



AGENDA

Victor P. Lopez, Mayor

Diana Guerra Silva, Mayor Pro Tem
Minerva Pineda, Council Member

Gilbert Garcia, Council Member
Josie Cervantes, Council Member

WEDNESDAY, AUGUST 12, 2015 - 6:30 P.M.
Orange Cove Council Chambers
633 6th Street, Orange Cove, California 93646

A. Call to Order/Welcome

1. Roll Call
2. Invocation
3. Flag Salute

B. Confirmation of Agenda

C. Consent Calendar

1. City Council Minutes, Special Meeting of June 12, 2015
2. City Council Minutes, Meeting of June 24, 2015
3. City Council Minutes, Meeting of July 8, 2015
4. City Council Minutes, Meeting of July 22, 2015
5. Consideration to approve the letter to LAFCO regarding the one-year extension of time "Jacobs-South Reorganization (Del Rey Villas LLC) for LAFCO File NO. Ro-09-3 (fee of \$750.00 will be paid by the Developer)

D. Administration

Mayor and City Council Items:

1. **SUBJECT:** Consideration and Discussion regarding the City Attorney Appointment

Recommendation: Council to appoint Dan McCloskey as the City Attorney and approve Agreement with Tuttle and McCloskey for City Attorney Legal Services

2. **SUBJECT:** Consideration and Discussion regarding the Orange Cove Events Committee

Recommendation: Council to consider dissolving the Orange Cove Events Committee

Finance Director:

3. **SUBJECT:** Presentation and discussion regarding the Monthly Financials for June 30, 2015

Recommendation: Informational item only

4. **SUBJECT:** Consideration regarding a Resolution Authorizing the Examination of Prepaid Mobile Telephone Services Surcharge; and Local Charge Records Agreement for State Collection and Administration of Local Charges

Recommendation: Council to approve the following:

1. Resolution Authorizing the Examination of Prepaid Mobile Telephone Service Surcharge and Local Charge Records; and
2. Agreement for State Collection and Administration of Local Charges

City Manager:

5. **SUBJECT:** Consideration and Discussion regarding Addendum No.2 to Franchise Agreement with Pena's Disposal, Inc.

Recommendation: Council to approve Addendum No. 2 to Franchise Agreement which includes a new Exhibit A with the new fees for recycle services for commercial & multi-family, bulky item & tipping fee, and mattress recycle fee.

6. **SUBJECT: PUBLIC HEARING** – An Ordinance of the City of Orange Cove amending Sections 13.17.030, 13.17.080 (Level 2 Water Supply Shortage and Emergency Condition), and Section 13.17.090 (Procedures for Determination/Notification of Water Supply Storage), and adding Section 13.17.075 (Level 2 Water Supply Shortage) to Chapter 13.17 (Orange Cove

Water Conservation and Water Supply Shortage Plan) of Title 132 (Public Services) of the Orange Cove Municipal Code

Recommendation: It is recommended that the City Council open the public hearing to hear suggestions from residents and adopt Ordinance 372 by title only waiving full reading

7. **SUBJECT:** Consideration and Discussion regarding the ECWAG Grant Agreement United States Department of Agriculture Rural Utilities Service in the amount of \$500,000

Recommendation: Council to approve the ECWAG Grant Agreement United States Department of Agriculture Rural Utilities Service in the amount of \$500,000

8. **SUBJECT:** Consideration of a Confidential Settlement Agreement between the City of Orange Cove and Valley Small Business Development Corporation

Recommendation: Council to approve the following:

- a) Termination of CDBG Agreement – as of June 30th, the CDBG agreement is hereby terminated and shall be of no further force and effect; and
- b) Settlement Payment by Valley Small Business. No later than August 13th, 2015, Valley Small Business shall deliver to the City the sum of Two Hundred One Thousand Thirty-Three and 16/100ths Dollars (\$201,033.16) in good funds by check or wire transfer, together with CDBG Program income notes receivable in the amount of \$39,323.44, (collectively, the “Settlement Payment”), as full, complete and final settlement and payment of all amounts due and owing by Valley Small Business to the City under CDBG Agreement through the Settlement Date.
- c) Delivery of Files and Documents: Not later than August 13th, 2015, Valley Small Business shall deliver to the City all CDBG Program Files in its possession related to the CDBG Agreement, except for those files related to defederalized CDBG loans originated by Valley (“Defederalized Loans”) pursuant to the CDBG Agreement, which shall remain the sole and exclusive property of Valley.
- d) Mutual Release and Waiver – the parties now desire to settle, relinquish, waive, remand, remit and resolve the Dispute and any and all claims and disputes between them concerning the CDBG Agreement and all of their respective rights, duties, obligations, covenants, representation, and performances thereunder.

