812.80
67509	04/25/2016	General Fund	Communications	AT and T		245.68
67509	04/25/2016	Northwood Village LD	Communications	AT and T		102.84
67509	04/25/2016	Meadow View LD	Communications	AT and T		101.61
67509	04/25/2016	Water Enterprise Fund	Communications	AT and T		1,132.10
67509	04/25/2016	Sewer Enterprise Fund	Communications	AT and T		1,337.61
67509	04/25/2016	Internal Service Fund	Communications	AT and T		2,122.89
Check Total:						5,855.53
67510	04/25/2016	Gas Tax/Street Improvement	Professional Services	ATWATER ELECTRIC		1,992.50
67510	04/25/2016	Water Enterprise Fund	Professional Services	ATWATER ELECTRIC		2,921.00
67510	04/25/2016	Gas Tax/Street Improvement	Professional Services	ATWATER ELECTRIC		125.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	5,038.50
67511	04/25/2016	General Fund	Special Departmental Expense	ATWATER MEDICAL GROUP		94.00
67511	04/25/2016	General Fund	Special Departmental Expense	ATWATER MEDICAL GROUP		94.00
67511	04/25/2016	General Fund	Special Departmental Expense	ATWATER MEDICAL GROUP		156.00
					Check Total:	344.00
67512	04/25/2016	General Fund	Castle Park	ATWATER YOUTH CHEER		170.00
					Check Total:	170.00
67513	04/25/2016	RDVLPMT Obligation Retirement	Professional Services	BANK OF NEW YORK		1,650.00
					Check Total:	1,650.00
67514	04/25/2016	Internal Service Fund	Improvements Other Than Bldg	BARTON OVERHEAD DOOR		50.00
					Check Total:	50.00
67515	04/25/2016	Sewer Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		604.00
67515	04/25/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		16.00
67515	04/25/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		16.00
					Check Total:	636.00
67516	04/25/2016	General Fund	Special Departmental Expense	BENCHMARK ROOFING		500.00
67516	04/25/2016	General Fund	Maint. Buildings & Grounds	BENCHMARK ROOFING		3,000.00
					Check Total:	3,500.00
67517	04/25/2016	General Fund	Office Supplies	BEST IMPRESSION PRINTING		151.74
					Check Total:	151.74
67518	04/25/2016	General Fund	Maint. Buildings & Grounds	BIG CREEK LUMBER COMPANY		138.94
67518	04/25/2016	Internal Service Fund	Special Departmental Expense	BIG CREEK LUMBER COMPANY		16.41
					Check Total:	155.35
67519	04/25/2016	Water Enterprise Fund	Special Departmental Expense	BORGES & MAHONEY CO.		121.94
					Check Total:	121.94
67520	04/25/2016	General Fund	Training	CACEO		60.00
					Check Total:	60.00
67521	04/25/2016	Water Enterprise Fund	Special Departmental Expense	CHEM QUIT, INC.		-150.00
67521	04/25/2016	Water Enterprise Fund	Special Departmental Expense	CHEM QUIT, INC.		866.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	716.00
67522	04/25/2016	Internal Service Fund	Professional Services	COLEMAN HEATING & A/C		1,723.71
67522	04/25/2016	Internal Service Fund	Professional Services	COLEMAN HEATING & A/C		452.20
67522	04/25/2016	Internal Service Fund	Professional Services	COLEMAN HEATING & A/C		240.00
					Check Total:	2,415.91
67523	04/25/2016	Internal Service Fund	Communications	COMCAST CABLE		117.73
					Check Total:	117.73
67524	04/25/2016	Sewer Enterprise Fund	Special Departmental Expense	CONSOLIDATED ELECTRICAL DISTRIBUTORS		221.40
67524	04/25/2016	Sewer Enterprise Fund	Special Departmental Expense	CONSOLIDATED ELECTRICAL DISTRIBUTORS		149.04
67524	04/25/2016	Internal Service Fund	Special Departmental Expense	CONSOLIDATED ELECTRICAL DISTRIBUTORS		201.96
67524	04/25/2016	Gas Tax/Street Improvement	Special Departmental Expense	CONSOLIDATED ELECTRICAL DISTRIBUTORS		188.77
					Check Total:	761.17
67525	04/25/2016	General Fund	Youth Basketball	TODD A. DAVIS		584.00
					Check Total:	584.00
67526	04/25/2016	General Fund	Professional Services	DEPT. OF JUSTICE		49.00
67526	04/25/2016	General Fund	Special Departmental Expense	DEPT. OF JUSTICE		128.00
					Check Total:	177.00
67527	04/25/2016	Internal Service Fund	Operations & Maintenance	DONLEE PUMP COMPANY		75.49
					Check Total:	75.49
67528	04/25/2016	Sewer Enterprise Fund	Special Departmental Expense	E.R. VINE & SONS, INC		84.97
					Check Total:	84.97
67529	04/25/2016	Ferrari Ranch Project Fund	Professional Services	EMC PLANNING GROUP INC		3,093.84
67529	04/25/2016	Ferrari Ranch Project Fund	Professional Services	EMC PLANNING GROUP INC		8,119.92
					Check Total:	11,213.76
67530	04/25/2016	General Fund	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		1,818.50
67530	04/25/2016	Price Annexation LMA	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		304.50
67530	04/25/2016	Atwater South LNDSCP	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		322.45
67530	04/25/2016	Stone Creek LNDSCP	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		53.75
67530	04/25/2016	Sandlewood Square LMA	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		134.50
67530	04/25/2016	Mello Ranch LNDSCP	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		98.55
67530	04/25/2016	Bell Crossing LNDSCP	Professional Services	ENVIRONMENTAL COMPLIANCE RESOURCES		170.25

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	2,902.50
67531	04/25/2016	Water Enterprise Fund	Special Departmental Expense	FASTENAL COMPANY		20.49
					Check Total:	20.49
67532	04/25/2016	General Fund	Professional Services	FORENSIC NURSE SPECIALISTS		1,100.00
					Check Total:	1,100.00
67533	04/25/2016	General Fund	Community Center	KYLWINDER GILL		220.00
					Check Total:	220.00
67534	04/25/2016	General Fund	Youth Basketball	JAMES T. GOFF		85.00
					Check Total:	85.00
67535	04/25/2016	General Fund	Professional Services	GOLDEN VALLEY ENGINEERING		1,085.00
					Check Total:	1,085.00
67536	04/25/2016	Water Enterprise Fund	Special Departmental Expense	GROENIGER & COMPANY #1423		93.67
					Check Total:	93.67
67537	04/25/2016	General Fund	Special Departmental Expense	HORIZON		200.77
					Check Total:	200.77
67538	04/25/2016	General Fund	Adult Co-Ed Volleyball	JULIANNE HUERTA		90.00
					Check Total:	90.00
67539	04/25/2016	General Fund	Office Supplies	INGRAHAM TROPHIES		91.80
					Check Total:	91.80
67540	04/25/2016	General Fund	Memberships & Subscriptions	INTERNATIONAL CODE COUNCIL, INC.		55.00
					Check Total:	55.00
67541	04/25/2016	General Fund	Community Center	JEHOVAH'S WITNESSES		300.00
					Check Total:	300.00
67542	04/25/2016	General Fund	Elementary School Track	CARDEN W. KALCEVICH		325.00
					Check Total:	325.00
67543	04/25/2016	Sewer Enterprise Fund	Special Departmental Expense	KELLOGG'S SUPPLY		131.12
67543	04/25/2016	Sewer Enterprise Fund	Small Tools	KELLOGG'S SUPPLY		7.54

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	138.66
67544	04/25/2016	General Fund	Special Departmental Expense	LEXISNEXIS RISK DATA MANAGEMENT		366.10
					Check Total:	366.10
67545	04/25/2016	General Fund	Castle Park	ELIZABETH MALDONADO		167.00
					Check Total:	167.00
67546	04/25/2016	General Fund	Adult Co-Ed Volleyball	AMOS M. MASANIAI		51.00
					Check Total:	51.00
67547	04/25/2016	Internal Service Fund	Special Departmental Expense	MERCED COUNTY DEPT.		173.70
					Check Total:	173.70
67548	04/25/2016	Parks and Recreation Fund	Misc Park & Playground Imp's	MERCED FENCE COMPANY		1,000.00
					Check Total:	1,000.00
67549	04/25/2016	Sewer Enterprise Fund	Professional Services	MERCED IRRIGATION DISTRICT		164.16
67549	04/25/2016	Sewer Enterprise Fund	Professional Services	MERCED IRRIGATION DISTRICT		124.04
67549	04/25/2016	General Fund	Utilities	MERCED IRRIGATION DISTRICT		679.11
67549	04/25/2016	Gas Tax/Street Improvement	Utilities	MERCED IRRIGATION DISTRICT		346.29
67549	04/25/2016	Price Annexation LD	Utilities	MERCED IRRIGATION DISTRICT		151.85
67549	04/25/2016	Price Annexation LMA	Utilities	MERCED IRRIGATION DISTRICT		17.92
67549	04/25/2016	Mello Ranch LD	Utilities	MERCED IRRIGATION DISTRICT		321.25
67549	04/25/2016	Mello Ranch LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		47.41
67549	04/25/2016	Camellia Estates LD	Utilities	MERCED IRRIGATION DISTRICT		50.62
67549	04/25/2016	Juniper Meadows LD	Utilities	MERCED IRRIGATION DISTRICT		4.21
67549	04/25/2016	Camellia Meadows LD	Utilities	MERCED IRRIGATION DISTRICT		50.62
67549	04/25/2016	Stone Creek LD	Utilities	MERCED IRRIGATION DISTRICT		197.71
67549	04/25/2016	Stone Creek LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		31.60
67549	04/25/2016	America West LD	Utilities	MERCED IRRIGATION DISTRICT		112.53
67549	04/25/2016	Bell Crossing LD	Utilities	MERCED IRRIGATION DISTRICT		248.21
67549	04/25/2016	Bell Crossing LNDSCP	Utilities	MERCED IRRIGATION DISTRICT		15.80
67549	04/25/2016	Atwater South LD	Utilities	MERCED IRRIGATION DISTRICT		310.02
67549	04/25/2016	Mello Ranch 2 LD	Utilities	MERCED IRRIGATION DISTRICT		472.88
67549	04/25/2016	Meadow View LD	Utilities	MERCED IRRIGATION DISTRICT		444.08
67549	04/25/2016	Aspenwood LD	Utilities	MERCED IRRIGATION DISTRICT		147.14
67549	04/25/2016	Applegate Ranch LD	Utilities	MERCED IRRIGATION DISTRICT		258.08
67549	04/25/2016	Applegate Ranch Lndscp	Utilities	MERCED IRRIGATION DISTRICT		15.80
67549	04/25/2016	Water Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		9.24
67549	04/25/2016	Sewer Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		206.03
67549	04/25/2016	Sewer Enterprise Fund	Utilities	MERCED IRRIGATION DISTRICT		3,327.47

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	7,754.07
67550	04/25/2016	General Fund	Special Departmental Expense	MERCED MEDICAL SUPPLY		24.00
					Check Total:	24.00
67551	04/25/2016	Gas Tax/Street Improvement	Winton Way Road Improvements	MID VALLEY ENGINEERING		6,000.00
67551	04/25/2016	Gas Tax/Street Improvement	Winton Way Road Improvements	MID VALLEY ENGINEERING		2,155.00
					Check Total:	8,155.00
67552	04/25/2016	General Fund	Professional Services	MUNICIPAL RESOURCE GROUP, LLC		1,275.60
					Check Total:	1,275.60
67553	04/25/2016	General Fund	Professional Services	MUNISERVICES LLC		492.00
					Check Total:	492.00
67554	04/25/2016	Internal Service Fund	Small Tools	O'REILLY AUTO PARTS		83.87
67554	04/25/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		3,996.00
67554	04/25/2016	Internal Service Fund	Small Tools	O'REILLY AUTO PARTS		29.15
67554	04/25/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		77.53
67554	04/25/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		29.80
67554	04/25/2016	Sewer Enterprise Fund	Special Departmental Expense	O'REILLY AUTO PARTS		12.18
					Check Total:	4,228.53
67555	04/25/2016	General Fund	Donations	ANDREW OVERBAY		94.06
					Check Total:	94.06
67556	04/25/2016	Police Grants Fund	Uniform & Clothing Expense	P&R INFRARED		10,225.00
					Check Total:	10,225.00
67557	04/25/2016	General Fund	Donations	MARK PIMENTEL		127.62
67557	04/25/2016	General Fund	Special Departmental Expense	MARK PIMENTEL		2.39
					Check Total:	130.01
67558	04/25/2016	Internal Service Fund	Operations & Maintenance	PRESTON'S LOCK & KEY		14.58
67558	04/25/2016	Internal Service Fund	Operations & Maintenance	PRESTON'S LOCK & KEY		159.80
					Check Total:	174.38
67559	04/25/2016	General Fund	Professional Services	QUAD KNOPF		1,341.99
67559	04/25/2016	Gas Tax/Street Improvement	Professional Services	QUAD KNOPF		2,629.60
67559	04/25/2016	General Fund	Professional Services	QUAD KNOPF		124.80
67559	04/25/2016	General Fund	Professional Services	QUAD KNOPF		3,955.51

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	8,051.90
67560	04/25/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		365.93
67560	04/25/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		185.92
67560	04/25/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
67560	04/25/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		365.93
67560	04/25/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		545.94
67560	04/25/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
67560	04/25/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		365.93
67560	04/25/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
67560	04/25/2016	General Fund	Operations & Maintenance	RAY MORGAN COMPANY		427.33
67560	04/25/2016	General Fund	Operations & Maintenance	RAY MORGAN COMPANY		250.35
67560	04/25/2016	General Fund	Operations & Maintenance	RAY MORGAN COMPANY		283.28
67560	04/25/2016	General Fund	Operations & Maintenance	RAY MORGAN COMPANY		406.59
67560	04/25/2016	General Fund	Operations & Maintenance	RAY MORGAN COMPANY		318.74
67560	04/25/2016	Water Enterprise Fund	Operations & Maintenance	RAY MORGAN COMPANY		232.11
67560	04/25/2016	General Fund	Operations & Maintenance	RAY MORGAN COMPANY		94.33
67560	04/25/2016	General Fund	Operations & Maintenance	RAY MORGAN COMPANY		543.42
67560	04/25/2016	General Fund	Operations & Maintenance	RAY MORGAN COMPANY		428.23
					Check Total:	4,858.61
67561	04/25/2016	General Fund	Elementary School Track	MICHAEL P. RICHTER		325.00
					Check Total:	325.00
67562	04/25/2016	General Fund	Youth Basketball	JAMES L. ROBINSON		170.00
					Check Total:	170.00
67563	04/25/2016	Sewer Enterprise Fund	Special Departmental Expense	Rockwell Engineering		26,726.16
					Check Total:	26,726.16
67564	04/25/2016	RDVLPMT Obligation Retirement	Project Retention	ROLFE CONSTRUCTION		-5,197.35
67564	04/25/2016	RDVLPMT Obligation Retirement	Atw Blvd Strscp-Dwntwn Sub	ROLFE CONSTRUCTION		103,947.00
					Check Total:	98,749.65
67565	04/25/2016	RDVLPMT Obligation Retirement	Professional Services	ROSENOW SPEVACEK GROUP INC.		1,300.00
					Check Total:	1,300.00
67566	04/25/2016	General Fund	Adult Co-Ed Volleyball	TERRY L. RUST		51.00
					Check Total:	51.00
67567	04/25/2016	Internal Service Fund	Professional Services	SAN JOAQUIN PEST CONTROL		28.00
67567	04/25/2016	Internal Service Fund	Professional Services	SAN JOAQUIN PEST CONTROL		25.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67567	04/25/2016	Internal Service Fund	Professional Services	SAN JOAQUIN PEST CONTROL		38.00
67567	04/25/2016	Internal Service Fund	Professional Services	SAN JOAQUIN PEST CONTROL		25.00
67567	04/25/2016	Internal Service Fund	Professional Services	SAN JOAQUIN PEST CONTROL		31.00
67567	04/25/2016	Internal Service Fund	Professional Services	SAN JOAQUIN PEST CONTROL		33.00
67567	04/25/2016	Internal Service Fund	Professional Services	SAN JOAQUIN PEST CONTROL		18.00
				Check Total:		198.00
67568	04/25/2016	Water Enterprise Fund	Special Departmental Expense	SAN JOAQUIN VALLEY AIR		785.00
				Check Total:		785.00
67569	04/25/2016	Water Enterprise Fund	Professional Services	SHANNON PUMP CO.		1,668.92
67569	04/25/2016	Water Enterprise Fund	Professional Services	SHANNON PUMP CO.		1,653.41
67569	04/25/2016	Water Enterprise Fund	Professional Services	SHANNON PUMP CO.		1,620.66
67569	04/25/2016	Water Enterprise Fund	Professional Services	SHANNON PUMP CO.		2,644.42
				Check Total:		7,587.41
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		8.86
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		247.74
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		29.61
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		131.75
67570	04/25/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		307.11
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		27.24
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		94.19
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		21.60
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		-101.73
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		21.69
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		223.14
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		354.18
67570	04/25/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		23.75
67570	04/25/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		477.50
				Check Total:		1,866.63
67571	04/25/2016	General Fund	Special Departmental Expense	SUN BADGE COMPANY		256.43
				Check Total:		256.43
67572	04/25/2016	Water Enterprise Fund	Special Departmental Expense	SWRCB FEES		5,303.96
				Check Total:		5,303.96
67573	04/25/2016	Internal Service Fund	Operations & Maintenance	TESEI PETROLEUM, INC.		1,838.04
67573	04/25/2016	Internal Service Fund	Operations & Maintenance	TESEI PETROLEUM, INC.		7,421.24
				Check Total:		9,259.28

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67574	04/25/2016	Internal Service Fund	Operations & Maintenance	TRACTOR SUPPLY CREDIT PLAN		36.71
67574	04/25/2016	Internal Service Fund	Operations & Maintenance	TRACTOR SUPPLY CREDIT PLAN		21.58
67574	04/25/2016	Internal Service Fund	Operations & Maintenance	TRACTOR SUPPLY CREDIT PLAN		16.20
67574	04/25/2016	General Fund	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		107.98
67574	04/25/2016	Gas Tax/Street Improvement	Uniform & Clothing Expense	TRACTOR SUPPLY CREDIT PLAN		10.79
					Check Total:	193.26
67575	04/25/2016	General Fund	Professional Services	TROPHY CASE		6.48
67575	04/25/2016	General Fund	Professional Services	TROPHY CASE		21.60
					Check Total:	28.08
67576	04/25/2016	Risk Management Fund	Disability Insurance	UNUM LIFE INSURANCE		513.07
67576	04/25/2016	Risk Management Fund	Disability Insurance	UNUM LIFE INSURANCE		2,369.26
67576	04/25/2016	Risk Management Fund	Disability Insurance	UNUM LIFE INSURANCE		1,059.50
					Check Total:	3,941.83
67577	04/25/2016	Sewer Enterprise Fund	Professional Services	VEOLIA WATER NORTH AMERICA OPERATING		148,046.02
					Check Total:	148,046.02
67578	04/25/2016	General Fund	Special Departmental Expense	VIGILANT CANINE SERVICES		250.00
					Check Total:	250.00
67579	04/25/2016	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		17.17
					Check Total:	17.17
67580	04/25/2016	General Fund	Youth Basketball	ROBERT WEAR		51.00
					Check Total:	51.00
67581	04/25/2016	Gas Tax/Street Improvement	Professional Services	WEST COAST ARBORISTS, INC.		26,806.50
					Check Total:	26,806.50
67582	04/25/2016	Sewer Fund Capital Replacement	Wastewater Trtmt Plt Exp	WEST YOST & ASSOCIATES		62,172.89
					Check Total:	62,172.89
67583	04/25/2016	Internal Service Fund	Utilities	WGL ENERGY SYSTEMS, INC		1,827.79
67583	04/25/2016	Water Enterprise Fund	Utilities	WGL ENERGY SYSTEMS, INC		18,958.30
					Check Total:	20,786.09
67584	04/25/2016	Gas Tax/Street Improvement	Special Departmental Expense	WGR		265.00
67584	04/25/2016	Sewer Enterprise Fund	Professional Services	WGR		265.00
67584	04/25/2016	Northwood Village LD	Professional Services	WGR		13.36

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67584	04/25/2016	Orchard Park Estates LD	Professional Services	WGR		11.13
67584	04/25/2016	Wildwood Estates LD	Professional Services	WGR		4.06
67584	04/25/2016	Woodview Garland LA	Professional Services	WGR		2.47
67584	04/25/2016	Shaffer Lakes West LD	Professional Services	WGR		5.96
67584	04/25/2016	Woodhaven LD	Professional Services	WGR		3.66
67584	04/25/2016	Sierra Parks LD	Professional Services	WGR		2.78
67584	04/25/2016	Shaffer Lakes East LD	Professional Services	WGR		24.89
67584	04/25/2016	Price Annexation LD	Professional Services	WGR		75.15
67584	04/25/2016	Sandlewood Square LD	Professional Services	WGR		8.35
67584	04/25/2016	Pajaro Dunes LD	Professional Services	WGR		4.61
67584	04/25/2016	Redwood Estates LD	Professional Services	WGR		9.30
67584	04/25/2016	Cottage Gardens LD	Professional Services	WGR		1.11
67584	04/25/2016	Airport Business Park LD	Professional Services	WGR		1.43
67584	04/25/2016	Silva Ranch LD	Professional Services	WGR		11.93
67584	04/25/2016	Mello Ranch LD	Professional Services	WGR		12.01
67584	04/25/2016	Camellia Estates LD	Professional Services	WGR		3.02
67584	04/25/2016	Juniper Meadows LD	Professional Services	WGR		0.40
67584	04/25/2016	Camellia Meadows LD	Professional Services	WGR		2.47
67584	04/25/2016	Stone Creek LD	Professional Services	WGR		14.87
67584	04/25/2016	America West LD	Professional Services	WGR		1.03
67584	04/25/2016	Bell Crossing LD	Professional Services	WGR		14.95
67584	04/25/2016	Atwater South LD	Professional Services	WGR		12.01
67584	04/25/2016	Beluga Court LD	Professional Services	WGR		0.40
67584	04/25/2016	Mello Ranch 2 LD	Professional Services	WGR		10.34
67584	04/25/2016	Meadow View LD	Professional Services	WGR		10.18
67584	04/25/2016	Aspenwood LD	Professional Services	WGR		3.02
67584	04/25/2016	Applegate Ranch LD	Professional Services	WGR		1.11
Check Total:						796.00
67585	04/25/2016	Internal Service Fund	Special Departmental Expense	WINTON HARDWARE		13.96
67585	04/25/2016	Internal Service Fund	Special Departmental Expense	WINTON HARDWARE		6.47
67585	04/25/2016	Internal Service Fund	Small Tools	WINTON HARDWARE		5.33
67585	04/25/2016	Gas Tax/Street Improvement	Professional Services	WINTON HARDWARE		113.21
67585	04/25/2016	Internal Service Fund	Special Departmental Expense	WINTON HARDWARE		4.69
67585	04/25/2016	Internal Service Fund	Special Departmental Expense	WINTON HARDWARE		6.44
67585	04/25/2016	General Fund	Professional Services	WINTON HARDWARE		195.45
Check Total:						345.55
67586	04/25/2016	General Fund	Adult Co-Ed Volleyball	DONALD K WOODS		102.00
Check Total:						102.00
67587	04/25/2016	General Fund	Adult Co-Ed Volleyball	RICHARD A. ZAMARRIPA		85.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
						85.00
					Check Total:	85.00
						3,771,057.11
					Report Total:	3,771,057.11



# CITY OF ATWATER

## CITY COUNCIL

### ACTION MINUTES

**April 11, 2016**

OPEN SESSION: (Council Chambers)

*The City Council of the City of Atwater met in Open Session this date at 5:02 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Price presiding.*

PLEDGE OF ALLEGIANCE TO THE FLAG:

*The Pledge of Allegiance was led by Mayor Price.*

ROLL CALL:

**Present:** City Council Members Raymond, Rivero, Vineyard, Mayor Pro Tem Bergman, Mayor Price

**Absent:** None

**Staff Present:** City Manager/Police Chief Pietro, Deputy City Attorney Henderson, City Clerk Del Real, Recording Secretary Bengtson-Jennings

CLOSED SESSION: (Conference Room A)

*Closed Session agenda item (b), "Pursuant to Government Code Section 54956.8, Conference with Real Property Negotiator regarding Property Disposition," was removed from the agenda in its entirety.*

*Mayor Price invited public comments on Closed Session items.*

*No one came forward to speak at this time.*

*Mayor Price adjourned the meeting to Conference Room A for Closed Session at 5:03 PM. Closed Session was called to order at 5:08 PM.*

Conference with Legal Counsel – Anticipated Litigation – Government Code Section 54956.9(b): Number of cases: (1)

Pursuant to Government Code Section 54956.8, Conference with Real Property Negotiator regarding Property Disposition. Agency Negotiator: Community Development Director McBride

Property Locations:           APN 005-070-032  
  APN 001-134-015

***This item was removed from the Closed Session agenda in its entirety.***

***Closed Session adjourned at 5:20 PM.***

REGULAR SESSION: (Council Chambers)

***The City Council of the City of Atwater met in Regular Session this date at 6:00 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Price presiding.***

PLEDGE OF ALLEGIANCE TO THE FLAG:

***The Pledge of Allegiance was led by Mayor Price.***

INVOCATION:

***The Invocation was led by Police Chaplain McClellan.***

ROLL CALL:

***Present:                   City Council Members Raymond, Rivero, Vineyard, Mayor Pro Tem Bergman, Mayor Price***

***Absent:                   None***

***Staff Present:       City Manager/Police Chief Pietro, Deputy City Attorney Henderson, CAL FIRE Battalion Chief Pimentel, Police Lieutenant Joseph, Community Development Director McBride, Interim Public Works Director Faretta, Water Division Manager/Chief Operator Shaw, City Clerk Del Real, Recording Secretary Bengtson-Jennings***

MAYOR OR DEPUTY CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:

***Deputy City Attorney Henderson reported that no action was taken and staff was given direction. The Closed Session agenda was completed.***

SUBSEQUENT NEED ITEMS: ***None.***

APPROVAL OF AGENDA AS POSTED OR AS AMENDED:

***MOTION:*** Mayor Pro Tem Bergman moved to approve the agenda as posted. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Bergman, Vineyard, Raymond, Rivero, Price; Noes: None; Absent: None. The motion carried.

PRESENTATIONS:

Monthly verbal report by Merced County District 3 Supervisor McDaniel

***Supervisor McDaniel provided an update regarding the second segment of the Campus Parkway Project and regarding the Welcome Home Heroes event May 14, 2016. He reminded the community that although the County received over two inches of rain this past month, the drought still exists. He announced his mobile office hours, which are the fourth Thursday of each month from 1:30 PM – 3:30 PM at City Hall.***

COMMENTS FROM THE PUBLIC:

***Notice to the public was read.***

***ERIC LEE, Atwater, complimented Code Enforcement Officer Velazquez-Magana for his energetic and compassionate attitude and his professionalism on the job.***

***No one else came forward to speak.***

CONSENT CALENDAR:

***MOTION:*** Mayor Pro Tem Bergman moved to approve the consent calendar as listed. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Raymond, Vineyard, Bergman, Price; Noes: Rivero; Absent: None. The motion carried.

WARRANTS:

1. April 11, 2016

***ACTION:*** Approval of warrants as listed.

MINUTES: (City Council)

2. Regular meeting, March 28, 2016

***ACTION:*** Approval of minutes as listed.

AGREEMENTS:

3. Awarding Professional Services Agreement with Davey Resource Group for Urban Forest Master Plan and Canopy Coverage Analysis (Interim Public Works Director Faretta)

***ACTION: Awards a contract, in a form approved by the City Attorney, for professional services for Urban Forest Master Plan and Canopy Coverage Analysis, City Project No. 16-12, to Davey Resource Group of Atascadero, California in an amount not to exceed \$93,912; and authorizes and directs the City Manager to execute the Professional Services Agreement on behalf of the City.***

REPORTS:

4. Monthly review of local drought emergency (City Attorney Terpstra)

***ACTION: Reaffirms the facts and findings in Resolution No. 2823-15 declaring the existence of a local drought emergency.***

5. Ratifying urgency purchase and installation of two (2) Redundant Servers to provide telephone service to City Hall, Corporation Yard, Community Center, Youth Center and Fire Stations (City Manager Pietro)

***ACTION: Ratifies urgency purchase award to Quick PC Support, Inc., Modesto, California for the purchase and installation of two (2) Redundant Servers to provide telephone and voicemail service for City Hall, Corporation Yard, Community Center, Youth Center and Fire Stations in an amount not to exceed \$39,070.48.***

CLAIMS AGAINST THE CITY:

6. Claim No. 2016-8

***ACTION: After consideration and investigation, it is staff's recommendation that Claim No. 2016-8 be rejected.***

INFORMATIONAL ITEMS ONLY (NO ACTION REQUIRED):

7. Police Department/Code Enforcement Officer activities and projects for the month of March, 2016 (Police Lieutenant Joseph)
8. Police Volunteer activities for the month of March, 2016 (Police Volunteer Vineyard)
9. Fire Department activities and projects for the month of March, 2016 (CAL FIRE Battalion Chief Pimentel)

10. Public Works Department activities and projects for the month of March, 2016 (Interim Public Works Director Faretta)

REPORTS AND PRESENTATIONS FROM STAFF:

Adopting City Council Resolution No. 2879-16 approving Planned Development Final Development Plan No. 03-3 Amendment No. 2 (Community Development Director McBride)

***MOTION:*** Mayor Pro Tem Bergman moved to adopt Resolution No. 2879-16 approving Planned Development Final Development Plan No. 03-3 Amendment No. 2. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Raymond, Vineyard, Bergman, Rivero, Price; Noes: None; Absent: None. The motion carried.

Approving Memorandum of Understanding setting forth certain items of agreement among agencies within the Merced Groundwater Subbasin following the Sustainable Groundwater Management Act (Water Division Manager/Chief Operator Shaw)

***Lacey Kiriakou, Merced County Water Resources Coordinator, answered questions concerning the Memorandum of Understanding and clarified that the first step is to approve the City joining as a party to the MOU.***

***MOTION:*** Mayor Pro Tem Bergman moved to approve the City of Atwater becoming a party to the Memorandum of Understanding setting forth certain items of agreement among agencies within the Merced Groundwater Subbasin following the Sustainable Groundwater Management Act; and to ask staff to bring the Memorandum of Understanding back to the City Council in its final form at the regular City Council meeting of May 9, 2016 for authorization to execute the document. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Vineyard, Bergman, Raymond, Price; Noes: Rivero; Absent: None. The motion carried.

CITY COUNCIL MATTERS:

City Council comments and requests for future agenda items

***City Council Member Raymond thanked those in the Police Department, Fire Department, and with Riggs Ambulance Service who helped with a recent family member issue. He spoke regarding the undesirable conditions of the City's parks. He asked that staff initiate an RFP for building permitting and that a future regular City Council meeting agenda include review of the current City Council approval process, specifically which items require Community Development and Resources Commission approval prior to City Council approval.***

***City Council Member Vineyard announced that April is Autism Awareness month. He commended members of the Police Department for keeping the crime rate down in Atwater. He reminded the community of the City's Adopt-A-Park program***

*and of the current water ordinance, which prohibits watering between the hours of 7:00 AM and 7:00 PM any day. He asked citizens to check sprinkler systems and make necessary adjustments.*

*Mayor Pro Tem Bergman had nothing to report.*

*City Council Member Rivero congratulated Yosemite High School for earning a Gold Level of the California Green Ribbon Schools Award for “conserving resources while promoting health and environmental literacy.” He announced the 72<sup>nd</sup> Annual Merced County Junior Olympics will be held April 21-23, 2016 at Golden Valley High School. He asked that the next regular City Council meeting agenda of April 25, 2016 include a presentation of certificates to the winners of the Atwater City Track Meet.*

*Mayor Price announced that yesterday was National Siblings Day. He reported on the formal ribbon cutting for the Atwater/Merced Expressway and on his recent Police ride-along. He stated that Marjie Kirn, Merced County Association of Governments Executive Director, will be available to answer questions concerning the Merced County Transportation Expenditure Plan at the next regular City Council meeting of April 25, 2016 in which the item will be open for public comment and considered for City Council approval. He reminded the community that Love Atwater will be held April 23, 2016 beginning with a rally at Ralston Park at 8:00 AM; volunteers are needed.*

CLOSED SESSION:

*Closed Session was not necessary.*

ADJOURNMENT:

*City Council Member Vineyard asked that the time for the upcoming Adjourned meeting be changed to 4:15 PM.*

*The meeting adjourned to City Council Chambers, 750 Bellevue Road, Atwater, on April 25, 2016 at 4:15 PM to hold a workshop on Agenda Policy and Rules of Order.*

*The meeting adjourned at 6:35 PM.*

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JEANNA DEL REAL, CMC  
CITY CLERK

By: Kim Bengtson-Jennings,  
Recording Secretary

April 14, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of April 25, 2016

**AUTHORIZE A CONTRACT WITH CSG CONSULTANTS  
INC., FOR BUILDING DEPARTMENT ADMINISTRATION,  
BUILDING OFFICIAL, INSPECTION, AND PLAN REVIEW  
SERVICES**

**RECOMMENDATION:**

It is recommended that the City Council consider:

1. Approving a contract for professional services with CSG Consultants Inc. ("CSG") for Building Department Administration, Building Official, inspection, and plan review – plan check services; and
2. Authorize the City Manager to execute the agreement on behalf of the City of Atwater.

