

**CITY OF ATWATER**  
**CITY COUNCIL**  
**AND**  
**SUCCESSOR AGENCY TO THE ATWATER**  
**REDEVELOPMENT AGENCY**  
**AGENDA**

**May 9, 2016**

REGULAR SESSION: (Council Chambers)

**6:00 PM**

CALL TO ORDER:



PLEDGE OF ALLEGIANCE TO THE FLAG:

INVOCATION:

**Invocation by Police Chaplain McClellan**

ROLL CALL: (City Council/Governing Board)

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

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.

PRESENTATIONS:

- **Monthly verbal report by Merced County District 3 Supervisor McDaniel**

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. May 9, 2016**

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

MINUTES: (City Council)

- 2. a) Adjourned meeting, April 25, 2016**  
**b) Regular meeting, April 25, 2016**

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

AGREEMENTS:

- 3. Approving Amendment No. 1 to Professional Services Agreement with VVH Consulting Engineers, Inc. for the Fruitland Avenue Reconstruction Project (Community Development Director McBride)**

**Staff's Recommendation:** Approval of Amendment No. 1 to the Professional Services Agreement with VVH Consulting Engineers, Inc. for the Fruitland Avenue Reconstruction Project; and authorizes and directs the City Manager to execute the amendment on behalf of the City.

RESOLUTIONS:

4. **Calling, giving notice of, and consolidating the 2016 General Municipal Election** (City Clerk Del Real)

**Staff's Recommendation:** Adoption of Resolution No. 2885-16 calling and giving notice of the holding of a General Municipal Election to be held on Tuesday, November 8, 2016 for the election of the City Clerk, the City Treasurer, and two (2) Members of the City Council, as required by the provisions of the laws of the State of California relating to General Law Cities; and requesting the Board of Supervisors of the County of Merced consolidate a General Municipal Election to be held on November 8, 2016 with the Statewide General Election to be held on the date pursuant to Section 10403 of the Election Code.

5. **Consenting to inclusion of City of Atwater properties in the CSCDA Open Pace Program** (Community Development Director McBride)

**Staff's Recommendation:** Adoption of Resolution No. 2884-16 consenting to inclusion of properties within the City of Atwater's jurisdiction in the CSCDA Open Pace Program; and authorizes and directs the City Manager to execute any documents relating to participation on behalf of the City.

REPORTS:

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

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

INFORMATIONAL ITEMS ONLY (NO ACTION REQUIRED):

7. **Police Department activities and projects for the month of April, 2016** (Police Lieutenant Joseph)
8. **Fire Department activities and projects for the month of April, 2016** (CAL FIRE Battalion Chief Pimentel)
9. **Public Works Department activities and projects for the month of April, 2016** (Interim Public Works Director Faretta)

REPORTS AND PRESENTATIONS FROM STAFF:

10. **Refinancing CalPERS Side Fund for 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 transfer of Government Use Properties from the former Atwater Redevelopment Agency to the City of Atwater** (Community Development Director McBride)

**Staff's Recommendation:** Motion to adopt Resolution No. SA 2016-02 approving the transfer of real property to the City of Atwater; and Resolution No. 2883-16 accepting the transfer of real property from the Successor Agency to the Atwater Redevelopment Agency to the City of Atwater; or

Motion to approve staff's recommendation as presented.

12. **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)

**Staff's Recommendation:** Motion to approve Memorandum of Understanding setting forth certain items of agreement among agencies within the Merced Groundwater Subbasin following the Sustainable Groundwater Management Act; and authorizing and directing the Mayor to execute the Memorandum of Understanding, in a form approved by the City Attorney, on behalf of the City; or

Motion to approve staff's recommendation as presented.

CITY COUNCIL MATTERS:

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

ADJOURNMENT:

CERTIFICATION:

I, Jeanna Del Real, City Clerk/Secretary 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/SECRETARY

AB 23 NOTICE:

*Pursuant to Government Code Section 54952.3, City Council is not receiving additional compensation for serving as members of the Successor Agency to the Atwater Redevelopment Agency.*

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).*

~ 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					

~ June 2016 ~

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

# WARRANTS SUMMARY FOR MAY 9, 2016 COUNCIL MEETING

TOTAL OF WARRANTS (FROM WARRANT REPORT)

\$ 368,776.77

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

DATE	DESCRIPTION	AMOUNT
4/25/2016	Prewrittens included in this current warrant run.	(\$111,258.73)
5/2/2016	PERS Retirement EFT 4/7/16 - 4/20/16	\$41,576.77
4/26/2016	Retiree Medical Reimbursement-MAY 2016	\$28,622.58
5/2/2016	AFLAC-APRIL 2016	\$789.30
5/3/2016	PERS Health - MAY 2016	\$104,005.20

TOTAL ADDITIONAL WARRANTS \$63,735.12

GRAND TOTAL OF WARRANTS PAID =====

\$432,511.89

INFORMATIONAL ONLY ( INCLUDED IN THE TOTAL WARRANTS TOTAL)

DATE	DESCRIPTION	AMOUNT
4/28/2016	Net Payroll	\$155,599.81
4/28/2016	Federal Taxes	\$55,084.85
4/28/2016	State Taxes	\$7,163.12
4/28/2016	Payroll Deductions	\$1,914.32

\$217,847.78 Total Payroll

TOTAL INFORMATIONAL WARRANTS \$219,762.10

  
 CITY TREASURER

# Accounts Payable

## Checks for Approval

User: jdaniel  
 Printed: 5/4/2016 - 1:59 PM

*Prewritten*



*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
67588	04/25/2016	General Fund	Plan Check Deposit	MERCED UNION HIGH SCHOOL DISTRICT		2,152.00
					Check Total:	2,152.00
67589	04/25/2016	Information Technology Fund	Special Departmental Expense	QUICKPC SUPPORT		640.00
67589	04/25/2016	Water Enterprise Fund	Professional Services	QUICKPC SUPPORT		220.00
67589	04/25/2016	Information Technology Fund	Professional Services	QUICKPC SUPPORT		5,505.00
67589	04/25/2016	Information Technology Fund	Special Departmental Expense	QUICKPC SUPPORT		585.00
67589	04/25/2016	Water Enterprise Fund	Professional Services	QUICKPC SUPPORT		220.00
67589	04/25/2016	Information Technology Fund	Professional Services	QUICKPC SUPPORT		5,505.00
67589	04/25/2016	Information Technology Fund	Special Departmental Expense	QUICKPC SUPPORT		585.00
67589	04/25/2016	Information Technology Fund	Professional Services	QUICKPC SUPPORT		2,149.26
					Check Total:	15,409.26
67590	04/25/2016	General Fund	Training	SVAOBO		500.00
					Check Total:	500.00
67591	04/25/2016	General Fund	Training	FABIAN VELAZQUEZ		561.39
					Check Total:	561.39
67592	04/25/2016	General Fund	Communications	VERIZON WIRELESS		1,323.84
67592	04/25/2016	Gas Tax/Street Improvement	Communications	VERIZON WIRELESS		38.01
67592	04/25/2016	General Fund	Communications	VERIZON WIRELESS		54.02
67592	04/25/2016	Gas Tax/Street Improvement	Communications	VERIZON WIRELESS		10.82
67592	04/25/2016	General Fund	Communications	VERIZON WIRELESS		108.04
67592	04/25/2016	Internal Service Fund	Communications	VERIZON WIRELESS		10.80
67592	04/25/2016	Water Enterprise Fund	Communications	VERIZON WIRELESS		64.82
67592	04/25/2016	Sewer Enterprise Fund	Communications	VERIZON WIRELESS		10.80
67592	04/25/2016	Internal Service Fund	Communications	VERIZON WIRELESS		10.80
					Check Total:	1,631.95
67593	04/26/2016	Performance Bond Trust	Special Departmental Expense	RUBEN WEBB		439.40
67593	04/26/2016	Performance Bond Trust	Special Departmental Expense	RUBEN WEBB		6,200.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67593	04/26/2016	Parks and Recreation Fund	Special Departmental Expense	RUBEN WEBB		11,160.00
67593	04/26/2016	Sewer Fund Capital Replacement	Special Departmental Expense	RUBEN WEBB		26,000.00
67593	04/26/2016	Police Facility Impact Fee	Special Departmental Expense	RUBEN WEBB		4,870.00
67593	04/26/2016	Water Fund Capital Replacemet	Special Departmental Expense	RUBEN WEBB		20,000.00
67593	04/26/2016	Parks and Recreation Fund	Special Departmental Expense	RUBEN WEBB		9,080.00
67593	04/26/2016	Sewer Fund Capital Replacement	Special Departmental Expense	RUBEN WEBB		4,000.00
67593	04/26/2016	General Fund	Special Departmental Expense	RUBEN WEBB		212.89
67593	04/26/2016	Traffic Circulation Fund	Special Departmental Expense	RUBEN WEBB		2,514.00
					Check Total:	84,476.29
67594	04/28/2016	Employee Benefits Fund	Health Insurance, Retirees	RAMONA BLAKE		242.24
					Check Total:	242.24
67595	04/28/2016	Employee Benefits Fund	Health Insurance, Retirees	DAVID CHURCH		630.19
					Check Total:	630.19
67596	04/28/2016	Employee Benefits Fund	Health Insurance, Retirees	GARY FRAGO		334.76
					Check Total:	334.76
67597	04/28/2016	Employee Benefits Fund	Health Insurance, Retirees	BOBBY GREGORY		1,838.49
					Check Total:	1,838.49
67598	04/28/2016	Employee Benefits Fund	Health Insurance, Retirees	DARRELL HAMMIT		630.19
					Check Total:	630.19
67599	04/28/2016	Employee Benefits Fund	Health Insurance, Retirees	RENE MENDOZA		870.77
					Check Total:	870.77
67600	04/28/2016	Employee Benefits Fund	Health Insurance, Retirees	BILL SWALLEY		66.88
					Check Total:	66.88
67601	05/02/2016	General Fund	Miscellaneous Union Dues	AFSCME DISTRICT COUNCIL 57		732.48
					Check Total:	732.48
67602	05/02/2016	General Fund	Garnishments	FRANCHISE TAX BOARD		208.45
					Check Total:	208.45
67603	05/02/2016	General Fund	Pre-Paid Legal	PRE-PAID LEGAL SERVICES		28.91
					Check Total:	28.91
67604	05/02/2016	General Fund	Miscellaneous Union Dues	RMHC OF THE CENTRAL VALLEY, INC.		20.78

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67604	05/02/2016	General Fund	Miscellaneous Union Dues	RMHC OF THE CENTRAL VALLEY, INC.		20.78
					Check Total:	41.56
67605	05/02/2016	General Fund	Garnishments	STATE DISBURSEMENT UNIT		852.92
					Check Total:	852.92
67606	05/02/2016	General Fund	Deferred Compensation	VANTAGEPOINT TRANSFER AGT-457		50.00
					Check Total:	50.00
					Report Total:	111,258.73

# Accounts Payable

## Checks for Approval

User: jdaniel  
 Printed: 5/4/2016 - 2:02 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
67607	05/09/2016	General Fund	Professional Services	ABS PRESORT, INC.		1,946.55
67607	05/09/2016	General Fund	Office Supplies	ABS PRESORT, INC.		2,700.00
					Check Total:	4,646.55
67608	05/09/2016	Ferrari Ranch Project Fund	Professional Services	AECOM TECHNICAL SERVICES, INC.		4,746.60
					Check Total:	4,746.60
67609	05/09/2016	Parks and Recreation Fund	Misc Park & Playground Imp's	AIRS		22,980.00
67609	05/09/2016	Parks and Recreation Fund	Misc Park & Playground Imp's	AIRS		800.00
67609	05/09/2016	Parks and Recreation Fund	Misc Park & Playground Imp's	AIRS		1,700.00
					Check Total:	25,480.00
67610	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	ALL-PHASE ELECTRIC		283.69
					Check Total:	283.69
67611	05/09/2016	General Fund	Adult Co-Ed Volleyball	SABRINA ALVARADO		120.00
					Check Total:	120.00
67612	05/09/2016	General Fund	Adult Co-Ed Volleyball	SYLVIA ALVARADO		110.00
					Check Total:	110.00
67613	05/09/2016	Employee Benefits Fund	Health Insurance, Retirees	AMERICAN REPUBLIC		424.89
					Check Total:	424.89
67614	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	APPLIED INDUSTRIAL TECH.		163.95
67614	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	APPLIED INDUSTRIAL TECH.		124.03
					Check Total:	287.98
67615	05/09/2016	General Fund	Communications	AT and T		102.84
67615	05/09/2016	Sewer Enterprise Fund	Communications	AT and T		488.06

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67616	05/09/2016	Internal Service Fund	Professional Services	ATWATER RADIATOR	Check Total:	590.90
						19.20
67617	05/09/2016	Internal Service Fund	Operations & Maintenance	ATWATER TIRE SERVICE INC.	Check Total:	19.20
						3,061.16
67618	05/09/2016	Sewer Enterprise Fund	Professional Services	BANK OF NEW YORK	Check Total:	3,061.16
						1,650.00
67619	05/09/2016	Employee Benefits Fund	Professional Services	BARTEL ASSOCIATES	Check Total:	1,650.00
						5,700.00
67620	05/09/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.	Check Total:	5,700.00
67620	05/09/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		1,736.00
67620	05/09/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		16.00
67620	05/09/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		16.00
67620	05/09/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		32.00
67620	05/09/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		32.00
67620	05/09/2016	Water Enterprise Fund	Special Departmental Expense	BC LABORATORIES INC.		256.00
67621	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	BLUELINE RENTAL	Check Total:	2,088.00
						194.40
67622	05/09/2016	Internal Service Fund	Professional Services	C-33 PAINTING	Check Total:	194.40
						4,875.00
67623	05/09/2016	General Fund	Special Departmental Expense	CALLYO 2009 CORP.	Check Total:	4,875.00
						2,750.00
67624	05/09/2016	General Fund	Special Departmental Expense	CENTRAL SANITARY SUPPLY	Check Total:	2,750.00
67624	05/09/2016	General Fund	Special Departmental Expense	CENTRAL SANITARY SUPPLY		49.35
						22.46
67625	05/09/2016	Water Enterprise Fund	Special Departmental Expense	CHEM QUIP, INC.	Check Total:	71.81
67625	05/09/2016	Water Enterprise Fund	Special Departmental Expense	CHEM QUIP, INC.		834.16
						706.87
67626	05/09/2016	General Fund	Training	CITY OF FRESNO	Check Total:	1,541.03
						255.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67627	05/09/2016	Internal Service Fund	Communications	COMCAST CABLE		255.00
					Check Total:	13.24
67628	05/09/2016	General Fund	Special Departmental Expense	CREATIVE SUPPLIES, INC		13.24
					Check Total:	1,854.67
67629	05/09/2016	General Fund	Inspection Fees	CSG CONSULTANTS, INC.		4,900.00
67629	05/09/2016	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		3,884.08
67629	05/09/2016	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		482.88
67629	05/09/2016	General Fund	Plan Check Fees	CSG CONSULTANTS, INC.		405.00
					Check Total:	9,671.96
67630	05/09/2016	General Fund	Adult Slo-Pitch Softball	TODD A. DAVIS		50.00
					Check Total:	50.00
67631	05/09/2016	General Fund	Communications	DELTA WIRELESS & NETWORK SOLUTIONS		95.00
67631	05/09/2016	General Fund	Communications	DELTA WIRELESS & NETWORK SOLUTIONS		115.00
67631	05/09/2016	General Fund	Communications	DELTA WIRELESS & NETWORK SOLUTIONS		1,431.00
67631	05/09/2016	General Fund	Communications	DELTA WIRELESS & NETWORK SOLUTIONS		50.00
67631	05/09/2016	General Fund	Communications	DELTA WIRELESS & NETWORK SOLUTIONS		481.18
67631	05/09/2016	General Fund	Communications	DELTA WIRELESS & NETWORK SOLUTIONS		115.00
					Check Total:	2,287.18
67632	05/09/2016	General Fund	SB 1186 Fees-Business License	DIVISION OF THE STATE ARCHITECT		-77.00
67632	05/09/2016	General Fund	SB 1186 Fees-Business License	DIVISION OF THE STATE ARCHITECT		110.00
					Check Total:	33.00
67633	05/09/2016	General Fund	Professional Services	MARTIN DURAN		125.00
					Check Total:	125.00
67634	05/09/2016	Employee Benefits Fund	Unemployment Insurance	EMPLOYMENT DEVELOPMENT DEPT.		6,757.00
					Check Total:	6,757.00
67635	05/09/2016	Internal Service Fund	Special Departmental Expense	FASTENAL COMPANY		11.75
67635	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	FASTENAL COMPANY		42.08
67635	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	FASTENAL COMPANY		11.15
					Check Total:	64.98
67636	05/09/2016	Water Enterprise Fund	Special Departmental Expense	DONALD GARCIA		79.07

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67637	05/09/2016	General Fund	Professional Services	GUNRUNNER GUN SHOP	Check Total:	79.07
						756.00
67638	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	HORIZON	Check Total:	756.00
						48.20
67639	05/09/2016	General Fund	Uniform & Clothing Expense	IMAGE UNIFORMS	Check Total:	48.20
						40.33
67640	05/09/2016	General Fund	Communications	JD SANDERS COMPANY LLC	Check Total:	40.33
						650.00
67641	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	KELLOGG'S SUPPLY	Check Total:	650.00
67641	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	KELLOGG'S SUPPLY		87.42
67641	05/09/2016	Water Enterprise Fund	Special Departmental Expense	KELLOGG'S SUPPLY		23.75
						336.37
67642	05/09/2016	General Fund	Adult Slo-Pitch Softball	ROBERT L. MARTINEZ	Check Total:	447.54
						75.00
67643	05/09/2016	General Fund	Professional Services	MERCED COUNTY ANIMAL CONTROL	Check Total:	75.00
						15,099.50
67644	05/09/2016	Sewer Enterprise Fund	Professional Services	MERCED FENCE COMPANY	Check Total:	15,099.50
						1,120.00
67645	05/09/2016	Sewer Enterprise Fund	Professional Services	MERCED IRRIGATION DISTRICT	Check Total:	1,120.00
						343.63
67646	05/09/2016	General Fund	Special Departmental Expense	MERCED TINT	Check Total:	343.63
						279.00
67647	05/09/2016	General Fund	Uniform & Clothing Expense	MERCED UNIFORM	Check Total:	279.00
67647	05/09/2016	General Fund	Uniform & Clothing Expense	MERCED UNIFORM		130.82
67647	05/09/2016	General Fund	Uniform & Clothing Expense	MERCED UNIFORM		118.91
67647	05/09/2016	General Fund	Uniform & Clothing Expense	MERCED UNIFORM		33.43
						167.13
67648	05/09/2016	General Fund	Maint. Buildings & Grounds	MIRACLE PLAYSYSTEMS INC	Check Total:	450.29
						77.90

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
					Check Total:	77.90
67649	05/09/2016	General Fund	Maint. Buildings & Grounds	NEVCO, INC.		209.57
67649	05/09/2016	Internal Service Fund	Improvements Other Than Bldg	NEVCO, INC.		340.34
					Check Total:	549.91
67650	05/09/2016	Employee Benefits Fund	Professional Services	NHA ADVISORS		17,500.00
					Check Total:	17,500.00
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		81.40
67651	05/09/2016	General Fund	Special Departmental Expense	O'REILLY AUTO PARTS		19.43
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		218.84
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		109.39
67651	05/09/2016	Internal Service Fund	Special Departmental Expense	O'REILLY AUTO PARTS		64.48
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		53.16
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		32.81
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		33.63
67651	05/09/2016	Internal Service Fund	Small Tools	O'REILLY AUTO PARTS		13.05
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		67.26
67651	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	O'REILLY AUTO PARTS		33.79
67651	05/09/2016	Internal Service Fund	Small Tools	O'REILLY AUTO PARTS		38.59
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		129.41
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		95.61
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		16.17
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		14.03
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		16.63
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-86.75
67651	05/09/2016	Internal Service Fund	Special Departmental Expense	O'REILLY AUTO PARTS		21.15
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		322.52
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		141.27
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		384.04
67651	05/09/2016	Internal Service Fund	Operations & Maintenance	O'REILLY AUTO PARTS		-382.37
					Check Total:	1,437.54
67652	05/09/2016	General Fund	Communications	PACIFIC TELEMANAGEMENT		78.00
					Check Total:	78.00
67653	05/09/2016	General Fund	Adult Slo-Pitch Softball	FERNANDO PERALES		75.00
					Check Total:	75.00
67654	05/09/2016	Internal Service Fund	Operations & Maintenance	PRESTON'S LOCK & KEY		19.44