Police Department:

9. **SUBJECT:** Presentation and discussion by Chief of Police, Marty Rivera regarding monthly statistical report

Recommendation: Informational item only

E. Public Forum

Members of the public wishing to address the City Council on an item that is not on the agenda may do so now. No action will be taken by the City Council this evening. But items presented may be referred to the City Manager for follow up and a report. In order to allow time for all comments, each individual is limited to three minutes. When addressing the Council, you are requested to come forward to the speakers microphone, state your name and address, and then proceed with your comments.

F. City Manager's Report

G. City Attorney's Report

H. City Council Communications

I. Adjournment

ADA Notice: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (559) 626-4488 ext. 214. Notification 48 hours prior to the meeting will enable the City to make arrangements to ensure accessibility to this meeting.

Documents: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at front counter at City Hall and at the Orange Cove Library located at 815 Park Blvd., Orange Cove, CA during normal business hours. In addition, most documents are posted on City's website at cityoforangecove.com.

STATEMENT ON RULES OF DECORUM AND ENFORCEMENT

The Brown Act provides that members of the public have a right to attend public meetings, to provide public comment on action items and under the public forum section of the agenda, and to criticize the policies, procedures, or services of the city or of the acts or omissions of the city council. The Brown Act also provides that the City Council has the right to exclude all persons who willfully cause a disruption of a meeting so that it cannot be conducted in an orderly fashion.

During a meeting of the Orange Cove City Council, there is a need for civility and expedition in the carrying out of public business in order to ensure that the public has a full opportunity to be heard and that the Council has an opportunity to conduct business in an orderly manner. The following is provided to place everyone on notice of the rules of decorum and enforcement.

GENERAL RULES OF DECORUM

While any meeting of the City Council is in session, the following rules of decorum shall be observed:

1. All remarks shall be addressed to the City Council as a whole and not to any single member, unless in response to a question from a member of the City Council.
2. A person who addresses the City Council under public comment for a specific agenda item or under the Public Forum section of the agenda may not engage in speech or conduct (i) which is likely to provoke others to violent or riotous behavior, (ii) which disturbs the peace of the meeting by loud and unreasonable noise, (iii) which is irrelevant or repetitive, or (iv) which disrupts, disturbs, or otherwise impedes the orderly conduct of any City Council meeting.
3. A person, other than members of the Council and the person, who has the floor, shall not be permitted to enter into the discussion unless requested by the Mayor to speak.
4. Members of the City Council may not interrupt a person who has the floor and is making public comments. Members of the City Council shall wait until a person completes his or her public comments before asking questions or commenting. The Mayor shall then ask Councilmembers if they have comments or questions.
5. No person in the audience at a Council meeting shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet or other acts which disturb, disrupt or otherwise impede the orderly conduct of any Council meeting.

ENFORCEMENT OF DECORUM RULES

(Resolution No. 2012-16)

While the City Council is in session, all persons must preserve order and decorum. A person who addresses the City council under public comment for a specific agenda item or under the Public Forum section of the agenda may not engage in speech or conduct which is likely to provoke others to violent or riotous

behavior, which disturbs the peace of the meeting by loud and unreasonable noise, which is irrelevant or repetitive, or which disrupts, disturbs, or otherwise impedes the orderly conduct of any City Council meeting.

The Mayor or other presiding officer shall request that a person who is breaching the rules of decorum cease such conduct. If after receiving such a warning, the person persists in breaching the rules of decorum, the Mayor or other presiding officer may order the person to leave the City Council meeting. If such person does not leave, the Mayor or presiding officer may request any law enforcement officer who is on duty at the meeting as sergeant-at-arms to remove the person from the Council Chambers. In the event there is no one from law enforcement present, the Mayor or presiding officer may direct the City Manager to contact law enforcement.