**BACKGROUND:**

The City entered into a Professional Services Agreement ("PSA") with Precision Inspection in 2007, wherein Precision Inspection provided supplemental – backup inspection services to the daily work performed by City's own inspectors, as well as supplemental and backup permit issuance assistance to the City's Permit Technician. In 2013 Precision Inspection was acquired by CSG Consultants, Inc. Currently, CSG continues to provide these services to the City related to supplemental and backup building inspection and supplemental and backup permit issuance.

In 2014, an amendment to the PSA was executed with CSG adding plan review – plan check services. CSG became the third firm providing plan review – plan check services for the City. The other two firms providing these services are NAFFA International and Golden Valley Engineering. Multiple firms are needed for plan review – plan check in order to alleviate any conflicts of interest, such as designers reviewing their own plans, and it also allows an applicant choose from more than one firm if desired.

On March 31, 2016, the City's Chief Building Official, and sole building inspector, left the City to assume a position with a neighboring community. The City is required by State Law to perform inspections and to have a designated Building Official. In order to continue to efficiently provide the required services, the City and CSG need to amend their PSA to cover the services that have been historically provided by CSG, as well as add the new services needed, which were primarily the duties performed by the Building Official and some administrative functions. The prior PSA between the City and CSG does not include these specific duties and functions, nor does it include services such

as Business License Inspections and building code enforcement.

**ANALYSIS:**

The proposed Professional Services Agreement includes the scope of work (“Exhibit A to the PSA”) and the hourly rates for services (“Exhibit B to the PSA”) to be provided by CSG. CSG will charge the City based on the hourly rate for services provided. The City will be billed on a monthly basis.

The Building Division is one of the areas of highest activity within the City. A ten year history of activity, **(EXHIBIT A)**, is included. Annually hundreds of permits are issued requiring many more hundreds of inspections. In addition to these services Business License Inspections are coordinated with other City Departments and inspections are performed, building code enforcement activities are performed, inspections are done on City facilities as needed, information is provided on building permit estimates as well as development impact fees, “pre-application” and “pre-submittal” meetings are held, code interpretations are rendered, over the counter plan checks are performed, and support is provided to other Departments within the City. Unlike many other communities the Permit Technician also accepts payments for building permits, payment for contractor’s business licenses, payments for “schedule of fees” – impact fees, submits all final permits to the County Assessor, performs State SMI calculations, performs State and Census reports, accepts payments for Engineering Encroachment Permits, provides general information related to building setbacks, provides basic zoning information, creates and tracks Certificate of Occupancies for all non residential projects, processes monthly bills for the Building Division, maintains, updates, and trains on the permit software integrated within Springbrook, and assists in the divisions budget tracking.

The City Council has requested that staff to prepare a Request for Proposals (“RFP”) for supplementing the Building Division Services. That work is in progress and will be scheduled for consideration by the Council as soon as possible. Until such time as an RFP can be prepared, advertised, proposals submitted and reviewed, and a new contract awarded, the City still needs to provide daily services. Staff believes that the earliest an award could be made would be June or July 2016. That would help coincide with the new fiscal year starting July 1, 2016. In the interim, CSG has pledged to provide high quality services at a level as close as possible to the City’s former Building Official. However, depending on the type of workload and inspections that are required, CSG can provide other inspectors as needed on an hourly basis. The costs for services range from \$90 per hour for a Building Official level to \$60 per hour for a Building Inspector, and combo inspectors which provide both commercial and residential inspections would be billed at \$80 per hour. In comparison, the hourly rate of pay for the former Building Official, including pay, all benefits and overhead totaled \$87.91 per hour.

This is the first time the City will use a professional services arrangement as its sole source for Building Official – Inspection services. Additionally, the PSA will provide the City the ability to cancel the PSA at any time and without cause upon written notification to CSG. Further, executing the PSA does not preclude the City from hiring public

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employees to provide these services in the future, nor does it preclude the City from entering into other agreements with other providers should the need arise in the future.

**FISCAL IMPACT:**

No budget amendment is requested at this time. There are adequate funds in the professional services for Building Inspection. Additionally, funds may be transferred from position salaries and benefits as needed.

**CONCLUSION:**

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,



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Scott McBride  
Community Development Director

### City of Atwater Building Division Activity

	<u>PERMIT TOTAL</u>	<u>NEW RES</u>	<u>NEW COM</u>	<u>FEE TOTAL</u>	<u>VALUE TOTAL</u>
05'	1256	356	10	1,086,680	83,651,619
06'	902	122	13	581,362	44,305,881
07'	716	52	29	456,624	42,230,119
08'	513	2	9	253,250	15,699,475
09'	411	1	6	193,340	17,634,046
10'	458	4	12	183,564	11,268,953
11'	367	0	4	65,262	4,737,335
12'	334	5	7	58,098	8,107,276
13'	368	4	5	111,077	5,863,945
14'	481	0	4	236,169	13,161,543
15'	696	95	4	496,169.45	27,810,913.95

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF ATWATER AND  
CSG CONSULTANTS, INC. (CSG)**

This Professional Services Agreement (“Agreement”) for consulting services is made by and between the City of Atwater (“City”) and CSG CONSULTANTS, INC. (“CSG” or “Consultant”) as of April, \_\_\_\_\_ 2016 (the “Effective Date”). City and Consultant shall be referred to herein separately as a “Party” and collectively as “Parties”.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide on-going City Building Department administration services, Building Official services, inspection services, and plan review – plan check services as described in the Scope of Work attached hereto and incorporated herein as Exhibit “A”, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit “A”, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall remain in effect until cancelled by either Party or amended by the Parties, Consultant shall complete the work described in Exhibit “A” on an on-going basis, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant on a time-and-materials basis and in accordance with the hourly rates described in the Fee Schedule attached hereto and incorporated herein as Exhibit “B”, notwithstanding any contrary indications that may be contained in Consultant’s proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant’s Fee Schedule, attached as Exhibit “B”, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion (a Fixed fee proposal);
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds the amount allowed under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit "A" and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

**2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task, task order issued by City or for

the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the Fee Schedule attached hereto as Exhibit "B".
- 2.5 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit "B", and shall not exceed the amounts described in Exhibit "B". Expenses not listed in Exhibit "B" are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a

self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator.

#### **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, and employees, are to be covered as additional insured as respects: liability to the extent arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- c. For any claims related to this Agreement or the work hereunder, the Consultant’s insurance covered shall be primary insurance as respects the City, its officers, officials, and employees, to the extent related to consultant’s Scope of Work. Any insurance or self-insurance maintained by the City, its officers, officials, or employees shall be excess of the Consultant’s insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after prior

written notice has been provided to the City per standard ISO ACORD form wording.

#### **4.3 Professional Liability Insurance.**

**4.3.1 General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' negligent errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least two years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of two years after completion of work under this Agreement.

#### **4.4 All Policies Requirements.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance evidencing required policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those certificates. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies in the event of a claim.

**4.4.3 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

**4.4.4 Wasting Policies.** Except for Professional Liability insurance policy, no policy required by this Section 4 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

**4.4.5 Waiver of Subrogation.** With respect to Commercial General and Auto Liability insurance coverage only, Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

**4.4.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant’s breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.**

Consultant shall indemnify, defend, and hold harmless City and its officers, officials, employees, and authorized agents from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney’s fees and costs and fees of litigation) (collectively, “Liability”) to the extent caused by Consultant’s negligence or willful misconduct in its performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the negligence or willful misconduct of City.

The Consultant’s obligation to defend and indemnify, to the extent caused by Consultant’s negligence or willful misconduct, shall not be excused because of the Consultant’s inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered

necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

Neither party to this Agreement shall be liable to the other party or any third party claiming through the other respective party, for any special, incidental, indirect, punitive, liquidated, delay or consequential damages of any kind including but not limited to lost profits or use of property, facilities or resources, that may result from this Agreement, or out of any goods or services furnished hereunder.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that 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 City, Consultant shall indemnify, defend, and hold harmless 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.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
  - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.6.3** Retain a different consultant to complete the work described in Exhibit "A" not finished by Consultant; or
  - 8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit "A" that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications,

records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents 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 described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties. Consultant not liable for any re-use of documents other than their intended purpose.

- 9.2 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 under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain 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. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Merced or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

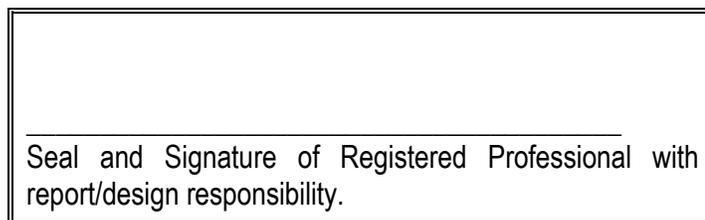
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by ***Community Development Director Scott McBride*** ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

***Crickett Brinkman, Manager  
CSG Consultants, Inc.  
930 Fresno St.  
Newman, CA 95360***

Any written notice to City shall be sent to:

**Community Development Director**  
**Scott McBride**  
**750 Bellevue Road**  
**Atwater, CA 95301**

- 10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



- 10.12 Integration.** This Agreement, including the Scope of Work attached hereto and incorporated herein as Exhibit "A", and the Fee Schedule attached hereto and incorporated herein as Exhibit "B", represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

The Parties have executed this Agreement as of the Effective Date.

CITY OF ATWATER

CONSULTANT

---

**Frank Pietro,  
City Manager**

---

**CSG CONSULTANTS, Inc.**

Attest:

---

**Jeanna Del Real, CMC  
City Clerk**

Approved as to Form:

---

**Thomas Terpstra,  
City Attorney**

# Capabilities and Scope of Work

## Approach to Work

CSG's proposed team has been selected to best support the project and will deliver the highest level of service through its application of technical expertise, knowledge of municipal processes and procedures, efficient and effective customer care, and application of code compliance combined with innovative and helpful alternatives. Our extensive experience in furnishing comprehensive building and fire life safety services to jurisdictions provides a consistent, strong technical foundation to all projects. From cutting edge digital plan review and online plan check status reporting to providing faster-than-scheduled turnaround times, CSG will deliver the highest quality services to the City of Atwater.

Key benefits that we offer include:

- ▶ **Concentrated focus on cost-saving approaches and methods.** Because we serve many municipalities and agencies, we are constantly improving and adapting to provide our clients with the most cost-effective services. We share a wealth of recommendations from our varied experience with other communities to help keep our clients' budgets healthy and on-track.
- ▶ **Customized, responsive services.** We are skilled at assessing time commitments, developing an accurate work plan and applying dedicated, professional personnel. We can quickly fine-tune staffing levels to match or adjust to changes in plan review, inspection and front counter activity—always maintaining the highest level of customer service. We hand pick staff uniquely qualified and experienced to deliver the exact services requested.
- ▶ **Fully committed and qualified personnel.** Each member of our staff is fully licensed and certified at the highest level of industry standards. To keep our personnel on the industry's cutting edge, many serve as popular educational instructors and lecturers as well as sit on leading boards and committees for organizations developing and implementing important code regulations. We also keep up with latest in procedures and use of products, e.g., green building, accessibility, CASp certification requirements, NPDES, MRP, and more.
- ▶ **Swift turnarounds and expedited services.** With extensive experience in the digital plan review process, our staff excels at providing the speediest turnarounds in the industry. We easily match and more often beat any required timing.
- ▶ **Leading-edge technology with cost-saving solutions.** CSG delivers a suite of digital options for jurisdictions—speedy digital plan reviews including electronic versions of plan comments, an optional, easy-to-use online web application/portal for submittal, tracking and approval of digital plans; and, full scanning and archival services.
- ▶ **Environmentally friendly practices.** Our corporate policy on sustainability supports a healthy environment, reduces our carbon footprint and promotes environmental stewardship through environmentally preferable purchasing and other sustainability actions. Our digital plan review system encourages the bypass of paper use, and all possible documents at CSG are printed double-sided on recycled, post consumer content paper.

## Commitment to Excellence

We encourage staff to participate in and contribute to the many associations important to our industry. Knowing technical excellence and proficiency is vital to successful public service, attending update seminars, specialized training classes and continuing certification conferences is an integral part of delivering “best-in-the-business” service to our clients. Many of our staff hold or have held key positions within the groups listed below as well as serve as in-demand instructors and trainers.

- ▶ *League of California Cities*
- ▶ *California Building Officials*
- ▶ *International Code Council*
- ▶ *ICC Chapters of Yosemite, Sacramento Valley, Monterey, East Bay, Peninsula, Napa-Solano, Shasta Cascade, Los Angeles Basin, Coachella, Orange Empire, Foothill, Redwood Empire, Central Coast*
- ▶ *County Building Officials Association of California*
- ▶ *California Fire Chiefs Association*
- ▶ *Northern California Fire Prevention Officers*
- ▶ *Southern California Fire Prevention Officers*
- ▶ *National Fire Protection Association*
- ▶ *California Automatic Fire Alarm Association*
- ▶ *American Fire Sprinkler Association*
- ▶ *National Fire Sprinkler Association*
- ▶ *American Public Works Association*
- ▶ *Institute of Transportation Engineers*
- ▶ *Structural Engineers Association of Northern California*
- ▶ *Structural Engineers Association of Southern California*
- ▶ *Certified Access Specialist Institute (CASI)*



## Plan Review

### Compliance Standards

Our team of professionals is ready to assist in all aspects of plan review and to focus on the special needs and requirements of each of our clients. We promise prompt turnaround times and offer comprehensive online status reports. Our plan checkers carefully review all documents for compliance with building codes, fire codes, energy conservation standards, State accessibility regulations, and all local ordinances. We understand and will comply with the City’s own requirements for plan review services. Our engineers and plan reviewers review plans for compliance with all policy and model codes adopted by the State of California, including but not limited to:



- ▶ *California Building Code, Volumes 1 and 2*
- ▶ *California Residential Code*
- ▶ *California Electrical Code*
- ▶ *California Plumbing Code*
- ▶ *California Mechanical Code*

- ▶ *California Fire Code as amended and adopted by the State of California (Title-24, Part 9 California Fire Code)*
- ▶ *National Fire Codes as published by the National Fire Protection Association (NFPA); as adopted and referenced by the State of California (California Code of Regulations, Title-19, Section 1.09)*
- ▶ *State Historical Building Code*
- ▶ *California Energy Code (as directed by the California Energy Commission)*
- ▶ *California Green Building Code (except those sections per the California Energy Code)*
- ▶ *NPDES/WQMP/SWPPP Compliance*
- ▶ *City adopted ordinances and amendments relative to building and municipal codes, including project Conditions of Approval from other City departments, divisions, regulating agencies, and jurisdictions*

### **CASp Services**

We understand California Building Departments are required to have CASp certified staff in place and available for technical questions and interpretations. Our CASp certified staff are knowledgeable of state and federal accessibility laws and regulations and possesses the expertise necessary to promote access to facilities for persons with disabilities. In accordance with current regulations, CSG can supply a CASp certified professional to review plans for accessibility and to facilitate compliance with regulations.



### **Plan Check Comments**

All plan check comments will be formatted to the City's established correction list templates. Any additional forms established by the City for alternative methods of construction and/or deviations from requirements, such as disabled access, will be incorporated into the correction comments and returned with the appropriate recommendations. In addition, plan check comments can be delivered electronically by email or other City approved means. This will enable City staff to immediately modify our checklist for incorporation with other department comments.

### **Quality Control / Quality Assurance**

CSG's in-house quality assurance / quality control program utilizes a peer review process with multi-level internal plan checking and project management. A senior staff member will review plan check comments in order to ensure relevance and accuracy.

### **Plans Pickup and Delivery**

CSG will arrange for pickup and delivery of plans to/from City offices. The pickup and delivery of plans and other materials via CSG staff or an approved alternative service will be provided at no additional cost.

## **Field Inspection Services**

### **Standards and Responsibilities**

CSG provides fully integrated, multi-disciplined building and fire inspection services for residential, commercial, and industrial projects, and are experienced in all construction types. We provide experienced, ICC certified (and/or with other appropriate entities in accordance with AB717) inspectors.

Our inspectors ensure compliance with applicable codes and requirements by identifying code violations, offering solutions to developers, property owners and tenants on potential risks and safety hazards, and by working as a team to correct violations. Specific responsibilities include but are not limited to the following:



- ▶ *Providing inspection services for project compliance with relevant codes including accessibility, fire, grading, building, electrical, mechanical and plumbing*
- ▶ *Addressing resident inquiries and resolving complaints*
- ▶ *Assisting with the construction and demolition permitting process*
- ▶ *Providing code administration, inspection and enforcement*
- ▶ *Maintaining records and files concerning construction permits and building code administration, documents for storage and/or imaging*

In addition, we can utilize combination inspection personnel whenever possible to perform over-the-counter plan reviews or assist as customer service back-up at the front counter in addition to regular inspection duties to save jurisdictions valuable time and expenses. Our inspection staff easily integrates into client organizations, consistently implementing policies and procedures and remaining transparent to applicants and customers. CSG provides all vehicles, fuel, maintenance and other equipment necessary for inspectors to carry out duties with no additional cost to the City.

### **Continuing Certification and Training**

We take pride in working with inspectors who have variety of inspection project experiences and who are motivated to achieve the highest level of certification. We work hard to match your jurisdiction's level of safety and code compliance and understand that personality and customer service are crucial to on-the-job success. All CSG inspectors are ICC certified and/or possess additional required certifications. In addition, they routinely update their knowledge and skills through specialized training classes and seminar attendance in approved and modern methods, materials, tools and safety used in building inspection, as well as the most current building standards.

## **Building Official Services**

CSG's building officials can perform management of a Building Division, as well as provide oversight and direction and be available part-time as needed as requested. Our building officials are certified with many years of building industry experience, and can provide staff management, plan review, and inspection roles as needed. CSG's Building Officials provide a well-rounded approach to building administration and the operations of a building department. Our building officials are well-known for their consummate customer service skills and successful identification of solutions through innovative problem solving. They are thoroughly familiar with the following services listed below and can easily adapt to other needed requests:

- ▶ *Quality Control*
- ▶ *Building Code updates and adoption*
- ▶ *Resolution of resident inquires and complaints*
- ▶ *Building Official Administration, processing of complex Building Code issues and dispute resolution*
- ▶ *Participating in the City's Architectural Review Board*
- ▶ *Building and Safety procedure manual development*
- ▶ *Monthly reporting of Building and Safety activities and annual reporting*
- ▶ *Participating in pre-development review and providing comments*
- ▶ *Processing of Planning Commission and City Council staff reports (as needed)*
- ▶ *Attendance at Planning Commission and City Council meetings (as needed)*

## **Permit Processing Services and Front Counter Support**

CSG has staff available to provide Permit Technician services. These first response services are vital to the success of the entire building and safety permit process as they often set the tone for the applicant whether a homeowner, contractor, or architect. CSG handpicks exceptionally qualified personnel with a central focus on operating as an extension of the City's team, understanding the importance of

exemplary customer service, knowledge of the inner-workings of building departments, and thorough familiarity with the building application and permit process.

## **Fire Plan Review Services**

CSG furnishes fire and life safety, special hazards, and fire sprinkler and fire alarm plan review for any and all structures with an emphasis on the unique needs and requirements of each of our clients. We are also experienced in special hazards and risks associated with industrial and commercial buildings, and single-family and multi-family complexes. CSG will become an active partner with the City, working as an extension of the City, and working closely with the development community and general public. All fire plan review and inspection personnel are thoroughly trained and familiar with jurisdictional processes, working within multiple departments, and serving the public.



# Atwater Professional Services Fees Amendment 3/28/16

CSG’s fee schedule which includes fees for personnel providing the proposed scope of work is provided in the table below. We will coordinate the pickup and return of all plans via CSG staff or a licensed courier service. This service is provided at no additional cost. CSG will mail an invoice at the beginning of every month for services rendered during the previous month.

## Hourly Fee Structure for Personnel

*Fee includes initial review and 2 reviews, if necessary. Additional reviews will incur hourly fees\**

PERSONNEL	ALL INCLUSIVE HOURLY RATE
<b>Plan Review</b>	
Building and Life Safety	75% of City-Collected
Expedited Plan Review	95% of Plan Review Fee
Fire Plan Review	\$90
Expedited Fire Plan Review *2 hour minimum	\$135
Solar Plan Review *1 hour minimum	\$75
CASp Professional	\$125
Civil Engineer/ Structural Engineer	\$95
*Additional Hourly Review Rate	\$85
<b>Building and Fire Staffing</b>	
Building Official	\$90
Combo Building Inspector	\$80
Building Inspector	\$60
Fire Inspector	\$90
Permit Technician	\$45

**Overtime** work authorized by the City, CONSULTANT shall be paid as follows:

Work performed in excess of 8 hours per day.....1.5 x Regular hourly rate

Work performed after 5:00.....1.5 x Regular hourly rate

Work performed on Saturdays.....1.5 x Regular hourly rate

**Holiday** work authorized by the City, CONSULTANT shall be paid as follows:

Work performed on Sundays.....2 x Regular hourly rate

Work performed on Holidays.....2 x Regular hourly rate

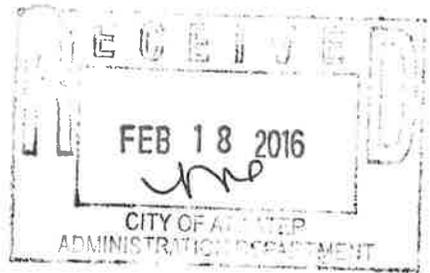
**Prevailing** work authorized by City, CONSULTANT rate shall be determined by current prevailing rates

All hourly rates include overhead costs including, but not limited to, salaries, benefits, Workers Compensation Insurance, office expenses, etc. Should the scope of work change or circumstances develop which necessitate special handling, we will notify the City prior to proceeding. Annual adjustments may be made by mutual agreement based upon current CPI.

CLAIM FORM

FORM B

(Please Type or Print)



CLAIM AGAINST City of Atwater  
(Name of Entity)

Claimant's name: Bill & Jan Helms

Gender: Male  Female

Claimant's address: Atwater Ca. 95301

Address where notices about claim are to be sent, if different from above: Same

Date of incident/accident: 15 Feb 2016

Date injuries, damages, or losses were discovered: 15 Feb 2016

Location of incident/accident: City PARK @ Linden St. Atwater

What did entity or employee do to cause this loss, damage, or injury? Side WALK Curb broken + juts toward roadway 2" sharp edges knife like  
(Use back of this form or separate sheet if necessary to answer this question in detail.)

What are the names of the entity's employees who caused this injury, damage, or loss (if known)? \_\_\_\_\_

What specific injuries, damages, or losses did claimant receive? RT FRONT tire on our Mercedes Benz had a blow-out as it hit the jagged edge of curb.  
(Use back of this form or separate sheet if necessary to answer this question in detail.)

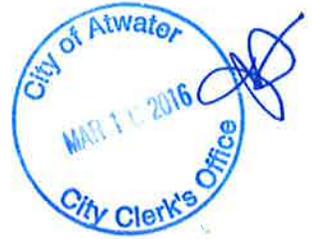
What amount of money is claimant seeking or, if the amount is in excess of \$10,000, which is the appropriate court of jurisdiction. Note: If Superior and Municipal Courts are consolidated, you must represent whether it is a "limited civil case" [see Government Code 910(f)] to replace tire costs \$150<sup>00</sup> + \$200<sup>00</sup>

How was this amount calculated (please itemize)? tire was 14 mo old (almost new.)  
(Use back of this form or separate sheet if necessary to answer this question in detail.)

Date Signed: 18 Feb 2016 Signature: Janet Helms William E. Helms

If signed by representative:  
Representative's Name \_\_\_\_\_ Address \_\_\_\_\_  
Telephone # \_\_\_\_\_  
Relationship to Claimant \_\_\_\_\_

Amazing Grace Holiness Tabernacle  
1399 Grove Ave.  
Atwater, CA 95301



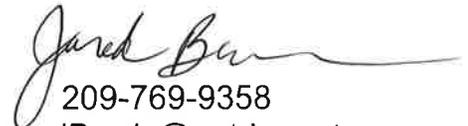
To the City Council Members of Atwater, CA:  
March 16, 2016

Our church, Amazing Grace Holiness Tabernacle, would like to organize and hold an open air community event under a Gospel tent. The purpose of this event is to minister across denominational and social lines, and to bring faith and hope out of the church building and into the community. We especially desire to minister to the poor and hurting in our city. This event is called City Reach.

We would like to hold this event in Ralston Park, in the open grassy area immediately across from our church, located at the corner of Fifth and Grove in Atwater. We would like to hold the event starting Sunday, May 8th - 15th. We would like to set up the tent on Saturday, May 7th and would take it down on Monday, May 16th.

We respectfully request your approval to use this part of our City Park to hold this event.

Rev. Jared Burris

  
209-769-9358  
JBurris@outdrs.net

ATWATER PENTECOST ASSOCIATION



Post Office Box 331 Atwater, CA 95301

March 17<sup>th</sup>, 2016

City of Atwater

750 Bellevue Road

Atwater, CA 95301

To Whom It May Concern:

The APC organization is currently organizing the annual Atwater Pentecost Association Celebration of the Holy Spirit Festa on Sunday, June 26<sup>th</sup>, 2016. The festa will consist of the following:

8:30am- Parade from the Atwater Pentecost Hall to St. Anthony's Church will begin forming and end back at the Hall after mass.

9:00am- Parade begins

10:00am- First serving of sopas to the public will be served (free to the public)

2:00pm- Live auction and bazaar at the APC Hall.

7:00pm-Sopas will be served to the public (free to the public)

8:00pm-12:00am- Dance by Luso Tones (free admission)

We are requesting your assistance and approval for the parade that will travel from the APC Hall to Anthony's Church then return back to the APC Hall after mass.

The Parade will begin at 9:00am down Third Street, to Broadway, down Broadway, to Winton Way, turn right on Winton Way, and proceed to St. Anthony's Church.

The return route after mass will leave church down to Winton Way, to Grove Ave., down Grove Ave., to Third St., right on Third St., to the APC grounds.

Please inform us as to what needs to be done for your assistance. If you have any questions, please call or email Brenda Lima at (209) 777-5462 or [bandabl@aol.com](mailto:bandabl@aol.com)

Thank you,

Brenda Lima  
APC Secretary

**STATEMENT OF CHANGES IN CASH BALANCE, UNAUDITED**  
**BY FUND**  
**AS OF 3/31/16**

<b>FUND</b>	<b>BEG. BALANCE</b>	<b>CASH DEBITS</b>	<b>CASH CREDITS</b>	<b>ENDING BAL.</b>
0001 General Fund	(2,740,389.85)	1,254,921.88	1,393,868.36	(2,879,336.33)
0003 General Fund Capital	(6,387.66)	0.00	113,374.72	(119,762.38)
0004 Measure H Fund	1,166,325.46	154,653.49	83,604.33	1,237,374.62
0005 Ferrari Ranch Project Fund	(31,549.35)	0.00	10,159.51	(41,708.86)
1005 Police Grants Fund	24,771.75	16,298.82	38,852.51	2,218.06
1011 Gas Tax/Street Improvement	1,811,312.73	114,473.29	162,360.37	1,763,425.65
1013 Local Transportation Fund	23,426.46	1,282.35	0.00	24,708.81
1015 Traffic Circulation Fund	879,755.13	4,779.27	0.00	884,534.40
1016 Applegate Interchange	723,230.11	155.57	0.00	723,385.68
1020 Parks and Recreation Fund	1,581,405.71	14,520.59	27,362.04	1,568,564.26
1050 Buhach Colony High School	221,429.95	47.63	0.00	221,477.58
1055 Neighborhood Stabilization	161,693.88	49,685.45	0.00	211,379.33
1059-78 Housing Grant Funds	199,052.32	42.80	0.00	199,095.12
1091 Police Facility Impact Fee	37,267.47	2,399.37	0.00	39,666.84
1093 Fire Facility Impact Fee	41,866.93	3,109.99	0.00	44,976.92
1095 Government Building Facility	97,910.08	2,279.78	0.00	100,189.86
3064 RDVLPMT Obligation Retirement Fund	470,388.86	926,401.12	497,062.35	899,727.63
3065 Low & Mod Income Housing Asset Fund	0.00	0.00	0.00	0.00
3066 Successor Agency Debt Service Fund	0.00	0.00	0.00	0.00
3067 Community RDVLPMT Prop Trust Fund	1,893.46	264.46	0.00	2,157.92
3064-67 Redevelopment/Successor Agency Funds	472,282.32	926,665.58	497,062.35	901,885.55
4000 Bloss Estate Trust Fund	(775.94)	2,546.94	1,771.00	0.00
4020 Performance Bond Trust	216,728.45	46.61	0.00	216,775.06
4030 Narcotics Program Trust	5,263.79	1.13	0.00	5,264.92
4040 Unclaimed Property Trust	893.84	0.00	893.84	0.00
4050 Employment Event Trust	369.80	0.00	369.80	0.00
4060 Section 125 Medical	174.24	485.16	180.00	479.40
4070 Section 125 Dependent Care	(3,173.60)	416.66	0.00	(2,756.94)
4090 CFD No. 1 Trust	48,501.30	10.43	0.00	48,511.73
4099 General Fund Fee Waiver	698.12	0.00	698.12	0.00

**STATEMENT OF CHANGES IN CASH BALANCE, UNAUDITED**  
**BY FUND**  
**AS OF 3/31/16**

FUND	BEG. BALANCE	CASH DEBITS	CASH CREDITS	ENDING BAL.
5000-54 All Maintenance Districts	1,865,016.32	450.46	24,864.71	1,840,602.07
5050 CFD Districts	(468,454.40)	355.14	54.03	(468,153.29)
6000 Water Enterprise Fund	(8,240,801.36)	463,850.27	367,052.72	(8,144,003.81)
6001 Water Fund Capital Replacement	8,129,306.46	1,748.66	0.00	8,131,055.12
6002 DBCP Settlement	665,941.34	143.24	0.00	666,084.58
6004 Water Well- Buhach Colony	147,457.49	1,627.38	0.00	149,084.87
6005 Water Capital Impact Fees	1,003,872.04	18,642.88	0.00	1,022,514.92
6006 Water Operating Reserve Fund	172,458.24	37.09	0.00	172,495.33
6010 Sewer Enterprise Fund	4,972,977.17	1,117,776.61	539,235.36	5,551,518.42
6011 Sewer Fund Capital Replacement	2,003,566.33	24,690.17	0.00	2,028,256.50
6020 Sanitation Enterprise	763,072.34	325,667.01	288,435.67	800,303.68
7000 Internal Service Fund	407,414.29	214,563.66	74,088.37	547,889.58
7010 Employee Benefits Fund	654,049.11	216,492.21	63,940.01	806,601.31
7020 Risk Management	400,103.51	115,160.20	65,508.11	449,755.60
7030 Information Technology	64,658.18	66,121.77	16,732.06	114,047.89
9050 General Fund Asset Group	0.00	0.00	0.00	0.00
9090 Accrued Interest Fund	3,170.47	3,438.01	6,608.48	0.00
<b>TOTAL</b>	<b>17,475,890.97</b>	<b>5,119,587.55</b>	<b>3,777,076.47</b>	<b>18,818,402.05</b>

Prepared by:



Patricia Tejada, Accountant II

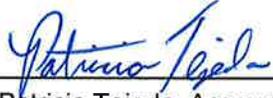
Approved by:

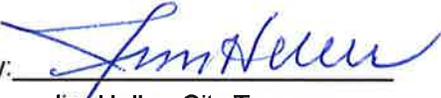


Jim Heller, City Treasurer

**Statement of Changes in Cash Balance  
by Bank  
As of 3/31/16**

	Beg. Period Balance	Cash Debits	Cash Credits	End Period Balance
City - LAIF	5,389,605.63			5,389,605.63
City Checking & Investment Accounts	8,946,416.58	5,116,128.22	3,777,076.47	10,285,468.33
RA Obligation Retirement Fund	825,380.45	21.32		825,401.77
City - RMA Long-Term Investment Fund	1,033,355.00	3,419.00		1,036,774.00
Wells Fargo Mutual Fund	1,230,760.79	10.45		1,230,771.24
Rabobank - Money Market	<u>50,372.52</u>	<u>8.56</u>		<u>50,381.08</u>
<b>Totals</b>	<u><u>17,475,890.97</u></u>	<u><u>5,119,587.55</u></u>	<u><u>3,777,076.47</u></u>	<u><u>18,818,402.05</u></u>

Prepared by:   
Patricia Tejada, Accountant II

Approved by:   
Jim Heller, City Treasurer

(The following statements are required by California Govt. Code Section 53646 (b) (2,3))

Investments are made pursuant to the City Council approved Investment Policy and Guidelines.