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67655	05/09/2016	General Fund	Professional Services	PRIME SHINE, INC		19.44
					Check Total:	196.00
67656	05/09/2016	General Fund	Communications	QUICKPCSUPPORT		196.00
					Check Total:	1,454.44
67657	05/09/2016	Water Enterprise Fund	Professional Services	RAFTELIS FINANCIAL		7,032.50
67657	05/09/2016	Sewer Enterprise Fund	Professional Services	RAFTELIS FINANCIAL		5,142.50
					Check Total:	12,175.00
67658	05/09/2016	Water Enterprise Fund	Rents & Leases	RAY MORGAN COMPANY		135.75
67658	05/09/2016	Sewer Enterprise Fund	Rents & Leases	RAY MORGAN COMPANY		135.74
67658	05/09/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		365.93
67658	05/09/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		185.91
67658	05/09/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
67658	05/09/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		336.41
67658	05/09/2016	General Fund	Rents & Leases	RAY MORGAN COMPANY		14.86
					Check Total:	1,189.46
67659	05/09/2016	General Fund	Youth Basketball	TRAVANTE RICHARD		51.00
					Check Total:	51.00
67660	05/09/2016	General Fund	Youth Basketball	JAMES L. ROBINSON		51.00
					Check Total:	51.00
67661	05/09/2016	General Fund	Adult Co-Ed Volleyball	TERRY L. RUST		102.00
					Check Total:	102.00
67662	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	SAFE-T-LITE		133.65
67662	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	SAFE-T-LITE		103.68
					Check Total:	237.33
67663	05/09/2016	General Fund	Professional Services	SANTA FE PET		130.00
67663	05/09/2016	General Fund	Professional Services	SANTA FE PET		203.00
67663	05/09/2016	General Fund	Professional Services	SANTA FE PET		225.00
67663	05/09/2016	General Fund	Professional Services	SANTA FE PET		149.00
67663	05/09/2016	General Fund	Professional Services	SANTA FE PET		149.00
67663	05/09/2016	General Fund	Professional Services	SANTA FE PET		374.00
67663	05/09/2016	General Fund	Professional Services	SANTA FE PET		243.00

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67663	05/09/2016	General Fund	Professional Services	SANTA FE PET		315.00
					Check Total:	1,788.00
67664	05/09/2016	General Fund	Special Departmental Expense	HENRY SCHEIN, INC.		447.90
					Check Total:	447.90
67665	05/09/2016	Sewer Enterprise Fund	Utilities	SIEMENS FINANCIAL SERVICES, INC.		16,965.00
					Check Total:	16,965.00
67666	05/09/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		63.98
67666	05/09/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		56.42
67666	05/09/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		33.21
67666	05/09/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		48.74
67666	05/09/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		17.65
67666	05/09/2016	General Fund	Special Departmental Expense	STAPLES BUSINESS ADVANTAGE		47.54
67666	05/09/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		79.55
67666	05/09/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		93.77
67666	05/09/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		130.72
67666	05/09/2016	General Fund	Office Supplies	STAPLES BUSINESS ADVANTAGE		53.99
					Check Total:	625.57
67667	05/09/2016	General Fund	Special Departmental Expense	SUN BADGE COMPANY		220.79
					Check Total:	220.79
67668	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	SWRCB FEES		1,282.00
					Check Total:	1,282.00
67669	05/09/2016	Information Technology Fund	Special Departmental Expense	TELEPACIFIC COMMUNICATIONS		5,277.69
					Check Total:	5,277.69
67670	05/09/2016	Ferrari Ranch Project Fund	Professional Services	THOMAS H. TERPSTRA		756.25
67670	05/09/2016	Employee Benefits Fund	Professional Services	THOMAS H. TERPSTRA		3,207.50
67670	05/09/2016	Risk Management Fund	Professional Services	THOMAS H. TERPSTRA		1,896.18
67670	05/09/2016	Water Enterprise Fund	Professional Services	THOMAS H. TERPSTRA		140.00
67670	05/09/2016	General Fund	Professional Services	THOMAS H. TERPSTRA		12,439.79
					Check Total:	18,439.72
67671	05/09/2016	Internal Service Fund	Operations & Maintenance	TESEI PETROLEUM, INC.		2,072.03
67671	05/09/2016	Internal Service Fund	Operations & Maintenance	TESEI PETROLEUM, INC.		6,820.04
					Check Total:	8,892.07

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67672	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	THE UPS STORE		23.20
Check Total:						23.20
67673	05/09/2016	Internal Service Fund	Operations & Maintenance	TRACTOR SUPPLY CREDIT PLAN		29.15
67673	05/09/2016	General Fund	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		42.09
67673	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		9.16
67673	05/09/2016	Water Enterprise Fund	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		10.79
67673	05/09/2016	Water Enterprise Fund	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		6.46
67673	05/09/2016	General Fund	Special Departmental Expense	TRACTOR SUPPLY CREDIT PLAN		38.86
Check Total:						136.51
67674	05/09/2016	General Fund	Uniform & Clothing Expense	TROPHY CASE		19.44
Check Total:						19.44
67675	05/09/2016	Internal Service Fund	Operations & Maintenance	TURF STAR, INC.		235.58
67675	05/09/2016	Internal Service Fund	Operations & Maintenance	TURF STAR, INC.		272.39
67675	05/09/2016	Internal Service Fund	Operations & Maintenance	TURF STAR, INC.		165.52
Check Total:						673.49
67676	05/09/2016	Water Enterprise Fund	Professional Services	TWO BROTHERS		1,125.00
Check Total:						1,125.00
67677	05/09/2016	Internal Service Fund	Special Departmental Expense	UNIFIRST CORPORATION		69.04
67677	05/09/2016	Sanitation Enterprise	Uniform & Clothing Expense	UNIFIRST CORPORATION		39.64
67677	05/09/2016	Internal Service Fund	Uniform & Clothing Expense	UNIFIRST CORPORATION		26.80
67677	05/09/2016	Gas Tax/Street Improvement	Uniform & Clothing Expense	UNIFIRST CORPORATION		56.08
67677	05/09/2016	Water Enterprise Fund	Uniform & Clothing Expense	UNIFIRST CORPORATION		111.60
67677	05/09/2016	Internal Service Fund	Uniform & Clothing Expense	UNIFIRST CORPORATION		32.44
67677	05/09/2016	Gas Tax/Street Improvement	Uniform & Clothing Expense	UNIFIRST CORPORATION		118.40
67677	05/09/2016	Sewer Enterprise Fund	Uniform & Clothing Expense	UNIFIRST CORPORATION		161.66
Check Total:						615.66
67678	05/09/2016	General Fund	Life Insurance Payable	UNUM LIFE INSURANCE		1,236.74
67678	05/09/2016	General Fund	Life Insurance Payable	UNUM LIFE INSURANCE		161.08
67678	05/09/2016	General Fund	Life Insurance Payable	UNUM LIFE INSURANCE		256.71
Check Total:						1,654.53
67679	05/09/2016	Measure H Fund	Communications	VERIZON WIRELESS		54.02
67679	05/09/2016	Sewer Enterprise Fund	Communications	VERIZON WIRELESS		81.13
67679	05/09/2016	General Fund	Communications	VERIZON WIRELESS		206.46
67679	05/09/2016	Gas Tax/Street Improvement	Communications	VERIZON WIRELESS		33.55
67679	05/09/2016	Water Enterprise Fund	Communications	VERIZON WIRELESS		79.10

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67679	05/09/2016	General Fund	Communications	VERIZON WIRELESS		703.43
67679	05/09/2016	General Fund	Communications	VERIZON WIRELESS		54.02
67679	05/09/2016	General Fund	Communications	VERIZON WIRELESS		631.53
Check Total:						1,843.24
67680	05/09/2016	General Fund	Special Departmental Expense	VIGILANT CANINE SERVICES		250.00
67680	05/09/2016	General Fund	Special Departmental Expense	VIGILANT CANINE SERVICES		250.00
Check Total:						500.00
67681	05/09/2016	Employee Benefits Fund	Vision Insurance	VISION SERVICE PLAN (CA)		887.79
67681	05/09/2016	Employee Benefits Fund	Vision Insurance	VISION SERVICE PLAN (CA)		1,391.17
Check Total:						2,278.96
67682	05/09/2016	Risk Management Fund	Life Insurance	VOYA RETIREMENT INSURANCE		36.26
Check Total:						36.26
67683	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	W.W. GRAINGER, INC.		184.75
67683	05/09/2016	Water Enterprise Fund	Special Departmental Expense	W.W. GRAINGER, INC.		246.64
Check Total:						431.39
67684	05/09/2016	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		21.55
67684	05/09/2016	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		27.05
67684	05/09/2016	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		32.29
67684	05/09/2016	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		45.22
67684	05/09/2016	Internal Service Fund	Special Departmental Expense	WARD ENTERPRISES		28.16
Check Total:						154.27
67685	05/09/2016	Gas Tax/Street Improvement	Professional Services	WEST COAST ARBORISTS, INC.		18,279.00
Check Total:						18,279.00
67686	05/09/2016	Sewer Fund Capital Replacement	Wastewater Trtmnt Plt Exp	WEST YOST & ASSOCIATES		39,842.78
Check Total:						39,842.78
67687	05/09/2016	General Fund	Adult Slo-Pitch Softball	CLINTON WILLIAMS		75.00
Check Total:						75.00
67688	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	WINTON HARDWARE		75.24
67688	05/09/2016	Water Enterprise Fund	Special Departmental Expense	WINTON HARDWARE		30.53
67688	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	WINTON HARDWARE		254.54
67688	05/09/2016	Internal Service Fund	Special Departmental Expense	WINTON HARDWARE		2.77
67688	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	WINTON HARDWARE		5.57

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Void	Amount
67688	05/09/2016	Maintenance District Reserve	Small Tools	WINTON HARDWARE		505.20
67688	05/09/2016	Water Enterprise Fund	Special Departmental Expense	WINTON HARDWARE		6.10
67688	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	WINTON HARDWARE		76.73
67688	05/09/2016	Sewer Enterprise Fund	Special Departmental Expense	WINTON HARDWARE		6.20
67688	05/09/2016	Gas Tax/Street Improvement	Special Departmental Expense	WINTON HARDWARE		98.86
67688	05/09/2016	Internal Service Fund	Special Departmental Expense	WINTON HARDWARE		5.25
67689	05/09/2016	General Fund	Adult Co-Ed Volleyball	DONALD K WOODS	Check Total:	1,066.99
						187.00
67690	05/09/2016	Internal Service Fund	Operations & Maintenance	X-ERGON	Check Total:	187.00
						255.76
67691	05/09/2016	General Fund	Adult Co-Ed Volleyball	RICHARD A. ZAMARRIPA	Check Total:	255.76
						45.00
						45.00
						257,518.04



# CITY OF ATWATER

## CITY COUNCIL ADJOURNED MEETING

### ACTION MINUTES

April 25, 2016

#### CALL TO ORDER:

*The City Council of the City of Atwater met in Adjourned Session this date at 4:19 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, City Attorney Terpstra, City Clerk Del Real, Recording Secretary Bengtson-Jennings

#### COMMENTS FROM THE PUBLIC:

*Notice to the public was read.*

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

#### BUSINESS:

Workshop regarding Agenda Policy and Rules of Order

*City Attorney Terpstra spoke regarding a proposed policy to improve the efficiency and effectiveness of creating the City Council agenda by defining the roles and responsibilities of staff and the City Council.*

*City Attorney Terpstra also provided a brief overview of Rosenberg's Rules of Order and spoke concerning a proposed forthcoming resolution that adopts the latest version of Rosenberg's Rules of Order, rules that will replace Robert's Rules of Order as referenced in the Atwater Municipal Code and will govern the conduct of the meetings of the City Council as well as the meetings of all commissions and committees of the City.*

ADJOURNMENT:

*The meeting adjourned at 4:57 PM.*

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JEANNA DEL REAL, CMC  
CITY CLERK

By: Kim Bengtson-Jennings,  
Recording Secretary



# CITY OF ATWATER

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## CITY COUNCIL

### ACTION MINUTES

**April 25, 2016**

OPEN SESSION: (Council Chambers)

*The City Council of the City of Atwater met in Open Session this date at 5:00 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.*

ROLL CALL:

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

**Absent:** *None*

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

CLOSED SESSION: (Conference Room A)

*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 5:02 PM. Closed Session was called to order at 5:05 PM.*

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

***Closed Session adjourned at 5:35 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, City Attorney Terpstra, CAL FIRE Battalion Chief Pimentel, Police Lieutenant Joseph, Community Development Director McBride, Interim Public Works Director Faretta, City Treasurer Heller, Finance Director Deol, City Clerk Del Real, Recording Secretary Bengtson-Jennings***

**MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:**

***City Attorney Terpstra 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:**

***Ceremonial Matters was removed from the agenda in its entirety.***

***Agenda item #10 under Reports and Presentations from Staff, "Refinancing CalPERS Side Fund for the Miscellaneous and Safety Plans," was moved up on the agenda, to be considered immediately following agenda item #7 under Funding and Budget Matters.***

**MOTION:** *City Council Member Rivero moved to approve the agenda as amended. The motion was seconded by Mayor Pro Tem Bergman and the vote*

*was: Ayes: Bergman, Rivero, Raymond, Vineyard, Price; Noes: None; Absent: None. The motion carried.*

CEREMONIAL MATTERS:

Firefighter of the Year

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

COMMENTS FROM THE PUBLIC:

*Notice to the public was read.*

*GARY BRICE, Atwater, voiced his concerns regarding Measure H funding and the transfer of Police Officer salaries in and out of the fund, and he reminded the community that the fund will expire in six years.*

*No one else came forward to speak.*

CONSENT CALENDAR:

*Agenda item # 5 under Petitions and Communications, "Amazing Grace Holiness Tabernacle for use of Ralston Park," was removed from the consent calendar for separate discussion and possible action.*

*Agenda item #6 under Petitions and Communications, "Atwater Pentecost Association for assistance with annual procession," was removed from the consent calendar for separate discussion and possible action.*

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

WARRANTS:

1. April 25, 2016

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

MINUTES: (City Council)

2. Regular meeting, April 11, 2016

**ACTION:** *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)

***ACTION: 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:

4. Claim No. 2016-5

***ACTION: 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

***This item was removed from the consent calendar for separate discussion and possible action.***

6. Atwater Pentecost Association for assistance with annual procession

***This item was removed from the consent calendar for separate discussion and possible action.***

PETITIONS AND COMMUNICATIONS:

Amazing Grace Holiness Tabernacle for use of Ralston Park

***Jared Burris, pastor of Amazing Grace Holiness Tabernacle, spoke regarding the "City Reach" event and announced the following times: Sunday evenings beginning at 6:00 PM; mid week beginning at 7:00 PM and concluding around 8:30 PM.***

***MOTION: City Council Member Rivero moved to approve the request from Amazing Grace Holiness Tabernacle for "City Reach" event and placement of gospel tent in Ralston Park from May 8-15, 2016. The motion was seconded by City Council Member Vineyard and the vote was: Ayes: Rivero, Raymond, Bergman, Vineyard, Price; Noes: None; Absent: None. The motion carried.***

Atwater Pentecost Association for assistance with annual procession

**MIKE RAYMOND, Atwater, voiced his concerns with the procession route as Winton Way is currently under construction.**

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

FUNDING AND BUDGET MATTERS:

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

**MOTION: Mayor Pro Tem Bergman moved to approve the Treasurer's Report for the month of March, 2016. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Rivero, Raymond, Bergman, Vineyard, Price; Noes: None; Absent: None. The motion carried.**

REPORTS AND PRESENTATIONS FROM STAFF:

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

**Eric Scriven, Principal at NHA Advisors, provided a brief overview of the objective of refinancing the CalPERS Side Fund for the Miscellaneous and Safety Plans, which is to create a more predictable payment structure over the next 10-15 years.**

**Cameron Weist, Attorney with The Weist Law Firm, spoke regarding the legal documents and the collateral necessary to refinance.**

**MOTION: Mayor Pro Tem Bergman moved to table this item and to bring it back at the next regular City Council meeting of May 9, 2016, which will allow time for staff and the City Council to search for an alternative, better solution to the repayment of debt. The motion was seconded by City Council Member Rivero and the vote was: Ayes: Raymond, Rivero, Vineyard, Bergman, Price; Noes: None; Absent: None. The motion carried.**

PETITIONS AND COMMUNICATIONS:

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

**Marjorie Kirn, MCAG Executive Director, presented an overview of the ½ cent Sales Tax Transportation Expenditure Plan.**

**ERIC LEE, Atwater, asked questions in regard to the money the City would receive should the sales tax measure pass.**

**MIKE RAYMOND, Atwater, questioned the division of the potential sales tax revenue and spoke regarding the City's stagnant development.**

**JOSE RAMIREZ, San Joaquin Regional Rail Commission, spoke of the Commission's support of the plan and stated that neighboring communities are thriving due to similar measures.**

**GARRETT MAYER, Atwater, provided an example to put the proposed tax measure into perspective.**

**LINDA DASH, Atwater, voiced her concerns with City roads and with how the City will spend the money, and she questioned how many other entities have approved the plan so far.**

**MOTION: Mayor Pro Tem Bergman moved to adopt Resolution No. 2881-16 as amended, removing the third "Whereas" and changing the "Now, therefore, be it resolved" to read: "that the City Council of the City of Atwater approves placing the Merced County Transportation Expenditure Plan, including the ½ cent sales tax measure, before the voters as a ballot measure in the November 2016 general election." The motion was seconded by Mayor Price and the vote was: Ayes: Vineyard, Bergman, Price; Noes: Raymond, Rivero; Absent: None. The motion carried.**

**CITY ATTORNEY REPORTS/UPDATES:**

Update regarding medical marijuana regulations in the City of Atwater.