In accordance with the Point of Order Rule 4.6, the majority of the Council may overrule the Mayor if the majority of the Council believes the Mayor or other presiding officer is not applying the rules of decorum appropriately.

**MINUTES
SPECIAL MEETING
ORANGE COVE CITY COUNCIL**

DATE: FRIDAY, June 12, 2015 – 5:30 P.M.

**LOCATION: Orange Cove Council Chambers
633 6th Street, Orange Cove, California 93646**

Victor P. Lopez, Mayor

**Diana Guerra Silva, Mayor Pro Tem
Minerva Pineda, Council Member**

**Gilbert Garcia, Council Member
Josie Cervantes, Council Member**

A. CALL TO ORDER/WELCOME

COUNCIL PRESENT: Mayor Victor P. Lopez
Mayor Pro Tem Diana Guerra Silva
Councilman Josie Cervantes
Councilmember Minerva Pineda (ARRIVED AT 6PM)

COUNCIL ABSENT: Councilmember Gilbert Garcia

STAFF PRESENT: City Manager Samuel A. Escobar
City Clerk June V. Bracamontes
Attorney Bianca Sparks
Finance Director, Lan Bui

STAFF ABSENT: Police Chief, Marty Rivera

INVOCATION: Mayor Pro Tem Diana Guerra Silva

FLAG SALUTE: Mayor Victor P. Lopez

B. PUBLIC COMMENT

During oral communications, if you wish to address the City Council during this Special Meeting, under Government Code Section 54954.3(a), you may only address the City Council concerning any item that has been described in the notice for the Special Meeting.

1. Charlotte Pavelko had a question regarding Close Session item #1 asked what is the person going to do with the 2 acres

C. CLOSED SESSION

1. Conference with real property negotiators
Government Code Section 54956.8
Property: Industrial Park Property corner of South and Center Street
City Negotiator: Sam Escobar, City Manager
Negotiating Parties: Matt Kuykendall (2 acres)
Under Negotiation: Price and Terms of Payment

2. Conference with Labor Negotiators pursuant to Government Code Section 54957.6
Agency designated representative: Sam Escobar, City Manager
Employee organization: International Union of Operating Engineers, Local 39

3. Conference with Labor Negotiators pursuant to Government Code Section 54957.6
Agency designated representative: Sam Escobar, City Manager
Employee organization: Orange Cove Police Officers Association

D. Reconvene City Council Meeting

Report out of closed session

Mayor reconvened the City Council Meeting. City Attorney stated that the Council met in Closed Session in respect to items 1, 2 and 3. In respect to item 1 gave staff direction, item 2 and 3 Council gave City Attorney and Staff direction.

E. ADJOURNMENT:

Mayor Lopez adjourned the City Council Meeting.

RESPECTFULLY SUBMITTED:

June V. Bracamontes, City Clerk

City of Orange Cove

PRESENTED TO COUNCIL:

DATE: _____ ACTION: _____



MINUTES

Victor P. Lopez, Mayor

Diana Guerra Silva, Mayor Pro Tem
Minerva Pineda, Council Member

Gilbert Garcia, Council Member
Josie Cervantes, Council Member

WEDNESDAY, JUNE 24, 2015 - 6:30 P.M.
Orange Cove Council Chambers
633 6th Street, Orange Cove, California 93646

A. Call to Order/Welcome

COUNCIL PRESENT: Mayor Victor P. Lopez
Mayor Pro Tem Diana Guerra Silva
Councilmember Gilbert Garcia
Councilmember Minerva Pineda
Councilman Josie Cervantes

STAFF PRESENT: City Manager Samuel A. Escobar
Attorney Bianca Sparks
Police Chief, Marty Rivera
Finance Director, Lan Bui
Deputy City Clerk, Clara Camarena

STAFF ABSENT: City Clerk June V. Bracamontes

INVOCATION: Mayor Pro Tem Diana Guerra Silva

FLAG SALUTE: Mayor Victor P. Lopez

B. Confirmation of Agenda

No changes.