The City of Atwater has the ability to meet its pooled expenditure requirements for the next six months.

Bank Account Detail			
City LAIF	5,389,605.63	Westamerica Bank Checking	10,785,158.81
Chandler Asset Mgt.	1,036,774.00	Westamerica Bank (Transfer Account)	100,000.00
Wells Fargo Mutual Fund	1,230,771.24	Westamerica Bank Rdvlpmnt Obligation Checking	825,401.77
Rabobank Money Market	50,381.08		

**We have a problem.**

**We have a solution.**

**The choice is yours.**

---

# Here's the problem...

## Our region is facing a serious funding shortfall.

- \$380 million = amount needed to **maintain** local streets and roads in Merced County through 2040
- \$1.1 billion = amount needed to **expand** our regional roads and highways through 2040



# Here's the solution...

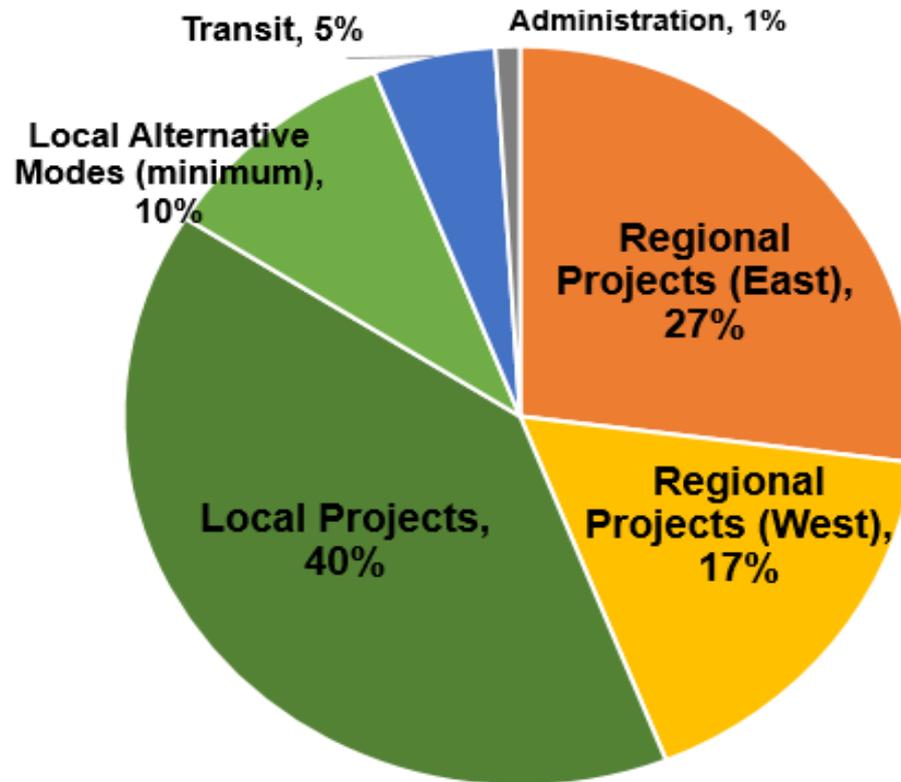
## **A half-cent sales tax dedicated to transportation**

- \$450 million in new revenue over 30 years
- \$15 million annually
- Self-Help County status
- Promotes economic development and job creation
- Provides local control and flexibility
- Reduces reliance on state and federal government

**The choice is yours!**

# Where will the money go?

**Figure 1**



				Major Categories	Sub- categories		
				%	%	<b>Annual</b>	<b>30 Year Total</b>
1.	Regional Projects	<i>subtotal</i>		44%		\$6,600,000	\$198,000,000
	Regional Projects - Eastside				27%	\$4,050,000	\$121,500,000
	Regional Projects - Westside				17%	\$2,550,000	\$76,500,000
2.	Local Projects	<i>subtotal</i>		50%		\$7,500,000	\$225,000,000
	Unrestricted maximum				40%	\$6,000,000	\$180,000,000
2.A.	Alternative Modes minimum				10%	\$1,500,000	\$45,000,000
3.	Transit			5%	5%	\$750,000	\$22,500,000
4.	Administration			1%	1%	\$150,000	\$4,500,000
	<b>TOTAL COUNTYWIDE</b>			<b>100%</b>	<b>100%</b>	<b>\$15,000,000</b>	<b>\$450,000,000</b>

# What does this mean for Atwater?

- **\$615,000** per year for local transportation priorities
  - Decided by the City Council
  - **\$123,000** minimum to be spent on bikeways, sidewalks, and other alternative modes
- **\$18 million** over the life of the measure for local projects in Merced
- Benefiting from Eastside Share of regional funding (**\$121.5 million** over the life of the measure)
- Improvements to transit service throughout the county

# We're in this together!

Local Shares	Annual Amount	30 Year Total
Atwater	\$615,763	\$18 million
Dos Palos	\$244,816	\$7 million
Gustine	\$246,594	\$7 million
Livingston	\$368,040	\$11 million
Los Banos	\$767,143	\$23 million
Merced	\$1,554,461	\$47 million
County	\$3,703,183	\$111 million
Regional Shares	Annual Amount	30 Year Total
Regional Projects – Eastside	\$4,050,000	\$122 million
Regional Projects – Westside	\$2,550,000	\$77 million
Transit	\$750,000	\$23 million

# MERCED COUNTY

## 1/2 Cent Sales Tax Transportation Expenditure Plan

### The Problem

Our region is facing a serious funding shortfall. We are unable to maintain our streets, roads, bridges, sidewalks and other critical components of our region's transportation infrastructure. As state and federal funding continue to decline and our local and regional transportation systems continue to deteriorate, additional revenue is needed to not only maintain the current system but also expand to meet the needs of our growing population.

**\$380 million**

amount needed to **maintain** our local streets and roads through 2040

**\$1.1 billion**

amount needed to **expand** our regional roads and highways through 2040

**\$450 million**

amount of **new revenue** the proposed sales tax is projected to generate over 30 years

### The Solution

If approved by voters in November 2016, a half-cent sales tax could generate more than \$450 million in new revenue to address our transportation needs over the next three decades. The proposed Transportation Expenditure Plan outlines a flexible approach to spending these funds, providing transportation funding directly to our local governments and setting aside funding for projects of regional benefit along our highways and regionally significant corridors.

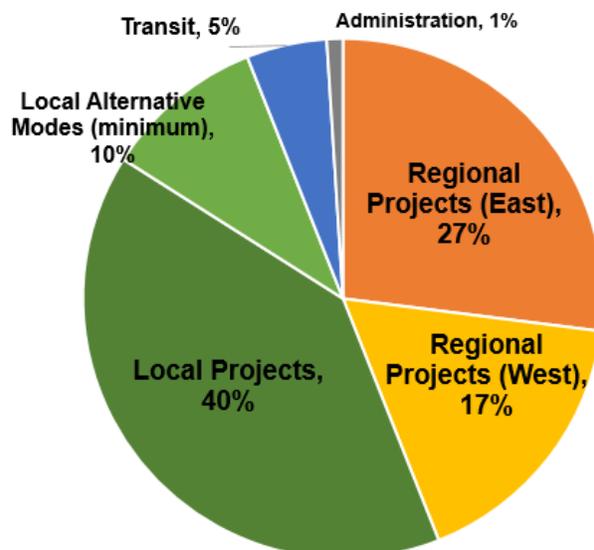
### Who developed the Transportation Expenditure Plan?

The Plan is the product of a collaborative process involving a broad range of engaged stakeholders from throughout the county. The 24-member committee was comprised of representatives from the Cities of Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced, the County of Merced, and a wide variety of community stakeholders representing diverse interests from across the county.

### Where will the money go?

The proposed transportation sales tax is estimated to generate \$15 million annually, to be allocated to the following categories:

- **Regional Projects**
- **Local Projects and Alternative Modes**
- **Transit**
- **Administration**



Local Shares	Annual Amount	30 Year Total
Atwater	\$615,763	\$18 million
Dos Palos	\$244,816	\$7 million
Gustine	\$246,594	\$7 million
Livingston	\$368,040	\$11 million
Los Banos	\$767,143	\$23 million
Merced	\$1,554,461	\$47 million
County	\$3,703,183	\$111 million
Regional Shares	Annual Amount	30 Year Total
Regional Projects – Eastside	\$4,050,000	\$122 million
Regional Projects – Westside	\$2,550,000	\$77 million
Transit	\$750,000	\$23 million

**Regional Projects: 44%** of the total annual revenue will be dedicated to regional projects located in or directly benefiting more than on jurisdiction in Merced County. With the San Joaquin River serving as the geographic boundary, 27% of these funds will be dedicated to projects on the eastside of the county, while 17% will fund projects on the westside. Examples of regional projects include but are not limited to: **improving highways and freeways, investing in passenger rail and supporting vanpools and other ridesharing programs.**

**Local Projects & Alternative Modes: 50%** of the total annual revenue will be allocated directly to local jurisdictions based their share of the County’s population and maintained road miles. This funding will give local jurisdictions the flexibility to address local transportation needs including but not limited to: **repairing potholes and bridges, repaving streets, replacing traffic signals and improving sidewalks and bicycle facilities.**

As local jurisdictions invest these funds into their communities, at least 20% of the local funds received must be used for Alternative Modes projects. The goal of this requirement is to provide safe alternatives to automobile travel such as biking, walking and passenger rail. Examples of such projects include but are not limited to: **sidewalks, crosswalks, safe routes to schools, curb ramps, bicycle projects, railroad crossing safety improvements, ridesharing programs, and other air quality improvement projects.**

**Transit: 5%** of the annual revenue will be dedicated to improving The Bus – our region’s county-wide public transit system. These funds may be used to enhance and expand transit services and programs including bus shelters, fare reductions, and improved services for seniors, the disabled and veterans.

**Administration: 1%** of the annual revenue will be allocated to Merced County Association of Governments for administrative responsibilities including administering a citizens’ oversight committee, preparing annual reports and contracting for annual independent audits.



**For more information:**

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<http://www.mcagov.org/240/Transportation-Expenditure-Plan>

**REVISED**

**2016 ½ CENT TRANSPORTATION  
SALES TAX MEASURE  
EXPENDITURE PLAN**

Prepared by:



369 W. 18<sup>th</sup> Street  
Merced, CA 95340

**MARCH 2016**

# Introduction

A Merced County ½ Cent Transportation Sales Tax Expenditure Plan was prepared to:

**Guide more than \$450 million in transportation fund expenditures generated through the approval of a Merced County half-cent transportation sales tax over the next 30 years if approved by the voters in the November 2016 election.**

The Expenditure Plan was developed by a 24-member Transportation Expenditure Plan (TEP) Committee created and appointed by the Merced County Association of Governments (MCAG) Governing Board. The committee was comprised of representatives from each of the seven member agencies (Atwater, Dos Palos, Gustine, Livingston, Los Banos, Merced and the County of Merced), as well as, a wide variety of community stakeholders representing diverse interests from across the county (Appendix C).

The Expenditure Plan will address major regional transportation needs in Merced County through the Year 2047 with the initiation of a ½ cent sales tax.

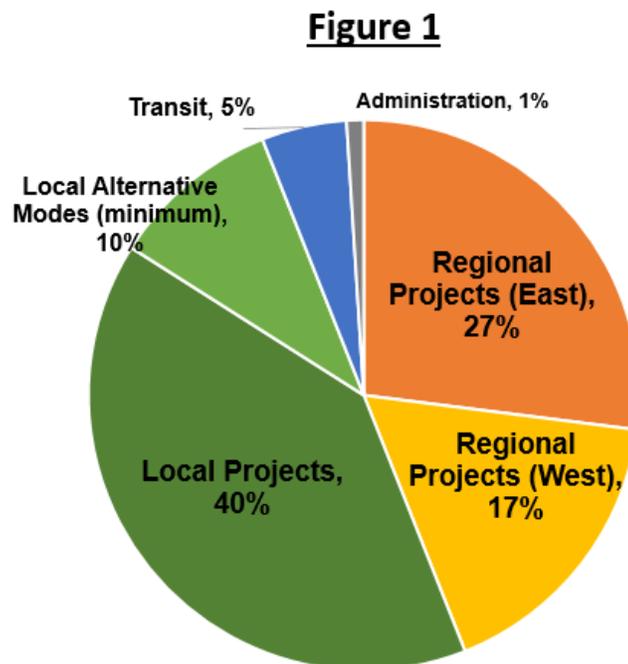
## Where will the money go?

Figure 1 provides an overview of the proposed Expenditure Plan that outlines where the funds will be spent and what categories of projects will be funded.

The funding categories include:

1. Regional Projects
2. Local Projects
- 2A. Alternative Modes Projects
3. Transit, and
4. Administration.

The proposed 30-year Transportation Measure is expected to generate a total of \$450 million.



## **1. REGIONAL PROJECTS**

44% of the Transportation Measure funds are allocated to Regional Projects which are established in the adopted Regional Transportation Plan (RTP) approved by the MCAG Governing Board. 27% must be spent on projects east of the San Joaquin River, and 17% must be spent on projects west of the San Joaquin River. The projects within the RTP were selected through a process that evaluated safety, performance measures and cost effectiveness. The RTP is updated every four years with 25 years of transportation projects. Regional Projects provide for the movement of goods, services, and people throughout Merced County and benefit multiple jurisdictions.

## **2. LOCAL PROJECTS**

50% of the Transportation Measure funds are allocated to Local Projects to address the diverse needs of the cities and the County. The Local Projects funding category provides each of the member agencies with the flexibility to develop a priority list of local projects. This category will allow funding for projects ranging from pot-hole repair and road rehabilitation to sidewalks and safe routes to schools to freeway interchange improvements.

### **2.A. ALTERNATIVE MODES PROJECTS**

At least 20 percent (20%) of the Local Projects funds each jurisdiction receives must be used for Alternative Modes projects. This sub-category is intended to fund projects that provide transportation alternatives including bicycle, pedestrian, passenger rail, or other modes of transportation that reduce single-occupant vehicle use.

## **3. TRANSIT**

5% of the Transportation Measure funds are directed to support increased transit service.

## **4. ADMINISTRATION**

The remaining 1% of the total Transportation Measure funding is directed to program implementation activities. Details regarding the administration of the funds are provided in Appendix A.

# Responding to Public Needs

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Two-thirds (66.7%) voter approval is necessary to pass the Transportation Measure in November 2016. In order to ensure that Merced County Association of Governments is on target with this Expenditure Plan, voters and community residents were initially surveyed to determine support for a new Transportation Measure.

The voters of Merced County responded with strong support to impose a sales tax which would lead to transportation improvements in Merced County. Meeting the needs of Merced County residents requires leveraging state and federal expenditures with local resources. Even with the passage of the Transportation Measure there will not be enough funding available to address the more than \$1 billion in transportation needs. The Transportation Measure will generate \$450 million over the next 30 years to address a portion of this need. Therefore, leveraging additional federal and state dollars, beyond what the region expects, is critical.

Most state and federal grants require a match. Counties that pass transportation sales tax measures are referred to as “Self-Help” counties and can generate the revenues to be used as matching dollars. Similar measures throughout the San Joaquin Valley and California have been very successful in this regard. Such measures have been viewed as the most important transportation programs ever approved by voters in those counties. According to the Regional Transportation Plan, Merced County needs to become a Self-Help county to achieve its goals and address its transportation needs.

The TEP Committee, which included representatives from each of the cities, the County of Merced, MCAG and a number of community stakeholders, worked together to develop the Expenditure Plan funding categories and other key components.

## Annual Audit of Transportation Measure

The Transportation Measure expenditures and accounts of the local agencies and MCAG will be audited on an annual basis by an independent audit firm retained by Merced County Association of Governments. Appendix A provides additional detail regarding the Transportation Measure audit process.

## Citizen Oversight

To inform the public and to ensure that the Transportation Measure revenues and expenditures are spent as promised to the public, a Citizens’ Oversight Committee would be formed by MCAG as part of the new Transportation Measure. Details regarding the committee are provided in Appendix B.

# Anticipated Measure Revenues

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If voters approve the Transportation Measure on November 8, 2016, they will allow MCAG to impose a ½ cent retail transaction and use tax for 30 years (between April 1, 2017 and March 31, 2047). The Transportation Measure Sales Tax will:

**Provide \$450 million in new revenues for transportation improvements according to financial projections through the year 2047.**

This estimate considers current sales tax receipts (with no growth rate in sales tax proceeds) through March 2047. Since the project funding is shown in current dollars, the projected revenues are shown in current dollars. Actual revenues will depend on actual sales tax proceeds. The allocation of projected revenues to specific transportation funding categories is described in the following sections of this Expenditure Plan. A Transportation Measure Implementation Plan detailing current transportation projects will be updated every two (2) years to adjust the projection of sales tax receipts, ensuring that the projections are consistent with future expenditures and promises made in this initial Expenditure Plan. MCAG will have the option of issuing bonds to deliver Transportation Measure projects to reduce project costs by delivering them earlier.

# Funding Categories

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Through many weeks of intense discussion and hard work, the following Transportation Measure funding categories and commitments were developed by the TEP Committee. MCAG realized that providing funds for all modes of transportation would meet the quality of life intent of the new Transportation Measure. This would in turn enable agencies within Merced County to address the needs of residents, businesses, and major industries over the 30-year life of the Transportation Measure.

The Expenditure Plan will:

**Provide funds for regional road improvements, public transit, rehabilitate existing roads and other transportation programs that improve mobility and air quality within the County and each of the cities.**

# 1. Regional Projects – 44% of total

If \$450 million is collected over 30 years, then \$198 million will be available for Regional Projects - \$121.5 million on the Eastside and \$76.5 million on the Westside.

Forty-four percent (44%) of the funds will be allocated to this category.

- 27% of the total is for an Eastside share, to be spent on projects east of the San Joaquin River.
- 17% of the total is for a Westside share, to be spent on projects west of the San Joaquin River.

The dividing line between Eastside and Westside shares is the San Joaquin River. Two committees will be created to recommend projects:

- The Eastside Regional Projects Committee will consist of one council person from each City that includes area east of the San Joaquin River and each County Supervisor whose district includes area east of the River.
- The Westside Regional Projects Committee will consist of one council person from each City that includes area west of the San Joaquin River and each County Supervisor whose district includes area west of the River.

As the Local Transportation Authority overseeing the funds, the Governing Board of Merced County Association of Governments has the authority to approve recommendations made by the Regional Projects Committees. Notwithstanding the foregoing, the MCAG Governing Board shall not approve a project that has not been recommended by a Regional Projects Committee.

Regional Projects must be listed in the applicable Regional Transportation Plan, which is updated every four years and can be amended as needed. These projects provide for the movement of goods, services, and people throughout Merced County. Projects on the State Highway system or the Regional Road System or the Regional Transportation System defined by MCAG are Regional Projects. Projects located in or directly benefitting more than one jurisdiction are Regional Projects.

Examples of Regional Projects include but are not limited to:

- Improving highway and freeways
- Adding lanes to projects on the Regional Road System
- Improvements on the Regional Transportation System
- Passenger Rail
- Bus Rapid Transit
- Regional bikeways and trails
- Improvements to Regional Airports
- Transportation Demand Management benefitting more than one jurisdiction, such as vanpools and ridesharing.

Funds can be used for all phases of project development and implementation. In some cases, other sources of funding will also be used for these projects, for example State Transportation Improvement Program (STIP) funds.

## **2. Local Projects – 50% of total**

If \$450 million is collected over 30 years, then \$225 million will be available for Local Projects.

Fifty percent (50%) of the funds will be allocated to this program. The local elected city councils and the Board of Supervisors will be the decision-making bodies for the use of these funds within their respective jurisdictions. Every year each City and the County will receive funding based on a formula using a base amount, population, and road miles. The goal is to improve the local transportation systems within each individual city and the County overall.

Local agencies in Merced County know what their needs are and how best to address them. The funding will help cities and the County to meet maintenance needs and to rehabilitate their aging transportation systems. Funds can be used for all phases of project development and implementation. Funds can be used for new projects or programs, for safety improvements, or for maintenance or operation of existing projects or programs

Potential uses include but are not limited to:

- Pothole repair
- Repaving streets
- Bridge repair or replacement
- Traffic signals
- Add additional lanes to existing streets and roads
- Improve sidewalks
- Bicycle or pedestrian facilities
- Separate street traffic from rail traffic

The funds for the Local Projects program will be allocated annually to local jurisdictions (the Cities and the County) using a formula as follows:

1. A base amount of \$150,000 will be allocated to each jurisdiction;
2. The remaining funds will be allocated based on the average of the jurisdiction's share of the total countywide population and their share of the total countywide public maintained road miles. For example, if a jurisdiction has 35% of the population and 75% of the road miles they will be allocated 55% of the funds remaining after the base amounts are allocated.

### **2.A Alternative Modes Projects – at least 20% of Local Projects (10% of total)**

If \$450 million is collected over 30 years, then \$45 million will be available for Alternative Modes Projects.

At least twenty percent (20%) of the “Local Projects” funds each jurisdiction receives must be used for Alternative Modes projects. Each jurisdiction may use more than this minimum but not less. The goal of this sub-category of projects is to provide safe alternatives to automobile travel, increase use of alternative modes, and improve air quality and the environment. This sub-category may be used for projects and programs that provide alternatives to single-occupant vehicle use, including but not limited to:

- Sidewalks, crosswalks, safe routes to schools, ADA curb ramps, and other pedestrian projects
- Bicycle projects
- Passenger Rail
- Railroad crossing safety improvements
- Vanpools, carpools or other ridesharing programs or incentives
- Roundabouts or other air quality improvements
- or other alternative modes

This sub-category may be used for new projects or programs, for safety improvements, or for maintenance or operation of existing projects or programs. Funds can be used for all phases of project development and implementation.

This sub-category may also be used as an incentive or as matching funds for transportation-related components of sustainable communities and developments that help increase alternatives to automobiles.

Below is an example of what the annual allocation to each local jurisdiction could look like in any given year, assuming \$15,000,000 in revenue.

Jurisdiction	Example Annual Amount	20% for local alternative modes projects	80% for other local transportation needs
City of Atwater	\$615,763	\$123,152	\$492,610
City of Dos Palos	\$244,816	\$48,963	\$195,853
City of Gustine	\$246,594	\$49,319	\$197,276
City of Livingston	\$368,040	\$73,608	\$294,432
City of Los Banos	\$767,143	\$153,429	\$613,714
City of Merced	\$1,554,461	\$310,892	\$1,243,569
Merced County	\$3,703,183	\$740,637	\$2,962,546
Total	\$7,500,000	\$1,500,000	\$6,000,000

### 3. Transit – 5% of total

If \$450 million is collected over 30 years, then \$22.5 million will be available for Transit Projects

Five percent (5%) of the funds will be allocated to this program. The Governing Board of the Merced County Association of Governments is the decision-maker for allocating these funds. The goal of this funding category is to expand or enhance public transit services and programs.

To accomplish this important goal, funding is provided to the transit agency within the County to expand transit services. Potential uses include but are not limited to:

- New routes to enhance existing transit service
- Low emission buses
- Night and weekend service
- Bus shelters and other capital improvements
- Safer access to public transit services
- Fare reduction or subsidies

### 4. Administration – 1% of total

If \$450 million is collected over 30 years, then \$4.5 million will be available for Administration.

One percent (1%) of the funds will be allocated to MCAG to:

- Prepare Implementation Plan updates
- Develop funding allocation requirements
- Administer and conduct specified activities identified in the categories described above
- Prepare Annual Transportation Measure Report
- Contract for annual independent audits
- Staff the regional committees and provide technical assistance.

## For more information

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# Appendices

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## Appendix A – Expenditure Plan Administration

### Governing Board and Organizational Structure

A description of the Merced County Association of Governments and its organizational structure related to the sales tax follows. The structure is consistent with the enabling legislation.

#### **Merced County Transportation Authority Structure under the Transportation Measure**

The Merced County Association of Governments (MCAG) is the Merced County Local Transportation Authority and will administer the Transportation Measure in compliance with Public Utilities Code PUC 180000 et seq. If the Transportation Measure is approved by Merced County voters in November 2016, the Authority will be responsible for administering the Transportation Measure in accordance with plans and programs outlined in this and subsequent updates of this Expenditure Plan. In addition, this Expenditure Plan includes provision for a Citizens' Oversight Committee. Details regarding the Committee are contained in Appendix B. The TEP Implementation Plan will continue to be prepared by MCAG and approved by its Policy Board and by the Authority.

PUC 180000 includes provisions regarding the number of members on the Authority Board. Specifically, the Authority will be represented by eleven (11) members including:

- Five (5) members of the Board of Supervisors
- One (1) member representing each of the six cities in Merced County: Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced consisting of members of the city council appointed by the city council

Alternates to the regular members of the authority may participate in accordance with the MCAG By-Laws.

### Plan Update, Approval Process, and Expenditure Plan Amendments

#### **Plan Review and approval process**

There are three primary reports/plans that are referenced as follows:

1. The Expenditure Plan – The Expenditure Plan is approved by the voters and may be amended once a year as outlined below.
2. The Annual Report – The Annual report is prepared each year by the Citizen's Oversight Committee to provide review how sales tax receipts are being spent and publicize the results
3. Biennial Implementation Plan – Prepared every two years to outline project expenditures. The Implementation Plan will be timed to coincide with the development of the Bi-annual State Transportation Improvement Program development.

In compliance with schedules mandated in federal and state law, MCAG regularly prepares a new long-range transportation plan (RTP) that updates and renews a list of candidate projects for all transportation modes (streets, highways, public transportation, bikeways, aviation, etc.). If funds are available for any projects beyond those now listed in this Expenditure Plan, they will be drawn from that list. MCAG will have the option of issuing bonds to deliver Measure projects and programs contained in this Expenditure Plan to reduce project costs by delivering them earlier.

All updates of the Expenditure Plan will be subject to public review and public hearings. While these candidate projects may change and priorities for funding may occur, there are more than enough project

needs within the County to be addressed using all types of funding, including Transportation Measure funds. It will be vital during development of each Expenditure Plan Update to consider financing all transportation modes in order to insure a balanced and efficient transportation system. All of the projects and programs included in this Expenditure Plan are considered essential to meet the transportation needs of Merced County.

The Funding Categories and overall Funding Allocations formulas described in this Expenditure Plan may not be amended without approval of the voters.

### **Amendments to the Expenditure Plan**

As specified in Public Utilities Code Section 180207:

- (a) The authority may annually review and propose amendments to the county transportation expenditure plan adopted pursuant to Section 180206 to provide for the use of additional federal, state, and local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances.
- (b) The authority shall notify the board of supervisors and the city council of each city in the county and provide them with a copy of the proposed amendments.
- (c) The proposed amendments shall become effective 45 days after notice is given.

The Funding Categories and overall Funding Allocations formulas described in this Expenditure Plan may not be amended without approval of the voters.

### **Bi-Annual Implementation Plan**

At a minimum of once every two years, MCAG will prepare and adopt a Transportation Measure Implementation Plan. This will include a financial plan consistent with the Regional Transportation Improvement Program (RTIP) and the State Transportation Improvement Program (STIP).

- MCAG staff working with member agencies and affected stakeholders will develop the Draft Implementation Plan, and will update it every two years.
- The MCAG Governing Board receives the Draft Implementation Plan and its updates and schedules public hearings to review the Plan
- The MCAG Governing Board adopts the Implementation Plan

## **Independent Financial Audits**

If the Transportation Measure is approved by the voters, MCAG would conduct independent financial audits consistent with PUC 180000 et seq.

## **Implementation Guidelines**

### **Administration Program: - 1% of the Measure**

There are a number of processes that MCAG must also perform to support the Transportation Measure including maintenance of the Expenditure Plan and development of requirements associated with:

- Each of the proposed allocation programs
- The identification and prioritization of projects

It is recommended that MCAG be allocated 1% of sales tax revenue to address important activities.

Activities of MCAG are described below:

- Prepare Annual Work Program and Budget
- Develop the allocation program requirements including focused studies needed to implement the Transportation Measure
- Prepare the Implementation Plan every two years
- Develop the priority list of regional capacity increasing and rehabilitation projects
- Conduct an independent audit of Transportation Measure funds on an annual basis
- Conduct on on-going public outreach program

- Issue bonds to deliver Transportation Measure projects contained in Implementation Plan to save project costs by delivering them earlier
- Allocate Transportation Measure proceeds to the local jurisdictions consistent with the Expenditure Plan requirements
- **Staff the regional committees and provide technical assistance.**

### **Bonding and Financing**

MCAG will have the authority to bond and use other financing mechanisms, including, when more advantageous economically, loans from banks and other financial lending institutions, for the purposes of expediting the delivery of transportation projects and programs and to provide economies of scale. Bonds or loans, if issued, will be paid with the proceeds of the transportation sales tax. The costs and risks associated with the bonding and loans will be presented in the Implementation Plan, and will be subject to public comment before any bond sale or loan application is approved.

MCAG will also be able to use other means to accelerate the delivery of Regional Projects including partnering with other COGS, the State of California, the federal government, and other government agencies, federal authorization funds, federal earmarks, partnering with private entities, seeking outside grants and matching or leveraging tax receipts to the maximum extent possible.

Local agencies may choose to advance funds for a project, either a project specified in the plan, or a project for which they plan to use their local agency Local Project funds, and to receive reimbursement for that advancement in accordance with the plan. The fund advancement and reimbursement projections must be approved by MCAG in accordance with the voting requirements, prior to proceeding with the project. Local agencies may also accumulate funds from their Local Projects allocations over several years to fund larger or higher cost projects.

### **Regional Projects Contingency Fund**

MCAG will also have the ability to set aside a contingency fund for Regional Projects shares of up to 5% of the annual receipts from the tax. Revenues to fund the contingency may be accumulated if revenues exceed projections.

In the event that actual revenues in any given year are less than the budgeted revenues, the MCAG Board may use the contingency fund to make up the difference between the budgeted revenues and the actual revenues. The contingency fund may also be used to fund projects where the actual cost exceeds projections.

### **Accountability**

All business of MCAG will be conducted in an open and public meeting process in accordance with the California Brown Act. MCAG will approve all spending plans described in this document and will ensure that adequate public involvement has been included in the preparation of all spending plans. MCAG will be required to hire an independent auditor who will annually audit all sales tax expenditures, ensuring that expenditures are made in accordance with the plan, and with prudent, established accounting regulations and practices.