**City Attorney Terpstra provided an update regarding medical marijuana regulations in the City of Atwater and stated that staff has begun the process of allowing indoor cultivation of marijuana in the City of Atwater in order to meet the needs of those who do not have access to this medicinal product.**

**MIKE RAYMOND, Atwater, questioned the number of "live" plants one can have in his or her home if indoor cultivation was allowed.**

**GARRETT MAYER, Atwater, explained to the community several provisions of a 215 card.**

***By consensus, staff was given direction to proceed with the process of allowing indoor cultivation of marijuana in the City of Atwater, incorporating the City Council's comments.***

REPORTS AND PRESENTATIONS FROM STAFF:

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

***Finance Director Deol provided a financial update regarding Fiscal Year ended June 30, 2016.***

***ERIC LEE, Atwater, questioned why the CFDs were allowed to go into deficit.***

***LINDA DASH, Atwater, asked questions concerning account receivables, specifically those 90+ days past due, and which services City staff directly invoices.***

***MIKE RAYMOND, Atwater, voiced his belief that staff does not know where the money is within the City.***

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

***Sam Palmer, Project Manager/Construction Supervisor with Self-Help Enterprises, provided an update regarding Merced County's Emergency Water Distribution Program, specifically the number of families with non-functional wells who reside in the 95301 zip code area and their water needs.***

***Jeremy Rahn, representing Merced County Office of Emergency Services, spoke in regard to the program and its success.***

**MOTION: *City Council Member Rivero moved 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. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Rivero, Raymond, Bergman, Price; Noes: Vineyard; Absent: None. The motion carried.***

CITY COUNCIL MATTERS:

Discussion and possible action regarding existing Water Conservation Code

***Greg Olzack, Police Department Volunteer, provided an update regarding enforcement of the water conservation code and stated the current code fits residents but not necessarily commercial and industrial park landscaping.***

***Jennifer Krumm, Community Administrator with Castle Vista, voiced her concerns with the existing water conservation code as it pertains to the Castle Vista senior community and asked the City Council to take her concerns into consideration when making changes.***

***By consensus, staff was given direction to proceed with modifications to the existing water conservation code, namely watering hours, taking into consideration the recommendations of the City Council.***

City Council comments and requests for future agenda items

***City Council Member Raymond spoke of the recent Love Atwater event. He announced several upcoming events: National Day of Prayer, May 5, 2016 at noon at City Hall; God Belongs in My City, May 7, 2016 at 10:00 AM beginning at City Hall and ending at Veterans Park; and VFW Job Fair, April 26, 2016 from 10:00 AM until 3:00 PM.***

***Mayor Pro Tem Bergman encouraged everyone to attend the Merced County Spring Fair in Los Banos this week, April 27 - May 1, 2016.***

***City Council Member Rivero thanked all those who helped with the Merced County Junior Olympics, and he acknowledged two friends who recently stopped in Atwater to shop.***

***City Council Member Vineyard spoke regarding the recent State of the College Address luncheon in which he attended. He reminded the community of the City's Adopt-A-Park program. He announced that he is adopting Heller Park and invited the community to a work day April 30, 2016 at 8:00 AM (and thereafter the last Saturday of each month). Also he announced that Crestview Neighborhood Watch will meet at Heller Park May 10, 2016 at 5:30 PM for a BBQ and to discuss the possibility of adopting a City park.***

***Mayor Price thanked Pastor Motz and Gloria Perez for their efforts with the recent Love Atwater event as well as those who participated. He encouraged the community to donate to the Atwater 4<sup>th</sup> of July event and challenged everyone to match or exceed his donation of \$100. He announced a Concert at Castle, May 21, 2016 and reminded citizens of the Welcome Home Heroes event and Job Fair May 14, 2016.***

CLOSED SESSION:

***Closed Session was not necessary.***

ADJOURNMENT:

***The meeting adjourned at 8:26 PM.***

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JEANNA DEL REAL, CMC  
CITY CLERK

By: Kim Bengtson-Jennings,  
Recording Secretary

April 21, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of May 9, 2016

**AUTHORIZE AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH VVH CONSULTING ENGINEERS INC. FOR THE FRUITLAND AVENUE RECONSTRUCTION PROJECT**

**RECOMMENDATION:**

It is recommended that the City Council consider:

1. Approving Amendment No. 1 to the Professional Services Agreement (“Amendment No. 1”) with VVH Consulting Engineers, Inc. (“VVH”) for the Fruitland Avenue Reconstruction Project; and,
2. Authorize the City Manager to execute Amendment No. 1 on behalf of the City of Atwater.

**BACKGROUND:**

In March 2016 the City of Atwater and VVH executed a Professional Services Agreement (“PSA”) for general engineering and land surveying services. The City has several contracts with area civil engineering consultants including VVH, Mid Valley Engineering, AECOM, Golden Valley Engineering, and FPP – Quad. This arrangement allows for selection of a firm to perform services based on their specific qualifications or areas of expertise and the ability to perform the necessary services.

VVH has contracts with several valley communities and also works on private projects. They provide all forms of engineering, surveying, and technical engineering services. One of the main services they provide is design engineering, cost estimates, and value engineering for roadway reconstruction projects.

Currently, the City is under contract with Mid Valley Engineering for the survey, design, engineering, and preparation of plans and specifications for Winton Way. This work has been initiated to determine the costs to reconstruct the roadway and provide the necessary pedestrian improvements. It was initiated in advance of the potential Transportation Expenditure Plan Ballot Measure so that Atwater residents could see the potential cost of this item. It would also allow the City to have a “shovel ready” project if the measure is approved by the voters.

In addition to Winton Way a proposal was sought for Fruitland Avenue. VVH has prepared a proposal for the Fruitland Avenue Reconstruction Project. The Proposal is included as Exhibit A to the proposed Amendment No. 1.

**ANALYSIS**

Fruitland Avenue is approximately 1.8 miles in length and is generally defined in two segments; Orchard Park to Winton Way, and Winton Way to Shaffer. Both segments have various levels of existing improvements. Many areas have no storm drainage system, road widths and right of way vary, there are missing segments of sidewalk, and there are also some segments missing overhead lighting.

The current condition of Fruitland Avenue paving is beyond repair. In order to plan for the costs potential phasing needed for its reconstruction, the City needs the services of a qualified engineering firm. The proposal from VVH provides for a comprehensive approach to the work.

**FISCAL IMPACT:**

No budget amendment is needed at this time. During the 2015/16 Mid Year Update \$100,000 was approved from the Gas Tax for this Project, 1011.1080.M007. The funded amount will not be exceeded before the end of the fiscal year. During the budget process for 2016/17, the remaining costs can be included in the 2016/17 fiscal year budget to complete the entire Project during the year. The proposal amount for the services is \$214,630; however, some items also include potential costs for time and materials which may exceed this amount.

**CONCLUSION:**

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

Respectfully submitted,



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Scott McBride  
Community Development Director

**AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF ATWATER AND  
VVH CONSULTING ENGINEERS, INC. (VVH)**

This Amendment No. 1 to the Professional Services Agreement ("Amendment No. 1") for consulting services is made by and between the City of Atwater ("City") and VVH CONSULTING ENGINEERS, Inc. ("Consultant") as of May 9, 2016 (the "Effective Date"). City and Consultant shall be referred to herein separately as "Party" and collectively as "Parties".

**RECITALS**

**WHEREAS**, the Parties entered into a Professional Services Agreement ("PSA") dated March 14, 2016 for the purpose of planning and design engineering services; and

**WHEREAS**, the Parties now desire to amend the PSA as set forth below.

**NOW, THEREFORE**, as of the Effective Date of this Amendment No. 1, the PSA is amended as follows:

1. The Parties hereby agree to add Subsection 1.5 to Section 1 of the PSA entitled "Services" to read in full as follows:

**1.5 Scope of Services – Additional Services:**

Subject to the terms and conditions set forth in the PSA and this Amendment No. 1, Consultant shall provide to City additional civil engineering and land surveying services described in the Proposal for Fruitland Avenue Reconstruction Project attached hereto and incorporated herein as "**Exhibit A**".

2. The Parties hereby agree to add Subsection 2.10 to Section 2 of the PSA entitled "Compensation" to read in full as follows:

**2.4 Compensation for Additional Services:**

City agrees to pay Consultant a sum not to exceed Two Hundred Fourteen Thousand Six Hundred Thirty and 00/100 Dollars (\$214,630.00) for the Additional Services outlined in Subsection 1.5 of the PSA and more particularly described in the Fee Summary 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 the PSA. .

3. The remaining terms and conditions of the PSA shall remain in full force and effect unless specifically modified herein.

4. This Amendment No. 1 may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same Amendment No. 1.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CITY OF ATWATER

CONSULTANT

\_\_\_\_\_  
**Frank Pietro**  
City Manager

\_\_\_\_\_  
**NAME:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
VVH Consulting Engineers

Attest:

\_\_\_\_\_  
**Jeanna Del Real, CMC**  
City Clerk

Approved as to form:

\_\_\_\_\_  
**Thomas Terpstra**  
City Attorney



430 Tenth Street  
Modesto, CA 95354  
Tel.: 209.568.4477  
Fax: 209.568.4478

April 20, 2016

**Mr. Scott McBride**

Community Development Director  
City of Atwater  
750 Bellevue Road  
Atwater, CA 95301

**Reference: Proposal for Fruitland Avenue Reconstruction Project**

Dear Scott,

VVH Consulting Engineers (VVHCE) is pleased to offer this proposal for professional services for civil engineering and land surveying in support of the Fruitland Avenue Reconstruction Project.

**1.0 INTRODUCTION**

The City of Atwater aims to reconstruct and improve Fruitland Avenue along two discontinuous segments: the western portion being between Orchard Park Avenue and Winton Way ( $\pm 3,600$  lineal feet) and the eastern portion being between Winton Way and Shaffer Road ( $\pm 5,750$  lineal feet). The total project area is approximately 1.8 miles of roadway; see Figure 1.1 for the location of each segment. The majority of existing asphaltic concrete pavements on both segments has failed and full reconstruction is anticipated to be recommended following evaluation by geotechnical engineers. Contemplated improvements include the repair, replacement and addition of curbs, gutters, and sidewalks in addition to ADA upgrades and positive storm drainage. The acquisition of right-of-way and/or easements may be required in some locations to accomplish these goals.

VVHCE has been requested to provide this proposal to confirm our understanding of the Project and to provide a scope of work and fee schedule for the preparation of Plans, Specifications, and Estimates (PS&E) for the advertisement of the project for construction. We propose a collaborative approach whereby VVHCE will partner with the City to review and evaluate options for stormwater management and roadway reconstruction methods to identify solutions that accomplish the Project's objectives in a cost-effective manner that complies with applicable regulations. The Scope of Work proposed in Section 2.0 includes the development of schematic plans (approximately 15% design level) to aid the Project Team in evaluating alternatives and potential construction phasing to meet anticipated available funding.

Our project management approach can be summarized as:

- Keeping the City apprised of key issues
- Managing team members and schedules
- Monitoring project costs/budgets

- Providing quality documents through an effective QA/QC program

We understand our role is that of an active partner with the City, and we will keep the lines of communication open with the City in all phases of design as we work closely with City engineering and operations staff.

VVHCE's staff has extensive experience providing similar services for other roadway rehabilitation projects for agencies in the Central Valley. Our success is due in large to our ability to provide quality, responsible service on these types of projects.

This proposal includes services that VVHCE anticipates to be required for the City to advertise the project to solicit bids from qualified contractors. Additional professional services that would be performed during the permitting and construction phases, such as Construction Administration, Construction Staking, Qualified SWPPP Practitioner services, Monument Preservation, Permitting Assistance (SJVAPCD, etc.) and Record Drawings are not included but can be provided under a separate proposal at the City's request. Construction management, inspection and testing are not included herein, as these would typically be contracted directly by the City utilizing a prequalified consultant or advertised in coordination with the solicitation for construction bids from qualified contractors.

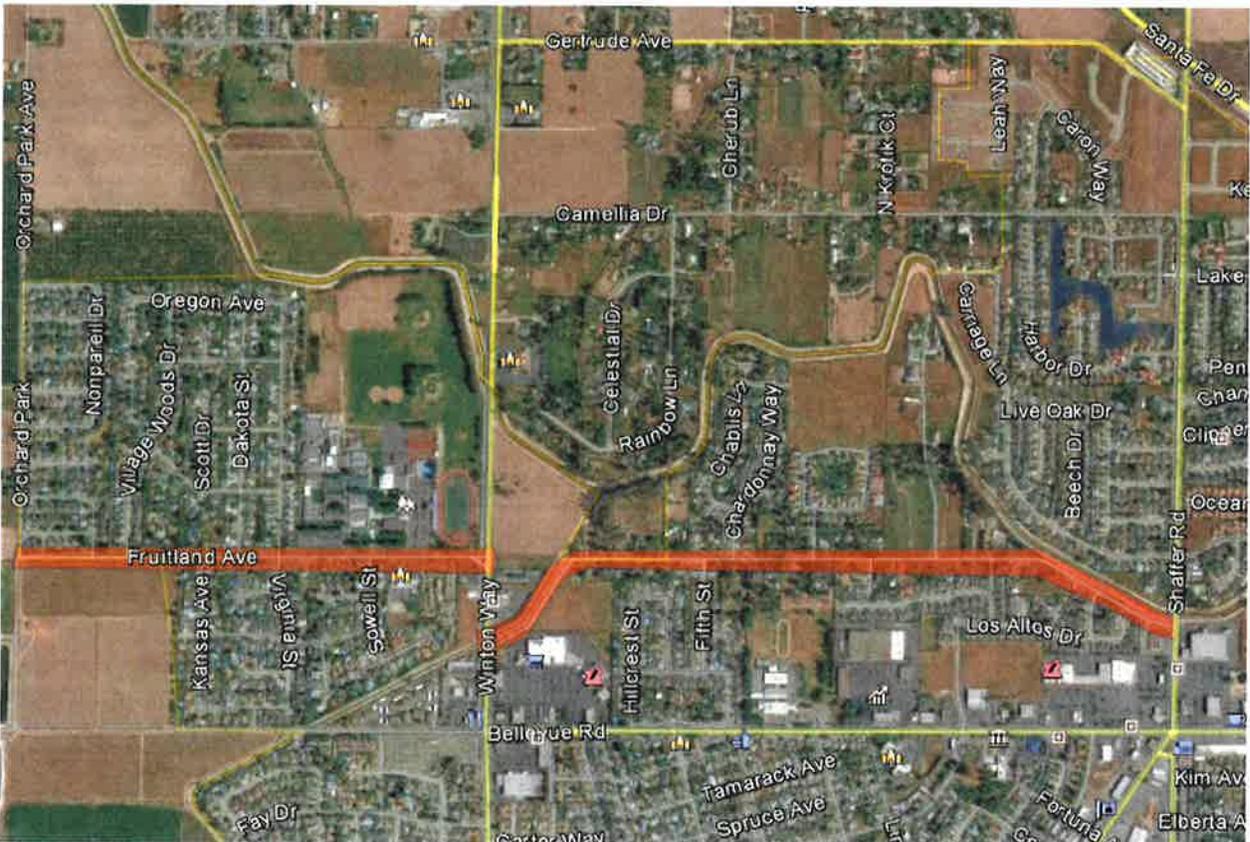


Figure 1.1 Proposed Project Areas

Section 2.0 includes a detailed description of tasks that will be completed in support of the Project.

## **2.0 SCOPE OF WORK**

### **2.1 Project Initiation**

VVHCE will coordinate with City of Atwater staff to commence the project.

VVHCE's work will include the following:

- Attend kickoff meeting
  - Review Project's Conceptual Scope of Work
  - Confirm City requirements
  - Establish project management and communication protocols
  - Establish Preliminary Project Schedule
- Visit Project site prior to kickoff meeting to review opportunities and constraints of existing conditions
- Prepare USA Design Inquiry to identify potential member utilities located within the project area
- Research and obtain existing information for the Project area and surrounding areas for use in Project planning and design

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$3,500 plus expenses**.

The deliverables for this portion of the work program will be:

- Kickoff Meeting Agenda (Hardcopy, Adobe PDF)
- Kickoff Meeting Minutes with action item assignments (Hardcopy, Adobe PDF)
- USA Design Inquiry results (Hardcopy, Adobe PDF)
- Project Schedule (Hardcopy, Adobe PDF)
- Copies of documents obtained during project research (Hardcopy, Adobe PDF)

### **2.2 Project Scope and Budget Definition**

Based on discussions with City staff and materials reviewed in the Kickoff Meeting, VVHCE will prepare a refined Scope of Work and initial budget for the project.

VVHCE's work will include the following:

- Prepare a Scope of Work for the Project that is intended to guide the preparation of Plans, Specifications, and Estimates (PS&E)
- Prepare a preliminary budget for the refined Scope of Work, including escalation for the anticipated construction schedule

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$2,500 plus expenses**.

The deliverables for this portion of the work program will be:

- ❑ Project Scope of Work (Hardcopy, Adobe PDF)
- ❑ Preliminary Project Budget (Hardcopy, Adobe PDF)

### **2.3 Topographic Survey**

VVHCE will prepare a design-level topographic survey for both roadway segments for use in preparation of the Plans. Roadway cross sections will be obtained at 25-foot intervals to promote the identification and resolution of potential vertical conflicts during the design process. Additionally, at least one ground elevation will be obtained in each front yard and driveway, to identify trends in existing lot grading relative to existing street grades. Prior to beginning the field survey, the Project Engineer will review the project area with available aerial imagery to determine areas requiring more detailed topographic survey.

VVHCE's work will include the following:

- ❑ VVHCE will provide traffic control to increase safety for the field surveyors and for motorists.
- ❑ Field survey crews will establish and/or verify existing survey control to be utilized for the project. If existing control is not recoverable, then new control will be based on California State Plane Coordinates, Zone 3, and acceptable City of Atwater benchmark.
- ❑ Perform survey on an approximate 25-foot cross section interval for the project area. The survey will be performed utilizing GPS and/or conventional survey methods to collect such features as centerline monuments, edge of pavements, curbs, gutters, sidewalks, tops/toes of slopes, high/low points of roadway, pavement markings, walls, fences, mailboxes, signs, utility poles and overhead wires (approximate horizontal location only), surface utilities features, accessible utilities pipe inverts, trees (caliper and drip line) and other items pertinent for the design documents. Survey will extend approximately 100 feet along intersecting roadways.
- ❑ Download the data collected in the field and create data files for delivery to the project surveyor.
- ❑ Perform the necessary office calculations to reduce field notes collected by the field crews prior to delivery to the office survey team.
- ❑ The location of existing utilities will be established from field located facilities, record drawings obtained from the City of Atwater, utility owner maps, and/or City-supplied utility information. Utility locating services are not included in this scope of work.
- ❑ The project surveyor will prepare a topographic map of the project site at a scale of 1"=20' to include all features collected in the field, as well as 1 foot contours with spot elevations. Existing rights-of-way and easements will be shown as per available

record maps and GIS information available from the City. Title Reports and/or Right-of-Way Survey are not included in this scope of work.

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$24,800 plus expenses**.

The deliverables for this portion of the work program will be:

- Topographic Survey Base File (AutoCAD)

## **2.4 Geotechnical Investigation**

VVHCE's subconsultant, Krazan & Associates, Inc., will evaluate existing pavements and underlying soils.

VVHCE's work will include the following:

- Prepare and submit City of Atwater Encroachment Permit Application
  - Permit fee to be waived or paid by the City of Atwater
- Prepare traffic control plans and provide traffic control services during field investigation by geotechnical engineers.
- Mark the areas of investigation for utility locating by Underground Service Alert (USA) and the City of Atwater. USA North Ticket Number will be provided to the City on receipt and at least 48 hours prior to the commencement of field work.
- Conduct pavement structural section sampling by core drilling the existing roadway in approximately 10 separate locations. The exploratory borings will be advanced to approximately 20 feet below existing grade to determine the project soils conditions. Materials will be visually classified and measurements will be made of asphaltic concretes, aggregate bases, aggregate subbases, and/or concrete as applicable at each location. Core locations will be backfilled with cold patch following the completion of measurements.
- Collect 10 bulk soil samples for R-Value testing, approximately 5 samples from west of Winton Way and 5 samples from east of Winton Way.
- At each boring location, additional samples will be collected at depths of 5 feet and 10 feet below existing grade for permeability testing to determine suitability for stormwater infiltration.
- Prepare a report summarizing the findings of the investigation, including Project description, identification of the study area, pavements measurements, recommended pavement structural sections and alternatives, and permeability results.

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$12,650 plus expenses**.

The deliverables for this portion of the work program will be:

- Geotechnical Investigation Report (Hardcopy, Adobe PDF)

## 2.5 Utilities Potholing

VVHCE's subcontractor will provide utilities potholing services where required. This task allows for up to four (4) days of potholing activities. Depending on the site conditions, generally between 4 and 8 locations can be potholed each day

VVHCE's work will include the following:

- Prepare and submit City of Atwater Encroachment Permit Application
  - Permit fee to be waived or paid by the City of Atwater
- Provide traffic control services during potholing and surface restoration
- Mark the areas of potholing for utility locating by Underground Service Alert (USA) and the City of Atwater. USA North Ticket Number will be provided to the City on receipt and at least 48 hours prior to the commencement of field work.
- Conduct potholing in accordance with industry standard wet or dry vacuum operation, up to 12 inches in size to the depth of the top of existing utility pipes.
- Record the locations and profiles in writing of all utilities found.
- Backfill potholes with native soils or sand and asphalt concrete cutback to finish grade.