C. Presentations

1. Proclamation Honoring the Orange Cove Police Protection District.

Mayor and Council presented a plaque honoring the Orange Cove Police Protection District for their contributions to the City of Orange Cove.

Mayor and Council adjourned for a quick break.

2. Presentation by Eduardo Gonzalez, Fresno State Project Manager, regarding Rural Business Enterprise Grant (RBEG)

Mr. Eduardo Gonzalez from Fresno State Project Manager gave an update on the RBEG. In partnership with the City of Orange Cove and Chamber of Commerce. The program assisted with the Businesses. Meeting twice a week. Launching the buy local campaign.

3. Presentation by Chelsea Vongehr, Townsend Group – update

Ms. Chelsea Vongehr from the Townsend Group gave an overview update of the City of Orange Cove grant application and legislative and administrative issues in Sacramento and Washington, DC as follows:

- FEMA Assistance to Firefighters Grant - #365,423.88
- FEMA Staffing for adequate Fire and Emergency Response Grants - \$303,264
- Caltrans Active Transportation Program - \$247,000
- US Department of Justice COPS Hiring Program - \$219,967.82
- FEMA Fire prevention and safety - \$27,143
- US Department of Ag Emergency Community Water Assistance Grant - \$500,000
- Advocacy trip to Washington, DC with Mayor Lopez
- Monitoring State legislation and policy developments and sending weekly and biweekly updates.
- Monitoring Federal Legislation and policy developments and sending monthly updates
- The development of Proposition 1 water bond grants program guidelines

Also included the overview of Public Safety applications on behalf of the City; Transportation working with Yamabe and Horn support for the Active Transportation Program Application; Water; Legislative Advocacy;

The following applications are in process:

- PetSmart Community Pets Program
- Albert Schweitzer Animal Welfare Fund
- Lowe Community Partners Grant

- SWRCB
- SWRCB Water Recycling Funding Program
- SWRCB Drinking Water Program

Chelsea added that Mayor Lopez was invited by the U.S. Environmental Protection Agency to attend the National Brownfields Conference in September in Chicago.

D. Public Forum

Members of the public wishing to address the City Council on an item that is not on the agenda may do so now. No action will be taken by the City Council this evening. But items presented may be referred to the City Manager for follow up and a report. In order to allow time for all comments, each individual is limited to three minutes. When addressing the Council, you are requested to come forward to the speakers microphone, state your name and address, and then proceed with your comments.

None.

E. Consent Calendar:

1. Consideration of Resolution No. 2015-29 Approving the City's Warrants (037487-037627)
2. City Council Minutes, Meeting of April 29, 2015
3. City Council Minutes, Meeting of May 12, 2015
4. City Council Minutes, Meeting of May 13, 2015
5. City Council Minutes, Special Meeting of June 2, 2015
6. Consideration of a Resolution Approving a paid sick leave policy pursuant to AB 1522 for unrepresented temporary, part-time and hourly rated employees

Upon the motion by Mayor Pro Tem Silva and seconded by Councilwoman Pineda, Council approved the Consent Calendar as presented. (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

F. Administration

City Engineer:

1. SUBJECT: Consideration of a Resolution approving a water transfer agreement with Fresno Irrigation District.

Recommendation: Council to adopt the Resolution approving an agreement with Fresno Irrigation District for the purchase of water and authorize the City Manager to sign the agreement pending receipt of funding from an outside agency to cover the costs.

Upon the motion by Councilwoman Cervantes and seconded by Mayor Pro Tem Silva, Council approved to adopt the Resolution approving an agreement with Fresno Irrigation District for the purchase of water and authorize the City Manager to sign the agreement pending receipt of funding from an outside agency to cover the costs. (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

2. SUBJECT: PUBLIC HEARING-Consideration of a Resolution approving Anchor Ave from Park Blvd to Martinez St., as the preferred location for Underground Utility District No. 1.

Recommendation: It is recommended that the City Council open the public hearing, and adopt a Resolution approving Anchor Avenue from Park Blvd. to Martinez St. as the preferred location for Underground Utility District No. 1.