### **Maintenance of effort**

The enabling legislation in Public Utilities Code PUC 180001(e) states:

*It is the intent of the Legislature that funds generated pursuant to this division be used to supplement and not replace existing local revenues used for transportation purposes.*

Each Agency receiving revenues for “Local Projects” shall annually maintain, as a minimum, the same level of local fully discretionary general fund revenues that were expended on average for fiscal years 2013/14, 2014/15 and 2015/16, for transportation purposes. Dedicated funds for transportation such as gas tax revenues are not counted as general fund revenues. Transfers in to the general fund will not be counted as general fund revenues. Grant awards and general fund revenues used as matching funds for

grant awards will not be counted as general fund revenues.

### **Other Guidelines**

This plan is guided by principles that ensure that the revenue generated by the transportation sales tax is spent in the most efficient and effective manner possible, consistent with the desires of the voters of Merced County. The principles outlined in this section provide flexibility needed to address issues that may arise during the life of the plan.

1. MCAG will fund both regional and local projects, and will also provide funds to local agencies to address special and localized needs.
2. MCAG is charged with a fiduciary duty in administering the transportation sales tax proceeds in accordance with the applicable laws and this Expenditure Plan. Receipt of these tax proceeds may be subject to appropriate terms and conditions as determined by MCAG in its reasonable discretion, including, but not limited to, the right to require recipients to execute funding agreements and the right to audit recipients' use of the tax proceeds.
3. The monies collected through MCAG shall be accounted for and invested separately, unless and until the funds are turned over to a local agency in accordance with the plan. At such time, the local agency shall keep a separate accounting of the monies and any and all expenditures to ensure that the monies are spent in accordance with the approved expenditure plan.
4. All meetings of MCAG will be conducted in public accordance to state law, through publicly noticed meetings. The annual budget of MCAG, annual work plan, biennial Implementation Plan, and annual report will all be prepared for public scrutiny. The interests of the public will further be protected by the Citizens' Oversight Committee described in this Plan.
5. Under no circumstances may the proceeds of this transportation sales tax be applied to any purpose other than for transportation improvements benefiting Merced County and its member agencies.
6. Actual revenues may be higher or lower than expected in this Plan, due to changes in receipts and/or matching or leveraging capability. Estimates of actual revenue will be programmed annually by the MCAG during its annual budget process.
7. All projects funded with these transportation sales tax funds will be required to complete appropriate California Environmental Quality Act (CEQA) and other environmental review as required.
8. Funds may be accumulated by MCAG or by recipient agencies over a period of time to pay for larger and long-term projects. If accumulated for a general purpose, the proceeds will be used for the transportation purposes described in the Expenditure Plan.
9. MCAG will have the **capability of loaning authority to loan** transportation sales tax receipts **allocated to Regional Projects** at prevailing interest rates to **other** member agencies for the implementation of needed transportation projects, provided that a guaranteed revenue stream is devoted to repay such a loan over a maximum amount of time, and provided that the loan will not interfere with the implementation of programs or projects defined in the Expenditure Plan. **Loaning of funds allocated to Regional Projects** requires **2/3rds** MCAG Board approval **and** approval by the affected Regional Committee.
10. **Each Local jurisdiction shall have the authority to loan transportation sales tax receipts allocated to them for Local Projects to member agencies for the implementation of needed transportation projects.**
11. **New incorporated cities or new transit agencies or services that come into existence in Merced County during the life of the Expenditure Plan could be considered as eligible recipients of funds through a Plan Amendment, and an additional position created on the governing board.**

## Appendix B – Citizens Oversight Committee

### Committee Purpose

- To provide input on implementation of the Plan, and to advise the MCAG Board if and when the Plan needs to be augmented and to ensure that the funds are being spent in accordance with the Plan.
- To inform the public and to ensure that the Transportation Measure (Measure) funding program revenues and expenditures are spent as promised to the public.

### Administrative Issues

#### Committee Formation

- The Committee will be formed within six (6) months upon approval of the Transportation Measure by the voters of Merced County in November 2016.
- The Committee shall not be amended out of the Expenditure Plan.
- Meetings will commence when Transportation Measure revenues are recommended for expenditure; including Implementation Plan updates.

#### Selection and Duties of Committee Chair and Vice Chair

- The Committee shall select a Chair and Vice Chair from the members, each of whom shall serve a one (1) year term.
- The duties of the Chair will be to call meetings, set agendas, and preside over meetings.
- The duties of the Vice Chair will be to perform the same duties described above in the absence of the Chair.

#### Committee Meetings

- The Committee will hold one formal meeting annually, with additional meetings scheduled as needed by the Committee.
- All Committee meetings must be held in compliance with the Brown Act.
- All meetings will be conducted per “Robert’s Rules of Order”.

#### Subcommittee Requirements

- The Committee may elect to form subcommittees to perform specific parts of its purpose.
- All subcommittees shall have an odd number of members.

### Committee Membership, Selection, and Quorum

#### Membership & Selection

The Committee will be designed to reflect the diversity of the County. The Committee will consist of 14 members. Each organization represented on the Citizens’ Oversight Committee will nominate its representative; with final appointments approved by the governing board of MCAG. The membership shall be as follows:

- One member will be appointed by each City and the County (Total of 7)
- One representative from the building industry
- One representative from the agriculture industry
- One representative from an ethnic community group
- One representative from a major private sector Merced County employer
- One representative from an advocacy group representing bicyclists and pedestrians, and/or transit
- One member who is a professional in the field of audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector
- One representative from an environmental advocacy group

In the case of the final four representatives, applications from residents within Merced County who are over the age of 18 will be solicited and accepted. The representatives will be selected by the MCAG Governing Board.

### **Quorum**

- A quorum will be no less than eight (8) members of the Committee
- An action item of the Committee may be approved by a simple majority of those present, as long as the quorum requirement is met.

### **Term of Membership**

- Terms of membership will be for two (2) years. No member may serve more than 8 years.
- Members may be reimbursed for authorized expenses, but not be compensated for their service on the Committee.
- In an effort to maintain Committee member consistency, during the first two (2) years of the Committee, terms will be staggered with 7 of the members to serve a one-year term, 7 of the members to serve a two-year term. The length of the first terms will be determined via random selection.
- Proxy voting will not be permitted.

### **Eligibility**

- U.S. citizen 18 years of age or older who resides in Merced County
- Not an elected official at any level of government
- Not a public employee at any State, County or local city agencies
- Must submit an annual statement of financial disclosure consistent with Fair Political Practices Commission (FPPC) rules and regulations and filed with the Authority

### **Staffing**

- MCAG will staff the Committee and provide technical and administrative assistance to support and publicize the Committee's activities.
- MCAG services and any necessary outside services will be paid using the MCAG's Transportation Measure Administration revenues.
- Expert staff will be requested to provide information and make presentations to the Committee, as needed.

### **Responsibilities**

The Committee may receive, review and recommend any action or revision to plans, programs, audits or projects that is within the scope of its purpose stated above. Specific responsibilities include:

- Receive, review, inspect, and recommend action on independent financial and performance audits related to the Transportation Measure
- Receive, review, and recommend action on other periodic reports, studies and plans from responsible agencies. Such reports, studies and plans must be directly related to Transportation Measure revenues or expenditures
- Review and comment upon Measure expenditures to ensure that they are consistent with the Expenditure Plan
- Annually review how sales tax receipts are being spent and publicize the results
- Present Committee recommendations, findings, and requests to the public and MCAG in a formal annual report to inform Merced County residents how funds are being spent.
- The Committee will have full access to the MCAG independent auditor and will have the authority to request and review specific information, with the understanding that the Committee will rely upon data, processes and studies available from MCAG, and other relevant data generated by reputable sources. It is understood; that MCAG will be continuously striving to improve the reliability of data and to update analytical and modeling
- processes and that the Committee will be kept abreast of any such efforts, and is invited to participate in development of such updates in a review capacity.

The Committee will assist MCAG in taking advantage of changing situations with technical and transportation developments in the future. Therefore, the provisions regarding the Committee make up, processes and protocols are viewed through 2047 based upon a 2016 perspective, and are not meant to be unduly restrictive on the MCAG and the Committee's roles and responsibilities.

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## Appendix C – TEP Steering Committee Roster

MCAG/Merced County	Deidre Kelsey Hub Walsh
Leadership Council for Justice and Accountability	Kaylon Hammond
Hilmar	Mike Seward
Assembly Member Adam Gray	Ryan Heller
Caltrans	Tom Dumas
Transit	Rich Green
Merced Boosters	Michael Carpenter Vinton Thengvall
Greater Merced Chamber of Commerce	Adam Cox
Golden Valley Health Centers	Mary-Michal Rawling
UC Merced	Phillip Woods
Merced College	Paul Baxter
City of Gustine	Ellen Hasness Pat Nagy
City of Dos Palos	Jerry Antonetti Michael McGlynn
City of Los Banos	Mike Villalta Steve Carrigan/Gary Brizzee
City of Atwater	Jim Price Scott McBride
City of Merced	Josh Pedrozo Tony Dossetti - Alternate
City of Livingston	Alex McCabe
Agriculture	Diana Westmoreland Pedrozo

DATE: FEBRUARY 23, 2016

TO: MCAG GOVERNING BOARD MEMBER

CC: CITY MANAGER/COUNTY CEO

FROM: MARJORIE KIRN, EXECUTIVE DIRECTOR

There is a problem with transportation in Merced County. We can no longer rely on the state and federal governments to solve our problem - It's our duty to tackle it. We have an opportunity to solve this problem, today and for future generations. To this end, the MCAG Governing Board directed the submittal of the Transportation Expenditure Plan for your consideration. The attached Transportation Expenditure Plan provides a balanced approach to meeting local and regional transportation needs.

The Transportation Expenditure Plan demonstrates how revenue from a half cent sales tax in Merced County will fund local and regional transportation needs. The transportation measure is estimated to generate \$450 million in revenue over 30 years (\$15 million per year). Two-thirds (66.7%) voter approval is needed to pass the measure in November 2016. The Plan provides flexibility in addressing transportation needs as they change over the years. It provides local jurisdictions with funding to address specific local needs, while providing funding for regional projects that will enhance the overall transportation system. Merced County will become a self-help county, meaning it will now have resources to leverage state and federal investments – making the region much more competitive.

In order to meet our goal of placing the Transportation Expenditure Plan on the November 8, 2016 Election Ballot, each of the City Councils and the Board of Supervisors is requested to approve the Transportation Expenditure Plan by May 20<sup>th</sup>, 2016.

Resolution No. 2881-16

WHEREAS, the City of Atwater recognizes the dire condition of the City's and the region's streets, roads, and highway system; and,

WHEREAS, the Merced County Association of Governments has prepared a Transportation Expenditure Plan that proposes transportation programs and projects that will increase safety, alleviate congestion, and improve street and road pavement conditions; and,

WHEREAS, the City of Atwater finds that the Transportation Expenditure Plan will benefit its citizens, businesses, and agricultural industry;

NOW, THEREFORE, the City Council of the City of Atwater approves the Transportation Expenditure Plan for Merced County and endorses its approval by the citizens of Atwater and Merced County as a ballot measure in November 2016.

April 18, 2016

Honorable Mayor and Members of the  
Atwater City Council

City Council Meeting  
Meeting of April 25, 2016

### **Financial Update – Fiscal Year Ended June 30, 2016**

#### **RECOMMENDATION:**

It is recommended that the City Council consider:

- Accepting the report on the City's financial status as of June 30, 2016

#### **BACKGROUND:**

The City Council adopted the Fiscal Year 2015-16 Budget on June 8, 2015 after much discussion of various budget balancing and cost savings measures. During the budget development process, it was agreed that the City Council would be provided regular updates on the status of the City's revenues and expenditures. The Audit and Finance Committee reviewed this information at their meeting on April 25, 2016. The information presented in this report includes preliminary (unaudited) information for fiscal year 2015-16 as of April 18, 2016 after completion of six months of the current fiscal year.

#### **ANALYSIS**

The City of Atwater has been severely impacted by the economic downturn over the past several years. As the economy stalled, the City's revenues declined. The City's General Fund and two of the enterprise funds have operated in a deficit position with expenditures exceeding available revenue for several years which has resulted in a depletion of reserves in these funds. As of June 30, 2015, (the last published financial audit), the General Fund had a negative fund balance of \$3.6 million. One of the City's enterprise activity funds also had negative balances - the Sanitation Enterprise Fund had a negative unrestricted fund balance of \$3 million as of June 30, 2015. The Water Enterprise fund generated enough revenue to pay off its deficit and had a positive fund balance of \$0.2 million. During the 2012-13 fiscal year, the City Council took action to address the negative operating position in these funds by implementing significant operating cost reductions and approving utility rate adjustments in the Water and Sanitation funds.

The attached reports provide the following preliminary information as of April 18, 2016:

- Comparison of General Fund revenues and expenditures to the budgeted amount by category/department
- Detailed information on General Fund revenues
- Comparison of actual revenues and expenditures to the budgeted amount for the Water, Sewer and Sanitation funds.

**Fiscal Year 2015-16**

As of April 18, 2016, six months of the 2015-16 fiscal year had elapsed. Staff has completed a preliminary review of revenues and expenditures compared to the budgeted amount. Reports providing budget status information for the General Fund and enterprise funds are attached.

**General Fund**

The adopted General Fund Budget for Fiscal Year 2015-16 is balanced with anticipated revenues and expenditures totaling \$12.3 million and \$12.1 million respectively. While the budget is balanced, it is imperative that financial activity be closely monitored since there is no cushion for negative variances in revenues or operating costs. As of April 18, 2016, the General Fund had received \$6.9 million (55.7 percent) of the budgeted annual revenue. During the first six months of the current fiscal year, the General Fund had expended \$6.8 million (56.1 percent) of the approved budget. A review of expenditures indicates that all departments are currently operating within their approved budget allocations. While it is expected that General Fund expenditures will exceed revenues during the first half of the fiscal year due to the scheduling of revenue receipts, it should be noted that the General Fund has no reserves to fund any temporary shortfall.

**Other Funds**

During the first six months of the fiscal year, the Water, Sewer and Sanitation funds each generated sufficient revenue to offset fund expenditures.

For Measure H fund, the Fiscal Year 2015-16 Budget anticipated revenue of \$1.6 million with \$1.1 million budgeted as a transfer to the General Fund for public safety expenditures. During first six months of the current fiscal year, the Measure H fund has collected 1.1 million in revenue and expended \$0.7 million as operating expenditures. The fund does have a surplus of \$354,442 as of April 18, 2016.

**CONCLUSION:**

This staff report is submitted for City Council review.

Respectfully submitted,



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Lakhwinder Deol  
Finance Director

## CITY OF ATWATER GENERAL FUND BUDGET SUMMARY

Un-audited Information	FY 2015-16 Budget	Received thru Apr. 18, 2016	
<b>Revenues</b>			
Property Tax	1,945,198	1,274,640	65.5%
Sales Tax	2,983,707	1,387,891	46.5%
Franchise Tax	620,000	386,347	62.3%
Business License Tax	160,000	139,401	87.1%
Transient Occupancy Tax	40,000	27,662	69.2%
Property Transfer Tax	55,000	39,413	71.7%
License & Permits	337,750	364,255	107.8%
Intergovernmental	2,943,960	1,728,892	58.7%
Charges for Service	448,675	317,568	70.8%
Fines and Forfeitures	49,000	23,205	47.4%
Miscellaneous Revenue	363,476	322,831	88.8%
Transfer-in	2,399,936	864,804	36.0%
<b>Revenue Total</b>	<b>\$12,346,702</b>	<b>\$6,876,911</b>	<b>55.7%</b>
<b>Expenditures By Department</b>			
Mayor and City Council	17,933	8,586	47.9%
City Administration	276,525	189,346	68.5%
Finance	686,340	472,985	68.9%
City Clerk/Human Resources	457,433	282,132	61.7%
City Treasurer	2,811	2,134	75.9%
Non-Departmental	1,387,347	954,802	68.8%
Police Department	5,256,430	3,378,510	64.3%
Fire	2,543,664	557,243	21.9%
Community Development Department	888,961	554,299	62.4%
Parks & Community Services	604,399	399,452	66.1%
Bloss House Trust	6,732	4,574	67.9%
<b>Expenditures Total</b>	<b>\$12,128,574</b>	<b>\$6,804,063</b>	<b>56.1%</b>
Operating Surplus/(Shortfall) Before Capital Projects	218,128	72,847	
Interfund Loan Repayment - Wastewater Fund			
Capital Projects			
Sidewalk Improvements - City Match (Engineering Costs)	12,604	0	
Traffic Signal Synchronization (City Match CMAQ Grant)	0	0	
Juniper Road Pedestrian/Bike Path Infill (City Match CMAQ Grant)	0	0	
Buhach Road Sidewalk Infill (City Match CMAQ Grant)	5,713	0	
Bulletproof Vest Program - State Homeland Security Grant Match	10,388	0	
Hazardous Tree Removal	0	0	
Street Sweeper/Sewer Vac Retrofit - City Match	0	0	
Street Sweeper Purchase - City Match	0	0	
<b>Total Capital Projects</b>	<b>28,705</b>	<b>0</b>	
<b>Total Expenditures/Capital Projects</b>	<b>\$12,157,279</b>	<b>\$6,804,063</b>	
<b>FY 2015-16 Operational Surplus/(Deficit)</b>	<b>\$189,423</b>	<b>\$72,847</b>	

**City of Atwater**

**Fiscal Year 2015-16**

**General Fund Revenue By Category**

Description	FY 2015-16 Adopted Budget	Received thru Apr. 18, 2016	Variance (Budget vs. Actuals)
<b>Property Taxes</b>			
Property Tax, Current Secured	1,456,728	972,167	(484,561)
Property Tax, Current Unsecured	130,665	153,519	22,854
Property Tax, Prior Unsecured	5,000	-	(5,000)
Property Tax, Supplemental	50,000	-	(50,000)
Property Tax Miscellaneous	-	776	776
Prop Tax In-lieu Sales/Use	221,305	110,674	(110,631)
RDA Residuals (COA)	57,500	35,975	(21,525)
Property Tax, Homeowner Exemption	24,000	1,529	(22,471)
<b>Total Property Tax Revenue</b>	<b>1,945,198</b>	<b>1,274,640</b>	<b>(670,558)</b>
<b>Sales Tax</b>			
Sales & Use Tax	2,868,707	1,305,624	(1,563,083)
Sales & Use Tax-Public Safety	115,000	82,267	(32,733)
<b>Total Sales Tax Revenue</b>	<b>2,983,707</b>	<b>1,387,891</b>	<b>(1,595,816)</b>
<b>Other Taxes</b>			
Business License Tax	160,000	139,401	(20,599)
Franchise Tax	620,000	386,347	(233,653)
Transient Occupancy Tax	40,000	27,662	(12,338)
Property Transfer Tax	55,000	39,413	(15,587)
<b>Total Other Tax Revenue</b>	<b>875,000</b>	<b>592,824</b>	<b>(282,176)</b>
<b>Licenses and Permits</b>			
Animal License	1,000	1,245	245
Bicycle License	50	30	(20)
Fireworks Permits	1,200	-	(1,200)
Well Permits	500	2,070	1,570
Building Permits	325,000	358,060	33,060
Other Licenses And Permits	10,000	2,851	(7,149)
<b>Total Licenses and Permit Revenue</b>	<b>337,750</b>	<b>364,255</b>	<b>26,505</b>
<b>Intergovernmental</b>			
Prop Tax In Lieu Veh Lic Fee	2,163,960	1,165,250	(998,710)
ROPS - Successor Agency	177,000	132,750	(44,250)
Loan Repayment - RDA	-	-	0
RDA Residuals - (COA Fire Dept)	22,000	11,847	(10,153)
Motor Vehicle In-lieu Fee	-	11,710	11,710
State Mandated Cost	40,000	39,330	(670)
Statutory Pass-Through Revenue	20,000	25,732	5,732
MUHSD/AESD Reimbursement	386,000	317,957	(68,043)
Fire District In-lieu Fee	135,000	-	(135,000)
State Fire Reimbursement	-	-	0
Homeland Security Grant Fire	-	-	0
AFG Operations & Safety Grant	-	24,315	24,315
Federal COPS Grant	-	-	0
<b>Total Intergovernmental Revenue</b>	<b>2,943,960</b>	<b>1,728,892</b>	<b>(1,215,068)</b>

**City of Atwater**

**Fiscal Year 2015-16**

**General Fund Revenue By Category**

Description	FY 2015-16 Adopted Budget	Received thru Apr. 18, 2016	Variance (Budget vs. Actuals)
Charges for Service			
Sale Of Maps And Copies	500	324	(176)
Cost Recovery CFD 1-90	-	-	0
Live Scan	1,000	1,060	60
False Alarm Fees	5,000	650	(4,350)
Impound Fees/Costs	10,000	7,080	(2,920)
Animal Control Services	2,500	369	(2,131)
Police Special Services	80,000	88,941	8,941
Police Cost Recovery	500	229	(271)
Weed Abatement	15,000	12,509	(2,491)
Fire Dept Response Fee	7,500	8,034	534
Fire Inspection Fees	6,000	7,762	1,762
Sale Of Standard Specs & Drawings	250	-	(250)
Engineering Services	22,500	28,603	6,103
Planning Fees	10,000	9,139	(861)
Plan Check Fees	1,000	20,094	19,094
Business License Inspection Fee	4,000	1,320	(2,680)
Recreation Fees	128,725	60,646	(68,079)
High School Pool	18,900	1,949	(16,951)
Recreation Concessions	-	-	0
After School Program	124,800	63,623	(61,177)
Field Trips/Events	5,500	3,063	(2,437)
Contracted Recreation Fees	5,000	2,173	(2,828)
Other Current Services	-	-	0
<b>Total Charges for Service Revenue</b>	<b>448,675</b>	<b>317,568</b>	<b>(131,107)</b>
Fines and Forfeitures			
Forfeitures	5,000	3,085	(1,915)
Vehicle Code Fines	30,000	1,533	(28,467)
Other Fines	7,000	14,099	7,099
Parking Fines	7,000	4,489	(2,511)
<b>Total Fines and Forfeiture Revenue</b>	<b>49,000</b>	<b>23,205</b>	<b>(25,795)</b>

**City of Atwater**

**Fiscal Year 2015-16**

**General Fund Revenue By Category**

Description	FY 2015-16 Adopted Budget	Received thru Apr. 18, 2016	Variance (Budget vs. Actuals)
<b>Miscellaneous Revenue</b>			
Interest Earned	-	141	141
Rents & Leases	12,500	10,500	(2,000)
Cellular 2000 Lease	35,000	27,006	(7,994)
Billboard Rental	6,000	1,678	(4,322)
KVRQ-F Tower Lease	12,000	10,000	(2,000)
Metro PCS Lease	17,000	14,283	(2,717)
Retroactive Insurance Adjustment	-	-	0
Cingular @ Water Tower	19,576	15,870	(3,706)
Cricket-Tower Lease	15,600	13,000	(2,600)
Cricket-Tower Electrical Usage	2,400	2,000	(400)
P G & E Energy Rebate	50,000	29,873	(20,127)
Restitution	2,000	361	(1,639)
Penalties	30,000	25,750	(4,250)
Donations & Contributions	1,000	-	(1,000)
Taxicab Registration Fees	100	-	(100)
Veterans Brick Project	800	148	(652)
Other Revenue	95,000	92,699	(2,301)
State Cops Funding	-	62,884	62,884
Special Funding	40,000	-	(40,000)
Rent & Utility Ralston Station	-	-	0
Community Center Rental	18,000	13,953	(4,047)
Bloss Estate Rental	-	-	0
Veterans Pavillion Rental & Rents &	6,500	2,686	(3,815)
<b>Total Miscellaneous Revenue</b>	<b>363,476</b>	<b>322,831</b>	<b>(40,645)</b>
<b>Inter-Fund Transfers</b>			
Admin Fees, Streets	40,702	30,527	(10,176)
Admin Fees, Water	367,132	275,349	(91,783)
Admin Fees, Sanitation	257,419	193,064	(64,355)
Admin Fees, Sewer	392,009	294,007	(98,002)
Admin Fees, Maintenance Dist	37,521	18,761	(18,761)
Admin Fees, CFD 1-90	-	-	0
Admin Fees, Information Technology	27,778	20,834	(6,945)
Ferrari Ranch Reimbursement Fund	25,000	3,302	(21,698)
Measure H Fund	1,100,000	-	(1,100,000)
Hydrant Maintenance - Water Fund	152,375	-	(152,375)
Transfers In	-	28,962	28,962
<b>Total Administrative Fee Revenue</b>	<b>2,399,936</b>	<b>864,804</b>	<b>(1,535,132)</b>
<b>Total General Fund Revenue</b>	<b>12,346,702</b>	<b>6,876,911</b>	<b>(5,469,791)</b>

**City of Atwater**  
**Fiscal Year 2015-16 Other Funds**  
**Budget vs Actual**

<b>Water Enterprise Fund (6000)</b>	<u>Budget</u>	<u>Actual thru 04/18/16</u>
Revenue	\$3,756,906	\$3,284,689
Expenditures	\$3,360,633	\$1,899,757
<b>Operating Surplus/(Shortfall)</b>	<b>\$396,273</b>	<b>\$1,384,932</b>

<b>Sewer Enterprise Fund (6010)</b>	<u>Budget</u>	<u>Actual thru 04/18/16</u>
Revenue	\$11,791,857	\$9,244,651
Expenditures	\$10,646,804	\$8,724,687
<b>Operating Surplus/(Shortfall)</b>	<b>\$1,145,053</b>	<b>\$519,963</b>

<b>Sanitation Enterprise Fund (6020)</b>	<u>Budget</u>	<u>Actual thru 04/18/16</u>
Revenue	\$3,693,000	\$3,097,892
Expenditures	\$2,561,445	\$2,129,497
<b>Operating Surplus/(Shortfall)</b>	<b>\$1,131,555</b>	<b>\$968,395</b>

<b>Measure H Fund (0004)</b>	<u>Budget</u>	<u>Actual thru 04/18/16</u>
Revenue	\$1,642,852	\$1,078,344
Expenditures	\$2,375,846	\$723,902
<b>Operating Surplus/(Shortfall)</b>	<b>(\$732,994)</b>	<b>\$354,442</b>

April 18, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of April 25, 2016

**REFINANCING CALPERS SIDE FUND (A PORTION OF THE CITY'S UNFUNDED LIABILITY) FOR THE MISCELLANEOUS AND SAFETY PLANS**

**RECOMMENDATION:**

It is recommended that the City Council consider:

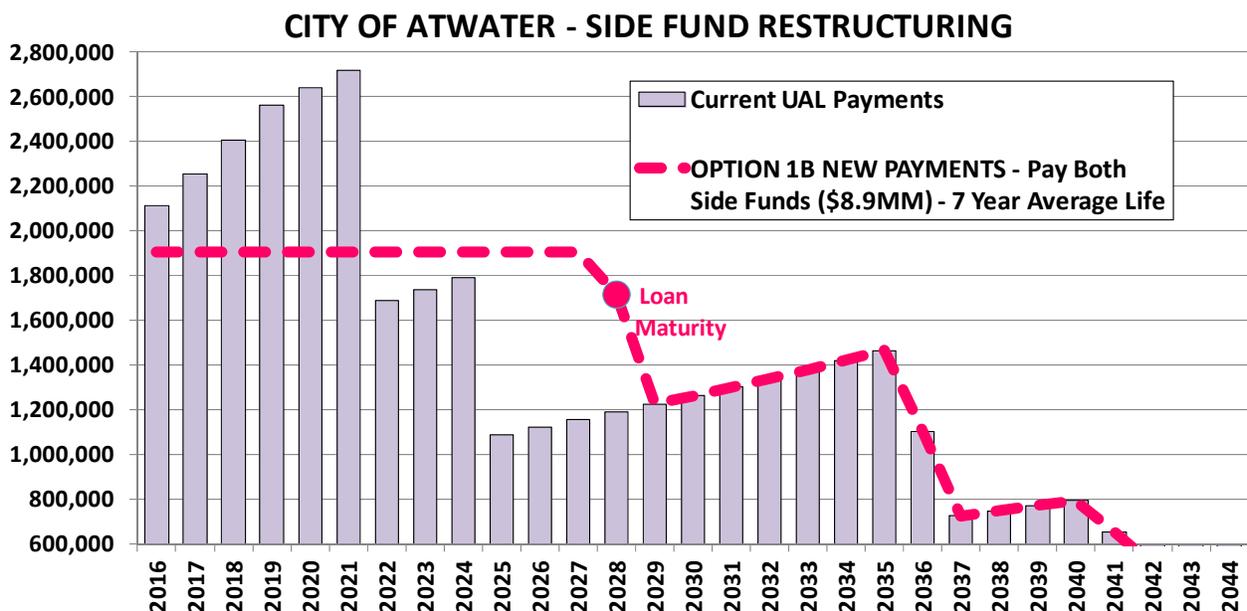
- Adopting Resolution No. 2880-16 approving the form and authorizing the execution and delivery of certain lease financing documents in connection with the refinancing of a portion of the City's outstanding unfunded accrued actuarial liability to the California Public Employees' Retirement System, and providing for other matters properly relating thereto.

**BACKGROUND/DISCUSSION:**

At its regular meeting of January 11, 2016, the City Council directed staff to pursue a financing strategy to restructure a portion of the City's retirement UAL obligation to CalPERS. The Council was presented with several restructuring options, ranging in size from \$4.7 million to \$8.9 million. All options were also shown with two different maturities, a 9-year average life (2034 final maturity estimated) and a 7-year average life (2029 final maturity estimated). The strategy selected by council was referred to as "Option 1B" and involved collateralizing certain City assets to secure approximately \$9 million in financing – roughly 46% of the overall UAL - enough to pay off the "side-fund" portion of the UAL for both retirement plans. Final sizing and maturity length will ultimately be determined after negotiations with potential investors/banks through the credit review process as well as timing of the closing.

**FISCAL IMPACT:**

Restructuring benefits include a more predictable and "smoothed" structure versus the current "un-even" payment structure (see chart below). By removing the current near-term peak in payments, it is estimated that the City will create over \$3.2 million of cash flow savings over the next 6 fiscal years, which will help improve the City's current negative fund balance situation.



Council directed staff to review and assess the City assets to determine and then assign which City assets should be pledged to provide sufficient security for the transaction. The value of those assets are intended to satisfy the “commensurate fair market value test” (i.e., that that total estimated fair market value of the “basket of assets” is at least equal to the proceeds derived from the Refinancing.

Preliminary title reports were completed for several potential assets and reviewed by City staff and the financing team. It has been determined that the most suitable assets are the following properties:

1. Fire Station 41:	\$2.4mm
2. Fire Station 42:	\$2.0mm
3. Community Center:	\$2.6mm
4. Corp Yard:	\$2.1mm
<b>TOTAL</b>	<b>\$9.1mm</b>

In addition to these four assets, it is proposed that a 5<sup>th</sup> asset, Veteran’s Park (\$2.9mm value), be used as an “alternative asset,” in order to provide additional flexibility. This alternative asset may be preferred by the banks instead of the Corporation Yard as the 4<sup>th</sup> asset, and if so, Veteran’s Park would be utilized instead of the Corporation Yard.

It should also be noted that through the credit and negotiation process with potential banks, they may not be comfortable with the proposed \$9 million loan size. If it becomes clear that a lower size would be more attractive to the banks, while still providing desirable savings benefits to the City, the proposed loan size may be lowered – in which case, certain assets will be removed from the proposed basket. For instance, if the loan goes below \$7 million, then the Corp Yard would not be needed, and only the first three assets would be pledged (two fire stations and the Community Center). If the size was even smaller, like under \$4.5 million, then another asset would not be needed, likely one of the fire stations or the Community Center.

While it is our intention to secure the estimated \$9 million loan utilizing the proposed 4 assets, these other hypothetical scenarios are included to allow flexibility and scalability in order to achieve best economic results for the City.

These various assets are hereby referred to as the “Property.”