VVH Consulting Engineers' initial estimated fee, invoiced on a time and materials basis, for this portion of the work is **\$12,880 plus expenses**. This is not an upset fee (not a "not to exceed" fee). VVH Consulting Engineers' invoices will show the current and cumulative billing amounts, so that it will be reasonably clear, as the project proceeds, whether this estimated fee amount will be adequate. If it appears that this fee will be exceeded, VVH Consulting Engineers will confirm revised fees with the client prior to billing over the initial budget amount.

The deliverables for this portion of the work program will be:

- Geotechnical Investigation Report (Hardcopy, Adobe PDF)

## 2.6 Schematic Project Plans (15% Design)

VVHCE will prepare improvement plans to approximately a 15% design level for the purpose of evaluating stormwater management alternatives prior to developing Initial Project Assessment Plans.

VVHCE's work will include the following:

- Establish centerline alignments
- Prepare typical cross sections for roadway segments
- Prepare plan and profile sheets showing existing rights-of-way, existing topography, existing utilities, and potential geometrics and vertical roadway alignments
- Complete hydrologic analysis to quantify stormwater management volume(s)
- Prepare schematic designs for potential stormwater management solutions
- Develop and/or select potential construction details for critical project elements

□ Task item/description 4

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$17,350 plus expenses**.

The deliverables for this portion of the work program will be:

- Schematic Project Plans (Hardcopy, Adobe PDF, AutoCAD)
- Hydrologic Analysis (Hardcopy, AutoCAD)

## 2.7 Initial Project Assessment Plans (35% Design)

VVHCE will prepare plans to approximately a 30% design level, incorporating the stormwater management approach selected from evaluation of the Schematic Project Plans. We will identify areas where existing curb, gutter, and sidewalk can remain in place, as well as any areas of pavements suitable for rehabilitation in lieu of replacement. Areas of nonconformance with current accessibility criteria (ADA) will be identified, as will proposed crosswalk locations and other pavement markings. Existing structures requiring adjustment to grade will be noted. Stormwater management improvements will be developed to an assessment level for quantification and estimating. Areas of potential right-of-way acquisition will be determined. Preliminary street light locations will be identified on the plans.

The Initial Project Assessment Plans will include the following:

- Cover Sheet
- General Notes and Specifications Sheet
- Construction Details Sheet(s)
- Topography and Demolition (Removals) Sheet(s)
- Plan and Profile Sheet(s)

Additional work for this task will include:

- Estimate removals quantities required for pavement reconstruction and rehabilitation areas
- Prepare Preliminary Engineer's Opinion of Probable Construction Costs based on Caltrans pricing and/or recent bids provided by the City of Atwater
- Identify potential construction phase areas together with City staff

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$17,650 plus expenses**.

The deliverables for this portion of the work program will be:

- Initial Project Assessment Plans (Hardcopy, Adobe PDF, AutoCAD)
- Preliminary Engineer's Opinion of Probable Construction Costs (Hardcopy, Adobe PDF)

## **2.8 Plans, Specifications, and Estimates (PS&E)**

VVHCE will prepare improvement plans, specifications, and estimates per City of Atwater standards. Plans will be submitted to the City for review at the 65%, 95% and 100% completion milestones. Outline Specifications will be submitted with the 65% plans and full specifications will accompany the 95% and 100% submittals. Each submittal will include up to five (5) sets of plans, specifications, and estimates, written responses to all review comments, and “redlined” plans and specifications showing comments from the previous submittal. All submittals will be made on 20lb. bond paper except the 100% plans, which will be prepared on Mylar film with wet signature by the licensed civil engineer of record.

The City of Atwater must provide standard “front end” contractual materials for the Specifications package, as well as standard boilerplate technical specifications and special provisions for VVHCE’s use in preparing the Project technical specifications and special provisions.

VVHCE’s subconsultant, Miller-Pezzoni & Associates, will provide electrical engineering for the street lighting systems. Roadway lighting will be designed in accordance with IESNA RP-08 and per City of Atwater standards. Miller-Pezzoni & Associates will coordinate with the Merced Irrigation District (MID) for electrical power points of connection.

Final Plans and Specifications will be sealed and signed by the California-licensed Civil and Electrical engineers in responsible charge of the engineering services.

VVHCE’s work will include the following:

- Prepare hydrologic and hydraulic stormwater calculations based on City of Atwater standards and other applicable regulations to provide for the collection, conveyance, and treatment for the storm water runoff volume and/or flow rate from the prescribed design storm. VVHCE will coordinate with the Merced Irrigation District or other agencies as required by the selected stormwater management alternative.
- Prepare civil improvement plans including:
  - Cover Sheet
    - Sheet Index; Vicinity Map; Project Plan View; Survey Benchmarks; Utility companies’ contact information; agency approval signature blocks (as required)
  - General Notes and Specifications Sheet(s)
    - General project notes for the contractor; City of Atwater standard notes; Selected specifications for materials, testing standards, and performance; Compliance notes for National Pollutant Discharge Elimination System (NPDES), San Joaquin Valley Air Pollution Control District (SJVAPCD)
  - Construction Details Sheets

- Roadway cross sections; City of Atwater and/or Caltrans standard plans; typical construction details for project-specific features; details for pavement structural section(s); construction details for storm water management system; typical pavement marking and signage details; typical curb ramp details
- Topography and Demolition Sheet(s)
  - Topographic map of existing conditions; removal of existing improvements; instructions to contractor regarding any existing materials or equipment to be returned to City or to be salvaged for reuse; survey benchmarks
- Plan and Profile Sheet(s)
  - Plan view showing existing grades at project construction limits; existing topography contours with elevations and spot grades for clarification; existing utilities to be adjusted to grade; finish grades for proposed surface improvements and drainage structures; slopes for surface improvements; ridges, grade breaks, and flow lines; sheet-specific notes and instructions to the contractor specific to site preparation, grading, and surface improvements shown on each sheet; general information and references to plan details for storm water system
  - Profile view showing existing grade at centerline; stations and offsets to roadway geometric features; proposed grades and slopes; existing utilities (from survey and/or record information); proposed wet utility structure rim grades, pipe sizes, pipe lengths, and pipe slopes
- Pavement Markings and Signage Sheet
  - Dimensioned plan of pavement markings and required signage with references to the California Manual on Uniform Traffic Control Devices (CA MUTCD), City of Atwater Standards, California Building Code (CBC), and the Americans with Disabilities Act (ADA) as applicable
- Erosion and Sediment Control Plan Sheet
  - Specification and location of storm water Best Management Practices (BMPs) for construction activities in accordance with NPDES as implemented through California storm water regulations, City of Atwater Municipal Separate Storm water Sewer System (MS4) permit requirements, and California Stormwater Quality Association (CASQA) guidelines. Locations of construction entrances, material storage areas, construction materials washdown areas, portable restrooms, stockpiles, equipment storage areas, and refueling areas will be determined in consultation with City staff.
- Erosion and Sediment Control Construction Details Sheet
  - Construction details for BMPs identified in Erosion and Sediment Control Plan

- Roadway Lighting Electrical Plans
  - Existing street lighting systems where present; electrical removals; locations of MID power points of connection; proposed light pole locations with indicated type and wattage; pullboxes; conduit runs; diagrams and schedules as required; notes referencing City standards.
- Prepare Engineer's Opinion of Probable Construction Costs (65%, 95%, 100%)
- Prepare 65% Outline Specifications
- Prepare Technical Specifications (95%, 100%)

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$99,300 plus expenses**.

The deliverables for this portion of the work program will be:

- 65% Improvement Plans (Bond Hardcopy, Adobe PDF, AutoCAD)
- 95% Improvement Plans (Bond Hardcopy, Adobe PDF, AutoCAD)
- 100% Improvement Plans (Mylar Hardcopy, Adobe PDF, AutoCAD)
- 65% Engineer's Opinion of Probable Construction Costs (Hardcopy, Adobe PDF)
- 95% Engineer's Opinion of Probable Construction Costs (Hardcopy, Adobe PDF)
- 100% Engineer's Opinion of Probable Construction Costs (Hardcopy, Adobe PDF)
- 65% Outline Specifications (Hardcopy, Adobe PDF)
- 95% Specifications (Hardcopy, MS Word, Adobe PDF)
- 100% Specifications (Hardcopy, MS Word, Adobe PDF)

## 2.9 SWRCB Construction General Permit Coverage (SWPPP)

The State of California Environmental Protection Agency's State Water Resource Control Board (SWRCB) adopted the current National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (CGP) on September 2, 2009 (CAS000002, Order No. 2009-0009-DWQ). The order is currently effective as modified by Order 2010-0014-DWQ and Order 2012-006-DWQ.

All construction projects are required to comply with the current permit and adopted amendments thereto. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action including civil and criminal penalties and/or removal from General Permit Coverage.

VVHCE's work will include the following:

- Utilizing site-specific characteristics and an estimated construction schedule prepared in coordination with the City, VVHCE will prepare the required permit registration documents (PRDs) for compliance with the CGP. The PRDs consist of the following:

- Risk Determination Worksheet:  
The risk assessment will be the first step to be completed, as the project risk level determines the requirements for the construction Storm Water Pollution Prevention Plan (SWPPP).
  - Notice of Intent (NOI):  
The NOI includes general information about the project and contact information for key persons.
  - Post-Construction Water Balance Standard Calculations:  
Demonstrates compliance with the New and Re-Development Water Balance Performance Standard.
  - Site Map:  
Includes the project layout and surrounding areas, drainage areas, discharge/sampling locations, areas of soil disturbance, and all temporary and post-construction BMPs.
  - Construction Storm Water Pollution Prevention Plan (SWPPP):  
The Storm Water Pollution Prevention Plan (SWPPP) will be prepared according to the Construction General Permit Section XIV "SWPPP Requirements" and the appropriate Appendix for the specific risk level for the project. Two printed copies of the Construction SWPPP will be provided.
  - Signed Certification Statement
- Assist in establishing Client/Owner access to Storm Water Multi-Application and Report Tracking System (SMARTS) Website and in establishing authorization for VVHCE to upload data and documents to SMARTS Website for this project.
  - File the PRDs through the SMARTS Website.
  - Assist Client/Owner with certification of the PRDs through the SMARTS Website.
  - Mail annual fee (provided by Client/Owner) to the State Water Board.

All PRDs must be filed electronically using the State Water Board's Storm Water Multi-Application and Report Tracking System (SMARTS) Website. The Annual Fee, which is based on total disturbed area, is mailed to the State Water Board or paid electronically through the SMARTS Website. After receipt of the complete PRDs and processing of the annual fee, the State Water Board will then email a receipt that includes a Waste Discharge Identification (WDID) number to the discharger.

The Construction General Permit requires that all PRDs be electronically certified and submitted to the State Water Board by the Legally Responsible Person (LRP) or a duly authorized representative.

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$4,500**.

The deliverables for this portion of the work program will be:

- Construction SWPPP (two bound hardcopies)

#### **Notes on the Scope of Work:**

1. Annual Fees are not included and must be paid by Client/Owner to SWRCB.
2. A Notice of Termination (NOT) must be prepared and filed electronically by Client or Contractor through the SMARTS Website after completion of construction and implementation of post-construction BMPs.
3. The Construction General Permit includes construction-related reporting requirements. Unless "SWPPP Field Observation and Testing" services are specifically included as a separate task within this proposal, VVH Consulting Engineers' scope of work does not include these or other implementation measures.
4. Contractor to provide information for inclusion into the SWPPP, including but not limited to: current construction schedule, superintendent contact information, and a list of subcontractors.

#### **2.10 Bidding Assistance**

VVHCE provide engineering assistance for the City's bidding process.

VVHCE's work will include the following:

- Assist with the creation of bidding addenda
- Review and respond to RFIs
- Provide engineering support as requested by City staff

VVH Consulting Engineers' lump sum fee (fixed fee) for completing this portion of the work program is **\$4,500 plus expenses**.

The deliverables for this portion of the work program will be:

- Bid Addenda
- RFI responses
- Other items as necessary for requested services

#### **2.11 Project Coordination Meetings**

VVHCE will facilitate regular meetings with City of Atwater staff to maintain coordination throughout the duration of the design process. The Project Coordination Meetings will serve as the primary forum for evaluating Project status and for coordinating and resolving Project design issues. It is anticipated that six (6) meetings will be required.

VVHCE's work will include the following:

- Provide Meeting Notices/Invitations
  - Distribution to be approved by City of Atwater
- Prepare Meeting Agendas
- Prepare handouts, presentations, or other meeting materials
- Prepare and distribute Meeting Minutes with action item assignments
- Update Project Schedule as required

VVH Consulting Engineers' initial estimated fee, invoiced on a time and materials basis, for this portion of the work is **\$7,500 plus expenses**. This is not an upset fee (not a "not to exceed" fee). VVH Consulting Engineers' invoices will show the current and cumulative billing amounts, so that it will be reasonably clear, as the project proceeds, whether this estimated fee amount will be adequate. If it appears that this fee will be exceeded, VVH Consulting Engineers will confirm revised fees with the client prior to billing over the initial budget amount.

The deliverables for this portion of the work program will be:

- Meeting Notices (Hardcopy, Adobe PDF)
- Meeting Agendas (Hardcopy, Adobe PDF)
- Meeting Minutes (Hardcopy, Adobe PDF)
- Meeting Handouts, Presentations (Hardcopy, Adobe PDF)
- Updated Project Schedule (Hardcopy, Adobe PDF)

## **2.12 Public Outreach**

VVHCE will travel door-to-door along the Project area to engage and inform affected residents/landowners about the planned project.

VVHCE's work will include the following:

- Meet with affected residents (3 attempts will be made)
- Document concerns and/or requests of residents/landowners
- Coordinate with City staff regarding resident concerns or requests (e.g. impacts to driveways, fences, walls, mailboxes, landscaping, sidewalks, utilities, etc.)
- Follow up with residents/homeowners that express concerns or requests to update them on status

VVH Consulting Engineers' initial estimated fee, invoiced on a time and materials basis, for this portion of the work is **\$7,500 plus expenses**. This is not an upset fee (not a "not to exceed" fee). VVH Consulting Engineers' invoices will show the current and cumulative billing amounts, so that it will be reasonably clear, as the project proceeds, whether this estimated fee amount will be adequate. If it appears that this fee will be exceeded, VVH Consulting Engineers will confirm revised fees with the client prior to billing over the initial budget amount.

The deliverables for this portion of the work program will be:

- List of residences adjacent to Project area with dates of contact (or attempted contact) and notes about any concerns or requests
- Meeting Notes from coordination with City of Atwater
- Copies of any exhibits or sketches prepared for coordination purposes

### 3.0 FEE SUMMARY

VVH Consulting Engineers' fees for the work noted in this proposal will be as follows.

Item	Description	VVHCE Fee	Fee Type
2.1	Project Initiation	\$3,500	FF
2.2	Project Scope and Budget Definition	\$2,500	FF
2.3	Topographic Survey	\$24,800	FF
2.4	Geotechnical Investigation	\$12,650	FF
2.5	Utilities Potholing	\$12,880	T&M
2.6	Conceptual Plans	\$17,350	FF
2.7	Initial Project Assessment Plans	\$17,650	FF
2.8	Plans, Specifications, and Estimates (PS&E)	\$99,300	FF
2.9	Construction SWPPP	\$4,500	FF
2.10	Bidding Assistance	\$4,500	T&M
2.11	Project Coordination Meetings	\$7,500	T&M
2.12	Public Outreach	\$7,500	T&M
<b>Total Fee</b>		<b>\$214,630</b>	

**Fee types:** FF = Fixed Fee  
 TMU = Time and Materials – Not to Exceed (to Upset Amount)  
 T&M = Time and Materials Estimate with No Upset. Total fees may be higher.

Unless otherwise indicated, the fees do not include disbursements (also referred to as Expenses, Other Direct Costs, etc.). Refer to the Limitations and Conditions section of this proposal for information with respect to disbursements.

#### 4.0 GENERAL LIMITATIONS AND CONDITIONS

In addition to any limitations and conditions noted in the other parts of this proposal, the following limitations and conditions apply to this work.

- 4.1 The fees in this proposal exclude prevailing wage. If prevailing wage is required, then VVH Consulting Engineers will provide a revised proposal.
- 4.2 The fees in this proposal exclude all taxes, levies or duties that may be applied by a Federal, State, County, or Municipal Government on fees for services.
- 4.3 The fees in this proposal exclude reimbursable expenses. Costs (plus 15 percent) for reimbursable expenses will be invoiced in addition to the fees noted. Expenses may include, among other things, vehicle mileage charges, printing and reproduction charges, and postage and courier charges.
- 4.4 Unless otherwise noted, the fees in this proposal are based on the project being designed as one phase or as one phase for each of the two (2) roadway segments.
- 4.5 In providing opinions of probable cost, it is recognized that neither the Client nor VVH Consulting Engineers has control over the costs of labor, equipment or materials, or over the Contractor's methods of determining prices or bidding. Opinions of probable cost prepared by VVH Consulting Engineers are based on VVH Consulting Engineers' reasonable professional judgment and experience and do not constitute a warranty, express or implied, that the Contractor's bids or the negotiated price of the Work will not vary from the Client's budget or from any opinion of probable cost prepared by VVH Consulting Engineers.
- 4.6 The Client is responsible for payment of all government application, permitting, municipal fees, and all other fees.
- 4.7 Where the services include erosion and sedimentation control drawings or procedures ("Erosion Control Services"), such drawings and procedures will be prepared in accordance with industry standards. The Client acknowledges that any Erosion Control Services proposed or performed by VVH Consulting Engineers are not guaranteed to capture all runoff or siltation, that any physical works must be constructed and maintained by the Client's contractor or others and that VVH Consulting Engineers has no control over the ultimate effectiveness of any erosion control measures constructed by others. Except to the extent that there were errors or omissions in Erosion Control Services provided by VVH Consulting Engineers, the Client agrees to indemnify and hold VVH Consulting Engineers harmless from and against all claims, costs, liabilities or damages whatsoever arising from any discharge of silt or other deleterious substances into any waterway and any resulting charges, fines, legal action, cleanup, or related costs.
- 4.8 Examples of items that are specifically excluded from this proposal include, but are not limited to:

- Additional Engineer's Opinion of Probable Costs
- Additional Prints Beyond Agency Submittals and Bid Processing
- Aerial Survey and/or Photography
- Agency Fees
- Agency Permits
- ALTA Survey
- Assessment Districts
- Bid Administration
- Boundary Survey
- Construction Contract Documents
- Construction Administration/Inspection/Management
- Construction Phasing Plan
- Construction Staking
- Construction Traffic Routing Plan
- Contaminated Soil Mitigation
- Coordination of Farming Operations
- Coordination with Dry Utility Providers, other than for roadway lighting points of connection
- Coordination with Governmental Regulatory Agencies
- Design of Off-Site Irrigation Systems, Including Relocations
- Design of Drainage Pump Stations or Sewer Lift Stations
- Design of Telephone, Cable Television, and Natural Gas Facilities
- Design of Off-Site Facilities
- Design of Sound Attenuation Walls, Decorative Walls, Retaining Walls, and Fences
- Dust Control Plan Application/Exhibit
- Engineering Services for Utility Companies with Regard to Overhead Power Lines, Underground Cables, or Off-Site Services
- Environmental Mitigation
- Finance Districts
- Flood Plain Issues
- Governmental Agency Permit Processing
- Landscape Irrigation System
- Landscaping Plans
- Legal Descriptions
- Lighting and Landscape Maintenance Districts
- Lot Line Adjustment
- On-Site or Off-Site Traffic and Sound Attenuation Studies
- Preparation and Processing of Drawings and Information for Dry Utility Providers
- Preparation of Bid Documents and Coordination of Bids
- Preparation of Offsite Easements, Rights-of-Way and/or Rights of Entry as May be Required
- Preparation or Revision of Computer Waterworks System Models
- Public Facility Fees
- Record of Survey

- Reimbursement Agreements
- Retaining Wall Design and/or Calculation
- Right-of-Way or Easement Acquisition
- Structural Calculations
- Structural Design or Structural Engineering
- Submission and/or Coordination of Permit Applications of Any Kind
- Swainson's Hawk Mitigation
- Title Reports
- Traffic Controls and Lane Closures other than those noted in the Scope of Work
- Traffic Signal Design
- Underground Utility Locating
- Any Other Services Not Specifically Described in This Proposal.