Upon the motion by Councilman Garcia and seconded by Councilwoman Cervantes, Council adopted a Resolution approving Anchor Avenue from Park Blvd. to Martinez St. as the preferred location for Underground Utility District No. 1. . (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

City Manager:

3. SUBJECT: Discussion and direction regarding reimbursement to Schoeppner Shows of the commission retained by the City from the proceeds of the carnival tickets and beer garden revenue

Recommendation: Council to provide direction regarding reimbursing Schoeppner Shows for the commission retained by the City from the proceeds of the carnival tickets and beer garden revenue.

Upon the motion by Councilwoman Pineda and seconded by Councilwoman Cervantes, Council approved to retain the amount of money for the City to purchase the fence and the balance of the funds from the carnival and beer sales be remitted to Mr. Schoeppner. (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

4. **SUBJECT:** Designation of Voting Delegates and Alternates for the League of California Cities Annual Conference, September 30 to October 2, 2015

Recommendation: Council to designate one voting delegate and one alternate to represent the City at the League of California Cities Annual Conference, September 30 to October 2, 2015

Upon the motion by Mayor Pro Tem Silva and seconded by Councilwoman Pineda, Council approved Councilman Garcia as the voting delegate and Councilwoman Cervantes as the alternate voting delegate. **(Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)**

G. City Attorney's Report

Nothing to report

H. City Manager's Report

A budget workshop has been scheduled on June 25 at 6:00 p.m. Mayor will not be at this budget workshop due to a Council of Government meeting.

At the next Council meeting discussion regarding water conservation.

I. City Council Communications

Councilman Gilbert Garcia:

Asked Council how the Las Vegas Trip went?

Councilwoman Josie Cervantes:

Conference in Las Vegas was very good.

Councilwoman Minerva Pineda:

Met new candidates at the NALEO conference

Mayor Pro Tem Diana Guerra Silva:

Attended the NALEO conference in Las Vegas and very pleased with the classes and speakers involving education for the Latino community.

Mayor Victor Lopez:

Attended the NALEO conference. Participated in the discussion about water. Community has to come forward and as Council we have to respond to their needs. The workshops were outstanding. They had Republican Party there.

J. Closed Session

Council went into Closed Session:

1. Conference with Legal Counsel pursuant to Government Code Section 54957(b)
(1): Public Employee Performance Evaluation
Title: City Manager
2. Conference with Labor Negotiators pursuant to Government Code Section 54957.6

Agency designated representatives: Sam Escobar, City Manager; Bianca Sparks,
City Attorney
Employee Organization: International Union of Operating Engineers, Local 39

3. Conference with Labor Negotiators pursuant to Government Code Section
54957.6

Agency designated representatives: Sam Escobar, City Manager; Bianca Sparks,
City Attorney
Employee Organization: Orange Cove Police Officers Association

K. Reconvene City Council Meeting

Mayor Lopez reconvened the City Council Meeting:

City Attorney announced that the Council met in closed session in respect to items 1, 2
and 3 and direction was given and no other matters were discussed.

L. Adjournment

Mayor Lopez adjourned the City Council Meeting 9:14 p.m.

RESPECTFULLY SUBMITTED:

June V. Bracamontes, City Clerk
City of Orange Cove

PRESENTED TO:

DATE: _____ ACTION: _____



MINUTES

Victor P. Lopez, Mayor

Diana Guerra Silva, Mayor Pro Tem

Gilbert Garcia, Council Member

Minerva Pineda, Council Member

Josie Cervantes, Council Member

WEDNESDAY, JULY 8, 2015 - 6:30 P.M.
Orange Cove Council Chambers
633 6th Street, Orange Cove, California 93646

A. Call to Order/Welcome

COUNCIL PRESENT: Mayor Victor P. Lopez
Mayor Pro Tem Diana Guerra Silva
Councilmember Gilbert Garcia
Councilmember Minerva Pineda
Councilman Josie Cervantes

STAFF PRESENT: City Manager Samuel A. Escobar
City Attorney Bianca Sparks
Finance Director, LAN Bui
Police Chief, Marty Rivera
City Clerk June V. Bracamontes

INVOCATION: Mayor Pro Tem Diana Guerra Silva

FLAG SALUTE: Mayor Victor P. Lopez

B. Confirmation of Agenda

City Manager requested to remove item #2 from the Consent Calendar
City Attorney requested to remove item #1 from the Consent Calendar subject to approval as to form by the City Attorney's Office.