The resolution being recommended for adoption essentially authorizes and approves the form of all the foundational legal documents (i.e., the Financing Documents) necessary to provide for the successful consummation of the transaction. Each of the Financing Documents are briefly described as follows:

1. Site and Facility Lease: This is an agreement between the City and the Bank, providing the mechanism of leasing the Property to Bank in exchange for the “loan” of sufficient moneys to accomplish the Refinancing.
2. Lease Agreement: This agreement provides for the lease of Property back to the City in exchange for semi-annual lease payments commensurate with the debt service on the “loan” from the Bank. The City pledges its general fund to repay the lease payments over the term of the Lease Agreement.
3. Refunding Instructions: This document sets forth the City’s instructions as to the specific amounts, terms, and conditions of the Refinancing proceeds and the corresponding prepayment of the UAAL Obligation.

**CONCLUSION:**

This staff report is submitted for City Council consideration.

Respectfully Submitted by:

/s/ *Lakhwinder Deol*

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Lakhwinder Deol  
Finance Director



## CITY COUNCIL OF THE CITY OF ATWATER

### RESOLUTION NO. 2880-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATWATER APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE REFINANCING OF A PORTION OF THE CITY'S OUTSTANDING UNFUNDED ACCRUED ACTUARIAL LIABILITY TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO**

**WHEREAS**, the City of Atwater (the "City") is a contracting member of the California Public Employees' Retirement System ("CalPERS"), and under its contract with CalPERS the City is obligated to make certain Unfunded Accrued Actuarial Liability (the "UAAL") payments to CalPERS in respect of its (a) retired public safety employees and (b) its retired miscellaneous employees, which UAAL is amortized over a fixed period of time (collectively, the "CalPERS UAAL Obligation"); and

**WHEREAS**, the City Council, after due investigation and deliberation, has determined at this time, due to prevailing interest rates in the municipal bond market and for other reasons, that it is within the public interests of the City to provide for the refinancing of a portion of the CalPERS UAAL Obligation (the "Refinancing"); and

**WHEREAS**, in order to provide for the Refinancing, the City proposes to lease certain real property and improvements (the "Property") to a financial institution to be determined at a later date (the "Bank") pursuant to a Site and Facility Lease (the "Site Lease"), dated as of March 1, 2016, by and between the Bank and the City, pursuant to which the Bank agrees to make an upfront lump sum payment in the amount necessary to successfully accomplish the Refinancing (the "Lease Proceeds"); and

**WHEREAS**, pursuant to a Lease Agreement (the "Lease Agreement"), dated as of May 1, 2016, by and between the Bank and the City, the Bank will sublease the Property back to the City, and will correspondingly make semi-annual lease payments

from its general fund, sufficient in amount to pay back the debt service on the Lease Proceeds advanced by the Bank under the Site Lease; and

**WHEREAS**, to properly transact the Refinancing, it is now appropriate and necessary for the City to approve the form of Refunding Instructions (the "Refunding Instructions"), dated as of May 1, 2016, pursuant to which the Bank will irrevocably wire transfer the Lease Proceeds directly to CalPERS to prepay a definitive portion of the CalPERS UAAL Obligation in accordance with the specific terms of the Refunding Instructions; and

**WHEREAS**, the City Council, with the aid of its staff, has reviewed the form of the Site Lease and Lease Agreement, the forms of which are on file with the City Clerk, and the Council wishes at this time to approve the foregoing document (collectively, the "Financing Documents") as being within the public interests of the City; and

**WHEREAS**, the City Council wishes at this time to authorize all proceedings relating to the Refinancing and the execution and delivery of Financing Documents and all other agreements and documents relating thereto; and

**WHEREAS**, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of such financing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such financing for the purpose, in the manner and upon the terms herein provided.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Atwater, as follows:

**Section 1. Findings and Determinations.** The City Council hereby finds that the above recitals are true and correct. The City Council determines that it is necessary and desirable to provide for the Refinancing and that the actions authorized hereby constitute, and are in furtherance of, authorized public purposes of the City and will result in public benefits to the City and its constituents.

**Section 2. Authorized Representatives.** The Mayor, Mayor Pro Tem, City Manager, Finance Director, City Clerk and any other person authorized by the Council to act on behalf of the City shall each be an "Authorized Representative" of the City for the purposes of structuring and providing for the execution of the Financing Documents, and are hereby authorized, jointly and severally, for and in the name of and on behalf of the City, to execute and deliver any and all documents and certificates that may be required to be executed in connection with the Refinancing, and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions and transactions contemplated by this Resolution and the Financing Documents.

**Section 3. Approval of Site Lease.** The City Council hereby authorizes and approves the lease of the Property to the Bank pursuant to the Site Lease. The City Council hereby approves the Site Lease in substantially the form on file with the City Clerk and consents to such revisions, amendments and completions as shall be approved by an Authorized Representative. Any Authorized Representative of the City is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final form of the Site Lease for and in the name and on behalf of the City and the execution thereof shall be conclusive evidence of the City Council's approval of any such additions and changes. The City Council hereby authorizes the delivery and performance of the Site Lease.

**Section 4. Approval of Lease Agreement.** The City Council hereby authorizes and approves the sublease of the Property back from the Bank pursuant to the Lease Agreement. The City Council hereby approves the Lease Agreement in substantially the form on file with the City Clerk and consents to such revisions, amendments and completions as shall be approved by an Authorized Representative. Any Authorized Representative of the City is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final form of the Lease Agreement for and in the name and on behalf of the City and the execution thereof shall be conclusive evidence of the City Council's approval of any such additions and changes. The City Council hereby authorizes the delivery and performance of the Lease Agreement.

**Section 5. Approval of Refunding Instructions.** The City Council hereby approves the Refunding Instructions in substantially the form on file with the City Clerk and consents to such revisions, amendments and completions as shall be approved by an Authorized Representative. Any Authorized Representative of the City is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final form of the Refunding Instructions for and in the name and on behalf of the City and the execution thereof shall be conclusive evidence of the City Council's approval of any such additions and changes. The City Council hereby authorizes the delivery and performance of the Refunding Instructions.

**Section 6. Taxable Bond Act.** The City Council hereby determines that interest payable pursuant to the Lease Agreement will be subject to federal income taxation, and that the provisions of Section 5900 et seq. of the California Government Code (the "Taxable Bond Act") apply to the Lease Agreement. The City may take any action and exercise any power permitted to be taken by it under the Taxable Bond Act in connection with the execution and delivery of the Lease Agreement.

**Section 7. Confirmation and Direction to Proceed with the Refinancing.** All actions heretofore taken by the officers and agents of the City with respect to the Refinancing are hereby approved, confirmed and ratified. The Mayor, Mayor Pro Tem, City Manager, Finance Director, City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of

conveyance, warrants and other documents which they or any of them might deem necessary or appropriate in order to consummate any of the actions and transactions contemplated by this Resolution and the Financing Documents. Whenever any officer of the City is authorized to execute or countersign any document or take any action contemplated by this Resolution and the Financing Documents, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

**Section 8. Effective Date.** This Resolution shall take effect from and after the date of its passage and adoption.

The foregoing resolution is hereby adopted this 25<sup>th</sup> day of April, 2016.

**AYES:**  
**NOES:**  
**ABSENT:**

**APPROVED:**

\_\_\_\_\_  
**JAMES E. PRICE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**JEANNA DEL REAL, CMC**  
**CITY CLERK**

**RECORDING REQUESTED BY:** )  
City of Atwater )  
)  
**WHEN RECORDED MAIL TO:** )  
The Weist Law Firm )  
108 Whispering Pines Drive, Suite 235 )  
Scotts Valley, California 95066 )  
Attn: Cameron A. Weist )  
)

---

(DO NOT WRITE ABOVE LINE - SPACE FOR RECORDERS USE ONLY)

THIS DOCUMENT IS RECORDED FOR THE BENEFIT OF THE CITY OF ATWATER. THIS TRANSACTION IS EXEMPT FROM DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

**SITE AND FACILITY LEASE**

by and between

**CITY OF ATWATER, CALIFORNIA,**  
as Lessor

And

\_\_\_\_\_ **BANK,**  
as Lessee

Dated as of May 1, 2016

## SITE AND FACILITY LEASE

**THIS SITE AND FACILITY LEASE** (this “Site and Facility Lease”), dated as of May 1, 2016, is by and between the **CITY OF ATWATER**, a municipal corporation and general law city, duly organized and validly existing under the laws of the State of California (the “City”), as lessor, and \_\_\_\_\_ **BANK**, a \_\_\_\_\_ (the “Bank”), as lessee;

### WITNESSETH:

**WHEREAS**, the City desires to finance a portion of its Unfunded Accrued Actuarial Liability to California Public Employees’ Retirement System (the “Project”); and

**WHEREAS**, in order to finance the Project, the City will lease certain parcels of real property owned by the City, more particularly described in Exhibit A attached hereto and made a part hereof (the “Site”), and those certain improvements thereon (the “Facility” and, together with the Site, the “Property”) to the Bank pursuant to this Site and Facility Lease; and

**WHEREAS**, the Bank has agreed to lease the Property back to the City pursuant to that certain Lease Agreement, dated as of May 1, 2016, a memorandum of which is recorded in the Office of the County Recorder of the County of Merced concurrently herewith (the “Lease Agreement”); and

**WHEREAS**, the City possesses statutory authority to lease the Property to the Bank, and its governing body has duly authorized the execution and delivery of the Lease Agreement and this Site and Facility Lease; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Site and Facility Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Site and Facility Lease;

**NOW THEREFORE**, for and in consideration of the premises and covenants and mutual agreements contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

**Section 1. Definitions.** Capitalized terms used, but not otherwise defined, in this Site and Facility Lease shall have the meanings ascribed to them in the Lease Agreement.

**Section 2. Site and Facility Lease.** The City hereby leases to the Bank and the Bank hereby leases from the City, on the terms and conditions hereinafter set forth, the Property.

**Section 3. Term.** The term of this Site and Facility Lease shall commence May \_\_, 2016, or the date this Site and Facility Lease or a memorandum thereof is recorded, whichever is later, and shall end on July 1, 20\_\_, unless such term is extended or sooner terminated as hereinafter provided. If, on July 1, 20\_\_, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid by reason of abatement, default or otherwise, or provision shall not have been made for their payment in accordance with the Lease Agreement, then

the term of this Site and Facility Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment, but in no event later than July 1, 20\_\_\_. If, prior to July 1, 20\_\_\_, all Lease Payments shall be fully paid or provision made for such payment in accordance with the Lease Agreement, the term of this Site and Facility Lease shall end.

**Section 4. Advance Rental Payment.** The City agrees to lease the Property to the Bank in consideration of the payment by the Bank of an advance rental payment of \$\_\_\_\_\_.

**Section 5. Purpose.** The Bank shall use the Property solely for the purpose of leasing the Property to the City pursuant to the Lease Agreement and for such purposes as may be incidental thereto; provided, however, that in the event of default by the City under the Lease Agreement, the Bank and its assigns may exercise the remedies provided in the Lease Agreement.

**Section 6. City's Interest in the Property.** The City warrants and covenants that it has sufficient interest in the Property to lease it hereunder. In the event of a title defect in the Property that impairs the right to use and occupy the Property, the City covenants that it will exercise its power, including but not limited to, its condemnation powers to the extent permitted by law, to obtain the necessary rights in the Property and to cure such defect and limitation of the right to use and occupancy.

**Section 7. Assignments and Subleases.** Unless the City shall be in default under the Lease Agreement, the Bank may not assign its rights under this Site and Facility Lease or sublet the Property, except as provided in the Lease Agreement. If the City is in default under the Lease Agreement, the Bank (including its successors and assigns under the Lease Agreement) may fully and freely assign and sublease the Property or any portion thereof, subject to this Site and Facility Lease.

**Section 8. Right of Entry.** The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

**Section 9. Termination.** The Bank agrees, upon the termination of this Site and Facility Lease, to quit and surrender the Property in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site and Facility Lease shall remain thereon and title thereto shall vest in the City.

**Section 10. Default.** In the event the Bank shall be in default in the performance of any obligation on its part to be performed under the terms of this Site and Facility Lease, which default continues for 30 days following notice and demand for correction thereof to the Bank, the City may exercise any and all remedies granted by law, except that no merger of this Site and Facility Lease and of the Lease Agreement shall be deemed to occur as a result thereof and the City shall have no right to terminate this Site and Facility Lease as a remedy for such default. Notwithstanding the foregoing, so long as the Lease Agreement remains in effect, the City will continue to pay the Lease Payments to the Bank.

In the event of the occurrence of an Event of Default under the Lease Agreement, the Bank may (a) exercise the remedies provided in the Lease Agreement, (b) use the Property for any lawful purpose, subject to any applicable legal limitations or restrictions, and (c) exercise all options provided herein.

**Section 11. Quiet Enjoyment.** The Bank, at all times during the term of this Site and Facility Lease, shall peaceably and quietly have, hold and enjoy all of the Property subject to the provisions of the Lease Agreement.

**Section 12. Waiver of Personal Liability.** All liabilities under this Site and Facility Lease on the part of the Bank are solely liabilities of the Bank and the City hereby releases each and every director, officer, employee and agent of the Bank of and from any personal or individual liability under this Site and Facility Lease. No director, officer, employee or agent of the Bank shall at any time or under any circumstances be individually or personally liable under this Site and Facility Lease for anything done or omitted to be done by the Bank hereunder.

**Section 13. Taxes.** All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Property or the Bank's interest in the Property created by this Site and Facility Lease (including both land and improvements) will be paid by the City in accordance with the Lease Agreement.

**Section 14. Eminent Domain.** In the event the whole or any part of the Property is taken by eminent domain proceedings, the interest of the Bank shall be recognized and is hereby determined to be the amount of the then unpaid principal component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Bank or its assignee, and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the City. The City hereby waives, to the extent permitted by law, any and all rights that it has or may hereafter have to acquire the interest of the Bank in and to the Property through the eminent domain powers of the City. However, the City hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the City with respect to the Property shall be in an amount not less than the total unpaid principal component of Lease Payments, the interest component of Lease Payments accrued to the date of payment of all Lease Payments and any premium due with respect to the prepayment of Lease Payments under the Lease Agreement.

**Section 15. Use of the Proceeds.** The City and the Bank hereby agree that the lease to the Bank of the City's right and interest in the Property pursuant to Section 2 serves the public purposes of the City.

**Section 16. Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Site and Facility Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site and Facility Lease shall be affected thereby, and each provision of this Site and Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 17. Notices.** All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, at the addresses set forth in the Lease Agreement, or to such other addresses as the respective parties may from time to time designate by notice in writing.

**Section 18. Binding Effect.** This Site and Facility Lease shall inure to the benefit of and shall be binding upon the City and the Bank and their respective successors and assigns.

**Section 19. Amendment.** This Site and Facility Lease may not be amended except as permitted under the Lease Agreement.

**Section 20. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site and Facility Lease.

**Section 21. Applicable Law.** This Site and Facility Lease shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California.

**Section 22. No Merger.** Neither this Site and Facility Lease, the Lease Agreement nor any provisions hereof or thereof shall be construed to effect a merger of the title of the City to the Property under this Site and Facility Lease and the City's subleasehold interest therein under the Lease Agreement.

**Section 23. Execution in Counterparts.** This Site and Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

\* \* \* \* \*

IN WITNESS WHEREOF, the City and the Bank have caused this Site and Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF ATWATER, CALIFORNIA

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

Attest:

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

\_\_\_\_\_ BANK,  
a \_\_\_\_\_

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

**ALL CAPACITY ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MERCED

On \_\_\_\_\_, before me, \_\_\_\_\_  
(Date) (Name and Title of officer)

personally appeared \_\_\_\_\_,  
(Name of person signing)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of officer

(Seal)

## **EXHIBIT A**

### **DESCRIPTION OF THE SITE**

All that certain real property situated in the City of Atwater, County of Merced, State of California, described as follows:

PARCEL COMMONLY REFERRED TO AS FIRE STATION NO. 41; BEING APN: 003-075-001

ALL THAT CERTAIN PARCEL OF LAND SITUATED, LYING AND BEING IN SECTIONS 1 AND 12, TOWNSHIP 7 SOUTH, RANGE 12 EAST, M.D.B. &M., COUNTY OF MERCED, STATE OF CALIFORNIA, BEING ALL OF THAT CERTAIN 10590 ACRES PARCEL OF LAND DESCRIBED IN DEED DATED AUGUST 11, 1926 FROM MATTIE B. OSBORN, ET AL, TO CENTRAL PACIFIC RAILWAY COMPANY, RECORDED AUGUST 26, 1926 IN VOLUME 155, PAGE 364, OFFICIAL RECORDS OF MERCED COUNTY, AND MORE PARTICULARLY DESCRIBED THEREIN AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT OR BLOCK 1 OF THE C. C. MITCHAELL SUBDIVISION, AS SHOWN. ON MAP FILED APRIL 12, 1890, MERCED COUNTY RECORDS; THENCE NORTH 24°40' EAST ALONG THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 1243.50 FEET TO A POINT 76.5 FEET AT RIGHT ANGLES SOUTHERLY FROM THE NORTHWEST CORNER OF LOT 2 OF SAID SUB-DIVISION; THENCE NORTH 65°20' WEST, A DISTANCE OF 371.00 FEET TO A POINT; THENCE SOUTH 24°40' WEST, A DISTANCE OF 1243.50 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 1; THENCE SOUTH 65°20' EAST, ALONG SAID SOUTHERLY LINE OF BLOCK 1, A DISTANCE OF 371.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION GRANTED TO GENE C. KENEY AND IMOGENE J. KENEY, HUSBAND AND WIFE IN JOINT TENANCY BY DEED RECORDED OCTOBER 8, 1962, IN BOOK 1586 OF OFFICIAL RECORDS AT PAGE 909, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCEL B AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD MARCH 5, 1970, IN VOLUME 10 OF PARCEL MAPS AT PAGE 31, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCEL 1, 2 AND 3 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JANUARY 29, 1976, IN BOOK 29 OF PARCEL MAPS AT PAGE 7, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCELS 1,2 AND 3 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JANUARY 4, 1978, IN VOLUME 35 OF PARCEL MAPS OF PAGE 36 MERCED COUNTY RECORD.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE EXTERIOR BOUNDARY LINES OF THAT CERTAIN MAP ENTITLED HIGH STREET SUBDIVISION, FILED FOR RECORD DECEMBER 28, 1979, IN VOLUME 26 OF OFFICIAL PLATS, AT PAGE 25, MERCED

COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCELS 1 AND 2 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JULY 13, 1989, IN BOOK 64 OF PARCEL MAPS AT PAGE 32, MERCED COUNTY RECORDS.

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PARCEL COMMONLY REFERRED TO AS FIRE STATION NO. 42; BEING APN: 005-080-045

PARCEL B, ACCORDING TO PARCEL MAP FOR STEINER DEVELOPMENT, RECORDED IN BOOK 95 OF PARCEL MAPS PAGES 43 AND 44, MERCED COUNTY RECORDS, BEING A SUBDIVISION OF ADJUSTED PARCEL 2 AS SHOWN ON THE MAP FOR "BUHACH HIGH SCHOOL/MELLO ALMOND RANCH" RECORDED IN BOOK 37 OF SURVEYS AT PAGE 44.

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PARCEL COMMONLY REFERRED TO AS COMMUNITY CENTER; BEING APN: 004-180-039

PARCEL 1 AS SHOWN ON PARCEL MAP FILED FOR RECORD FEBRUARY 3, 1989 IN BOOK 63 OF PARCEL MAPS, PAGES 29, AND 30, MERCED COUNTY RECORDS.

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PARCEL COMMONLY REFERRED TO AS CORPORATION YARD; BEING APN: 056-330-16

THE REMAINDER PARCEL, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF AIRPORT BUSINESS PARK SUBDIVISION", RECORDED JANUARY 13, 1995, IN VOLUME 45, OFFICIAL PLATS, PAGES 13 THRU 16 INCLUSIVE, IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF MERCED.

**RECORDING REQUESTED BY:** )  
 City of Atwater )  
 )  
**WHEN RECORDED MAIL TO:** )  
 The Weist Law Firm )  
 108 Whispering Pines Drive, Suite 235 )  
 Scotts Valley, California 95066 )  
 Attn: Cameron A. Weist )  
 )

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(DO NOT WRITE ABOVE LINE - SPACE FOR RECORDERS USE ONLY)

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

**MEMORANDUM OF LEASE AGREEMENT**

This Memorandum of Lease Agreement (this “Memorandum of Lease Agreement”), is entered into as of May 1, 2016, by and between \_\_\_\_\_ BANK, a \_\_\_\_\_, as sublessor (the “Bank”), and the CITY OF ATWATER, a municipal corporation and general law city duly organized and validly existing under the laws of the State of California, as sublessee (the “City”), who agree as follows:

**Section 1. The Lease.** The City leases from the Bank and the Bank leases to the City, certain real property described in paragraph 2 hereof, and the improvements situated upon said real property, upon the terms and conditions, and for the term, more fully set forth in the Lease Agreement, dated as of May 1, 2016, by and between the Bank, as sublessor, and the City, as sublessee (the “Lease Agreement”), all of the provisions of which are hereby incorporated into this Memorandum of Lease Agreement by reference.

**Section 2. Leased Premises; Term.** The Bank leases, lets and demises unto the City and the City leases, hires and takes from the Bank, those certain parcels of real property situated in the County of Merced, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the “Site”), and those certain improvements on the Site, more particularly described in Exhibit B attached hereto and made a part hereof (the “Facility”). The Lease Agreement is for a term commencing on the date of recordation of this Memorandum of Lease Agreement and ending on July 1, 20\_\_, or such earlier or later date on which the Lease Payments (as defined in the Lease Agreement) are paid in full or provision has been made for such payment in accordance with the Lease Agreement.

**Section 3. Provisions Binding on Successors and Assigns.** Subject to the provisions of the Lease Agreement relating to assignment and subletting, the Lease Agreement shall inure to the benefit of and shall be binding upon the Bank and the City and their respective successors and assigns, including the Bank.

**Section 4. Purpose of Memorandum.** This Memorandum of Lease Agreement is prepared for the purpose of recordation, and it in no way modifies the provisions of the Lease Agreement.

**Section 5. Execution.** This Memorandum of Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Bank has caused this Memorandum of Lease Agreement to be executed in its corporate name by its duly authorized officers; and the City has caused this Memorandum of Lease Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

\_\_\_\_\_ BANK,  
a \_\_\_\_\_

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

CITY OF ATWATER

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

Attest:

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

## **EXHIBIT A**

### **DESCRIPTION OF THE SITE**

All that certain real property situated in the City of Atwater, County of Merced, State of California, described as follows:

PARCEL COMMONLY REFERRED TO AS FIRE STATION NO. 41; BEING APN: 003-075-001

ALL THAT CERTAIN PARCEL OF LAND SITUATED, LYING AND BEING IN SECTIONS 1 AND 12, TOWNSHIP 7 SOUTH, RANGE 12 EAST, M.D.B. &M., COUNTY OF MERCED, STATE OF CALIFORNIA, BEING ALL OF THAT CERTAIN 10590 ACRES PARCEL OF LAND DESCRIBED IN DEED DATED AUGUST 11, 1926 FROM MATTIE B. OSBORN, ET AL, TO CENTRAL PACIFIC RAILWAY COMPANY, RECORDED AUGUST 26, 1926 IN VOLUME 155, PAGE 364, OFFICIAL RECORDS OF MERCED COUNTY, AND MORE PARTICULARLY DESCRIBED THEREIN AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT OR BLOCK 1 OF THE C. C. MITCHAELL SUBDIVISION, AS SHOWN. ON MAP FILED APRIL 12, 1890, MERCED COUNTY RECORDS; THENCE NORTH 24°40' EAST ALONG THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 1243.50 FEET TO A POINT 76.5 FEET AT RIGHT ANGLES SOUTHERLY FROM THE NORTHWEST CORNER OF LOT 2 OF SAID SUB-DIVISION; THENCE NORTH 65°20' WEST, A DISTANCE OF 371.00 FEET TO A POINT; THENCE SOUTH 24°40' WEST, A DISTANCE OF 1243.50 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 1; THENCE SOUTH 65°20' EAST, ALONG SAID SOUTHERLY LINE OF BLOCK 1, A DISTANCE OF 371.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION GRANTED TO GENE C. KENEY AND IMOGENE J. KENEY, HUSBAND AND WIFE IN JOINT TENANCY BY DEED RECORDED OCTOBER 8, 1962, IN BOOK 1586 OF OFFICIAL RECORDS AT PAGE 909, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCEL B AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD MARCH 5, 1970, IN VOLUME 10 OF PARCEL MAPS AT PAGE 31, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCEL 1, 2 AND 3 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JANUARY 29, 1976, IN BOOK 29 OF PARCEL MAPS AT PAGE 7, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCELS 1,2 AND 3 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JANUARY 4, 1978, IN VOLUME 35 OF PARCEL MAPS OF PAGE 36 MERCED COUNTY RECORD.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE EXTERIOR BOUNDARY LINES OF THAT CERTAIN MAP ENTITLED HIGH STREET SUBDIVISION, FILED FOR RECORD DECEMBER 28, 1979, IN VOLUME 26 OF OFFICIAL PLATS, AT PAGE 25, MERCED

COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCELS 1 AND 2 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JULY 13, 1989, IN BOOK 64 OF PARCEL MAPS AT PAGE 32, MERCED COUNTY RECORDS.

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PARCEL COMMONLY REFERRED TO AS FIRE STATION NO. 42; BEING APN: 005-080-045

PARCEL B, ACCORDING TO PARCEL MAP FOR STEINER DEVELOPMENT, RECORDED IN BOOK 95 OF PARCEL MAPS PAGES 43 AND 44, MERCED COUNTY RECORDS, BEING A SUBDIVISION OF ADJUSTED PARCEL 2 AS SHOWN ON THE MAP FOR "BUHACH HIGH SCHOOL/MELLO ALMOND RANCH" RECORDED IN BOOK 37 OF SURVEYS AT PAGE 44.

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PARCEL COMMONLY REFERRED TO AS COMMUNITY CENTER; BEING APN: 004-180-039

PARCEL 1 AS SHOWN ON PARCEL MAP FILED FOR RECORD FEBRUARY 3, 1989 IN BOOK 63 OF PARCEL MAPS, PAGES 29, AND 30, MERCED COUNTY RECORDS.

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PARCEL COMMONLY REFERRED TO AS CORPORATION YARD; BEING APN: 056-330-16

THE REMAINDER PARCEL, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF AIRPORT BUSINESS PARK SUBDIVISION", RECORDED JANUARY 13, 1995, IN VOLUME 45, OFFICIAL PLATS, PAGES 13 THRU 16 INCLUSIVE, IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF MERCED.

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY**

Means those certain existing facilities and improvements presently existing on the Site, including the building, parking areas and related facilities, together with any permitted additions, replacements, modifications or other alterations thereto, and together with and including, all riparian rights, water and water rights, easements, rights-of-way, licenses, franchises, rights of service and use, and the construction of all permissible auxiliary work necessary or convenient for the foregoing.

**ALL CAPACITY ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MERCED

On \_\_\_\_\_, before me, \_\_\_\_\_  
(Date) (Name and Title of officer)

personally appeared \_\_\_\_\_,  
(Name of person signing)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of officer

(Seal)

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**LEASE AGREEMENT**

by and between

\_\_\_\_\_ **BANK,**  
as Sublessor

And

**CITY OF ATWATER,**  
as Sublessee

Dated as of May 1, 2016

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## LEASE AGREEMENT

This **LEASE AGREEMENT** (this "Lease" or "Lease Agreement"), dated as of May 1, 2016, is by and between \_\_\_\_\_ **BANK**, a \_\_\_\_\_, as sublessor (the "Bank"), and the **CITY OF ATWATER**, a municipal corporation and general law city duly organized and validly existing under the laws of the State of California, as sublessee (the "City");

### WITNESSETH:

**WHEREAS**, the City desires to finance a portion of its Unfunded Accrued Actuarial Liability to California Public Employees' Retirement System (the "Project"); and

**WHEREAS**, pursuant to that certain Site and Facility Lease, dated as of May 1, 2016 (the "Site and Facility Lease"), the City has leased those certain parcels of real property situated in the City of Atwater, County of Merced, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Bank, all for the purpose of enabling the City to finance (the "Financing") the Project; and

**WHEREAS**, the Bank proposes to lease the Property back to the City pursuant to this Lease Agreement; and

**WHEREAS**, in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Property during each Rental Period (as hereinafter defined) under this Lease Agreement, the City agrees to make certain Lease Payments (as hereinafter defined); and

**WHEREAS**, the City and the Bank have agreed to enter into this Lease Agreement providing for Lease Payments with an aggregate principal component in the amount of \$\_\_\_\_\_ for the primary purpose of providing for the Acquisition and Financing of the Property; and

**WHEREAS**, the City and the Bank agree to mutually cooperate now and hereafter, to the extent possible, in order to sustain the intent of this Lease Agreement and the bargain of both parties hereto.

## AGREEMENT

**NOW, THEREFORE**, for and in consideration of the premises and the covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

### ARTICLE I

#### DEFINITIONS; RULES OF INTERPRETATION

**Section 1.01. Definitions.** All terms defined in this Section 1.01 have the meanings herein specified for all purposes of this Lease Agreement.

“*Additional Payments*” means the amounts specified as such in Section 4.03(b) of this Lease Agreement.

“*Applicable Environmental Laws*” means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC Sections 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; the California Hazardous Waste Control Law (“HWCL”), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), California Health & Safety Code Sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (a) the existence, cleanup, and/or remedy of contamination on property;
- (b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

“*Applicable Law*” means (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, rules, regulations and orders of all Governmental Authorities, (ii) Applicable Environmental Laws, (iii) applicable seismic building code requirements at the time of construction, and (iv) orders, decisions, judgments, writs, injunctions and decrees of all courts (whether at law or in equity) and arbitrators.

“*Authorized Representative*” means the Mayor, the City Manager, Finance Director, and any other person authorized by resolution of the City Council delivered to the Bank to act on behalf of the City under or with respect to the Site and Facility Lease and this Lease Agreement.

“*Bank*” means \_\_\_\_\_ Bank, a \_\_\_\_\_, and any other successor or any other entity to whom the rights of the Bank hereunder are assigned.

“*Bond Counsel*” means (a) The Weist Law Firm, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

“*Business Day*” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State.

“*CalPERS*” or “*PERS*” means the California State Public Employees’ Retirement System.

“*CalPERS Contract*” means the contract, as amended from time to time, entered into by the

City and CalPERS, obligating the City to make contributions to CalPERS in exchange for CalPERS providing retirement benefits to certain City employees.

“*City*” means the City of Atwater, California, a municipal corporation and general law city, duly organized and existing under and by virtue of the Constitution and laws of the State of California.

“*City Council*” means the City Council of the City.

“*Closing Date*” means the date that the City receives the Lease Obligation Proceeds from the Bank.

“*Costs of Issuance*” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the Financing of the Property, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, and fees for execution, transportation and safekeeping of this Lease Agreement and charges and fees in connection with the foregoing, including, but not limited to, fees of counsel to the Bank and CDIAC fees.

“*Default Rate*” means the rate of interest then applicable to the interest rate with respect to the Lease Payments, plus \_%.

“*Environmental Claim*” means any and all actual, alleged or threatened liabilities, claims, actions, causes of action, judgments, liens, orders, inquiries, investigations, studies or notices relating to any Hazardous Substance or any Applicable Environmental Law including without limitation those arising as a result of strict liability, whether under an Applicable Environmental Law or otherwise, and those arising out of the negligence.

“*Event of Default*” means any of the events of default as defined in Section 8.01.

“*Facility*” means those certain existing facilities more particularly described in Exhibit B to the Site and Facility Lease and in Exhibit B to this Lease Agreement.

“*Federal Securities*” means (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; and (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are fully, unconditionally and directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“*Financing*” means the financing of the Project made pursuant to this Lease Agreement.

“*Fiscal Year*” means each twelve-month period during the Term of this Lease Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

“*Governmental Authority*” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“*Hazardous Substance*” means any substance that shall, at any time, be listed as “hazardous” or “toxic” in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the Property, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 et seq.).

“*Interest Component*” means the portion of each Lease Payment designated as Interest Component, as such is set forth on Exhibit C hereto.

“*Lease Agreement*” or “Lease” means this Lease Agreement, dated as of May 1, 2016, between the Bank and the City.

“*Lease Obligation*” means the obligation represented by this Lease Agreement.

“*Lease Obligation Proceeds*” means the \$\_\_\_\_\_ amount received by the City from the Bank on the Closing Date.