VVH Consulting Engineers shall not be responsible for any costs associated with the above noted exclusions.

VVH Consulting Engineers is capable of providing most of these services. If the Client requests that VVH Consulting Engineers provide these services, VVH Consulting Engineers will provide a proposal. If directed in writing by the Client to provide these services with less than five business days notice before the work must be started, VVH Consulting Engineers will perform the work on a time and materials basis.

4.9 The following items are specifically excluded from the topographic survey scope of work:

- Determination of boundaries between varying soil types or grass patches.
- Pickup of miscellaneous shrubs and bushes, unless specifically marked for survey by the Client.
- Survey of anything that is not in direct contact with the ground (tree branches and drip lines, overhead lines, tops of fences). Our survey will only include things that are at ground level. Overhead utilities will be shown on the plans but that their elevations are not obtained during the topographic survey.
- Placing of monuments and submission of a record of survey.
- Title searches.
- Preparation of easement documents or exhibits.

If VVH Consulting Engineers is required to do any of these items, a revised fee quote will be provided.

4.10 Design of drainage pump stations, sewer lift stations, or water booster pumping facilities is not included in the scope of work for this proposal.

4.11 Structural design for pole foundations as an alternate to the Agency's standard pole foundations due to soil conditions or to conditions discovered during construction has not been included.



We are prepared to commence work upon our receipt of a signed contract. We will require two weeks lead time to allow for data to be set up and survey crews to be scheduled.

The work will be completed under the terms of our existing Professional Services Agreement dated March 14, 2016.

We trust that this proposal is in order. However, please do not hesitate to contact the undersigned if you have any questions.

Respectfully,

**VVH CONSULTING ENGINEERS**

A handwritten signature in blue ink that reads 'Michael Hayes'. The signature is fluid and cursive, with a long horizontal line extending to the right.

Michael Hayes, PE, LEED AP, QSD  
Principal  
Tel.: (209) 568-4477  
Fax: (209) 568-4478  
mhayes@vvhce.com

c. Chris Vierra  
Ryan Vance

### 3.0 FEE SUMMARY

VVH Consulting Engineers' fees for the work noted in this proposal will be as follows.

Item	Description	VVHCE Fee	Fee Type
2.1	Project Initiation	\$3,500	FF
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2.6	Conceptual Plans	\$17,350	FF
2.7	Initial Project Assessment Plans	\$17,650	FF
2.8	Plans, Specifications, and Estimates (PS&E)	\$99,300	FF
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2.10	Bidding Assistance	\$4,500	T&M
2.11	Project Coordination Meetings	\$7,500	T&M
2.12	Public Outreach	\$7,500	T&M
<b>Total Fee</b>		<b>\$214,630</b>	

**Fee types:** **FF** = Fixed Fee  
**TMU** = Time and Materials – Not to Exceed (to Upset Amount)  
**T&M** = Time and Materials Estimate with No Upset. Total fees may be higher.

Unless otherwise indicated, the fees do not include disbursements (also referred to as Expenses, Other Direct Costs, etc.). Refer to the Limitations and Conditions section of this proposal for information with respect to disbursements.

May 2, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of May 9, 2016

**CALLING, GIVING NOTICE OF, AND CONSOLIDATING THE 2016  
GENERAL MUNICIPAL ELECTION**

**RECOMMENDATION:**

It is recommended that the City Council consider:

- Adopting Resolution No. 2885-16 calling and giving notice of the holding of a General Municipal Election to be held on Tuesday, November 8, 2016 for the election of the City Clerk, the City Treasurer and two (2) Members of the City Council, as required by the provisions of the laws of the State of California relating to General Law Cities; and requesting the Board of Supervisors of the County of Merced consolidate a General Municipal Election to be held on November 8, 2016 with the Statewide General Election to be held on the date pursuant to Section 10403 of the Election Code.

**BACKGROUND:**

The City of Atwater conducts elections for City Officers on even-numbered years. In November 2016, the terms of the City Clerk, the City Treasurer and two (2) Members of the City Council will expire. The statewide general election will be held on Tuesday, November 8, 2016. It has been the practice that the City election be consolidated, through the services of the Merced County Office of Elections, with the statewide general election.

**ANALYSIS:**

The conduct of the 2016 Municipal Election will be the same as the 2014 election process. The City Clerk's office will refer all persons expressing an interest in running for election to obtain their election materials from the Elections Office of Merced County. Collection and verification of signatures on nomination papers and financial documentation required by state law will be handled by the County Elections Office. The coordination of the election, polling places and ballot materials will be handled by the Merced County Office of Elections, with approval from the Merced County Board of Supervisors.

The 2016 General Municipal Election will be for the purpose of electing the City Clerk, the City Treasurer and two (2) Members of the City Council for the full term of four (4) years. Resolution No. 2883-16 has been prepared for this purpose.

**FISCAL IMPACT:**

The costs associated with the election will be included in the General Fund, City Clerk Department, Professional Services Account for FY 2016-17. Staff is estimating these costs at approximately \$30,000.

**CONCLUSION:**

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

Respectfully submitted,

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Jeanna Del Real, CMC  
City Clerk



**CITY COUNCIL  
OF THE  
CITY OF ATWATER**

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**RESOLUTION NO. 2885-16**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATWATER CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016, FOR THE ELECTION OF CITY CLERK, CITY TREASURER, AND TWO (2) MEMBERS OF THE CITY COUNCIL, AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE ELECTION CODE**

**WHEREAS**, the City of Atwater conducts election for City Officers on even-numbered years; and

**WHEREAS**, in November 2016, the terms of the City Clerk, the City Treasurer and Two (2) Members of the City Council will expire; and

**WHEREAS**, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on November 8, 2016, for the election of Municipal Officers; and

**WHEREAS**, it is desirable that the General Municipal Election be consolidated with the Statewide General election to be held on the same date and that within the City precincts, polling places and election officers of the two (2) elections be the same, and that the County Elections Department of the County of Merced canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Atwater does hereby resolve, declare, determine, and order as follows:

**Section 1:** Pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Atwater, California, on Tuesday, November 8, 2016, a General Municipal Election for the purpose of electing the City Clerk, the City Treasurer, and two (2) Members of the City Council, for the full term of four (4) years.

**Section 2:** The above-mentioned offices shall be placed on the ballots used in the above-specified election in the following form:

CITY OF ATWATER	
MEMBER, CITY COUNCIL	VOTE FOR TWO
CITY CLERK	VOTE FOR ONE
CITY TREASURER	VOTE FOR ONE

**Section 3:** The ballots to be used at the election shall be in form and content as required by law.

**Section 4:** The City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

**Section 5:** The polls for the election shall be open at seven o'clock AM (7:00 AM) on the day of the election and shall remain open continuously from that time until eight o'clock PM (8:00 PM) the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

**Section 6:** In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

**Section 7:** Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law and pursuant to Elections Code section 12101.

**Section 8:** Pursuant to the requirements of Sections 10400, 10402, and 10403 of the Election Code, it is in the best interest of the public to consolidate the City of Atwater Election with the Statewide General Election, and the Board of Supervisors of the County of Merced is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 8, 2016.

**Section 9:** The County Election Department is authorized to canvass the returns of the General Municipal Election in accordance with Elections Code section 10411. The

selection shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

**Section 10:** The Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

**Section 11:** The City of Atwater acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code section 10418.

**Section 12:** Pursuant to the provisions of Elections Code section 10002, the City Council hereby requests the Board of Supervisors of the County of Merced, California to permit the County Election Department of the County of Merced, California to render to the City of Atwater such services as the City Clerk of the City of Atwater may request, relating to the conduct of the above-mentioned elections with respect to the following matters: coordination of election precincts, polling places, voting booths, voting systems and election officers; checking of nomination petitions; printing and mailing of voter pamphlets; and preparation of tabulation of result of votes cast.

**Section 10:** The City of Atwater recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for such costs.

**Section 11:** The City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the County Election Department of the County of Merced.

**Section 12:** The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

The foregoing resolution is hereby adopted this 9<sup>h</sup> day of May, 2016

**AYES:  
NOES:  
ABSENT:**

**APPROVED:**

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**JAMES E. PRICE, MAYOR**

**ATTEST:**

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**JEANNA DEL REAL, CMC  
CITY CLERK**

April 28, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of May 9, 2016

**CONSENTING TO INCLUSION OF THE CITY OF ATWATER  
PROPERTIES IN THE CSCDA OPEN PACE PROGRAM**

**RECOMMENDATION:**

It is recommended that the City Council consider:

1. Adopting Resolution No. 2884-16 consenting to inclusion of properties within the City of Atwater's jurisdiction in the CSCDA Open Pace Program. and
2. Authorizing and directing the City Manager to execute any documents relating to participation, on behalf of the City.

**BACKGROUND:**

The City of Atwater has previously approved two PACE Programs. In November 2013, the HERO Program was approved. In 2016 the CHF PACE program, administered by Ygrene, was added. If adopted, CSCDA would be the third program. The request for consideration has been made by Pastor Bill Barkman with the First Church of God, (**Exhibit A**). The First Church of God intends to use the program to help finance solar panels associated with an expansion, currently underway, of the First Church of God located on Fruitland Ave.

CSCDA, the largest Joint Powers Authority in California, founded and sponsored by the League of California Cities and CSAC, is implementing Property Assessed Clean Energy ("PACE") under the provisions of Chapter 29 of Division 7 of the Streets & Highways Code (commonly referred to as "AB 811") on behalf of its member counties and cities. AB811 authorizes a legislative body to designate an area within which authorized public officials (including a joint powers authority like CSCDA) and free and willing property owners may enter into voluntary contractual assessments to finance the installation of renewable energy, energy efficiency, water efficiency, and seismic strengthening improvements as well as electric vehicle charging infrastructure, in each case affixed to real property (the "Improvements").

CSCDA's Commissioners pre-qualified and appointed two PACE Administrators to manage the CSCDA Open PACE program in order to offer members turn-key PACE solutions that provide residential and commercial property owners the choice among prequalified PACE financing providers, creating competition on terms, service and interest rates. The prequalified program administrators operating the following programs are; AllianceNRG Program and Renewable Funding LLC (administering CaliforniaFIRST).

CSCDA's Open PACE program offers turnkey solutions to save California jurisdictions the time and resources of developing standalone PACE programs. Jurisdictions only need to adopt the form of resolution accompanying this staff report related to the CSCDA Open PACE program to begin the process. There is no cost to approving the resolution PACE has been a very successful financing tool in California. PACE is operating in over 250 jurisdictions throughout the state, and nearly half a billion dollars in energy efficiency, water efficiency and renewable projects have been funded.

**ANALYSIS:**

CSCDA Open PACE is being offered to allow property owners in participating cities and counties to finance renewable energy, energy water efficiency improvements, seismic improvements and electric vehicle charging infrastructure on their property. Participation in the assessment is 100% voluntary by the property owner. The improvements installed on the owner's property are financed by the issuance of bonds by CSCDA. The bonds are secured by a voluntary contractual assessment levied on the owner's property. Property owners who wish to participate in PACE agree to repay the money through the voluntary contractual assessment collected with property taxes. The voluntary contractual assessments will be levied by CSCDA and collected in annual installments through the applicable county secured property tax bill.

The benefits to the property owner include:

- **Competition:** CSCDA Open PACE provides two options to property owners: AllianceNRG Program and CaliforniaFIRST. Property owners can shop for the best price and service through the availability of the PACE administrators.
- **Eligibility:** In today's economic environment, alternatives for property owners to finance renewable improvements may not be available. Many property owners do not have financing options available to them to lower their utility bills.
- **Savings:** Energy prices continue to rise and installing energy efficient, water efficient and renewable energy models lower utility bills.
- **100% voluntary:** Only property owners who choose to finance improvements will have assessments placed on their property.
- **Payment obligation can stay with the property:** Under Chapter 29, a voluntary contractual assessment stays with the property upon transfer of ownership. Most private loans are due on sale of the property. Certain mortgage providers will, however, require the assessment be paid at the time the property is refinanced or sold.
- **Prepayment option:** The property owner can choose to pay off the assessments at any time, subject to applicable prepayment penalties.
- **Customer oriented:** Part of the success of the CSCDA Open PACE is prompt

customer service.

- Favorable Terms: The economic terms of PACE financing will often be more favorable than other options.
- Not a personal loan or mortgage: The PACE assessment in effect is not a personal obligation of the property owner through a conventional loan or mortgage but an assessment on the property secured by an assessment lien and collected as part of the regular tax roll on the property.

The benefits to the City include:

- Prequalified PACE Administrators. CSCDA has pre-qualified the PACE Administrators based on their business practices, qualifications, experience, and capital commitment to the PACE market.
- Single Resolution. The City can pass a single resolution and provide access to residential and commercial property owners to highly qualified PACE administrators. There is no need to pass multiple resolutions to approve the administrators.
- Project Eligibility. The CSCDA Open PACE platform can provide financing for all aspects of PACE including: 1) Residential, 2) Commercial, and 3) Seismic strengthening programs such as Mandatory Soft Story programs,
- Increase local jobs. Property improvements provide jobs in the local economy.
- Increase in housing prices. Updated and higher efficient homes are generally more valuable.
- Increase Revenue to the City. Property improvements result in an increase in sales, payroll and property tax revenue to the City.
- No City Obligation. As in conventional assessment financing, the City is not obligated to repay the bonds or to pay the assessments levied on the participating properties. Unlike conventional assessment financing, the City/County has no administrative duties and its name is not on the bonds, as CSCDA's name is on the bonds.
- No City staff support required. All CSCDA Open PACE and assessment administration, bond issuance and bond administration functions are handled by CSCDA and the Administrators; AllianceNRG Program and Renewable Funding. No City staff time is needed to participate in CSCDA Open PACE.
- No internal management requirements. The City can provide access for its residents to CSCDA Open PACE without the higher staff costs that an independent program

established by the City would require.

- Availability of Information on Projects Financed. The City may receive, at its option, periodic updates on CSCDA Open PACE projects that have been completed in their community.
- Demonstration of Community Commitment to the Environment. Participating in CSCDA Open PACE demonstrates the City’s commitment to do everything in its power to improve the environment.
- The proposed resolution enables CSCDA Open PACE programs to be available to owners of residential and commercial property within the City to finance permanently fixed renewable energy, energy efficiency, water efficiency, and seismic strengthening improvements as well as electric vehicle charging infrastructure.
- CSCDA will be responsible for entering into voluntary contractual assessment agreements with participating property owners, levying the voluntary contractual assessments, issuing bonds to finance the Improvements and taking remedial actions in the event of delinquent assessment payments. The resolution expressly provides that the City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies in assessment payments, or the issuance, sale or administration of any bonds issued in connection with CSCDA Open PACE.

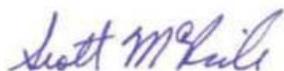
**FISCAL IMPACT:**

The City will incur no financial obligations as a result of program participation.

**CONCLUSION:**

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

Respectfully submitted,



---

Scott McBride  
Community Development Director

# FIRST CHURCH OF GOD



a starting place for new destinies

and Fruitland Christian Preschool serving families of infant - toddler - preschool - school age children

April 21, 2016

Mr. Scott McBride, Dir.  
Community Development Dept.  
750 Bellevue Road  
Atwater, CA 95301

Mr. McBride:

First Church of God (2100 Fruitland Avenue) is requesting action by City Council on a PACE proposal, as indicated in my previous email to you. The next date available to go before the Councilmen is May 8.

A Mr. Joseph Livaich of CaliforniaFIRST will be assisting with whatever necessary information may be required during the meeting. His contact information is: 510-350-3710; 916-396-7659; [jlivaich@renewfinancial.com](mailto:jlivaich@renewfinancial.com).

Thank you for your help.

Sincerely,

William Barkman, Chief Officer and Senior Pastor

2100 Fruitland Avenue Atwater, CA 95301-2109 - Church 209.358.5632 & Preschool 209.358.7981

Bill Barkman, Lead Pastor - Bexx To'Omalatai, Student Ministries - Payia Chambers, Preschool Ministries

[bill@afcog.org](mailto:bill@afcog.org)

[troy@afcog.org](mailto:troy@afcog.org)

[payia@afcog.org](mailto:payia@afcog.org)



# CITY COUNCIL OF THE CITY OF ATWATER

## RESOLUTION NO. 2884-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATWATER CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TERRITORY OF THE CITY OF ATWATER IN THE CSCDA OPEN PACE PROGRAMS; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF ATWATER; AND AUTHORIZING RELATED ACTIONS**

**WHEREAS**, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Atwater; and

**WHEREAS**, the Authority is implementing Property Assessed Clean Energy (PACE) programs, which it has designated CSCDA Open PACE, consisting of CSCDA Open PACE programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the "Programs"), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time; and

**WHEREAS**, the program administrators currently active in administering Programs are Alliance NRG and Renewable Funding LLC, and the Authority will notify the City in advance of any additions or changes; and

**WHEREAS**, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner or owners of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

**WHEREAS**, the City desires to allow the owners of property (“Participating Property Owners”) within its territory to participate in the Programs and to allow the Authority to conduct assessment proceedings under Chapter 29 within its territory and to issue bonds to finance or refinance Improvements; and

**WHEREAS**, the territory within which assessments may be levied for the Programs shall include all of the territory within the City of Atwater’s official boundaries; and

**WHEREAS**, the Authority will conduct all assessment proceedings under Chapter 29 for the Programs and issue any bonds issued in connection with the Programs; and

**WHEREAS**, the City of Atwater will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs;

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

Section 1. The City Council of the City of Atwater hereby finds and declares that properties in the territory of the City of Atwater will benefit from the availability of the Programs within the territory of the City of Atwater and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

Section 2. In connection with the Programs, the City of Atwater hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City of Atwater and the issuance of bonds to finance or refinance Improvements; provided, that

(1) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(2) The City of Atwater will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs.

Section 3. The appropriate officials and staff of the City are hereby authorized and directed to make applications for the Programs available to all property owners who wish to finance or refinance Improvements; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense.

Section 4. The appropriate officials and staff of the City of Atwater are hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Programs.

Section 5. The Atwater City Council hereby finds that adoption of this Resolution is not a “project” under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

Section 6. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority at: Secretary of the Board, California Statewide Communities Development Authority, 1400 K Street, Sacramento, CA 95814.

The foregoing resolution is hereby adopted this 9<sup>th</sup> day of May, 2016.

**AYES:  
NOES:  
ABSENT:**

**APPROVED:**

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

**ATTEST:**

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

May 5, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of May 5, 2016

## **MONTHLY REVIEW OF LOCAL DROUGHT EMERGENCY**

### **RECOMMENDATION:**

It is recommended that the City Council consider:

- Reaffirming the facts and findings in Resolution No. 2823-15 declaring the existence of a local drought emergency.

### **BACKGROUND AND ANALYSIS:**

In January 2014, the Governor declared a state of emergency in the State of California due to current drought conditions. As a result of the Governor's declaration, on May 26, 2015, the City Council adopted Resolution No. 2823-15 declaring the existence of a local drought emergency and Urgency Ordinance No. CS 966 amending the City's current water conservation program in an effort to curtail effects of the current and future statewide drought conditions within the City of Atwater.

Government Code section 8630(c) requires the City review the need for continuing the local drought emergency at least once every 30 days until the City Council terminates the local drought emergency. Staff has reviewed the City's need for continued conservation in line with the urgency ordinance and believes there is a continued need for the local drought emergency procedures contained therein.