“*Lease Payment Date*” means July 1 and January 1 in each year, commencing July 1, 2016, and continuing to and including the date on which the Lease Payments are paid in full.

“*Lease Payments*” means all payments required to be paid by the City, as such is set forth on Exhibit C hereto, on each Lease Payment Date pursuant to Section 4.03, including any prepayment thereof under Sections 9.02 or 9.03.

“*Material Adverse Effect*” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the City, (b) the ability of the City to carry out its business in the manner conducted as of the date of this Lease Agreement or to meet or perform its obligations under this Lease Agreement on a timely basis, or (c) the validity or enforceability of this Lease Agreement.

“*Material Litigation*” means any action, suit, proceeding, inquiry or investigation against the City in any court or before any arbitrator of any kind or before or by any Governmental Authority, which (i) if determined adversely to the City, may have a Material Adverse Effect, (ii) seeks to restrain or enjoin any of the transactions contemplated by this Lease Agreement, or (iii) may adversely affect the ability of the City to perform its obligations under this Lease Agreement.

“*Miscellaneous Employees Plan*” means the obligation of the City to make payments pursuant to the CalPERS Contract with respect to certain of the City’s miscellaneous employees.

“*Net Proceeds*” means any insurance or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“*Permitted Encumbrances*” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article VI of this Lease Agreement; (b) the Site and Facility Lease and this Lease Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy issued with respect to the Property as of the Closing Date; and (e) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Property for its intended purposes.

“*Permitted Investments*” means any of the following which at the time of investment are determined by the City to be legal investments under the laws of the State of California for the moneys proposed to be invested therein:

- (a) Federal Securities;
- (b) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including: Export-Import Bank, Farmers Home Administration, General Services Administration, U.S. Maritime Administration, Small Business Administration, Government National Mortgage Association, U.S. Department of Housing & Urban Development, and Federal Housing Administration;
- (c) bonds, notes or other evidences of indebtedness rated AAA by S&P and Aaa by Moody’s issued by the Fannie Mae or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;
- (d) U.S. dollar denominated deposit accounts, secured or unsecured certificates of deposit, demand deposits, including interest bearing money market accounts, trust deposits, trust accounts, time deposits, overnight bank deposits, interest-bearing deposits, federal funds and banker’s acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of A-1 or A-1+ by S&P and P-1 by Moody’s, and maturing no more than 360 days after the date of purchase;
- (e) commercial paper which is rated at the time of purchase in the single highest classification, A-1+ by S&P and P-1 by Moody’s and which matures not more than 270 days after the date of purchase;
- (f) investments in a money market mutual fund, rated at the time of purchase AAAM or AAAM-G or better by S&P;
- (g) Repurchase and reverse repurchase agreements collateralized with Federal Securities;

(h) any pre-refunded bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (i) which are rated, at the time of purchase, based on the refunding escrow, in the highest rating category of S&P and Moody's or (ii)(A) which are fully secured as to principal and interest and redemption premium (if any) by a fund consisting only of cash or Federal Securities, which fund may be applied only to the payment of such principal of and interest and redemption premium (if any) in such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates under such irrevocable instructions, as appropriate, and (B) which fund is sufficient, as verified by an Independent Accountant, to pay principal of and interest and redemption premium (if any) on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(i) investment agreements, which are rated, at the time of investment, in the highest rating category of S&P and Moody's;

(j) the Local Agency Investment Fund established under Section 16429.1 of the Government Code of the State of California; and

(k) any other investment permitted under Section 53601 of the California Government Code.

*"Principal Component"* means the portion of each Lease Payment designated as Principal Component, as such is set forth on Exhibit C hereto.

*"Project"* means the Financing of a portion of the City's Unfunded Accrued Actuarial Liability to California Public Employees' Retirement System.

*"Project Costs"* means the costs associated with the Financing of the Project.

*"Property"* means, collectively, the Site and the Facility.

*"Public Safety Employees Plan"* means the obligation of the City to make payments pursuant to the CalPERS Contract with respect to the City's public safety employees.

*"Refunding Instructions"* means the written refunding instructions dated as of May 1, 2016, given by the City to the Bank relating to the wire transfer of Lease Proceeds, and the corresponding prepayment of a definitive portion of the UAAL Obligation.

*"Rental Period"* means each period during the Term of the Lease commencing on and including July 1 in each year and extending to and including the next succeeding June 30. The first Rental Period begins on the Closing Date and ends on June 30, 2016.

*"Resolution"* means the Resolution No. \_\_\_\_, adopted by the City Council on April \_\_, 2016, authorizing and otherwise providing for the execution and delivery of this Lease Agreement.

*"Site"* means that certain real property more particularly described in Exhibit A to the Site and Facility Lease and in Exhibit A to this Lease Agreement.

“*Site and Facility Lease*” means the Site and Facility Lease, dated as of May 1, 2016, by and between the City, as lessor, and the Bank, as lessee, together with any duly authorized and executed amendments thereto.

“*State*” means the State of California.

“*Term of this Lease Agreement*” or “*Term*” means the time during which this Lease Agreement is in effect, as provided in Section 4.02.

“*UAAL Obligation*” means the Unfunded Accrued Actuarial Liability obligation of the City under the CalPERS Contract to make payments to CalPERS with respect to benefits accruing to retired public safety employees and certain other employees of the City under the Public Safety Employees Plan and the Miscellaneous Employees Plan.

“*Written Request*” means a request in writing signed by Authorized Representative, or by any other officer of the City duly authorized for that purpose.

### **Section 1.02. Interpretation.**

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

## **ARTICLE II**

### **COVENANTS, REPRESENTATIONS AND WARRANTIES**

**Section 2.01. Covenants, Representations and Warranties of the City.** The City makes the following covenants, representations and warranties to the Bank as of the date of the execution and delivery of this Lease Agreement:

(a) ***Due Organization and Existence.*** The City is a municipal corporation and general law city duly organized and validly existing under the laws of the State of California, with full legal right, power and authority under the laws of the State to enter into the Site and Facility Lease and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby.

(b) ***Due Execution.*** By all necessary official action, the City has duly adopted the Resolution, has duly authorized and approved the execution and delivery of, and the

performance of its obligations under, this Lease Agreement, the Site and Facility Lease, and the consummation by it of all other transactions contemplated by this Lease Agreement, the Site and Facility Lease and the Resolution. The Authorized Representative executing the Site and Facility Lease and this Lease Agreement has been fully authorized to execute the same.

(c) ***Valid, Binding and Enforceable Obligations.*** The Site and Facility Lease and this Lease Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.

(d) ***No Conflicts.*** The execution and delivery of the Site and Facility Lease and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease or this Lease Agreement, or the financial condition, assets, properties or operations of the City.

(e) ***Consents and Approvals.*** No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with the execution and delivery of the Site and Facility Lease and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) ***No Litigation.*** There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other Governmental Authority pending and notice of which has been served on the City or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a Material Adverse Effect, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other Governmental Authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement.

(g) ***Sufficient Funds.*** The City reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(h) **Fee Title.** The City is the owner in fee of title to the Property. The City has disclosed all known liens and encumbrances to the Bank, and no lien or encumbrance on the Property materially impairs the City's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(i) **Use of the Property, Essentiality.** During the term of this Lease Agreement, the Property will be used by the City only for the purpose of performing one or more governmental or proprietary functions of the City consistent with the permissible scope of the City's authority. The City considers the Property to be essential to the City's efficient and economic operations, and the lease thereof for use by the City is in the best interest of the City.

(j) **Hazardous Substances.** The Property is free of all Hazardous Substances, and the City is in full compliance with all Applicable Environmental Laws.

(k) **Flooding Risk.** The Property is not located in a flood hazard area and has never been subject to material damage from flooding.

(l) **Value of Property.** The value of the Property (real property replacement cost) is not less than \$\_\_\_\_\_.

(m) **Financial Statements.** The statement of financial position of the City as of June 30, 2015, and the related statement of activities and statement of cash flows and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Bank, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the City at such date and for such period, and were prepared in accordance with generally accepted accounting principles. Since the period of such statements, there has been no (i) change which would have a Material Adverse Effect and (ii) no material increase in the indebtedness of the City.

(n) **No Material Adverse Change.** Since the most current date of the information, financial or otherwise, supplied by the City to the Bank:

(i) There has been no change in the assets, liabilities, financial position or results of operations of the City which might reasonably be anticipated to cause a Material Adverse Effect.

(ii) The City has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.

(iii) The City has not (A) incurred any material indebtedness, other than the Lease Payments, and trade accounts payable arising in the ordinary course of the City's business and not past due, or (B) guaranteed the indebtedness of any other person.

(o) **Compliance with Procurement Laws.** The City has complied with all applicable procurement laws with respect to the execution and delivery of this Lease

Agreement.

(p) ***Due Authorization and Payment.*** All of the Lease Payments and other payments hereunder have been, or shall be, duly authorized and paid when due out of funds then on hand and legally available for such purposes.

(q) ***No Default or Non-Appropriation.*** The City has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, certificates of participation, or other debt obligations.

(r) ***Foreseeable need for the Property.*** There are no circumstances presently affecting the City that could be reasonably expected to alter its foreseeable need for the Property or adversely affect its ability or willingness to budget funds for the payment of the Lease Payments and other payments due hereunder.

(s) ***Taxable Lease.*** The City Council has determined that the Interest Components of the Lease Payments will be subject to federal income taxation.

(t) ***Property.*** The Property complies with all applicable restrictive covenants, zoning ordinances, building laws and other Applicable Laws (including without limitation, the Americans with Disabilities Act, as amended).

(u) ***No Condemnation.*** The City hereby covenants and agrees, to the extent it may lawfully do so, that so long as any amounts are owed to the Bank, that it will not exercise the power of condemnation with respect to the Property. The City further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the City should fail or refuse to abide by such covenant and condemns the Property, the appraised value of the Property shall not be less than the greater of (i) if such Lease Payments are then subject to prepayment, or (ii) if such Lease Payments are not then subject to prepayment, the amount necessary to prepay the Lease Payments to the first available prepayment date.

(v) ***Accuracy of Information.*** To the knowledge of the Authorized Representative executing this Lease Agreement, (i) all information, reports and other papers and data furnished by the City to the Bank were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Bank a true and accurate knowledge of the subject matter and were provided in expectation of the Bank's reliance thereon in entering into the transactions contemplated by this Lease Agreement; (ii) no fact is known to the City which has had or, so far as the City can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements previously furnished to the Bank or in other such information, reports, papers and data or otherwise disclosed in writing to the Bank prior to the Closing Date; (iii) any financial, budget and other projections furnished to the Bank by the City or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the City's best estimate of its future financial

performance; and (iv) no document furnished nor any representation, warranty or other written statement made to the Bank in connection with the negotiation, preparation or execution of this Lease Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

(w) **Role of Bank.** The City acknowledges that (i) the Bank is acting solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor, (ii) the Bank has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City with respect to the Lease Payments, (iii) the Bank has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, if any, or the correctness of any legal interpretation made by counsel to any other party, if any, with respect to any such matters, and (iv) the City has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the financing effectuated through this Lease Agreement from its financial, legal and other advisors to the extent that the City desired to obtain such advice.

**Section 2.02. Covenants, Representations and Warranties of the Bank.** The Bank makes the following covenants, representations and warranties to the City as of the date of the execution and delivery of this Lease Agreement:

(a) the Bank has been duly organized and is validly existing as a banking corporation under the laws of the State of \_\_\_\_\_ with full corporate power to enter into and undertake its duties and obligations hereunder and has sufficient knowledge and experience in financial and business matters to be able to evaluate the economic risks and merits of the investment represented by the Lease Obligation;

(b) the execution, delivery and performance of this Lease Agreement and the Site and Facility Lease have been duly authorized by all necessary corporate actions on the part of the Bank and do not require any further approvals or consents;

(c) to the knowledge of the officer executing this Lease Agreement, the execution, delivery and performance of this Lease Agreement and the Site and Facility Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Bank is a party by which it or its property is bound;

(d) to the knowledge of the officer executing this Lease Agreement, there is no pending or, to the knowledge of the Bank, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Bank to perform its obligations under this Lease Agreement and the Site and Facility Lease;

(e) the Bank will not mortgage or encumber the Property or this Lease Agreement or assign this Lease Agreement or its rights to receive Lease Payments hereunder, except as expressly permitted herein or in the Site and Facility Lease; and

(f) the Bank will deliver to the City a certificate substantially in the form set forth in Exhibit D attached hereto.

### ARTICLE III

#### DEPOSIT AND APPLICATION OF LEASE PROCEEDS

**Section 3.01. Deposit of and Application of Lease Proceeds.** The City hereby instructs the Bank (to which instruction the Bank hereby assents) to set-aside a portion of the Lease Proceeds in the approximate amount of \$\_\_\_\_\_ (the "COI Set-Aside Funds") for the payment of Costs of Issuance on behalf of the City as provided in Section 3.02. The City hereby instructs the Bank (to which the Bank also assents) to wire the amount of (i) \$\_\_\_\_\_ directly to CalPERS, in accordance with the Refunding Instructions, in satisfaction of a portion of the City's obligations under the CalPERS Contract with respect to the Public Safety Employees Plan UAAL Obligations, and (ii) \$\_\_\_\_\_ directly to CalPERS, in accordance with Refunding Instructions, in satisfaction of a portion of the City's obligations under the CalPERS Contract with respect to the Miscellaneous Employees Plan UAAL Obligations.

**Section 3.02. Application of Costs of Issuance Set-Aside Funds.** The COI Set-Aside Funds held by the Bank on behalf of the City pursuant to Section 3.01 shall be used by the Bank to pay the Costs of Issuance upon submission of sequentially numbered written Requisitions of the City, substantially in the form attached hereto as Exhibit E. Upon the Request of the City, but in no event later than seven (7) calendar days after the Closing Date, any remaining amounts of COI Set-Aside Funds shall be transferred by the Bank to the City.

### ARTICLE IV

#### SUBLEASE OF PROPERTY; LEASE PAYMENTS; SUBSTITUTION, ADDITION OR RELEASE

**Section 4.01. Sublease of Property; No Merger.**

(a) **Sublease.** The Bank hereby subleases the Property to the City, and the City hereby subleases the Property from the Bank, upon the terms and conditions set forth in this Lease Agreement.

(b) **No Merger.** The leasing of the Property by the City to the Bank pursuant to the Site and Facility Lease shall not affect or result in a merger of the City's subleasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Site and Facility Lease.

**Section 4.02. Term.** The Term of this Lease Agreement commences on May \_\_, 2016, or the date this Lease Agreement or a memorandum thereof is recorded, whichever is later, and ends on July 1, 20\_\_, or the date on which all of the Lease Payments have been paid in full. If on July 1, 20\_\_, the Lease Payments payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental interruption insurance or other sources, or the City shall have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and

continues without cure by the City, then the term of this Lease Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, as necessary to accommodate the final payment of all Lease Payments due hereunder, not to exceed 10 years. The provisions of this Section 4.02 are subject to the provisions of Section 6.01 relating to the taking in eminent domain of the Property or any portion thereof.

**Section 4.03. Lease Payments.**

(a) **Obligation to Pay.** Subject to the provisions of Sections 6.01 and 6.03 and the provisions of Article IX, the City hereby agrees to repay the Lease Obligation in the aggregate principal amount of \$ \_\_\_\_\_ together with interest (calculated at the rate of \_\_\_%, on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semi-annual Lease Payments in the respective amounts and on the respective Lease Payment Dates specified in Exhibit C hereto, and by this reference made a part hereof. The City understands that the Bank will send an invoice to the City in advance of each Lease Payment Date.

(b) **Additional Payments.** In addition to the Lease Payments set forth herein, the City agrees to pay as Additional Payments all of the following:

(i) Subject to Section 5.01, all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Property or upon any interest of the Bank therein or in this Lease Agreement;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof;

(iii) any other reasonable fees, costs or expenses incurred by the Bank in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Property, including, without limitation, reasonable legal expenses in connection with the enforcement of this Lease Agreement and any amounts which may become due; provided, however, the City shall not be responsible for any costs incurred by the Bank associated with any assignment of this Lease Agreement;

(iv) any amounts required to be paid as rebate to the United States; and

(v) such amounts sufficient to indemnify the Bank and to pay all amounts due under Section 7.03.

Amounts constituting Additional Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 30 days after notice in writing from the Bank to the City stating the amount of Additional Payments then due and payable and the purpose thereof.

(c) ***Effect of Prepayment.*** If the City prepays all Lease Payments in full under Sections 9.02 or 9.03, the City's obligations under this Section will thereupon cease and terminate; provided, however, that the City's obligation to indemnify the Bank pursuant to Section 7.03 hereof shall survive the termination of this Lease Agreement. If the City prepays the Lease Payments in part but not in whole under Section 9.03, the Principal Components of the remaining Lease Payments will be reduced on a pro rata basis; and the Interest Component of each remaining Lease Payment will be reduced on a pro rata basis.

(d) ***Rate on Overdue Payments.*** If the City fails to make any of the payments required in this Section 4.03, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the interest rate set forth in Section 4.03(a) plus \_\_\_\_\_ percent (\_%), or any lesser maximum rate as may be required by law.

(e) ***Fair Rental Value.*** The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Property for such Rental Period, and will be paid by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments due during each Rental Period are not in excess of the fair rental value of the Property during such Rental Periods. In making this determination, consideration has been given to the estimated fair market value of the Property, the estimated replacement cost of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(f) ***Source of Payments; Budget and Appropriation.*** The Lease Payments are payable from an irrevocable pledge of legally available funds of the City, subject to the provisions of Sections 6.01, 6.03 and 9.01. The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

(g) ***Allocation of Lease Payments.*** All Lease Payments received shall be applied first to the Interest Components of the Lease Payments due hereunder, then to the Principal Components of the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(h) ***No Offsets.*** Notwithstanding any dispute between the Bank and the City, the City shall make all Lease Payments when due without deduction or offset of any kind and shall not withhold any Lease Payments pending the final resolution of such dispute.

(i) ***Payments under this Lease Agreement.*** The Bank hereby directs the City,

and the City hereby agrees, to pay to the Bank (or to its assignees as directed pursuant to Section 7.04 hereof) all payments payable by the City under this Section 4.03 and all amounts payable by the City under Article IX. So long as the Lease Obligation is owned by the Bank, all principal and interest payments with respect to the Lease Obligation shall be made by wire transfer using the following wiring instructions (unless the City shall receive subsequent wiring instructions from the Bank):

\_\_\_\_\_ Bank  
Attn: \_\_\_\_\_  
Account # \_\_\_\_\_  
Routing # \_\_\_\_\_  
Note in comments: Loan # \_\_\_\_\_

**Section 4.04. Quiet Enjoyment.** Throughout the Term of this Lease Agreement, the Bank will provide the City with quiet use and enjoyment of the Property and the City will peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the Bank, except as expressly set forth in this Lease Agreement. The Bank will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Bank may lawfully do so. Notwithstanding the foregoing, the Bank has the right to inspect the Property as provided in Sections 5.12(c) and 7.02.

**Section 4.05. Title.** At all times during the Term of this Lease Agreement, the City shall hold title to the Property, including all additions which comprise fixtures, repairs, replacements or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.02. Upon the termination of this Lease Agreement (other than under Section 8.02(b) hereof), all right, title and interest of the Bank in and to the Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Property, or upon the deposit by the City of security for such Lease Payments as provided in Section 9.01, all right, title and interest of the Bank in and to the Property shall be transferred to and vested in the City. The Bank agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer.

**Section 4.06. Substitution, Addition or Release of the Property.** The City shall have the right to substitute alternate real property for any portion of, or add additional real property to the Property, or to release a portion of the Property from this Lease Agreement. All costs and expenses incurred in connection with such substitution, addition or release (including all reasonable costs, expenses and attorneys' fees incurred by the Bank) shall be borne by the City. Notwithstanding any substitution, addition or release of Property pursuant to this subsection, there shall be no reduction in or abatement of the Lease Payments due from the City hereunder as a result of such substitution, addition or release. Any such substitution, addition or release of any portion of the Property shall be subject to the following specific conditions, which are hereby made conditions precedent to such substitution, addition or release:

(a) The City shall first receive written authorization and approval from the Bank, which authorization and approval shall not be unreasonably denied by the Bank so long as the conditions set forth below are satisfied;

(b) No Event of Default shall have occurred and be continuing, and no event giving rise

to an abatement of Lease Payments under Section 6.03 hereof shall have occurred and be continuing;

(c) An independent certified real estate appraiser selected by the City shall have found (and shall have delivered a certificate to the City and the Bank setting forth its findings) that the Property, as constituted after such substitution, addition or release, (i) has an annual fair rental value greater than or equal to 105% of the maximum Lease Payments payable by the City in any Rental Period, and (ii) has a useful life equal to or greater than the useful life of the Property, as constituted prior to such substitution, addition or release;

(d) The property to be substituted or added must be owned in fee simple by the City and be free of any liens and encumbrances that would impair the use of the property for its intended purpose, and the City shall have obtained or caused to be obtained a CLTA title insurance policy or policies with respect to any substituted or additional property in the amount of the fair market value of such substituted or additional property, of the type described in Section 5.07 hereof;

(e) In the case of substituted or additional property, the City agrees to provide any required surveys, environmental reports, or other diligence items related to such proposed substituted or additional property that are reasonably required by the Bank; and

(f) The City and the Bank shall have executed, and the City shall have caused to be recorded with the Merced County Recorder, any document necessary to reconvey to the City the portion of the Property being substituted or released and to include any substituted or additional real property in the description of the Property contained herein and in the Site and Facility Lease; and

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

**Section 5.01. Maintenance, Utilities, Taxes and Assessments.** Throughout the Term of this Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property are the sole responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Bank agrees to provide only the Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease Agreement.

The City will pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Bank or the City affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City is obligated to pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Bank shall notify the City that, in the opinion of Bond Counsel, by nonpayment of any such items, the interest of the Bank in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City will promptly pay such taxes, assessments or charges or provide the Bank with full security against any loss which may result from nonpayment, in form satisfactory to the Bank. The City shall promptly notify the Bank of any tax, assessment, utility or other charge it elects to contest.

**Section 5.02. Modification of Property.** The City has the right, at its own expense, to make additions, modifications and improvements to the Property or any portion thereof. All additions, modifications and improvements to the Property will thereafter comprise part of the Property and become subject to the provisions of this Lease Agreement. Such additions, modifications and improvements may not in any way damage the Property, or cause the Property to be used for purposes other than those authorized under the provisions of State and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

**Section 5.03. Public Liability Insurance.** The City shall maintain or cause to be maintained throughout the Term of this Lease Agreement a standard comprehensive general liability insurance policy or policies in protection of the City, the Bank and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Such policy or policies must provide coverage with limits of at least \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, for bodily injury and property damage coverage, and in all events in form and amount (including any deductibles) satisfactory to the Bank.

Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with Bank's prior written consent, a self-insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

**Section 5.04. Casualty Insurance.** The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, casualty insurance against loss or damage to all buildings situated on the Property and owned by the City, in an amount at least equal to the greater of the replacement value of the insured buildings and the aggregate principal amount of the Lease Payments outstanding, with a lender's loss payable endorsement. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$25,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with the Bank's prior written consent, a self-insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as

provided in Section 6.02.

**Section 5.05. Rental Interruption Insurance.** The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Property and the improvements situated thereon as a result of any of the hazards covered in the insurance required by Section 5.04, in an amount at least equal to the maximum Lease Payments coming due and payable during any future 24 month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance; provided that such rental interruption insurance shall not be self-insured by the City. The City will apply the Net Proceeds of such insurance towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

**Section 5.06. Worker's Compensation Insurance.** If required by applicable California law, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Property and, upon written request, shall furnish to the Bank certificates evidencing such coverage throughout the Term of this Lease Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance.

**Section 5.07. Recordation Hereof; Title Insurance.** On or before the Closing Date, the City shall, at its expense, (a) cause this Lease Agreement and the Site and Facility Lease, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Merced County Recorder with respect to the Property, and (b) obtain a CLTA title insurance policy insuring the Bank's interests in the leasehold estate established under the Site and Facility Lease and hereunder in the Property, subject only to Permitted Encumbrances, in an amount equal to the original principal components of the Lease Payments. The City will apply the Net Proceeds of such insurance as provided in Section 6.02.

**Section 5.08. Insurance Net Proceeds; Form of Policies.** All insurance policies (or riders) required by this Article V and provided by third party insurance carriers shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten days before the cancellation or revision becomes effective. Each insurance policy or rider required by Sections 5.03, 5.04 and 5.05 and provided by third party insurance carriers shall name the City and the Bank as insured parties and the Bank as loss payee and shall include a lender's loss payable endorsement for the benefit of the Bank. In the case of coverage pursuant to Section 5.03, the Bank shall be added as an additional insured.

Prior to the Closing Date, the City will deposit with the Bank policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Bank evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article

V unless such insurance is no longer obtainable, in which event the City shall notify the Bank of such fact.

**Section 5.09. Installation of City's Personal Property.** The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City, in which the Bank has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest may attach to any part of the Property.

**Section 5.10. Liens.** The City will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Bank do not materially and adversely affect the subleasehold estate in the Property hereunder and for which the Bank provides its prior written approval, which approval shall be at Bank's sole discretion. Except as expressly provided in this Article V, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City will reimburse the Bank for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

**Section 5.11. Advances.** If the City fails to perform any of its obligations under this Article V, the Bank may take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.03(d).

**Section 5.12. Environmental Covenants.**

(a) ***Compliance with Laws; No Hazardous Substances.*** The City will comply with all Applicable Environmental Laws with respect to the Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Property, or from the Property to any other property.

(b) ***Notification of Bank.*** The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Property and any operations conducted thereon or any conditions existing thereon to the Bank, and the City will notify the Bank in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Bank.

(c) **Access for Inspection.** The City will permit the Bank, its agents, or any experts designated by the Bank to have full access to the Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Bank has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

## ARTICLE VI

### EMINENT DOMAIN; USE OF NET PROCEEDS

**Section 6.01. Eminent Domain.** If all of the Property shall be taken permanently under the power of eminent domain or sold to a governmental entity threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (a) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there shall be a partial abatement of Lease Payments in an amount equal to the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the City and the Bank such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

#### **Section 6.02. Application of Net Proceeds.**

(a) **From Insurance Award.**

(i) Any Net Proceeds of insurance against damage to or destruction of any part of the Property collected by the City in the event of any such damage or destruction shall be deposited by the City promptly upon receipt thereof in a special fund with the Bank designated as the "Insurance and Condemnation Fund."

(ii) Within 30 days following the date of such deposit, the City shall determine and notify the Bank in writing of its determination either (A) that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the City and the Net Proceeds, together with other moneys available therefor, are sufficient to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.03 hereof, or (B) that all or a portion of such Net Proceeds are to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property and the fair rental value of the Property following such repair, restoration, replacement, modification or improvement will at least equal the unpaid principal component of the Lease Payments.

(iii) In the event the City's determination is as set forth in clause (A) of subparagraph (ii) above, such Net Proceeds shall be promptly applied to the prepayment of Lease Payments and other amounts pursuant to Section 9.03 of this

Lease Agreement; provided, however, that in the event of damage or destruction of the Property in full, such Net Proceeds may be so applied only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments, all accrued and unpaid interest, Prepayment Premiums described in Section 9.02, and all other costs related to such prepayments pursuant to Section 9.03 of this Lease Agreement and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property; provided further, however, that in the event of damage or destruction of the Property in part, such Net Proceeds may be applied to the prepayment of Lease Payments only if the resulting Lease Payments following such prepayment from Net Proceeds represent fair consideration for the remaining portions of the Property and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, evidenced by a certificate signed by an Authorized Representative.

(iv) In the event the City's determination is as set forth in clause (B) of subparagraph (ii) above, such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property by the City, and until the Property has been restored to its prior condition, the City shall not place any lien or encumbrance on the Property that is senior to this Lease Agreement without the prior written consent of the Bank, at its sole discretion.

**(b) *From Eminent Domain Award.*** If all or any part of the Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited by the City in the Insurance and Condemnation Fund and shall be applied and disbursed as follows:

(i) If the City has given written notice to the Bank of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are not needed for repair or rehabilitation of the Property, the City shall so certify to the Bank and the Bank, and the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.03 of this Lease Agreement.

(ii) If the City has given written notice to the Bank and the Bank of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Property, the City shall so certify to the Bank, and the City shall apply such amounts for such repair or rehabilitation.

(iii) If (A) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the City has given written notice to the Bank of its determination that such eminent domain proceedings have materially affected the

operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement or (B) all of the Property shall have been taken in such eminent domain proceedings, then the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.03 of this Lease Agreement.

(iv) In making any determination under this Section 6.02(b), the City may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Bank. Any such determination by the City shall be final.

(c) **From Title Insurance.** The Net Proceeds from a title insurance award shall be deposited by the City in the Insurance and Condemnation Fund and credited towards the prepayment of Lease Payments required to be paid pursuant to Section 9.03 of this Lease Agreement.

**Section 6.03. Abatement of Lease Payments.** Lease Payments shall be abated during any period in which by reason of damage, destruction or condemnation there is substantial interference with the use and occupancy of the Property or any portion thereof by the City. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon an appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of an Authorized Representative to the Bank. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.03 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Insurance and Condemnation Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.03, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

## ARTICLE VII

### OTHER COVENANTS OF THE CITY

**Section 7.01. Disclaimer of Warranties.** THE BANK MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CITY LEASES THE PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event is the Bank liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease Agreement for the existence, furnishing, functioning or

use of the Property by the City. The City hereby further acknowledges that the Bank has never physically occupied or entered upon the Property.

**Section 7.02. Access to the Property; Grant and Conveyance of Right of Entry.** The City agrees that the Bank, and the Bank's successors or assigns, has the right at all reasonable times, following at least 48 hours written notice provided to the City, to enter upon and to examine and inspect (to the extent permitted by law and public policy) the Property or any part thereof. The City further agrees that the Bank, and the Bank's successors or assigns shall have such rights of access to the Property or any component thereof, following at least 48 hours written notice provided to the City, as may be reasonably necessary to cause the proper maintenance of the Property if the City fails to perform its obligations hereunder. Neither the Bank nor any of its assigns has any obligation to cause such proper maintenance.

The City further grants, conveys and confirms to the Bank, for the use, benefit and enjoyment of the Bank, its successors in interest to the Property, including the Bank, and its sublessees, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public visiting the Property, a right of entry which shall be irrevocable for the Term of this Lease Agreement over, across and under the property of the City adjacent to the Property to and from the Property for the purpose of: (a) ingress, egress, passage or access to and from the Property by pedestrian or vehicular traffic; (b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and (c) other purposes and uses necessary or desirable for access to and from and for operation and maintenance of the Property.

**Section 7.03. Release and Indemnification Covenants.** To the maximum extent permitted by law, the City hereby indemnifies the Bank, and its directors, officers, agents, employees, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the City or the City's employees, agents, contractors, invitees or licensees, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Property, (e) the acquisition, construction, improvement and equipping of the Property, (f) Environmental Claims and liabilities, damages (including foreseeable and unforeseeable consequential damages), losses, fines, penalties, judgments, awards, settlements, and costs and expenses (including, without limitation, reasonable attorneys' fees, experts', engineers' and consultants' fees, and costs and expenses of investigation, testing, remediation and dispute resolution) related thereto, whether for past or present violation of Applicable Environmental Laws, (g) any investigation, cleanup, remediation, removal or restoration work of site conditions of the Property relating any actual or alleged past or present to Hazardous Substances (whether on the Property or any adjacent or otherwise affected property and whether or not an abatement under this Lease Agreement has occurred) and resulting damages involving such Hazardous Substances, or the authorization of payment of the costs thereof. No indemnification is made under this Section 7.03 or elsewhere in this Lease Agreement for willful misconduct or gross negligence under this Lease Agreement by the Bank, or its respective officers, agents, employees, successors or assigns. The indemnification hereunder shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease Agreement or the termination of the Term of this Lease Agreement for any reason.

The City and the Bank each agree to promptly give notice to each other and the Bank of any claim or liability hereby indemnified against following learning thereof.

**Section 7.04. Assignment by the Bank.** The Bank may assign its rights, title and interests herein, but no such assignment will be effective as against the City unless and until the Bank has filed with the City at least five Business Days' prior written notice thereof and an executed copy of an investor's letter addressed to the City and the Bank substantially in the form of the letter delivered by the Bank on the Closing Date attached hereto as Exhibit D. The City shall pay all Lease Payments hereunder to the Bank, as provided in Section 4.03(i) hereof, or under the written direction of the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Lease Agreement, the City will keep a complete and accurate record of all such notices of assignment.

**Section 7.05. Assignment Agreement and Subleasing by the City.** This Lease Agreement may not be assigned, mortgaged, pledged or transferred by the City. The City may further sublease the Property, or any portion thereof, with the prior written consent of the Bank, which consent shall not be unreasonably withheld, subject to all of the following conditions:

(a) This Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City, and any sublease shall be subject and subordinate to this Lease Agreement.

(b) The City shall, within 15 days after the delivery thereof, furnish or cause to be furnished to the Bank a true and complete copy of such sublease.

(c) No such sublease by the City shall cause the Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State.

(d) Any such sublease shall be subject and subordinate in all respects to the Site and Facility Lease and this Lease Agreement.

Notwithstanding the foregoing, in connection with any sublease entered into for financing purposes, the Principal Component of the then remaining Lease Payments plus the principal component of the sublease payments shall not exceed the fair market value of the Property.

**Section 7.06. Amendment of Lease Agreement.** This Lease Agreement may be amended in writing by the parties hereto.

**Section 7.07. Financial Statements; Budgets.** Within 240 days following the end of each Fiscal Year of the City during the Term of this Lease Agreement, the City will provide the Bank with a copy of its Audited Financials for such Fiscal Year. Such Audited Financials shall include such information as is required by applicable Government Accounting Standards Board pronouncements and applicable State law. Within 30 days of adoption of its annual budget, the City will provide the Bank with a copy of its annual budget and any interim updates or modifications to such budget. Concurrent with each annual budget, the City shall provide the Bank with a certification that the Lease Payments for the pertinent Fiscal Year covered by such budget have been appropriated in the budget. Concurrent with the Audited Financials the City shall provide the Bank with a copy of its most recent rent roll for the Property. The City shall also supply the Bank

with copies of all lease agreements and lease agreement amendments for any and all space not occupied by the City at the Property as they are entered into. The City hereby agrees to provide the Bank with such other information as may be reasonably requested by the Bank.

**Section 7.08. Records and Accounts.** The City covenants and agrees that it shall keep proper books of record and accounts of its operations, in which complete and correct entries shall be made of all transactions relating to the City. Said books and records shall at all reasonable times be subject to the inspection of the Bank upon 48 hours' prior notice.

**Section 7.09. Observance of Laws and Regulations.** The City will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the City, including the City's right to exist and carry on business as a municipal corporation, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

**Section 7.10. Closing Conditions.** The Bank has entered into this Lease Agreement in reliance upon the representations and warranties of the City contained in this Lease Agreement and to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the City of the obligations of the City pursuant to this Lease Agreement at or prior to the Closing Date. Accordingly, the obligation of Bank to execute this Lease Agreement is subject to the fulfillment to the reasonable satisfaction of the Bank of the following conditions:

(a) The representations and warranties of the City contained in the Site and Facility Lease and in this Lease Agreement shall be true, complete and correct on the Closing Date.

(b) All representations, warranties and covenants made herein, and in certificates or other instruments delivered pursuant hereto or in connection herewith, shall be deemed to have been relied upon by the Bank notwithstanding any investigation heretofore or hereafter made by the Bank or on their behalf.

(c) On the Closing Date, the Resolution, the Site and Facility Lease and this Lease Agreement shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Bank.

(d) On the Closing Date, the City will have adopted and there will be in full force and effect such resolutions as in the opinion of Bond Counsel shall be necessary in connection with the transactions contemplated by this Lease Agreement, and all necessary action of the City relating to the execution and delivery the Lease Agreement will have been taken, will be in full force and effect and will not have been amended, modified or supplemented, except as may have been agreed to in writing by the Bank.

(e) At or prior to the Closing Date, the Bank will have received the following documents:

(i) the approving opinions, dated the Closing Date and addressed to the Bank, of

Bond Counsel representing, among other matters, that the Site and Facility Lease and Lease Agreement have been duly authorized, executed and delivered by the City and each is a legal, valid and binding obligation of the City, enforceable in accordance with its respective terms, subject to customary exceptions for bankruptcy and judicial discretion;

(ii) a certificate or certificates, dated the date of the Closing and signed on behalf of the City by an Authorized Representative, to the effect that, among other things, (A) the representations and warranties contained in the Site and Facility Lease and this Lease Agreement are true and correct in all material respects on and as of the date of the Closing with the same effect as if made on the Closing Date; (B) no litigation of any nature is then pending or, to his or her knowledge, threatened, seeking to restrain or enjoin the issuance and delivery of the Site and Facility Lease and Lease Agreement or affecting the validity of the Site and Facility Lease and this Lease Agreement or contesting the existence or boundaries of the City or the titles of the present officers to their respective offices; (C) no authority or proceedings for the issuance of the Lease Obligation has been repealed, revoked or rescinded and no petition or petitions to revoke or alter the authorization to execute and deliver this Lease Agreement has been filed with or received by the City; and (D) the City has complied with all the agreements and covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to, and to the extent possible before, the Closing Date;

(iii) a certified copy of the Resolution;

(iv) the items required by the Resolution as conditions for execution and delivery of this Lease Agreement;

(v) the opinion of the City Attorney, dated the Closing Date, addressed to the Bank and Bond Counsel, to the effect that, among other things:

(A) the City is a municipal corporation and general law city, duly organized and validly existing under and by virtue of the Constitution and laws of the State of California, with full legal right, power, and authority (1) to adopt the Resolution, (2) to conduct its affairs and to lease and own its properties, including the Property, as contemplated by the Site and Facility Lease and this Lease Agreement, (3) to execute and deliver the Refunding Instructions, the Site and Facility Lease and this Lease Agreement, and (4) to provide for the budget and appropriation, as contemplated by this Lease Agreement;

(B) the City has taken all actions required to be taken by it prior to the Closing Date material to the transactions contemplated by the Site and Facility Lease, the Refunding Instructions and this Lease Agreement, and the City has duly authorized the execution and delivery of, and the due performance of its obligations under, the Site and Facility Lease, the Refunding Instructions and this Lease Agreement;

(C) the adoption of the Resolution, the execution and delivery by the City of the Site and Facility Lease, the Refunding Instructions and this Lease Agreement, and the compliance with the provisions of the Site and Facility Lease, the Refunding

Instructions and this Lease Agreement, to the best of such counsel's knowledge after due inquiry, do not and will not conflict with or violate in any material respect any California constitutional, statutory or regulatory provision, or, to the best of such counsel's knowledge after due inquiry, conflict with or constitute on the part of the City a material breach of or default under any agreement or instrument to which the City is a party or by which it is bound;

(D) no litigation is pending with service of process completed or, to the best of such counsel's knowledge after due inquiry, threatened against the City in any court in any way affecting the titles of the officials of the City to their respective positions, or seeking to restrain or to enjoin the execution and delivery of the Site and Facility Lease, the Refunding Instructions and this Lease Agreement, or the collection of revenues pledged or to be pledged to pay the principal of and interest on the Lease Obligation, or in any way contesting or affecting the validity or enforceability of the Site and Facility Lease, the Refunding Instructions and this Lease Agreement or the Resolution, or contesting the powers of the City or its authority with respect to the Site and Facility Lease, the Refunding Instructions and this Lease Agreement or the Resolution;

(E) to the best of such counsel's knowledge after due inquiry, no authorization, approval, consent or other order of the State or any local agency of the State, other than such authorizations, approvals and consents which have been obtained, is required for the valid authorization, execution and delivery by the City of the Site and Facility Lease, the Refunding Instructions and this Lease Agreement; and

(F) to the best of such counsel's knowledge after due inquiry, the City is not in breach of or default under any applicable law or administrative regulation of the State or any applicable judgment or decree or any lease agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, which breach or default would materially adversely affect the City's ability to enter into or perform its obligations under the Site and Facility Lease, the Refunding Instructions and this Lease Agreement, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument;

(vi) the fully executed Refunding Instructions, Site and Facility Lease and this Lease Agreement in form and substance acceptable to the Bank;

(vii) evidence of liability and casualty insurance satisfactory to the Bank; and

(viii) such additional legal opinions, certificates, instruments and other documents as the Bank or its counsel may reasonably request to evidence the truth and accuracy, as of the date of this Lease Agreement and as of the Closing Date, of the representations, warranties, agreements and covenants of the City contained herein and the due performance or satisfaction by the City at or prior to the Closing Date of all agreements then to be performed and all conditions then to be satisfied by the City.

**Section 7.11. Notices.** During the Term of this Lease Agreement, the City shall provide to the Bank:

- (a) Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which is, or with the passage of time or the giving of notice or both, would constitute an Event of Default under this Lease Agreement, together with a detailed statement by an Authorized Representative of the steps being taken by the City to cure the effect of such default or Event of Default.
- (b) Prompt written notice of any Material Litigation, or any investigation, inquiry or similar proceeding by any Governmental Authority.
- (c) With reasonable promptness, such other information respecting the City, and the operations, affairs and financial condition of the City as the Bank may from time to time reasonably request.
- (d) Immediate notice if any budget for the City does not include an amount sufficient to make all Lease Payments in a Rental Period.

## **ARTICLE VIII**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 8.01. Events of Default Defined.** Any one or more of the following events constitutes an “Event of Default” hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any material covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Bank. However, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the Bank shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar federal or State act now existing or which may hereafter be enacted.

(d) Any default by the City to observe any material covenant, condition or agreement on its part to be observed or performed under the Site and Facility Lease.

(e) Any court of competent jurisdiction shall find or rule that the Site and Facility Lease or this Lease Agreement is not valid or binding against the City.

(f) Any Material Adverse Effect shall exist.

Upon the occurrence and continuance of an Event Default, the interest rate on the Lease Payments shall bear interest at the Default Rate.

**Section 8.02. Remedies on Default.** Whenever any Event of Default has happened and is continuing, the Bank may exercise any and all remedies available under law or granted under this Lease Agreement, including without limitation re-leasing of the Property; provided, however, that notwithstanding anything herein to the contrary, there shall be absolutely no right to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Bank may exercise any and all rights granted hereunder; provided, that no termination of this Lease Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Bank may exercise any one or more of the following remedies:

(a) ***Enforcement of Payments without Termination.*** If the Bank does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Bank for any deficiency arising out of the re-leasing of the Property, or, if the Bank is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Bank or any suit in unlawful detainer, or otherwise, brought by the Bank for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Bank. The City hereby irrevocably appoints the Bank as the agent and attorney-in-fact of the City to enter upon and re-lease the Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place in the City of Atwater for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Bank from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Bank or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Bank to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Bank in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such

default by the City the right to terminate this Lease Agreement shall vest in the Bank to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Property upon demand of the Bank for the purpose of enabling the Property to be re-let under this paragraph. Any rental obtained by the Bank in excess of the sum of Lease Payments plus costs and expenses incurred by the Bank for its services in re-leasing the Property shall be paid to the City.

**(b) *Termination of Lease.*** If an Event of Default occurs and is continuing hereunder, the Bank at its option may either terminate this Lease Agreement and re-lease all or any portion of the Property, subject to the Site and Facility Lease. If the Bank terminates this Lease Agreement at its option and in the manner hereinafter provided due to a default by the City (and notwithstanding any re-entry upon the Property by the Bank in any manner whatsoever or the re-leasing of the Property), the City nevertheless agrees to pay to the Bank all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Bank from such re-leasing shall be applied by the Bank to Lease Payments due under this Lease Agreement. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Bank shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Bank shall have given written notice to the City of the election on the part of the Bank to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Property, or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Bank by such written notice.

**(c) *Proceedings at Law or In Equity.*** If an Event of Default occurs and continues hereunder, the Bank may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

**(d) *Remedies under the Site and Facility Lease.*** If an Event of Default occurs and continues hereunder, the Bank may exercise its rights under the Site and Facility Lease.

**Section 8.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Bank is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

**Section 8.04. Agreement to Pay Attorneys' Fees and Expenses.** If either party to this Lease Agreement defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of

moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

**Section 8.05. No Additional Waiver Implied by One Waiver.** If any agreement contained in this Lease Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

**Section 8.06. Judicial Reference.**

(a) *Judicial Reference.* The Bank and the City hereby agree: (i) each proceeding or hearing based upon or arising out of, directly or indirectly, this Lease Agreement, the Site and Facility Lease, the Property or any document related thereto, any dealings between the City and the Bank related to the subject matter of this Lease Agreement, the Site and Facility Lease or any related transactions, and/or the relationship that is being established hereunder between the City and the Bank (hereinafter, a “Claim”) shall be determined by a consensual general judicial reference (the “Reference”) pursuant to the provisions of Section 638 et seq. of the California Code of Civil Procedure, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either the Bank or the City, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee’s statement of decision will constitute the conclusive determination of the Claim. The Bank and the City agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before the Referee; (iii) the Bank and the City shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 8.06; (iv) either the Bank or the City, as applicable, may file the Referee’s findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee’s report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it; (v) the Authority and the City, as applicable, will each have such rights to assert such objections as are set forth in Section 638 et seq. of the California Code of Civil Procedure; and (vi) all proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(b) *Selection of Referee; Powers.* The parties to the Reference proceeding shall select a single neutral referee (the “Referee”), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten (10) years of judicial experience in civil matters. The Referee shall be appointed in accordance with Section 638 of the California Code of Civil Procedure (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the

parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the Merced County Superior Court, or of the U.S. District Court for the Eastern District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 8.06.

(c) *Provisional Remedies and Self Help.* No provision of this Section 8.06 shall limit the right of either the Bank or the City, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any Reference. The exercise of, or opposition to, any such remedy does not waive the right of the Bank or the City to the Reference pursuant to this Section 8.06(c).

(d) *Costs and Fees.* Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

## ARTICLE IX

### PREPAYMENT OF LEASE PAYMENTS

**Section 9.01. Security Deposit.** Notwithstanding any other provision of this Lease Agreement, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Bank or a fiduciary reasonably satisfactory to the Bank, in trust, an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Bank, which cash so held is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit C, or (b) invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be required to make Lease Payments or any prepayment in an amount which is sufficient, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Bank and addressed and delivered to the Bank), together with interest to accrue thereon and without reinvestment and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.03(a) or when due on any optional prepayment date under Section 9.02, as the City instructs at the time of said deposit; provided, however, that at or prior to the date on which any such security deposit is established, the City shall deliver to the Bank an opinion of Bond Counsel (in form and substance acceptable to the Bank) to the effect that any such security deposit will not adversely affect the excludability of the Interest Component of Lease Payments from gross income of the Bank for federal income tax purposes.

In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (i) the Term of this Lease Agreement shall continue, (ii) all obligations of the City under

this Lease Agreement, and all security provided by this Lease Agreement for said obligations, shall thereupon cease and terminate, excepting only (A) the obligation of the City to make, or cause to be made, all of the Lease Payments from such security deposit and, to the extent of any deficiency, as rent payable from other legally available funds of the City, and (B) the City's obligation to pay all unpaid Additional Payments, including amounts due under Section 7.03, including, but not limited to, the release and indemnification obligations of the City under subparagraphs (f) and (g) of Section 7.03, and (iii) under Section 4.05, the Bank's leasehold interest in the Property will vest in the City on the date of said deposit automatically and without further action by the City or the Bank. The City hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Bank. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement and, notwithstanding anything to the contrary herein, Lease Payments therefrom shall not be subject to abatement under Section 6.03 hereof to the extent payable from the funds held by the Bank or the fiduciary as described in the first sentence of this Section 9.01.

**Optional Prepayment.**

Upon thirty (30) days' prior written notice to the Bank, the City may prepay the Lease Agreement in full on any day from any lawfully available source of funds, by depositing with the Bank immediately available funds equal to a prepayment price equal to 100% of the unpaid Principal Components of the Lease Payments, together with accrued interest to the prepayment date, plus any amount of Lease Payments that were abated and that have not been otherwise paid from rental interruption insurance or other sources or paid during an extension of the lease term, together with a prepayment premium expressed as a percentage of the Principal Component to be prepaid in the amounts set forth in the following table:

<u>Prepayment Date</u>	<u>Prepayment Premium</u>
Closing Date to June 30, 20__	.00%
July 1, 20__ to June 30, 20__	.00%
July 1, 20__ to June 30, 20__	.00%
July 1, 20__, and thereafter	0.00%

If the City gives notice to the Bank of its intention to exercise such option but fails to deposit the required amount with the Bank on or prior to the prepayment date, the City will continue to pay the Lease Payments as if no such notice had been given. The City agrees that, if following such prepayment the Property is damaged or destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of abatement of such prepaid Lease Payments.

**Section 9.02. Mandatory Prepayment from Net Proceeds of Insurance or Eminent Domain.** The City shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part in such order of prepayment as shall be selected by the City on any date, together with any accrued and unpaid interest, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Property to be used for such purpose under Section 6.02. The City and the Bank hereby agree that such proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the City's obligations under this Section 9.03.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Notices.** Any notice, request, complaint, demand or other communication under this Lease Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City and the Bank may, by written notice to the other party, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:                   City of Atwater  
750 Bellevue Road  
Atwater, CA 95301  
Attention: Finance Director  
Phone: (209) 357-6310  
Facsimile: (209) 357-6364

If to the Bank:                   \_\_\_\_\_ Bank  
\_\_\_\_\_, Suite \_\_\_\_  
\_\_\_\_\_, California \_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_

**Section 10.02. Binding Effect.** This Lease Agreement inures to the benefit of and is binding upon the Bank, the City and their respective successors and assigns.

**Section 10.03. Severability.** If any provision of this Lease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

**Section 10.04. Net-net-net Lease.** This Lease Agreement is a “net-net-net lease” and the City hereby agrees that the Lease Payments are an absolute net return to the Bank, free and clear of any expenses, charges or set-offs whatsoever.

**Section 10.05. Further Assurances and Corrective Instruments.** The Bank and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

**Section 10.06. Applicable Law.** This Lease Agreement is governed by and construed in accordance with the laws of the State.

**Section 10.07. Partial Invalidity.** If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof; but the Bank shall retain all the rights and benefits accorded to it under any applicable provisions of law. The City hereby declares that it would have adopted this Lease Agreement and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

**Section 10.08. Captions.** The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Lease Agreement.

**Section 10.09. Execution in Counterparts.** This Lease Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

\* \* \* \* \*

IN WITNESS WHEREOF, the Bank and the City have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

\_\_\_\_\_ BANK,  
a \_\_\_\_\_

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

CITY OF ATWATER, CALIFORNIA

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

Attest:

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

## **EXHIBIT A**

### **DESCRIPTION OF THE SITE**

All that certain real property situated in the City of Atwater, County of Merced, State of California, described as follows:

PARCEL COMMONLY REFERRED TO AS FIRE STATION NO. 41; BEING APN: 003-075-001

ALL THAT CERTAIN PARCEL OF LAND SITUATED, LYING AND BEING IN SECTIONS 1 AND 12, TOWNSHIP 7 SOUTH, RANGE 12 EAST, M.D.B. &M., COUNTY OF MERCED, STATE OF CALIFORNIA, BEING ALL OF THAT CERTAIN 10590 ACRES PARCEL OF LAND DESCRIBED IN DEED DATED AUGUST 11, 1926 FROM MATTIE B. OSBORN, ET AL, TO CENTRAL PACIFIC RAILWAY COMPANY, RECORDED AUGUST 26, 1926 IN VOLUME 155, PAGE 364, OFFICIAL RECORDS OF MERCED COUNTY, AND MORE PARTICULARLY DESCRIBED THEREIN AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT OR BLOCK 1 OF THE C. C. MITCHAELL SUBDIVISION, AS SHOWN. ON MAP FILED APRIL 12, 1890, MERCED COUNTY RECORDS; THENCE NORTH 24°40' EAST ALONG THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 1243.50 FEET TO A POINT 76.5 FEET AT RIGHT ANGLES SOUTHERLY FROM THE NORTHWEST CORNER OF LOT 2 OF SAID SUB-DIVISION; THENCE NORTH 65°20' WEST, A DISTANCE OF 371.00 FEET TO A POINT; THENCE SOUTH 24°40' WEST, A DISTANCE OF 1243.50 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID BLOCK 1; THENCE SOUTH 65°20' EAST, ALONG SAID SOUTHERLY LINE OF BLOCK 1, A DISTANCE OF 371.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION GRANTED TO GENE C. KENEY AND IMOGENE J. KENEY, HUSBAND AND WIFE IN JOINT TENANCY BY DEED RECORDED OCTOBER 8, 1962, IN BOOK 1586 OF OFFICIAL RECORDS AT PAGE 909, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCEL B AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD MARCH 5, 1970, IN VOLUME 10 OF PARCEL MAPS AT PAGE 31, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCEL 1, 2 AND 3 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JANUARY 29, 1976, IN BOOK 29 OF PARCEL MAPS AT PAGE 7, MERCED COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCELS 1,2 AND 3 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JANUARY 4, 1978, IN VOLUME 35 OF PARCEL MAPS OF PAGE 36 MERCED COUNTY RECORD.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE EXTERIOR BOUNDARY LINES OF THAT CERTAIN MAP ENTITLED HIGH STREET SUBDIVISION, FILED FOR RECORD DECEMBER 28, 1979, IN VOLUME 26 OF OFFICIAL PLATS, AT PAGE 25, MERCED

COUNTY RECORDS.

ALSO EXCEPTING THEREFROM PARCELS 1 AND 2 AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JULY 13, 1989, IN BOOK 64 OF PARCEL MAPS AT PAGE 32, MERCED COUNTY RECORDS.

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PARCEL COMMONLY REFERRED TO AS FIRE STATION NO. 42; BEING APN: 005-080-045

PARCEL B, ACCORDING TO PARCEL MAP FOR STEINER DEVELOPMENT, RECORDED IN BOOK 95 OF PARCEL MAPS PAGES 43 AND 44, MERCED COUNTY RECORDS, BEING A SUBDIVISION OF ADJUSTED PARCEL 2 AS SHOWN ON THE MAP FOR "BUHACH HIGH SCHOOL/MELLO ALMOND RANCH" RECORDED IN BOOK 37 OF SURVEYS AT PAGE 44.

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PARCEL COMMONLY REFERRED TO AS COMMUNITY CENTER; BEING APN: 004-180-039

PARCEL 1 AS SHOWN ON PARCEL MAP FILED FOR RECORD FEBRUARY 3, 1989 IN BOOK 63 OF PARCEL MAPS, PAGES 29, AND 30, MERCED COUNTY RECORDS.

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PARCEL COMMONLY REFERRED TO AS CORPORATION YARD; BEING APN: 056-330-16

THE REMAINDER PARCEL, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF AIRPORT BUSINESS PARK SUBDIVISION", RECORDED JANUARY 13, 1995, IN VOLUME 45, OFFICIAL PLATS, PAGES 13 THRU 16 INCLUSIVE, IN THE OFFICE OF THE RECORDER OF SAID COUNTY OF MERCED.

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY**

Means those certain existing facilities and improvements presently existing on the Site, including the building, parking areas and related facilities, together with any permitted additions, replacements, modifications or other alterations thereto, and together with and including, all riparian rights, water and water rights, easements, rights-of-way, licenses, franchises, rights of service and use, and the construction of all permissible auxiliary work necessary or convenient for the foregoing.

**EXHIBIT C**

**SCHEDULE OF LEASE PAYMENTS**

<u>Lease Payment Date</u>	<u>Principal</u>	<u>Rate</u>	<u>Interest</u>	<u>Lease Payment</u>
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Totals

\$

\$

\$

## **EXHIBIT D**

### **CERTIFICATE OF BANK**

The undersigned hereby states and certifies, for and on behalf of, \_\_\_\_\_ Bank, a \_\_\_\_\_ (the "Bank"), with respect to the \$\_\_\_\_\_ aggregate principal amount of the City of Atwater, Series 2016 Lease Obligations (CalPERS Financing Project) (the "2016 Lease Obligation"), approved pursuant to Resolution No. \_\_\_\_ (the "Resolution"), adopted by the City Council of the City of Atwater (the "City") on April \_\_, 2016, and secured and consummated pursuant to a Site and Facilities Lease, dated as of May 1, 2016 (the "Site Lease"), by and between the City and the Bank, and pursuant to a Lease Agreement, dated as of May 1, 2016 (the "Lease Agreement," and together with the Site Lease, the "Lease Documents"), and as such, in connection with said 2016 Lease Obligation, the undersigned hereby acknowledges and represents that:

(i) the Bank is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was incorporated or formed and has the full legal right, power and authority to enter into the Lease Documents;

(ii) the Bank has sufficient knowledge and experience in financial and business matters, including municipal obligations similar to the 2016 Lease Obligation, to be able to evaluate the risks and merits of the 2016 Lease Obligation and is able to bear such economic risks;

(iii) the Bank understands that neither the 2016 Lease Obligation nor Lease Documents have been registered with any federal or state securities agency or commission; and further understands that the 2016 Lease Obligation and Lease Documents (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state; (b) will not be listed in any stock or other securities exchange; and (c) will not carry a rating from any rating service;

(iv) the Bank acknowledges that it has either been supplied with or has been given access to information to which a reasonable lender would attach significance in making lending decisions, and the Bank has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the legal, physical and fiscal condition of the City, and the City's financial statements and fund balances, as well as the insurance, security and prepayment arrangements set forth in the Lease Documents, so that, as a reasonable lender, the Bank has been able to make an informed decision to enter into the Lease Documents for the consummation of the 2016 Lease Obligation;

(v) the Bank understands and acknowledges that no official statement, offering memorandum or any disclosure document has been prepared, nor is any contemplated to be prepared;

(vi) the Bank acknowledges that there is no reserve fund required for the 2016 Lease Obligation;

(vii) the Bank understands that the 2016 Lease Obligation is not subject to the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended, and therefore the City has not undertaken, other than as provided in the Lease Documents, to provide to or for the benefit of owners of the 2016 Lease Obligation financial or operating data or any other information with respect to the City or the 2016 Lease Obligation on an ongoing basis;

(viii) the Bank has made its own inquiry and analysis with respect to the 2016 Lease Obligation and the security therefore, and other material factors affecting the security and payment of the 2016 Lease Obligation;

(ix) the Bank is either:

(a) an “accredited investor” as such term is defined in Rule 501(a) promulgated under the Securities Act of 1933, as amended (the “Securities Act”);

(b) a “qualified institutional buyer” as such term is defined in Rule 144A promulgated under the Securities Act; or

(c) a bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any qualified institutional buyer or on its own behalf);

(x) the Bank is purchasing the 2016 Lease Obligation for its own account as evidence of a financing transaction or for the account of institutions that meet the representations set forth herein, and not with a view to, and with no intention of, selling, pledging, transferring, conveying, hypothecating, mortgaging, disposing, reoffering, distributing, or reselling the 2016 Lease Obligation, or any part or interest thereof;

(xi) the Bank recognizes that the 2016 Lease Obligation involves significant risks, there is no established market for the 2016 Lease Obligation and that none is likely to develop and, accordingly, the Bank must bear the economic risk of the 2016 Lease Obligation for an indefinite period of time;

(xii) the Bank agrees that its right, title and interest in and to the Lease Documents and the 2016 Lease Obligation, with notice to the City, may be assigned and reassigned in whole (but not in part) to one or more assignees or subassignees by Bank, without the necessity of obtaining the consent of City, pursuant to the requirements of the Lease Agreement;

(xiii) the Bank further acknowledges that it is responsible for consulting with its advisors concerning any obligations, including, but not limited to, any obligations pursuant to federal and state securities and income tax laws it may have with respect to subsequent assignments or assignees of the 2016 Lease Obligation if and when any such future disposition of the 2016 Lease Obligation may occur;

(xiv) the Bank acknowledges that The Weist Law Firm (“Bond Counsel”) is acting as

bond counsel to the City, that Bond Counsel has no attorney-client relationship with the Bank, and that the Bank has sought legal advice from its own counsel to the extent it concluded legal advice was necessary.

Capitalized terms shall have the meaning set forth in the Lease Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the \_\_\_th day of May, 2016.

\_\_\_\_\_ BANK,  
a \_\_\_\_\_

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

**EXHIBIT E**

\$ \_\_\_\_\_

**CITY OF ATWATER  
SERIES 2016 REFUNDING LEASE OBLIGATION  
(CALPERS REFINANCING PROJECT)**

**REQUISITION NO. 1  
FOR DISBURSEMENT OF COSTS OF ISSUANCE SET-ASIDE FUNDS**

The undersigned, as Finance Director of the City of Atwater (the "City"), in connection with the execution and delivery of the above-captioned \$\_\_\_\_\_ aggregate principal amount of the City of Atwater, Series 2016 Lease Obligation (CalPERS Refinancing Project) (the "2016 Lease Obligation"), approved pursuant to Resolution No. \_\_\_\_ (the "Resolution"), adopted by the City Council of the City on April \_\_, 2016, and secured and consummated pursuant to a Site and Facility Lease, dated as of May 1, 2016, by and between the City and \_\_\_\_\_ Bank, a \_\_\_\_\_ (the "Bank"), and pursuant to a Lease Agreement, dated as of May 1, 2016 by and between the City and the Bank (the "Lease Agreement"), do hereby certify that:

(i) the undersigned is a duly Authorized Representative (as defined in the Resolution and Lease Agreement) with authority to act on behalf of the City as necessary in connection with execution and delivery of the 2016 Lease Obligation, and as such, is authorized to disburse money for the payment of Costs of Issuance (the "Costs of Issuance"), which moneys have been set aside by the Bank for the purpose of paying the Costs of Issuance (the "Costs of Issuance Funds");

(ii) the Bank is hereby instructed to pay to the parties listed on Exhibit A hereto the sum listed opposite such parties names as a payment for the items listed and the expenses incidental thereto from the Costs of Issuance Funds. These costs have been properly incurred, are each a proper charge under the Lease Agreement and have not been the basis of any previous disbursements; and

(iii) all payments shall be made by check or wire transfer in accordance with the payment instructions set forth in Exhibit A attached hereto or in invoices submitted in accordance herewith, and the Bank may rely on such payment instructions as though given by the City with no duty to investigate or inquire as to the authenticity of the invoice or the payment instructions contained therein.

Dated: May \_\_, 2016

**CITY OF ATWATER**

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

**EXHIBIT A**  
**REQUEST NO. 1**  
**COSTS OF ISSUANCE DISBURSEMENTS**

<b><u>Payee Name and Address</u></b>	<b><u>Purpose of Obligation</u></b>	<b><u>Amount</u></b>
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§ \_\_\_\_\_  
**CITY OF ATWATER**  
**SERIES 2016 REFUNDING LEASE OBLIGATION**  
**(CALPERS REFINANCING PROJECT)**

**CERTIFICATE OF ACCEPTANCE OF LEASE AGREEMENT**

This is to certify that the interest in real property conveyed by the Lease Agreement, dated as of May 1, 2016, from \_\_\_\_\_ Bank, a \_\_\_\_\_, as sublessor, to the City of Atwater, California, as sublessee (the "City"), as evidenced by the Memorandum of Lease Agreement recorded concurrently herewith, is hereby accepted by the undersigned officer on behalf of the City pursuant to authority conferred by resolution of the City Council of the City adopted on April \_\_, 2016, and the sublessee consents to recordation thereof by its duly authorized officer.