Therefore, Staff recommends that the City Council reaffirm the facts and findings in Resolution No. 2823-15 declaring the existence of a local drought emergency.

### **FISCAL IMPACT:**

Short-term water saving actions will have minimal staff and monetary impacts. Longer-term actions may require additional resources, which would be presented to the City Council for consideration after Staff has had an opportunity to further explore their feasibility.

### **CONCLUSION:**

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

Respectfully submitted,

*/s/ Thomas H. Terpstra*

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Thomas H. Terpstra  
City Attorney



## CITY COUNCIL OF THE CITY OF ATWATER

### RESOLUTION NO. 2823-15

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATWATER DECLARING EXISTENCE OF A LOCAL DROUGHT EMERGENCY

**WHEREAS**, California Government Code § 8630 empowers the City Council to declare the existence of a local drought emergency when the City of Atwater is threatened or likely to be threatened by the conditions of extreme peril to the safety of persons and property that are or are likely to be beyond the control of the services, personnel, equipment, and facilities of this City; and

**WHEREAS**, California Government Code § 8558(c) states that a “local emergency” means the duly declared existence of conditions of extreme peril to the safety of persons and property within the territorial limits of the City caused by the drought; and

**WHEREAS**, pursuant to Atwater Municipal Code § 2.44.060, the Director of Emergency Services has requested the City Council to declare the existence of a local emergency; and

**WHEREAS**, on January 17, 2014, the Governor of the State of California declared a state of emergency in the State of California due to current drought conditions in the state; and

**WHEREAS**, the Governor’s proclamation acknowledged that the State of California is experiencing record dry conditions that have persisted since 2012; and

**WHEREAS**, the Governor’s proclamation also noted that the snowpack in California’s mountains is alarmingly below the normal average level for this date; and

**WHEREAS**, the Governor’s proclamation called upon all Californians to reduce their water usage by 25 percent; and

**WHEREAS**, the Governor’s proclamation called upon local water suppliers and municipalities to implement water shortage contingency plans immediately in order to avoid or forestall outright restrictions that could become necessary later in the drought season; and

**WHEREAS**, persistent drought conditions have negatively impacted and continue to threaten the City’s economy; and

**WHEREAS**, conditions of drought exacerbate already perilous fire conditions threatening communities in the City of Atwater; and

**WHEREAS**, on January 15, 2014, the Secretary of the United States Department of Agriculture designated 27 California counties, [*including Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Fresno, Inyo, Kings, Kern, Los Angeles, Madera, Mariposa, Merced, Mono, Monterey, Sacramento, San Benito, San Bernardino, San Joaquin, San Luis Obispo, Santa Clara, Santa Barbara, Stanislaus, Tulare, Tuolumne, and Ventura*] as natural disaster areas due to drought which makes farm operators in the designated counties eligible to be considered for certain assistance including emergency loans from the U.S. Farm Service Agency for production losses; and

**WHEREAS**, on January 17, 2014, the California State Resources Control Board notified all water rights holders in California that, in the coming months, if dry weather conditions persist, the State Water Board will notify water right holders in critically dry watersheds of the requirement to limit or stop diversions of water under their water right, based upon the priority of their right; and

**WHEREAS**, these conditions are likely to be beyond the services, equipment, personnel and fiscal resources of the City of Atwater.

**NOW, THEREFORE, BE IT RESOLVED AND DECLARED** by the City Council of the City of Atwater that for the reasons set forth herein, a local drought emergency now exists throughout the City of Atwater; and

**BE IT FURTHER RESOLVED** that federal and state agencies are requested to provide financial and other assistance to residents, water suppliers, water rights holders, and business owners in the City of Atwater to help them mitigate the persistent drought conditions; and

**BE IT FURTHER RESOLVED** that the City of Atwater's water users shall be encouraged and directed to heed the Governor's request to reduce water usage by 25 percent; and

**BE IT FURTHER RESOLVED** that water suppliers in the City of Atwater shall be encouraged and directed to heed the Governor's request to implement water shortage contingency plans immediately in order to avoid or forestall outright restrictions that could become necessary later in the drought season; and

**BE IT FURTHER RESOLVED** that all city water associates, power companies, other involved agencies, utilities, and individuals shall be encouraged and directed to do whatever they can to equitably allocate the available water to mitigate to the extent possible the hardships resulting from the lack of water during this extended drought period of recovery; and

**BE IT FURTHER RESOLVED, DECLARED AND ORDERED** that during the existence of this local drought emergency the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, ordinances, and resolutions existing and passed in conjunction with this emergency, and that this emergency shall be deemed to continue to exist until the City Council of the City of Atwater, County of Merced, State of California, declares its termination. Further, it is directed that this emergency declaration be forwarded to the Director of the Governor's Office of Emergency Services and the Governor of the State of California; and

**BE IT FURTHER RESOLVED, DECLARED AND ORDERED** that the City Council of the City of Atwater hereby authorizes the undertaking of all extraordinary police and planning powers in response to this local drought emergency including but not limited to the ability to modify,

amend, or issue planning codes, building or safety codes, environmental health codes, and such other codes, orders, and regulations as determined necessary for the duration of the emergency; and

**BE IT FURTHER RESOLVED, DECLARED AND ORDERED** that public employees, officers, and governing bodies within the City are hereby granted full immunity to the extent allowed by law for actions undertaken in compliance with this declaration; and

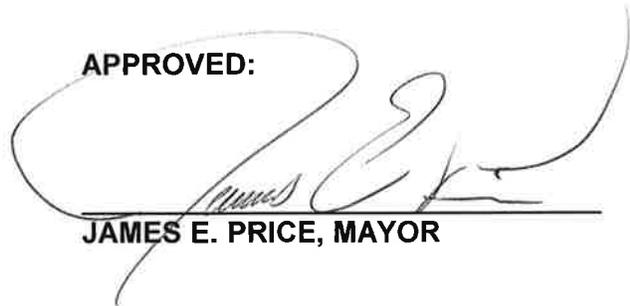
**BE IT FURTHER RESOLVED, DECLARED AND ORDERED** that during the existence of this local drought emergency, the City of Atwater Director of Emergency Services may request the City Council to amend this declaration of a local drought emergency and, if this Council is not in session to amend this declaration as necessary and, if this declaration is amended by the Director of Emergency Services, the Council shall take action to ratify the amendment within 14 days thereafter or the amendment shall have no further force or effect; and

**BE IT FURTHER RESOLVED, DECLARED AND ORDERED** that pursuant to Government Code section 8630(c) this City Council will review the need for continuing the local drought emergency at least once every 30 days until this Council terminates the local drought emergency.

The foregoing resolution is hereby adopted this 26<sup>th</sup> day of May, 2015.

**AYES:** Bergman, Raymond, Vineyard, Price  
**NOES:** Rivero  
**ABSENT:** None

**APPROVED:**



A large, stylized handwritten signature in black ink, appearing to read 'James E. Price', is written over a horizontal line. The signature is fluid and cursive.

**JAMES E. PRICE, MAYOR**

**ATTEST:**



A handwritten signature in black ink, appearing to read 'Jeanna Del Real', is written over a horizontal line. The signature is cursive and somewhat stylized.

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

**ATWATER POLICE DEPARTMENT NOTABLE CASES**

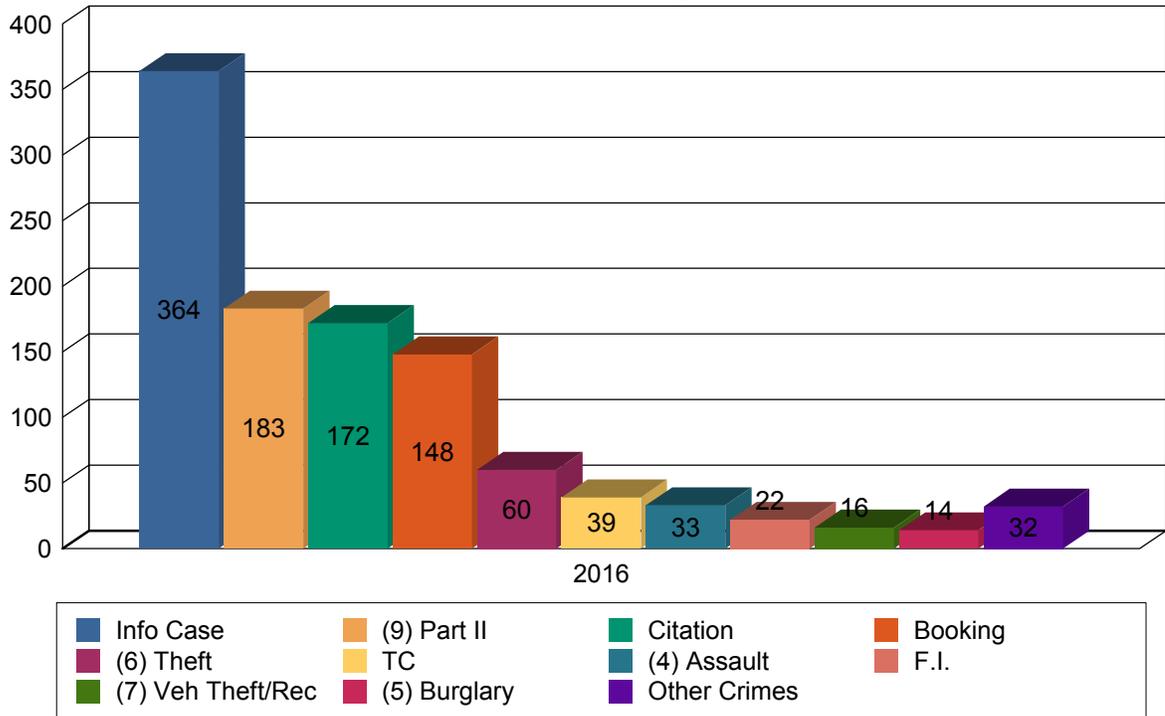
**APRIL OF 2016**

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1. Officers responded to investigate an incident of possible child molestation. During the investigation, officers learned that the victim was molested on several occasions by a family member. Officer responded to the suspect's residence and placed him under arrest for a felony warrant and several other charges, including resisting arrest.
2. Officers responded to the 1400 block of E. Bellevue Road regarding a report of shots fired and one victim possibly injured. Officers located a male subject that was shot and he was rushed to the hospital for treatment. Investigation on-going, appears to be gang related.
3. Officers were dispatched to the area of Juniper Avenue and Sierra Madre regarding a report of an injury hit& run accident. Officers located the suspect vehicle and the suspect was taken into custody. Victim was taken to the hospital for treatment.
4. Officers responded to the area of Ralston Park for a report of a victim being threatened with a weapon. The suspects were reported gang members and after receiving a description of the suspect vehicle, officers located the suspects and they were taken into custody.

# Incident Directory Report April 2016

## BCS Code by Year



	2016	Total
Info Case	364	<b>364</b>
(9) Part II	183	<b>183</b>
Citation	172	<b>172</b>
Booking	148	<b>148</b>
(6) Theft	60	<b>60</b>
TC	39	<b>39</b>
(4) Assault	33	<b>33</b>
F.I.	22	<b>22</b>
(7) Veh Theft/Rec	16	<b>16</b>
(5) Burglary	14	<b>14</b>
Other Crimes	32	<b>32</b>
<b>Grand Total</b>	<b>1083</b>	<b>1083</b>
<b>Calls for Service</b>		<b>2200</b>

## Incident Directory Report

(1) Homicide	<b>2</b>	Supports Drill Down
(2) Rape	<b>3</b>	Supports Drill Down
(3) Robbery	<b>4</b>	Supports Drill Down
(4) Assault	<b>33</b>	Supports Drill Down
(5) Burglary	<b>14</b>	Supports Drill Down
(6) Theft	<b>60</b>	Supports Drill Down
(7) Veh Theft/Rec	<b>16</b>	Supports Drill Down
(9) Part II	<b>183</b>	Supports Drill Down
Booking	<b>148</b>	Supports Drill Down
Citation	<b>172</b>	Supports Drill Down
DUI	<b>5</b>	Supports Drill Down
F.I.	<b>22</b>	Supports Drill Down
Info Case	<b>364</b>	Supports Drill Down
Premises	<b>12</b>	Supports Drill Down
Registrant	<b>6</b>	Supports Drill Down
TC	<b>39</b>	Supports Drill Down



## **Public Works Department Project/Activity Report for April 2016**

### **STREETS & BUILDINGS DIVISION**

- Building Maintenance:
  - Replaced ten (10) florescent light tubes in Engine Bay at Fire Station 42.
  - Repaired non-operational main security gate at the Corporation Yard.
  - Repaired mal-functioning secondary security gate at the Corporation Yard.
  - Installed new garbage disposal in Break Room at Corporation Yard.
  
- Performed sidewalk repairs/replacements at the following location:
  - 430 Broadway Avenue
  
- Cleaned up remnants of minor traffic accident on Commerce Avenue.
  
- Replaced missing Street name sign at the corner of Grove Avenue and High Street.
  
- Replaced speed limit signs on Santa Fe Drive and on Buhach Road.
  
- Filled potholes at various locations on First Street, SP Avenue, Olive Avenue and Fruitland Avenue using approximately 4000 pounds of asphalt patching material.
  
- Repaired in-ground crosswalk lights at the following locations:
  - Shaffer Road for Shaffer Elementary School
  - First Street and Grove Avenue
  - Atwater Boulevard and Third Street
  
- Performed traffic signal light repairs at the following location:
  - Replaced bulb for green light @ Bellevue Road and Seventh Street for Eastbound traffic.
  
- Repaired three (3) non functioning Street Lights at the following locations throughout the City:
  - 2013 Chadala Court – Pole # A0760
  - 2390 Fruitland Avenue – Pole # 1802
  - Shaffer Road – Pole # A6517

## **WATER DIVISION**

- Replaced one (1) broken Residential Water Service Line from the City water main to the City's shut off valve at the following location:
  - 117 Kim Avenue
- Performed 356 Commercial Water Meter readings.
- Performed 36 water service shut offs at locations where individuals had not signed up for City Services prior to moving in to their dwelling.
- Shut off water service on 45 high balance accounts and installed a lock and/or removed the idler at each location.
- Repaired a three inch irrigation main line on Atwater Boulevard that was damaged by a Contractor performing work at that location.
- Installed insulating materials at Well # 17.
- Repaired clay valve at USP Atwater Well Site.
- Repaired minor sink hole at 210 West Manzanita Drive.

## **WASTEWATER AND STORM DIVISION**

- Performed mowing and mechanical weed abatement at the following locations:
  - East Manzanita Drive Storm Pond
  - West Manzanita Drive Storm Pond
  - Meadowview Estates Storm Ponds
  - Sierra Park Storm Pond
  - Industry Way Storm Pond
  - Silva Ranch Storm Pond
  - Albiani Park Storm Pond
- Checked oil levels in pumps at all Storm Stations and filled with oil as needed.
- Replaced damaged motor that operates bar screen separator at USP Atwater Sewer Lift Station.
- Replaced non-functioning sump pump at Fay Drive Sewer Lift Station.
- Performed cleaning of Sewer Main Lines at various locations throughout the City.
- Cleaned sewer lift stations and wet wells on an as needed basis.

- Logged daily Sewer Flows at USP Atwater, Castle, and Old Base Housing Sewer Lift Stations.
- Cleaned storm water grates and checked storm stations on days prior to, and on days of heavy precipitation.
- Repaired and replaced three (3) sewer lateral lines due to damages caused by City owned trees at the following locations:
  - 1485 Quince Avenue
  - 1435 Quince Avenue
  - 1945 Fourth Street

### **EQUIPMENT MAINTENANCE DIVISION**

- Performed routine service/maintenance on 11 City vehicles.
- Performed specialty repairs on 41 City vehicles.
- Performed specialty repairs to seven (7) Police Department vehicles.
- Performed specialty repairs to Fire Engine – Vehicle #2231.
- Performed miscellaneous repairs to Code Enforcement – Vehicle #4115 and returned it to duty.
- Installed replacement parts and performed a general service to two (2) riding mowers.

### **PARKS DIVISION**

- Landscape Maintenance Districts:
  - Continued mowing and general maintenance of selected turf and landscaped areas within each LMD on a priority basis.
  - Performed chemical and manual weed abatement within landscaped areas contained in selected LMD's.
  - Completed irrigation system repairs as needed.
- General Park Maintenance:
  - Continued mowing and trimming in various park sites on an as needed basis.
  - Performed repairs to ramps, rails and Memorial Benches at Skate Park due to vandalism.
  - Replaced missing bench seat on picnic table at Ralston Park Pavilion.
- Street Side Maintenance:

- Mowing, trimming, weed removal and trash pick-up at various street side landscaped areas throughout the City.
- Street Tree Work
  - Zero (0) stump removals
  - Four (4) clearance/structural prunings
  - Two (2) tree removals

### **GRAFFITI ABATEMENT**

- Worked with Environmental Compliance Resources, the City's Graffiti Abatement Contractor, to remove and paint over graffiti at various locations throughout the City, to include twenty-six (26) separate street signs. This work was performed with 37 man hours during the month of April 2016. The total amount of graffiti removed during this time period was approximately 5,369 square feet.

### **LOVE ATWATER PROJECT**

- On Saturday, April 23, 2016 from 7:00 am to 2:00 pm, Love Atwater Coordinators Gloria Perez and John Motz organized a group of over 200 Volunteers from the Community to, as they put it, "LOVE ON ATWATER".
  - Approximately 220 Volunteers, made up of local residents, church members, low security inmates from USP Atwater, service clubs, school groups and teams of employees from local businesses worked together to help beautify their City.
  - Several hundred pounds of litter, trash, weeds and other debris was collected by the Volunteers.
  - The Volunteers worked at 12 different project sites throughout the City to include the Bloss Home Grounds and Bloss Park, Ralston Park, Veterans Park, Atwater Community Center, East Juniper Avenue Bike Path and several other sites.
  - For a complete list of projects completed and other informational items about the Love Atwater Project, please friend Love Atwater on Facebook.

April 18, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of May 9, 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.

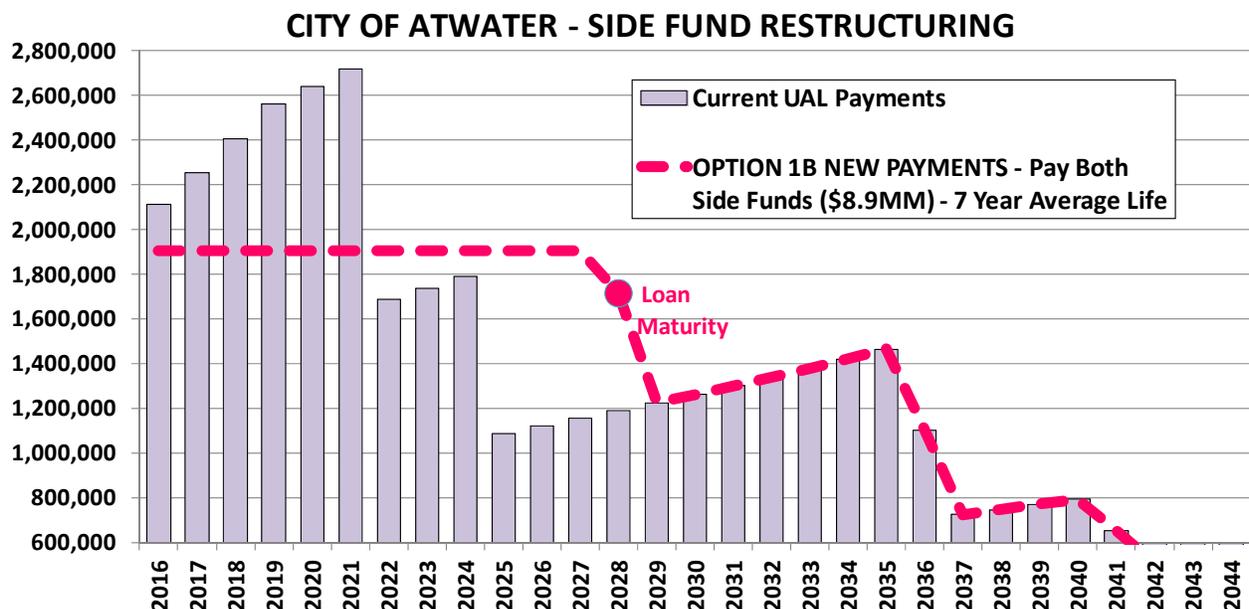
**BACKGROUND/DISCUSSION:**

At their regular meeting of April 25, 2016 City Council moved to table this item and to bring it back to the regular City Council meeting of May 9, 2016, to allow time for staff and the City Council to search for an alternative, better solution to the repayment of debt.

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 "uneven" 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 9<sup>th</sup> day of May, 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;

### W I T N E S S E T H :

**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 )  
 )

---

(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:

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## **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	<u>\$</u>		<u>\$</u>	<u>\$</u>
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## **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”);

**W I T N E S S E T H:**

**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 21, 2016

Honorable Mayor and Members  
of the Atwater City Council  
Board of the Successor Agency  
to the Atwater Redevelopment Agency

Meeting of  
May 9, 2016

**THE TRANSFER OF REAL PROPERTY FROM THE SUCCESSOR  
AGENCY TO THE ATWATER REDEVELOPMENT AGENCY TO THE  
CITY OF ATWATER**

**RECOMMENDATION:**

It is recommended that the Successor Agency to the Redevelopment Agency of the City of Atwater and the Atwater City Council take the following action;

1. Adopt Successor Agency Resolution No. 2016-02 approving the transfer of real property to the City of Atwater; and
2. Atwater City Council Resolution No. 2883-16 accepting the transfer of real property from the Successor Agency to the Atwater Redevelopment Agency to the City of Atwater.

**BACKGROUND:**

As established by AB 1484 (Chapter 26, Statutes of 2012), Health and Safety Code (“HSC”) Section 34191.5 requires that each successor agency prepare and submit a Long Range Property Management Plan (“LRPMP”) to its oversight board and the California Department of Finance (“DOF”) within six months of receiving a Finding of Completion from DOF. The Finding of Completion is issued by DOF after it concludes that all appropriate payments by the successor agency to the respective County Auditor-Controller were made as part of the Due Diligence Review process. The Atwater Successor Agency received its Finding of Completion on May 29, 2013.

The Successor Agency submitted an LRPMP (“Original LRPMP”) approved by the Oversight Board of the Successor Agency to DOF on November 20, 2013. DOF indicated that the Successor Agency would need to revise the Original LRPMP to get it approved. Requested revisions included designating parking lots for “future development” rather than “governmental use” and adding a property owned by the Successor Agency that was inadvertently left out of the Original LRPMP. A revised LRPMP (“Revised LRPMP”) was approved by the Oversight Board on April 21, 2014 with the requested changes and submitted to DOF on April 29, 2014. DOF approved the revised LRPMP on May 29, 2014.

Senate Bill (“SB”) 107, chaptered and effective on September 22, 2015, amended HSC Section 34191.3 to allow successor agencies to amend an approved LRPMP once prior to July 1, 2016 to retain “parking facilities and lots dedicated solely to public parking” for governmental use as long as they do not “generate revenues in excess of reasonable maintenance costs of the properties.” The Oversight Board approved an amended LRPMP (“Amended LRPMP”) on December 21, 2015. The Successor Agency submitted it to DOF on January 6, 2016. DOF approved the Amended LRPMP on January 29, 2016.

The approved LRPMP addresses the proposed use or disposition of all eight (8) properties formerly owned by the Atwater Redevelopment Agency, including the retention of six (6) properties for governmental use pursuant to HSC Section 34181 and 34191.3. According to HSC Section 34181, “governmental use” includes “roads, school buildings, parks, police and fire stations, libraries, parking facilities and lots dedicated solely to public parking, and local agency administrative buildings.”

DOF approved the City of Atwater’s retention of property for government use for the six (6) properties, identified in the LRPMP as:

3. 1440 Atwater Blvd. – 003-170-001 - Intersection Expansion Project Parcel – located at the south east corner of Atwater Blvd. and Winton Way
4. 1100 Atwater Blvd. - 003-170-031- Intermodal Transit Station – located on Atwater Blvd
5. City Park and Ride – 001-150-024 - located on Sycamore Ave.
6. 1501 Atwater Blvd. now Public Right-Of-Way – 001-122-008 - located at the north west corner of Atwater Blvd. and Winton Way
7. Parking Lot – 002-213-012 - located at Atwater Blvd and 4<sup>th</sup> Street
8. Parking Lot – 002-207-004 - located at 1390 Cedar Ave

**ANALYSIS:**

In order to facilitate the necessary transfer of title to the City in accordance with the LRPMP, the Successor Agency and City Council need to approve and accept, respectively, a quitclaim deed for each separate property. The Successor Agency's approval of the transfer of these properties per the revised LRPMP is accomplished by approving the attached Successor Agency Resolution No. 2016-02, which includes a form of the Quitclaim Deeds to be used to effect the transfer. The City’s acceptance of these properties is accomplished by approving the City’s separate attached Resolution No. 2883-16 and recording the Quitclaim Deeds with the Merced County Recorder’s Office.

**FISCAL IMPACT:**

None.

**CONCLUSION:**

This item is submitted for consideration and possible action.

Respectfully submitted,

A handwritten signature in blue ink that reads "Scott McBride". The signature is written in a cursive style with a large initial 'S'.

Scott McBride  
Community Development Director



## SUCCESSOR AGENCY OF THE CITY OF ATWATER

### RESOLUTION NO. 2016-02

#### A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ATWATER REDEVELOPMENT AGENCY APPROVING THE TRANSFER OF REAL PROPERTY TO THE CITY OF ATWATER AND MAKING CERTAIN FINDINGS REQUIRED BY LAW

**WHEREAS**, pursuant to Assembly Bill (“AB”) x1 26, which added Health and Safety Code (“HSC”) Section 34170 et seq., the Atwater Redevelopment Agency (“Former Agency”) was dissolved effective as of February 1, 2012; and

**WHEREAS**, the City of Atwater (“City”) elected to serve as the Successor Agency to the Former Agency (“Successor Agency”); and

**WHEREAS**, the Successor Agency is engaged in activities necessary to execute and implement the dissolution of the Former Agency; and

**WHEREAS**, the Successor Agency owns certain real property assets that are located within the dissolved Redevelopment Project Area, which were transferred effective February 1, 2012 to the Successor Agency by operation of law under ABx1 26; and

**WHEREAS**, AB 1484 was enacted on June 7, 2012 and established new compliance provisions mandating successor agencies to perform certain actions upon receiving a Finding of Completion from the California Department of Finance (“DOF”); and

**WHEREAS**, the Successor Agency received a Finding of Completion from DOF on May 29, 2013; and

**WHEREAS**, in accordance with HSC Section 34180, the Oversight Board of the Successor Agency (“Oversight Board”) is authorized and required to review and approve actions taken by the Successor Agency; and

**WHEREAS**, pursuant to HSC Section 34191.5, the Successor Agency was required to submit a Long Range Property Management Plan (“LRPMP”) to the Oversight Board and DOF within six (6) months of receiving the Finding of Completion; and

**WHEREAS**, on November 20, 2013 by Resolution No. OB-2013-07, the Oversight Board approved an LRPMP submitted to DOF on November 20, 2013 (“Original LRPMP”); and

**WHEREAS**, on April 21, 2014 by Resolution No. OB-2014-03, the Oversight Board approved the revised LRPMP (“Revised LRPMP”) identifying certain real properties identified as items 3-6 for public use and transfer to the City and submitted the LRPMP to DOF on April 29, 2014; and

**WHEREAS**, DOF approved the Revised LRPMP on May 29, 2014; and

**WHEREAS**, with the passage of Senate Bill (“SB”) 107, agencies with an approved LRPMP are allowed one amendment to their LRPMP, solely to allow for the retention of real properties that constitute “parking facilities and lots dedicated solely to public parking” that do not generate revenues in excess of reasonable maintenance costs; and

**WHEREAS**, on December 21, 2015 by Resolution No. OB-2015-07, the Oversight Board approved the amended LRPMP (“Amended LRPMP”) identifying certain real properties, items 3-8, for public use and transfer to the City (“Public Use Properties”) and submitted the LRPMP to DOF on January 6, 2016 (pages 11-21 of the LRPMP, which profile the Public Use Properties, are attached to this resolution as Exhibit 1); and

**WHEREAS**, DOF approved the Amended LRPMP on January 29, 2016; and

**WHEREAS**, the Successor Agency desires to effect the transfer of the Public Use Properties to the City in accordance with the approved Amended LRPMP; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.**NOW, THEREFORE**, the Successor Agency to the Atwater Redevelopment Agency does hereby resolve as follows:

**Section 1. Recitals.**

The Recitals set forth above are true and correct and incorporated herein by reference.

**Section 2. Approve.**

The Successor Agency to the Atwater Redevelopment Agency hereby approves the transfer of the following properties as Public Use Properties as identified in the Amended Long Range Property Management Plan;

3. 1440 Atwater Blvd. – 003-170-001 - Intersection Expansion Project Parcel – located at the south east corner of Atwater Blvd. and Winton Way
4. 1100 Atwater Blvd. - 003-170-031- Intermodal Transit Station – located on Atwater Blvd
5. City Park and Ride – 001-150-024 - located on Sycamore Ave.
6. 1501 Atwater Blvd. now Public Right-Of-Way – 001-122-008 - located at the north west corner of Atwater Blvd. and Winton Way
7. Parking Lot – 002-213-012 - located at Atwater Blvd and 4<sup>th</sup> Street

8. Parking Lot – 002-207-004 - located at 1390 Cedar Ave

Also included in the Quitclaim Deed form attached as **Exhibit A** to this Resolution.

The foregoing resolution is hereby adopted this 9<sup>th</sup> day of May, 2016.

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAINED:**

**APPROVED:**

\_\_\_\_\_  
**JIM PRICE, SUCCESSOR AGENCY  
CHAIR**

**ATTEST:**

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

STATE OF CALIFORNIA     )  
COUNTY OF MERCED     ) ss.  
CITY OF ATWATER     )

I, JEANNA DEL REAL, hereby certify that I am the duly appointed City Clerk of the City of Atwater and that the foregoing resolution was duly adopted at a regular meeting of the Successor Agency held on the 22nd day of February 2016.

---

Jeanna Del Real  
City Clerk

## EXHIBIT 1



**CITY COUNCIL  
OF THE  
CITY OF ATWATER**

**RESOLUTION NO. 2883-16**

**A RESOLUTION OF THE ATWATER CITY COUNCIL  
ACCEPTING THE TRANSFER OF REAL PROPERTY FROM THE  
SUCCESSOR AGENCY TO THE ATWATER REDEVELOPMENT  
AGENCY**

**WHEREAS**, pursuant to Assembly Bill (“AB”) x1 26, which added Health and Safety Code (“HSC”) Section 34170 et seq., the Atwater Redevelopment Agency (“Former Agency”) was dissolved effective as of February 1, 2012; and

**WHEREAS**, the City of Atwater (“City”) elected to serve as the Successor Agency to the Former Agency (“Successor Agency”); and

**WHEREAS**, the Successor Agency is engaged in activities necessary to execute and implement the dissolution of the Former Agency; and

**WHEREAS**, the Successor Agency owns certain real property assets that are located within the dissolved Redevelopment Project Area, which were transferred effective February 1, 2012 to the Successor Agency by operation of law under ABx1 26; and

**WHEREAS**, AB 1484 was enacted on June 7, 2012 and established new compliance provisions mandating successor agencies to perform certain actions upon receiving a Finding of Completion from the California Department of Finance (“DOF”); and

**WHEREAS**, the Successor Agency received a Finding of Completion from DOF on May 29, 2013; and

**WHEREAS**, in accordance with HSC Section 34180, the Oversight Board of the Successor Agency (“Oversight Board”) is authorized and required to review and approve actions taken by the Successor Agency; and

**WHEREAS**, pursuant to HSC Section 34191.5, the Successor Agency was required to submit a Long Range Property Management Plan (“LRPMP”) to the Oversight Board and DOF within six (6) months of receiving the Finding of Completion; and

**WHEREAS**, on November 20, 2013 by Resolution No. OB-2013-07, the Oversight Board approved an LRPMP submitted to DOF on November 20, 2013 (“Original LRPMP”); and

**WHEREAS**, on April 21, 2014 by Resolution No. OB-2014-03, the Oversight Board approved the revised LRPMP (“Revised LRPMP”) identifying certain real properties identified as items 3-6 for public use and transfer to the City and submitted the LRPMP to DOF on April 29, 2014; and

**WHEREAS**, DOF approved the Revised LRPMP on May 29, 2014; and

**WHEREAS**, with the passage of Senate Bill (“SB”) 107, agencies with an approved LRPMP are allowed one amendment to their LRPMP, solely to allow for the retention of real properties that constitute “parking facilities and lots dedicated solely to public parking” that do not generate revenues in excess of reasonable maintenance costs; and

**WHEREAS**, on December 21, 2015 by Resolution No. OB-2015-07, the Oversight Board approved the amended LRPMP (“Amended LRPMP”) identifying certain real properties, items 3-8, for public use and transfer to the City (“Public Use Properties”) and submitted the LRPMP to DOF on January 6, 2016 (pages 11-21 of the LRPMP, which profile the Public Use Properties, are attached to this resolution as Exhibit 1); and

**WHEREAS**, DOF approved the Amended LRPMP on January 29, 2016; and

**WHEREAS**, the Atwater City Council desires to accept the Public Use Properties from the Successor Agency and to continue their current use to benefit the public health, safety, and general welfare; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE**, the Atwater City Council does hereby resolve as follows:

**Section 1. Recitals.**

The Recitals set forth above are true and correct and incorporated herein by reference.

**Section 2. Approve.**

The Atwater City Council hereby accepts the transfer of the Public Use Properties identified in the Long Range Property Management Plan as;

3. 1440 Atwater Blvd. – 003-170-001 - Intersection Expansion Project Parcel – located at the south east corner of Atwater Blvd. and Winton Way
4. 1100 Atwater Blvd. - 003-170-031- Intermodal Transit Station – located on Atwater Blvd
5. City Park and Ride – 001-150-024 - located on Sycamore Ave.
6. 1501 Atwater Blvd. now Public Right-Of-Way – 001-122-008 - located at the north west corner of Atwater Blvd. and Winton Way
7. Parking Lot – 002-213-012 - located at Atwater Blvd and 4<sup>th</sup> Street

8. Parking Lot – 002-207-004 - located at 1390 Cedar Ave

Also included in the Quitclaim Deed form attached as **Exhibit A** to this Resolution

The foregoing resolution is hereby adopted this 9<sup>th</sup> day of May, 2016.

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

**APPROVED:**

---

**JIM PRICE, MAYOR**

**ATTEST:**

---

**JEANNA DEL REAL, CITY CLERK**

STATE OF CALIFORNIA     )  
COUNTY OF MERCED     ) ss.  
CITY OF ATWATER     )

I, JEANNA DEL REAL, hereby certify that I am the duly appointed City Clerk of the City of Atwater and that the foregoing resolution was duly adopted at a regular meeting of the Successor Agency held on the 22nd day of February 2016.

---

Jeanna Del Real  
City Clerk

## EXHIBIT 1

Recording requested by (name):

City of Atwater

And when recorded, mail this deed and tax statements to (name and address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# QUITCLAIM DEED

APN: 003-170-001

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
EXEMPTION (R&T CODE) \_\_\_\_\_  
EXPLANATION \_\_\_\_\_

Signature of Declarant or Agent determining tax

For a valuable consideration, receipt of which is hereby acknowledged,

Atwater Redevelopment Agency

(Disclaiming Party(ies))

hereby quitclaim(s) to City of Atwater

(Property Owner(s))

the following real property in the City of Atwater, County of Merced, California: (insert legal description)

See Exhibit "A" attached.

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

(Signature of declarant)

(Typed or written name of declarant)

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

(Signature of declarant)

(Typed or written name of declarant)

This form must be signed in front of a notary.

## 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 \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A portion of the South Half of the Southwest Quarter of Section 1, Township 7 South, Range 12 East, Mount Diablo Meridian, in the City of Atwater, County of Merced, State of California, being more fully described as follows:

All of that parcel described in that Grant Deed to the Atwater Redevelopment Agency filed for record on November 16, 2007 as Document No. 2007-061996, Merced County Official Records.

Containing 6,051 square feet, more or less.

APN 003-170-001

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Grant Deed dated the \_\_\_\_\_ of \_\_\_\_\_, 2016 from the Atwater Redevelopment Agency ("Agency") to the City of Atwater ("City") is hereby accepted on behalf of the City by the undersigned officer or agent on behalf of the pursuant to authority conferred by Resolution No. \_\_\_\_\_ adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and the City consents to recordation of the Grant Deed by its duly authorized officer.

Dated \_\_\_\_\_, 2016

**CITY OF ATWATER**

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

**ATTEST**

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

**APPROVED AS TO FORM**

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

Recording requested by (name):  
City of Atwater

And when recorded, mail this deed and tax  
statements to (name and address):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# QUITCLAIM DEED

APN: 003-170-031

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
EXEMPTION (R&T CODE) \_\_\_\_\_  
EXPLANATION \_\_\_\_\_  
\_\_\_\_\_  
Signature of Declarant or Agent determining tax

For a valuable consideration, receipt of which is hereby acknowledged,  
Atwater Redevelopment Agency  
\_\_\_\_\_  
(Disclaiming Party(ies))

hereby quitclaim(s) to City of Atwater  
\_\_\_\_\_  
(Property Owner(s))

the following real property in the City of Atwater \_\_\_\_\_, County of  
Merced \_\_\_\_\_, California: (insert legal description)

See Exhibit "A" attached.

Date: \_\_\_\_\_  
\_\_\_\_\_  
(Signature of declarant)

\_\_\_\_\_  
(Typed or written name of declarant)

Date: \_\_\_\_\_  
\_\_\_\_\_  
(Signature of declarant)

\_\_\_\_\_  
(Typed or written name of declarant)

This form must be signed in front of a notary.

## 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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A portion of the South Half of the Southwest Quarter of Section 1, Township 7 South, Range 12 East, Mount Diablo Meridian, in the City of Atwater, County of Merced, State of California, being more fully described as follows:

Parcel Two (2) of that Parcel Map for City of Atwater filed for Record in Book 94 of Parcel Maps at Pages 39 and 40, Merced County Official Records.

Containing 34,488 square feet, more or less.

APN 003-170-031

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Grant Deed dated the \_\_\_\_\_ of \_\_\_\_\_, 2016 from the Atwater Redevelopment Agency ("Agency") to the City of Atwater ("City") is hereby accepted on behalf of the City by the undersigned officer or agent on behalf of the pursuant to authority conferred by Resolution No. \_\_\_\_\_ adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and the City consents to recordation of the Grant Deed by its duly authorized officer.

Dated \_\_\_\_\_, 2016

**CITY OF ATWATER**

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

**ATTEST**

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

**APPROVED AS TO FORM**

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

Recording requested by (name):

City of Atwater

And when recorded, mail this deed and tax statements to (name and address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# QUITCLAIM DEED

APN: 001-150-024

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
EXEMPTION (R&T CODE) \_\_\_\_\_  
EXPLANATION \_\_\_\_\_

Signature of Declarant or Agent determining tax

For a valuable consideration, receipt of which is hereby acknowledged,  
Atwater Redevelopment Agency

(Disclaiming Party(ies))

hereby quitclaim(s) to City of Atwater

(Property Owner(s))

the following real property in the City of Atwater, County of Merced, California: (insert legal description)

See Exhibit "A" attached.

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

(Signature of declarant)

(Typed or written name of declarant)

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

(Signature of declarant)

(Typed or written name of declarant)

This form must be signed in front of a notary.