Dated as of May \_\_, 2016

CITY OF ATWATER, CALIFORNIA

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

§ \_\_\_\_\_  
**CITY OF ATWATER**  
**SERIES 2016 REFUNDING LEASE OBLIGATION**  
**(CALPERS REFINANCING PROJECT)**

**REFUNDING INSTRUCTIONS**

These REFUNDING INSTRUCTIONS (the “Instructions”) are dated as of May 1, 2016, and are given by the CITY OF ATWATER, a municipal corporation and general law city, duly organized and validly existing under the laws of the State of California (the “City”);

**WITNESSETH:**

**WHEREAS**, the City is obligated to the California State Public Employees’ Retirement System (“CalPERS”) under a certain contract, by and between the City and CalPERS, as amended from time to time (the “CalPERS Contract”), to make contributions to CalPERS in exchange for CalPERS providing retirement benefits for its retirees; and

**WHEREAS**, CalPERS determines, based on actuarial methods, a percentage rate of regular salary required to fund earned pension benefits, and if the total amount of accumulated contributions is less than the total forecasted cost of earned pension benefits, the difference represents an Unfunded Accrued Actuarial Liability (the “UAAL”); and

**WHEREAS**, to finance the prepayment of a portion of the UAAL, the City Council of the City (the “Council”) on April \_\_, 2016 adopted Resolution No. \_\_\_\_ (the “Resolution”), pursuant to which the City authorized and directed the execution and delivery its City of Atwater, Series 2016 Refunding Lease Obligation (CalPERS Refinancing Project) (the “Obligation”); and

**WHEREAS**, the Obligation in the amount of \$\_\_\_\_\_ (the “Obligation Proceeds”) is being made by \_\_\_\_\_ Bank, a \_\_\_\_\_ (the “Bank”), to the City in immediately available funds on May \_\_, 2016 (the “Closing Date”) pursuant to a Lease Agreement, dated as of May 1, 2016, by and between the Bank and the City (the “Lease Agreement”); and

**WHEREAS**, capitalized terms not otherwise defined herein will have the meanings ascribed to them in the Lease Agreement; and

**WHEREAS**, concurrently with the funding of the Obligation on the Closing Date, a portion of the Obligation Proceeds (i) in the amount of \$\_\_\_\_\_ will be transferred by the Bank directly to CalPERS, in accordance with the these Refunding Instructions, in satisfaction of a portion of the City’s obligations under the CalPERS Contract with respect to the Public Safety Employees Plan UAAL Obligations (the “Safety Plan Designated Proceeds”), and (ii) in the amount of \$\_\_\_\_\_ will be transferred by the Bank directly to CalPERS, in accordance with these Refunding Instructions, in satisfaction of a portion of the City’s obligations under the CalPERS Contract with respect to the Miscellaneous Employees Plan UAAL Obligations (the “Miscellaneous Plan Designated Proceeds”); and

**WHEREAS**, the City has full legal right, power, and authority to enter into and perform its duties under these Instructions; and

**WHEREAS**, the Bank acknowledges that these Instructions constitute irrevocable instructions by the City to apply the Safety Plan Designated Proceeds and the Miscellaneous Plan Designated Proceeds as set forth herein.

**NOW, THEREFORE**, in consideration of the above the City agrees as follows:

**Section 1.      Transfer and Application of Safety Plan Designated Proceeds.**

Concurrently with the funding of the Obligation on the date hereof, the Bank is hereby irrevocably instructed to wire the Safety Plan Designated Proceeds in the amount of the \$\_\_\_\_\_, directly to CalPERS in accordance with the following wire instructions:

WIRE INSTRUCTIONS:

ABA#0260-0959-3  
Bank of America Sacramento Main  
555 Capitol Mall, Suite 1555  
Sacramento, CA 95814  
For credit to State of California, CalPERS  
Account # \_\_\_\_\_

The City acknowledges that it has no right, title or interest in or to the Safety Plan Designated Proceeds, except as set forth herein. Under no circumstances shall the Safety Plan Designated Proceeds be paid or delivered to or for the order of the City, except as set forth herein. The City hereby waives any rights that it may have to give alternative instructions as to the Safety Plan Designated Proceeds.

**Section 2.      Transfer and Application of Miscellaneous Plan Designated Proceeds.**

Concurrently with the funding of the Obligation on the date hereof, the Bank is hereby irrevocably instructed to wire the Miscellaneous Plan Designated Proceeds in the amount of the \$\_\_\_\_\_, directly to CalPERS in accordance with the following wire instructions:

WIRE INSTRUCTIONS:

ABA#0260-0959-3  
Bank of America Sacramento Main  
555 Capitol Mall, Suite 1555  
Sacramento, CA 95814  
For credit to State of California, CalPERS  
Account # \_\_\_\_\_

The City acknowledges that it has no right, title or interest in or to the Miscellaneous Plan Designated Proceeds, except as set forth herein. Under no circumstances shall the Miscellaneous Plan Designated Proceeds be paid or delivered to or for the order of the City, except as set forth herein. The City hereby waives any rights that it may have to give alternative instructions as to the Miscellaneous Plan Designated Proceeds.

**Section 3.      Termination; Unclaimed Money.** These Instructions shall terminate when the Safety Plan Designated Proceeds and the Miscellaneous Plan Designated Proceeds have been transferred and received by the CalPERS, as provided herein.



**Section 7. Counterparts.** These Instructions may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same Instructions.

IN WITNESS WHEREOF, the City has each executed these Irrevocable Refunding Instructions as of the date first above written.

CITY OF ATWATER

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

Acknowledged and Agreed:

\_\_\_\_\_ BANK,  
as Bank

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

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

April 18, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of April 25, 2016

**APPROVING AN AGREEMENT FOR THE PURCHASE AND SALE OF  
POTABLE WATER FOR MERCED COUNTY'S EMERGENCY WATER  
DISTRIBUTION PROGRAM("EWDP")**

**RECOMMENDATION:**

It is recommended that the City Council consider:

1. Approving an agreement with The Confidence Ridge Company, LLC and with Bezak Liquid Transport, in a form approved by the City Attorney, for the purchase and sale of potable water for Merced County's Emergency Water Distribution Program ("EWDP").
2. Authorizing and directing the Mayor to execute the Agreements on behalf of the City.

**BACKGROUND:**

At the regular City Council Meeting of December 14, 2015, Sam Palmer from Self Help Enterprises presented some information to the City Council regarding the Emergency Water Distribution Program that was developed by Merced County in an effort to provide emergency potable water supplies to residents of Merced County whose domestic water wells have failed. Subsequently, the City Council authorized staff to develop an agreement(s) with water hauling purveyors for the purpose of providing emergency potable water supplies to residents of Merced County within the 95301 zip code, who have been approved to participate in the EWDP.

**ANALYSIS:**

As part of the Emergency Water Distribution Program, numerous water sources within the Merced County, both public and private, have been engaged to sell water to recognized water haulers for the purpose of providing potable water to households who have experienced the failure of their domestic water wells due to the severe drought conditions that continue to exist throughout the County and throughout the State.

The Confidence Ridge Company, LLC and Bezak Liquid Transport are recognized local water haulers who are currently participating in the EWDP for the transport and delivery of emergency water services to residents within Merced County. Over the course of the past few months, Staff and Mr. Palmer have worked with the City Attorney for the purpose of developing a separate, but similar agreement with the two water haulers that are referenced above. (EXHIBITS "A" and "B")

Based on recent data provided by Mr. Palmer, approximately 15 families which total 53 individuals, represent the amount of people who reside within the 95301 zip code that are

currently being served by the EWDP. In addition, Mr. Palmer has indicated that the affected families are utilizing an average of 18,520 gallons of water per week. However, these figures may be subject to change as these families secure the necessary funding and services from a well drilling company to resolve their situation. Based upon the current need, staff recommends that each of the two (2) agreements be limited 10,000 gallons of potable water per week during the term of the agreement. As per the City's current schedule of fees, the water haulers will be required to pay a \$524.00 hydrant/meter deposit, a \$45.00 fee for installation of the meter and charged \$5.00 for every 1000 gallons of water used.

**FISCAL IMPACT:**

The exact fiscal impact is currently unknown and will be based upon the actual number of gallons of water that is purchased from the City to support the Emergency Water Distribution Program.

**CONCLUSION:**

This staff report is submitted for City Council consideration and possible action.

Respectfully submitted,

*Patrick E. Faretta*

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Patrick E. Faretta  
Interim Public Works Director

## WATER PURCHASE AND SALE AGREEMENT

This Water Purchase and Sale Agreement (“Agreement”) is entered into by and between the City of Atwater, a California municipal corporation (“City”) and Bezak Liquid Transport (“Hauler”). Each party to this Agreement shall be referred to individually as a “Party” and collectively as “Parties.” This Agreement shall be effective on and after the date it is signed by all Parties (the “Effective Date”).

### RECITALS

A. WHEREAS, Hauler is in the business of purchasing water from individuals and entities and then transporting, selling and delivering said water to Merced County residents that have been approved through Merced County’s Emergency Water Distribution Program (“EWDP”); and

B. WHEREAS, on or about July 7, 2015, Merced County developed the EWDP to provide temporary water distribution systems to those Merced County residents whose home wells have gone dry as a result of the local drought conditions; and

C. WHEREAS, Hauler seeks to acquire alternative water sources during drought conditions for use by residents of Merced County within the 95301 zip code, who have been approved to participate in the EWDP; and

D. WHEREAS, this Agreement has been undertaken to mitigate drought conditions for which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code and shall not be subject to Division 13 (commencing with section 21000) of the Public Resources Code; and

E. WHEREAS, the purpose of this Agreement is to set forth the terms and conditions by which City may supply water to Hauler in accordance with the EWDP, on a temporary basis, when drought conditions exist.

NOW, THEREFORE, the Parties agree as set forth below.

### AGREEMENT

For valuable consideration, receipt of which is hereby acknowledged, including the promises and payments described in this Agreement, the Parties agree as follows:

1. **No Transfer of Water Rights or Entitlements.** City and Hauler acknowledge and agree that City’s sale of water pursuant to the terms of this Agreement in no way contemplates the transfer, whether permanent or otherwise, of any or all of City’s entitlement(s) or rights, whether contractual or otherwise, to any water right(s) or water supply that City holds as of the date of this Agreement and that Hauler is not acquiring any present or future right or entitlement, permanent or otherwise, to receive water from City or City’s sources of water.

2. **Delivery and Cost of Water to Hauler.**

a. City will make available to Hauler up to Ten Thousand (10,000) gallons per week of water (“Water”) from the effective date of this Agreement, through August 5, 2016, pursuant to a written schedule which shall be mutually approved and executed by the Parties’ managerial staff within ten (10) days of the Effective Date (“Delivery Schedule”). The Delivery Schedule shall provide for all

deliveries to be made only during City's non-peak water-use hours and, in particular, such transfers must occur between 9:00 A.M. and 4:00 P.M., Monday - Thursday.

b. Hauler shall be responsible for the safe transportation of all Water transferred under this Agreement in an appropriate transport vehicle, such as a tanker truck. The point of delivery for the Water to Hauler shall be a water meter located at the fire hydrant assigned by City staff, which shall be identified in the Delivery Schedule, where the water shall be loaded by Hauler onto its transport vehicle(s). Transfer of ownership, responsibility, and risk of loss for the Water shall occur upon exit of the Water from said water meter. City may, and Hauler shall, monitor the amount of Water delivered to Hauler during the term of this Agreement through the use of a City issued water meter. Hauler shall keep detailed records of the amount of Water delivered and shall provide copies of the water meter reports to the City every Monday during the term of this Agreement.

c. Hauler shall be responsible for ensuring the quality and potability of the Water, and for ensuring that the Water is only delivered to residents of Merced County within the 95301 zip code, who have been approved to participate in the EWDP.

d. Hauler shall compensate City for the actual amount of Water provided by City to Hauler at the Point of Delivery, at the rate of five dollars (\$5.00 USD) per one thousand (1,000) gallons in addition to a refundable hydrant/meter use deposit of five hundred twenty-four dollars (\$524.00 USD) and a one-time meter installation charge of forty-five dollars (\$45.00 USD). ("Water Charges"). All Water Charges shall be due the first (1<sup>st</sup>) day of each calendar month for the Water delivered the previous month. All payments for the Water Charges shall be accompanied by a statement identifying the quantity of Water delivered and the Water Charges. The Parties agree that City's actual cost for the delivered water may vary and, accordingly, may be adjusted upon prior written notice from City at least ten (10) business days before the effective date of the rate increase, especially if unanticipated expenses are incurred by City.

e. Notwithstanding any other provision of this Agreement, the City shall not be obligated under this Agreement to supply any water to Hauler after August 5, 2016, unless this Agreement is extended in a separate writing signed by both Parties. No notice shall be required from City prior to discontinuing supply water under the terms of this Agreement.

f. Notwithstanding any other provision in this Agreement, City may, at any time, immediately suspend the sale of Water under this Agreement if, in the sole discretion of City, it is believed that water which would otherwise be sold should be preserved for use by customers of City.

### 3. **Approvals.**

a. Hauler shall be responsible for the cost of obtaining any and all approvals legally required for the purchase, sale, transfer and delivery of Water under this Agreement.

b. The performance by both Parties to this Agreement is contingent upon approval of the governing body of City and any other state or federal agency from whom approval is required prior to the sale and transfer of Water.

4. **Notices.** All payments, notices, requests and other communication under this Agreement shall be in writing, and shall be deemed to have been duly given on the date of delivery if personally delivered to the Party to whom it is to be given, or on the second day after mailing if mailed to the Party to whom it is to be given by first class mail, postage prepaid, and properly addressed to the following addresses or such other addresses as the Parties designate in writing:

City: City Manager  
City of Atwater  
750 Bellevue Road  
Atwater, California 95301

Hauler: Fred Youngren  
Bezak Liquid Transport  
Post Office Box 541  
5062 West Whitlock Road  
Mariposa, California 95338

5. **Further Assurances.** From and after the Effective Date, the Parties shall cooperate in good faith with the each other in taking such actions, executing such instruments and granting such rights as may be reasonably necessary to effectuate the purposes of the Parties in entering into this Agreement and to perfect the rights granted hereunder.

6. **Miscellaneous.**

a. **Warranty.** Each signatory hereto warrants that the signatory has authority to enter into this Agreement on behalf their respective Party.

b. **Indemnification.** Hauler agrees to protect, defend, indemnify and hold harmless City, its officers, agents, servants, employees, City Council members, and consultants from and against any and all loses, claims, liens, demands and causes of action of every kind and character, personal injuries, death and/or damage to property, and without limitation by enumeration, all other claims or demands of every character occurring, or in any way related to, connected with, or arising directly or indirectly out of the performance or non-performance of the terms of this Agreement. This indemnification obligation includes any action by any person, entity, or governmental agency against City, whether for damages, civil penalties, administrative, equitable and/or declaratory relief, concerning any alleged harm to the claimant(s) or the claimant(s)' water rights, a misappropriation of water or violation of any law or regulation arising from or relating to performance of the terms of this Agreement. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement, water supplied hereunder or any extension of this Agreement.

c. **Contentions.** Consistent with the provisions of Water Code §§ 475 and 1244, the Parties agree that neither this transfer nor this Agreement is evidence of the availability of additional or surplus water or lack of beneficial use by City of the Water involved in this Agreement, and neither Party shall contend otherwise.

d. **No Warranty or Guarantee of Water Quality.** The City shall not be required to test, monitor or report the quality of the Water to or for the benefit of Hauler. The Parties agree that City cannot and does not guaranty or warranty the quality of the Water, and that the Water sold to Hauler under to this Agreement is sold as-is. Any minimum water quality obligations existing between Hauler and its end-user(s) is and shall remain the ultimate responsibility of Hauler.

e. **Integration.** This Agreement contains the entire agreement between the Parties relating to the subject matter of this Agreement. Each Party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, relating to the terms of this Agreement have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other agreement, statement or promise relating to the terms of this Agreement which are not contained in this Agreement shall be valid or binding. Any oral representations or modifications concerning this Agreement shall be of no force and effect. This Agreement may be modified or amended only in a writing signed by the Parties.

f. Governing Law and Place of Execution. This Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of California. The Parties agree that for all purposes, this Agreement shall be deemed to have been executed and is required to be performed in Merced County, California.

g. Severability. If any provision of this Agreement is deemed by a Court of competent jurisdiction to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

h. Section Headings. Section headings used in this Agreement are for convenience only, are not part of the Agreement, and shall not affect any of the terms hereof.

i. Attorneys' Fees and Costs. In the event of any controversy, claim or dispute relating to this Agreement, or the performance or nonperformance of any provision hereof, in which the services of an attorney, mediator, arbitrator or expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including, without limitation, reasonable attorneys' fees, costs and expert fees, in addition to all other amounts awarded by the court, arbitrator or mediator.

j. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the Parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

k. Delivery by Electronic Means. Duly executed signatures to this Agreement may be delivered by facsimile or e-mail, and signature pages delivered by such methods shall be deemed equivalent to, and of the same force and effect as, original signature pages.

l. Successors and Assigns. This Agreement is binding on the successors and assigns of the Parties.

Accepted and agreed to:

City of Atwater, a California municipal corporation

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
By: James E. Price  
Its: Mayor

Bezak Liquid Transport

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
By: Fred Youngren  
Its: Owner

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
By: Thomas H. Terpstra  
Its: City Attorney

## WATER PURCHASE AND SALE AGREEMENT

This Water Purchase and Sale Agreement (“Agreement”) is entered into by and between the City of Atwater, a California municipal corporation (“City”) and The Confidence Ridge Company, LLC, a California limited liability Company (“Hauler”). Each party to this Agreement shall be referred to individually as a “Party” and collectively as “Parties.” This Agreement shall be effective on and after the date it is signed by all Parties (the “Effective Date”).

### RECITALS

A. WHEREAS, Hauler is in the business of purchasing water from individuals and entities and then transporting, selling and delivering said water to Merced County residents that have been approved through Merced County’s Emergency Water Distribution Program (“EWDP”); and

B. WHEREAS, on or about July 7, 2015, Merced County developed the EWDP to provide temporary water distribution systems to those Merced County residents whose home wells have gone dry as a result of the local drought conditions; and

C. WHEREAS, Hauler seeks to acquire alternative water sources during drought conditions for use by residents of Merced County within the 95301 zip code, who have been approved to participate in the EWDP; and

D. WHEREAS, this Agreement has been undertaken to mitigate drought conditions for which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code and shall not be subject to Division 13 (commencing with section 21000) of the Public Resources Code; and

E. WHEREAS, the purpose of this Agreement is to set forth the terms and conditions by which City may supply water to Hauler in accordance with the EWDP, on a temporary basis, when drought conditions exist.

NOW, THEREFORE, the Parties agree as set forth below.

### AGREEMENT

For valuable consideration, receipt of which is hereby acknowledged, including the promises and payments described in this Agreement, the Parties agree as follows:

1. **No Transfer of Water Rights or Entitlements.** City and Hauler acknowledge and agree that City’s sale of water pursuant to the terms of this Agreement in no way contemplates the transfer, whether permanent or otherwise, of any or all of City’s entitlement(s) or rights, whether contractual or otherwise, to any water right(s) or water supply that City holds as of the date of this Agreement and that Hauler is not acquiring any present or future right or entitlement, permanent or otherwise, to receive water from City or City’s sources of water.

2. **Delivery and Cost of Water to Hauler.**

a. City will make available to Hauler up to Ten Thousand (10,000) gallons per week of water (“Water”) from the effective date of this Agreement, through August 5, 2016, pursuant to a written schedule which shall be mutually approved and executed by the Parties’ managerial staff within ten (10) days of the Effective Date (“Delivery Schedule”). The Delivery Schedule shall provide for all

deliveries to be made only during City's non-peak water-use hours and, in particular, such transfers must occur between 9:00 A.M. and 4:00 P.M., Monday - Thursday.

b. Hauler shall be responsible for the safe transportation of all Water transferred under this Agreement in an appropriate transport vehicle, such as a tanker truck. The point of delivery for the Water to Hauler shall be a water meter located at the fire hydrant assigned by City staff, which shall be identified in the Delivery Schedule, where the water shall be loaded by Hauler onto its transport vehicle(s). Transfer of ownership, responsibility, and risk of loss for the Water shall occur upon exit of the Water from said water meter. City may, and Hauler shall, monitor the amount of Water delivered to Hauler during the term of this Agreement through the use of a City issued water meter. Hauler shall keep detailed records of the amount of Water delivered and shall provide copies of the water meter reports to the City every Monday during the term of this Agreement.

c. Hauler shall be responsible for ensuring the quality and potability of the Water, and for ensuring that the Water is only delivered to residents of Merced County within the 95301 zip code, who have been approved to participate in the EWDP.

d. Hauler shall compensate City for the actual amount of Water provided by City to Hauler at the Point of Delivery, at the rate of five dollars (\$5.00 USD) per one thousand (1,000) gallons in addition to a refundable hydrant/meter use deposit of five hundred twenty-four dollars (\$524.00 USD) and one-time meter installation charge of forty-five dollars (\$45.00 USD). ("Water Charges"). All Water Charges shall be due the first (1<sup>st</sup>) day of each calendar month for the Water delivered the previous month. All payments for the Water Charges shall be accompanied by a statement identifying the quantity of Water delivered and the Water Charges. The Parties agree that City's actual cost for the delivered water may vary and, accordingly, may be adjusted upon prior written notice from City at least ten (10) business days before the effective date of the rate increase, especially if unanticipated expenses are incurred by City.

e. Notwithstanding any other provision of this Agreement, the City shall not be obligated under this Agreement to supply any water to Hauler after August 5, 2016, unless this Agreement is extended in a separate writing signed by both Parties. No notice shall be required from City prior to discontinuing supply water under the terms of this Agreement.

f. Notwithstanding any other provision in this Agreement, City may, at any time, immediately suspend the sale of Water under this Agreement if, in the sole discretion of City, it is believed that water which would otherwise be sold should be preserved for use by customers of City.

### 3. **Approvals.**

a. Hauler shall be responsible for the cost of obtaining any and all approvals legally required for the purchase, sale, transfer and delivery of Water under this Agreement.

b. The performance by both Parties to this Agreement is contingent upon approval of the governing body of City and any other state or federal agency from whom approval is required prior to the sale and transfer of Water.

4. **Notices.** All payments, notices, requests and other communication under this Agreement shall be in writing, and shall be deemed to have been duly given on the date of delivery if personally delivered to the Party to whom it is to be given, or on the second day after mailing if mailed to the Party to whom it is to be given by first class mail, postage prepaid, and properly addressed to the following addresses or such other addresses as the Parties designate in writing:

City: City Manager  
City of Atwater  
750 Bellevue Road  
Atwater, California 95301

Hauler: Craig Case  
The Confidence Ridge Company, LLC  
Post Office Box 1304  
Twain Harte, California 95383

5. **Further Assurances.** From and after the Effective Date, the Parties shall cooperate in good faith with the each other in taking such actions, executing such instruments and granting such rights as may be reasonably necessary to effectuate the purposes of the Parties in entering into this Agreement and to perfect the rights granted hereunder.

6. **Miscellaneous.**

a. **Warranty.** Each signatory hereto warrants that the signatory has authority to enter into this Agreement on behalf their respective Party.

b. **Indemnification.** Hauler agrees to protect, defend, indemnify and hold harmless City, its officers, agents, servants, employees, City Council members, and consultants from and against any and all loses, claims, liens, demands and causes of action of every kind and character, personal injuries, death and/or damage to property, and without limitation by enumeration, all other claims or demands of every character occurring, or in any way related to, connected with, or arising directly or indirectly out of the performance or non-performance of the terms of this Agreement. This indemnification obligation includes any action by any person, entity, or governmental agency against City, whether for damages, civil penalties, administrative, equitable and/or declaratory relief, concerning any alleged harm to the claimant(s) or the claimant(s)' water rights, a misappropriation of water or violation of any law or regulation arising from or relating to performance of the terms of this Agreement. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement, water supplied hereunder or any extension of this Agreement.

c. **Contentions.** Consistent with the provisions of Water Code §§ 475 and 1244, the Parties agree that neither this transfer nor this Agreement is evidence of the availability of additional or surplus water or lack of beneficial use by City of the Water involved in this Agreement, and neither Party shall contend otherwise.

d. **No Warranty or Guarantee of Water Quality.** The City shall not be required to test, monitor or report the quality of the Water to or for the benefit of Hauler. The Parties agree that City cannot and does not guaranty or warranty the quality of the Water, and that the Water sold to Hauler under to this Agreement is sold as-is. Any minimum water quality obligations existing between Hauler and its end-user(s) is and shall remain the ultimate responsibility of Hauler.

e. **Integration.** This Agreement contains the entire agreement between the Parties relating to the subject matter of this Agreement. Each Party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, relating to the terms of this Agreement have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other agreement, statement or promise relating to the terms of this Agreement which are not contained in this Agreement shall be valid or binding. Any oral representations or modifications concerning this Agreement shall be of no force and effect. This Agreement may be modified or amended only in a writing signed by the Parties.

f. Governing Law and Place of Execution. This Agreement shall in all respects be interpreted, enforced and governed by the laws of the State of California. The Parties agree that for all purposes, this Agreement shall be deemed to have been executed and is required to be performed in Merced County, California.

g. Severability. If any provision of this Agreement is deemed by a Court of competent jurisdiction to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

h. Section Headings. Section headings used in this Agreement are for convenience only, are not part of the Agreement, and shall not affect any of the terms hereof.

i. Attorneys' Fees and Costs. In the event of any controversy, claim or dispute relating to this Agreement, or the performance or nonperformance of any provision hereof, in which the services of an attorney, mediator, arbitrator or expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including, without limitation, reasonable attorneys' fees, costs and expert fees, in addition to all other amounts awarded by the court, arbitrator or mediator.

j. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the Parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

k. Delivery by Electronic Means. Duly executed signatures to this Agreement may be delivered by facsimile or e-mail, and signature pages delivered by such methods shall be deemed equivalent to, and of the same force and effect as, original signature pages.

l. Successors and Assigns. This Agreement is binding on the successors and assigns of the Parties.

Accepted and agreed to:

City of Atwater, a California municipal corporation

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
By: James E. Price  
Its: Mayor

The Confidence Ridge Company, LLC, a California  
limited liability Company

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
By: Craig Case  
Its: Owner

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
By: Thomas H. Terpstra  
Its: City Attorney

## CHAPTER 13.13 - WATER CONSERVATION PROGRAM

Footnotes:

--- (3) ---

**Editor's note**—Ord. CS 966, § 3, adopted May 26, 2015, repealed the former Ch. 13.13, §§ 13.13.010—13.13.040, and enacted a new chapter as set out herein. The former Ch. 13.13 pertained to similar subject matter and derived from Ord. CS 906, § 2, adopted June 8, 2009; and Ord. CS 953, §§ 1—3, adopted April 28, 2014.

### 13.13.010 - Purpose.

The purpose of this chapter is to promote the efficient use and reuse of water by all City of Atwater water service customers by requiring that all new construction projects and existing customers use water as efficiently as possible and comply with new development standards, landscape water use efficiency standards and water waste prohibition regulations.

(Ord. CS 966, § 3, 5-26-2015)

### 13.13.020 - Rules and regulations.

These provisions shall apply to all persons using water in the City regardless of whether any person using water shall have a contract for water service with the City.

(Ord. CS 966, § 3, 5-26-2015)

### 13.13.030 - Prohibited uses—Mandatory.

The Water Conservation Program shall be in effect year-round.

The following uses, methods, types or techniques of the use of water are hereby determined and declared nonessential and are prohibited:

#### A. All Users.

1. Water abuse is prohibited. It shall be unlawful for any person to knowingly or willingly cause or allow any water delivered by the City water system and received by such person to become water waste runoff and to flow away from property owned or occupied by such person in any gutter, ditch or other manner over the surface of the ground. The definition of water abuse is excessive water flowing over the curb resulting in water running in the gutter a distance of 50 feet or directly into a catch basin.

Water waste runoff shall mean water flowing away from property caused by excessive application(s) of water delivered by the City water system beyond reasonable or practical flow rates, water volumes or duration of application.

2. Broken or defective plumbing, sprinklers, watering or irrigation systems which permit the escape or leakage of water are prohibited. Repair all water leaks within five days of notification by the City Public Works Department unless other arrangements are made with the City Public Works Department.

3. The use of water in any manner which causes, allows or permits the flooding of any premises, or any portion thereof, is prohibited.
  4. All uses of non-potable water without the permission of the Public Works Department are prohibited.
  5. Stop washing down paved surfaces, including but not limited to sidewalks, driveways, parking lots, tennis courts, or patios, except when it is necessary to alleviate safety or sanitation hazards, in which case, such areas shall be washed from water contained in a bucket or container not exceeding five gallons in capacity.
  6. Use a hand-held hose equipped with a positive shut-off nozzle or bucket to water landscaped areas, including trees and shrubs located on residential and commercial properties that are not irrigated by a landscape irrigation system.
  7. Stop operating ornamental fountains or similar decorative water features unless recycled water is used.
  8. Wash vehicles using a bucket, not exceeding five gallons in capacity, and a hand-held hose with positive shut-off nozzle, mobile high pressure/low volume wash system, or at a commercial site that re-circulates (reclaims) water on-site. Avoid washing during hot conditions when additional water is required due to evaporation.
  9. Serve and refill water in restaurants and other food service establishments only upon request.
  10. Offer guests in hotels, motels, and other commercial lodging establishments the option of not laundering towels and linens daily.
  11. Initial filling of swimming pools or otherwise of the full capacity of a pool over 2,500 gallons is prohibited. Emptying and refilling all pools is prohibited.
  12. The application of water from public water supply to outdoor landscapes during or within 48 hours after any measurable rainfall is prohibited.
- B. Gardens and Landscaping. Consumers shall not irrigate any lawn or landscaped area between the hours of 7:00 a.m. and 7:00 p.m. on any day of the week.
1. Even numbered addresses are assigned watering days on Tuesdays and Saturdays.
  2. Odd numbered addresses are assigned watering days on Sundays and Wednesdays.
  3. Watering on Mondays, Thursdays, and Fridays is prohibited.
  4. This section shall not apply to commercial growers or nurseries.
- C. New Planting. Notwithstanding the prohibitions contained in subsection B of this section, new lawns, ground covers, or bedding plants may be watered every day between 7:00 p.m. and 7:00 a.m. provided the following conditions are met:
1. New lawns, ground covers, or bedding shall not include reseeding of existing lawns or replacement of existing ground cover, or bedding plants, and shall be newly rototilled earth.
  2. The Public Works Director may impose such other restrictions as are deemed necessary to prevent the waste of water.

(Ord. CS 966, § 3, 5-26-2015)

#### 13.13.040 - Enforcement and penalties.

- A. Any violation of this chapter is declared a public nuisance and the following penalties shall apply to such violations:

1. Each violation of this chapter may be prosecuted as a misdemeanor punishable by imprisonment in the County jail for not more than 30 days or by a fine not exceeding \$1,000.00, or by both as provided in Water Code § 377.
  2. Each day that a violation of this chapter occurs is a separate offense.
  3. Administrative penalties may be levied for each violation of a provision of this chapter in accordance with Water Code §§ 71590 and 71600 as follows:
    - a. For the first violation of this chapter, the consumer shall be issued an administrative citation with a warning.
    - b. For the second violation of this chapter within a period of one year, the consumer shall be issued an administrative citation in the amount of \$50.00.
    - c. For the third violation of this chapter within a period of one year, the consumer shall be issued an administrative citation in the amount of \$75.00.
    - d. For the fourth violation of this chapter, and any subsequent violation within a period of one year, the consumer shall be issued an administrative citation in the amount of \$250.00. In addition, as part of the penalty for the fourth violation, the consumer and the property owner, if different than the consumer, shall be notified that the City will be installing a water meter, if one does not already exist, at the property owner's expense. The consumer or property owner will have the right to appeal the placement of the water meter on said property pursuant to subsection B. below.
  4. The foregoing provisions are cumulative and in addition to any other remedies or penalties authorized or imposed under any other provision of this Code or other applicable law or regulation.
- B. Right to Appeal.
1. The person receiving an administrative citation under this chapter shall have the right of appeal prior to the imposition of any penalty fee. The appeal hearing shall be informal and held before a hearing officer appointed by the City Manager, who shall make the final administrative determination regarding the matter.
  2. The person receiving an administrative citation under this chapter must request an appeal hearing, in writing, within ten days from the date the administrative citation was served. The request for hearing shall be addressed to the City Clerk who will assign a hearing officer. Failure to properly serve a request for hearing within the ten-day period shall be deemed a waiver of rights to appeal the matter, and the penalty fee will become final and subject to collection.
  3. The hearing officer shall give written notice and issue a decision in accordance with Section 8.32.080 of this Code.
- C. Enforcement. The Public Works Director, or his/her designee(s), shall be responsible for the enforcement of this chapter.

(Ord. CS 966, § 3, 5-26-2015)