## 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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A portion of the Northeast Quarter of Section 11, Township 7 South, Range 12 East, Mount Diablo Meridian, County of Merced, State of California and being a portion of that certain parcel of land conveyed to the State of California by Deed recorded July 18, 1956 as Instrument No. 12347 in Volume 1273 at Page 93, Merced County Official Records, said portion being more fully described in the following Grant Deed:

All of that parcel described in Grant Deed to the Atwater Redevelopment Agency filed for record on February 10, 1988 in Volume 2657 at Page 463, Merced County Official Records.

Containing 12,157 square feet, more or less.

APN 001-150-024

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Grant Deed dated the \_\_\_\_\_ of \_\_\_\_\_, 2016 from the Atwater Redevelopment Agency ("Agency") to the City of Atwater ("City") is hereby accepted on behalf of the City by the undersigned officer or agent on behalf of the pursuant to authority conferred by Resolution No. \_\_\_\_\_ adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and the City consents to recordation of the Grant Deed by its duly authorized officer.

Dated \_\_\_\_\_, 2016

**CITY OF ATWATER**

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

**ATTEST**

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

**APPROVED AS TO FORM**

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

Recording requested by (name):

City of Atwater

And when recorded, mail this deed and tax statements to (name and address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# QUITCLAIM DEED

APN: 001-122-016

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
EXEMPTION (R&T CODE) \_\_\_\_\_  
EXPLANATION \_\_\_\_\_

Signature of Declarant or Agent determining tax

For a valuable consideration, receipt of which is hereby acknowledged,  
Atwater Redevelopment Agency

(Disclaiming Party(ies))

hereby quitclaim(s) to City of Atwater

(Property Owner(s))

the following real property in the City of Atwater, County of Merced, California: (insert legal description)

See Exhibit "A" attached.

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

(Signature of declarant)

(Typed or written name of declarant)

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

(Signature of declarant)

(Typed or written name of declarant)

This form must be signed in front of a notary.

## 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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A portion of the Southwest Quarter of Section 1, Township 7 South, Range 12 East, Mount Diablo Meridian, County of Merced, State of California, described as follows:

A portion of Lots 1, 2, 3 and 4 of Block 1, Sierra Vista Addition, filed in Volume 5 of Official Plats at Page 21, Merced County Official Records, identified as Old Tax Lot 001-122-008; excepting that portion shown as Exhibit "A" in that Grant Deed Document No. 2011-010160, filed for record on March 3, 2011, Merced County Official Records.

Said remainder Parcel is further described as follows:

Commencing at the Northeast corner of said Lot 4, South 72°15'12" West along the Northerly line of said Lot 4 a distance of 11.79 feet to the TRUE POINT OF BEGINNING.

thence South 17°06'48" East a distance of 118.00 feet to the start of a 45.00 foot radius curve concave to the Northwest;

thence Southwesterly along said 45.00 foot radius curve through a delta of 131°49'26" and an arc length of 103.53 feet;

thence North 65°17'22" West a distance of 74.05 feet;

thence North 24°42'38" East a distance of 4.96 feet to a point on a 1962.69 foot radius curve concave to the Southwest;

thence Southeasterly along said 1962.69 foot radius curve through a delta of 02°07'50" an arc length of 72.98 feet to the point of a 31.20 foot radius compound curve with a radial bearing of North 17°31'09" East;

thence Northeasterly along said 31.20 foot radius curve through a delta of 124°37'57" an arc distance of 67.87 feet;

thence North 17°06'48" West a distance of 68.25 feet to the start of a 280.00 foot radius curve concave to the Northeast;

thence Northerly along said 280.00 foot radius curve through a delta of 08°33'34" an arc length of 41.83 feet;

thence North 08°33'14" West a distance of 6.04 feet to a point on the Northerly line of said Lot 4;

thence along the Northerly line of said Lot 4, North 72°15'12" East a distance of 12.95 feet to the TRUE POINT OF BEGINNING;

Containing 4,238 square feet, more or less.

APN 001-122-016

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Grant Deed dated the \_\_\_\_\_ of \_\_\_\_\_, 2016 from the Atwater  
Redevelopment Agency ("Agency") to the City of Atwater ("City") is hereby accepted on  
behalf of the City by the undersigned officer or agent on behalf of the pursuant to  
authority conferred by Resolution No. \_\_\_\_\_ adopted on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2016, and the City consents to  
recording of the Grant Deed by its duly authorized officer.

Dated \_\_\_\_\_, 2016

**CITY OF ATWATER**

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

**ATTEST**

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

**APPROVED AS TO FORM**

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

Recording requested by (name):  
City of Atwater

And when recorded, mail this deed and tax  
statements to (name and address):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# QUITCLAIM DEED

APN: 002-213-012

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
EXEMPTION (R&T CODE) \_\_\_\_\_  
EXPLANATION \_\_\_\_\_

Signature of Declarant or Agent determining tax

For a valuable consideration, receipt of which is hereby acknowledged,  
Atwater Redevelopment Agency  
\_\_\_\_\_  
(Disclaiming Party(ies))

hereby quitclaim(s) to City of Atwater  
\_\_\_\_\_  
(Property Owner(s))

the following real property in the City of Atwater \_\_\_\_\_, County of  
Merced \_\_\_\_\_, California: (insert legal description)

See Exhibit "A" attached.

Date: \_\_\_\_\_ (Signature of declarant)

\_\_\_\_\_  
(Typed or written name of declarant)

Date: \_\_\_\_\_ (Signature of declarant)

\_\_\_\_\_  
(Typed or written name of declarant)

This form must be signed in front of a notary.

## 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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A portion of the South Half of Section 1, Township 7 South, Range 12 East, Mount Diablo Meridian, County of Merced, State of California, being more fully described as follows:

Parcel One

Lots 9 and 10 of Block 3 as shown on the Map of the Fin De Siecle Investment Co's. addition to the Town of Atwater, filed for record on September 16, 1907 in Volume 3 of Maps at Page 43, Merced County Official Records and also described in that Grant Deed to the Atwater Redevelopment Agency filed for record on November 30, 1983 in Volume 2400 at Page 827, Merced County Official Records.

Parcel Two

The Westerly 19.67 feet of Lot 8 as shown on the Map of the Fin De Siecle Investment Co's. addition to the Town of Atwater, filed for record on September 16, 1907 in Volume 3 of Maps at Page 43, Merced County Official Records and also described in that Grant Deed to the Atwater Redevelopment Agency filed for record on December 28, 1983 in Volume 2404 at Page 878, Merced County Official Records.

Containing 8,012 square feet, more or less.

APN 002-213-012

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Grant Deed dated the \_\_\_\_\_ of \_\_\_\_\_, 2016 from the Atwater  
Redevelopment Agency ("Agency") to the City of Atwater ("City") is hereby accepted on  
behalf of the City by the undersigned officer or agent on behalf of the pursuant to  
authority conferred by Resolution No. \_\_\_\_\_ adopted on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2016, and the City consents to  
recording of the Grant Deed by its duly authorized officer.

Dated \_\_\_\_\_, 2016

**CITY OF ATWATER**

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

**ATTEST**

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

**APPROVED AS TO FORM**

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

Recording requested by (name):

City of Atwater

And when recorded, mail this deed and tax statements to (name and address):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# QUITCLAIM DEED

APN: 002-207-004

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
EXEMPTION (R&T CODE) \_\_\_\_\_  
EXPLANATION \_\_\_\_\_

\_\_\_\_\_  
Signature of Declarant or Agent determining tax

For a valuable consideration, receipt of which is hereby acknowledged,  
Atwater Redevelopment Agency

\_\_\_\_\_  
(Disclaiming Party(ies))

hereby quitclaim(s) to City of Atwater

\_\_\_\_\_  
(Property Owner(s))

the following real property in the City of Atwater, County of  
Merced, California: (insert legal description)

See Exhibit "A" attached.

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

\_\_\_\_\_  
(Signature of declarant)

\_\_\_\_\_  
(Typed or written name of declarant)

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

\_\_\_\_\_  
(Signature of declarant)

\_\_\_\_\_  
(Typed or written name of declarant)

This form must be signed in front of a notary.

## 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 \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ (Seal)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A portion of the South Half of Section 1, Township 7 South, Range 12 East, Mount Diablo Meridian, in the City of Atwater, County of Merced, State of California, being more particularly described as follows:

Lots One, Two, Three and Four of Block 9 of the Bloss Addition to Atwater as described in that Grant Deed to the Atwater Redevelopment Agency filed for record on June 18, 1994 in Volume 2433 at Page 63, Merced County Official Records.

Containing 13,800 square feet, more or less.

APN 002-207-004

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the Grant Deed dated the \_\_\_\_\_ of \_\_\_\_\_, 2016 from the Atwater Redevelopment Agency ("Agency") to the City of Atwater ("City") is hereby accepted on behalf of the City by the undersigned officer or agent on behalf of the pursuant to authority conferred by Resolution No. \_\_\_\_\_ adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and the City consents to recordation of the Grant Deed by its duly authorized officer.

Dated \_\_\_\_\_, 2016

**CITY OF ATWATER**

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

**ATTEST**

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

**APPROVED AS TO FORM**

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

May 2, 2016

Honorable Mayor and Members  
of the Atwater City Council

City Council Meeting  
of May 9, 2016

**APPROVING MEMORANDUM OF UNDERSTANDING SETTING FORTH  
CERTAIN ITEMS OF AGREEMENT AMONG AGENCIES WITHIN THE  
MERCED GROUNDWATER SUBBASIN FOLLOWING THE  
SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

**RECOMMENDATION:**

It is recommended that the City Council consider:

1. Approving Memorandum of Understanding setting forth certain items of agreement among agencies within the Merced Groundwater Sub-basin following the Sustainable Groundwater Management Act; and
2. Authorizing and directing the Mayor to execute the Memorandum of Understanding, in a form approved by the City Attorney, on behalf of the City.

**BACKGROUND AND ANALYSIS:**

At their regular meeting of April 11, 2016 City Council took action 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. Staff was directed 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 City of Atwater, Black Rascal Water Company, Chowchilla Water District, City of Livingston, City of Merced, County of Merced, East Merced Resource Conservation District, Le Grand Community Service District, Le Grand-Athlone Water District, Lone Tree Mutual Water Company, Lower San Joaquin Levee District, Meadowbrook Water Company, Merced Irrigation District, Merquin Water District, Planada Community Service District, San Luis Resource Conservation District, Stevinson Water District, Turner Island Water District, and Winton Water and Sanitation District share common groundwater resources in that each of the Parties are located above the Merced Groundwater Sub-basin (Sub-basin), as defined by the Department of Water Resources (DWR) Bulletin 118, 2003 Update, and have managed those resources in the best interests of their respective constituents in compliance with applicable state laws.

The enactment of the Sustainable Groundwater Management Act of 2014 ("SGMA") will change many conditions and requirements under which groundwater resources are managed within the Sub-basin. One purpose of SGMA is to promote and encourage

local control of groundwater management, provided that groundwater is managed in a sustainable manner.

SGMA requires certain deadlines be met by local agencies within the Sub-basin. These deadlines must be met in order to avoid intervention of local groundwater management by the State Water Resources Control Board (“State Water Board”).

Relevant to the Parties, the first SGMA deadline requires the formation of at least one Groundwater Sustainability Agency (“GSA”) by June 30, 2017 in order to avoid the Sub-basin being placed on probationary status (California Water Code §10735.2). To the extent that multiple GSA’s may be organized within the Sub-basin, DWR will be informed of the formation of GSA(s) in order to assess the adequacy of coordination agreements. Absent the formation of GSA(s), SGMA allows the State Water Board to develop an enforceable interim plan to manage local groundwater resources.

To facilitate the coordination required by SGMA, the City of Atwater agrees to work individually and collectively to pursue developing a single GSP or coordinated GSPs to manage groundwater within the Sub-basin.

The creation of and participation in this MOU (**EXHIBIT “A”**) does not create any right or authority over the City of Atwater’s own internal matters or resources whatsoever, including, but not limited to, each Party’s right to exercise its sole discretion in managing its surface water supplies, conjunctively managed water supplies, groundwater supplies, facilities, operations, water management decisions including groundwater recharge activities, or water supply/conservation projects.

The MOU will not replace or otherwise alter the existing MAGPI MOU, or any other agreement to which the City of Atwater is a party.

**FISCAL IMPACT:**

This MOU does not create, either expressly or by implication, any financial commitment of the City of Atwater.

**CONCLUSION:**

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

Respectfully submitted,

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Brian Shaw  
Water Division Manager/Chief Operator

**MEMORANDUM OF UNDERSTANDING  
SETTING FORTH CERTAIN ITEMS OF AGREEMENT  
AMONG AGENCIES WITHIN THE MERCED GROUNDWATER SUBBASIN  
FOLLOWING THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

**1. Parties**

The Parties (“Parties”) to this *Memorandum of Understanding Setting Forth Certain Items of Agreement among agencies within the Merced Groundwater Subbasin Following the Sustainable Groundwater Management Act* (“Post-SGMA MOU”) include the following: Chowchilla Water District, City of Atwater, City of Livingston, City of Merced, County of Merced, East Merced Resource Conservation District, Le Grand Community Services District, Le Grand-Athlone Water District, Lone Tree Mutual Water Company, Merced Irrigation District, Merquin County Water District, Planada Community Services District, Stevinson Water District, Turner Island Water District, and Winton Water and Sanitary District. Each of the entities and districts named above may be referred to herein singularly as a Party, or collectively as the Parties.

**2. Recitals**

This MOU is entered into with regard to the following facts and circumstances:

- 2.1.** The Parties share common groundwater resources in that each of the Parties are located above the Merced Groundwater Subbasin (Subbasin), as defined by the Department of Water Resources (DWR) Bulletin 118, 2003 Update, and have managed those resources in the best interests of their respective constituents in compliance with applicable state laws.
- 2.2.** The enactment of the Sustainable Groundwater Management Act of 2014 (“SGMA”) will change many conditions and requirements under which groundwater resources are managed within the Subbasin.

2.3. One purpose of SGMA is to promote and encourage local control of groundwater management, provided that groundwater is managed in a sustainable manner.

2.4. SGMA requires certain deadlines be met by local agencies within the Subbasin. These deadlines must be met in order to avoid intervention of local groundwater management by the State Water Resources Control Board (“State Water Board”).

2.5. Relevant to the Parties, the first SGMA deadline requires the formation of at least one Groundwater Sustainability Agency (“GSA”) by June 30, 2017 in order to avoid the Subbasin being placed on probationary status (California Water Code §10735.2). To the extent that multiple GSA’s may be organized within the Subbasin, DWR will be informed of the formation of GSA(s) in order to assess the adequacy of coordination agreements. Absent the formation of GSA(s), SGMA allows the State Water Board to develop an enforceable interim plan to manage local groundwater resources.

2.6. SGMA also requires the adoption of a Groundwater Sustainability Plan (“GSP”), describing how the local GSA(s) plans to achieve groundwater sustainability within the Subbasin. A GSP for the Subbasin must be submitted and approved by DWR by January 31, 2020. The Subbasin must be covered by at least one GSP. If more than one GSP is established, a coordination agreement must be in place to ensure the coordinated implementation of the GSP(s) to achieve sustainability.

### 3. **Agreement**

The Parties agree as follows:

**3.1. Cooperation:** The Parties agree to cooperate and work together in a civil and professional manner in an effort to move toward groundwater sustainability within the Subbasin and SGMA compliance during the term hereof.

**3.2. Groundwater governance:** While it is unknown at this time what governance structure will be agreed upon during the development of GSA(s), the Parties agree to work individually and collectively to seek formation of one or more GSA(s) to provide SGMA-compliant groundwater management governance within the Subbasin prior to June 30, 2017. The ultimate governance structure within the Subbasin is not the subject of this MOU. As such, this MOU does not form a GSA or multiple GSAs, but rather begins a consensus-seeking discussion process towards GSA(s) adoption and SGMA compliance.

**3.3. MAGPI is a forum for discussion:** The Parties intend that the meetings of the Merced Area Groundwater Pool Interests (MAGPI) may provide one of several forums to discuss possible groundwater governance structures. However, it is the Parties to this MOU (as defined in Water Code §10721(m)) that have ultimate decision-making authority on groundwater governance within the Subbasin.

**3.4. Coordination:** SGMA requires that the entire Subbasin be covered by one or more GSP(s). If more than one GSP is established, SGMA requires that a coordination agreement be established between the different GSA(s) and approved by DWR. The Parties understand and agree that continued coordination and collaboration will be essential to complying with SGMA requirements, therefore and regardless whether a single or multiple GSAs are formed covering the Subbasin, the parties agree to work together in cooperation to meet the requirements of SGMA.

**3.5. Groundwater Sustainability Plan:** To facilitate the coordination required by SGMA, the Parties agree to work individually and collectively to pursue developing a single GSP or coordinated GSPs to manage groundwater within the Subbasin.

**3.6. Groundwater Model and Other Data Coordination:** Development of a SGMA-compliant GSP or coordinated GSPs for the Subbasin will likely require a groundwater model and/or other tools. The Parties agree to cooperatively support the development of a modeling tool or tools to satisfy SGMA and to serve the Parties in identifying and developing strategies to sustainably manage groundwater in the Subbasin. The Merced Water Resources Model (Model) is an integrated water resources model nearing completion for the Subbasin, and simulates the interactions between groundwater and surface water. The Model is funded jointly by the City of Merced, County of Merced, Merced Irrigation District, and DWR. The Merced Area Groundwater Pool Interest (MAGPI) member agencies oversee the development of the Model. While the Model may provide significant capabilities for SGMA compliance, there may be a need for additional features and refinements, or a need to develop or use other models to assist the Parties in developing a SGMA compliant GSP or GSPs. The Parties agree to cooperatively evaluate the Merced Water Resources Model and other existing tools that may be needed to support basin analysis needed for SGMA compliance.

**3.7. No effect on water rights:** The Parties agree that the creation of and participation in this MOU does not create any right or authority over any other Party's own internal matters or resources whatsoever, including, but not limited to, each Party's right to exercise its sole discretion in managing its surface water supplies, conjunctively managed water supplies, groundwater supplies, facilities, operations, water management decisions including groundwater recharge activities, or water supply/conservation projects.

**3.8. No replacement of existing MOU:** The Parties do not intend for this MOU to replace or otherwise alter the existing MAGPI MOU, or any other agreement to which any party hereto may be party.

**3.9. No creation of financial commitment:** This MOU does not create, either expressly or by implication, any financial commitment of the Parties.

**3.10. No creation of joint powers:** This MOU is not intended to create a GSA(s) or any other agency or entity which is separate from the Parties pursuant to Chapter 5 (commencing with §6500) of Division 7 of Title 1 of the Government Code, relating to the joint exercise of powers.

**3.11. Term:** The Parties have entered into this MOU voluntarily. This MOU shall become effective upon signature by an authorized official from each one of the Parties. Any Party may withdraw from this MOU at any time upon providing written notice signed by an authorized official to the other Parties. Notwithstanding the withdrawal of a party to this MOU, this MOU will remain in effect with the remaining Parties unless such remaining Parties decide to terminate the MOU. Unless earlier terminated, this MOU shall expire upon approval by DWR of a GSP(s) that covers the Subbasin.

**3.12. Good faith efforts:** Each Party should use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of the terms and provisions contained herein.

#### **4. Counterparts:**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This MOU may not be modified except by mutual consent of the authorized officials from the Parties.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed, each signatory hereto represents that he has been appropriately authorized to enter into this MOU on behalf of the Party for whom he/she signs.

*{Signature page to follow}*

**MEMORANDUM OF UNDERSTANDING  
SETTING FORTH CERTAIN ITEMS OF AGREEMENT  
AMONG AGENCIES WITHIN THE MERCED GROUNDWATER SUBBASIN  
FOLLOWING THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

As authorized by motion and adopted by the Atwater City Council on May 9, 2016.

Signed:

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James E. Price, Mayor

Attest:

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Jeanna Del Real, City Clerk

Approved as to from:

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Thomas H. Terpstra, City Attorney