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilman Gilbert Garcia, Council approved to remove item #2 and #1

from the Consent Calendar as presented. (Yes Vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

C. Public Forum

Members of the public wishing to address the City Council on an item that is not on the agenda may do so now. No action will be taken by the City Council this evening. But items presented may be referred to the City Manager for follow up and a report. In order to allow time for all comments, each individual is limited to three minutes. When addressing the Council, you are requested to come forward to the speakers microphone, state your name and address, and then proceed with your comments.

1. Irene Alvarado resident of Orange Cove presented to Council
“The Right to Fair and Unbiased Decision Makers. Ms. Alvarado presented that Mario Villarreal was the campaign Manager in November 2014 for the committee to elect Victor Lopez, Minerva Pineda, and Josie Cervantes who are now currently serving on the Orange Cove City Council. Mr. Mario Villarreal is also the Chairman of the Orange Cove Events Committee and served alongside with Councilmember Minerva Pineda until she recently became elected to the City Council. Mario Villarreal and his family have been long-time neighbors of Councilmember Josie Cervantes and have a close neighborly relationship. Mr. Villarreal was Councilmember Cervantes daughter’s boyfriend at one time. Councilmember Josie Cervantes is very close friends with Mario Villarreal’s mother who is employed by the Target Eight Advisory Council at the Julia Lopez Care Center. Councilmember Cervantes and Mrs. Villarreal visit each other frequently and have sold food together at public city events sharing a booth. Councilmember Josie Cervantes’s niece was recently appointed to the Target Eight Advisory Council as a board member. Under the Ethic Law and the right to fair and unbais decision makers there are kinds of impermissible bias which include Personal Bias. There is a direct conflict between Cervantes and Villarreal and that needs to be addressed soon. The other is impermissible bias is factual bias.

Mayor Lopez stated that Ms. Alvarado is out of order and to address the Council as a whole not individually.

City Attorney asked the City Clerk to stop the timer and stated that the City Council adopted rules of decorum. In 2013, the Federal Court came out with a ruling regarding the City of Los Angeles and the rules of decorum. The Court ruled unless an individual’s speech causes a true disruption of the Council Meeting. Example run over the time or start a riot we would be able to stop the speech. Under the Rule of Decorum the only time we can stop a speech is when it causes a true disruption. Under

the Brown Act and current case law Act Ms. Alvarado has the right to criticize public officials subject to limitations.

Ms. Alvarado continued her comments and stated that it has been made public that Councilmembers Cervantes and Pineda both voted in support of Target Eight Advisory Council concerning the City and never asked any questions or made any comments

2. Charlotte Pavelco from Orange Cove asked when will there be 2 days of watering.
3. Mario Villarreal tax payer of Orange Cove. Stated that Ms. Alvarado had been friends of the family and covered her 2 years rent. Addressed Councilman Garcia gave his opinion of Target Eight and he had his right of bias opinion and stated that Councilman Garcia does not agree with Target Eight in what they do. Councilman Garcia is solely responsible for the \$10 million that the city doesn't have and responsible for the water crisis we have. You shouldn't have ran. You're not a good Councilmember. We voted people in to fix things. The dog issue Councilmember Garcia Abstain and Abstain from other items plenty of times. We will recall you and you're wasting your time. Recommending to Council, that Mr. Garcia should not attend conference, he has talked badly about the Mayor and the City. Should not send Garcia to lobby for the city.

City Manager presented to Council about watering days. One of the neighboring cities has increase with their water consumption of 9% from last year. The City of Orange Cove is at 30% of water consumption. Proposing to have a 1 day of watering in order to keep the trees alive.

D. Consent Calendar

1. Park Use Agreement between the City of Orange Cove and Viva La Salud Health Fair Event on July 26, 2015 located at Eaton Park
2. Proposals from TNT for the removal of Anthracite and ERS for Turn Key Service at the Water Treatment Plant

Items removed from Consent Calendar

E. Administration

City Engineer:

1. **SUBJECT:** Discussion and direction regarding proposed restrooms at Eaton Park

Recommendation: Council to provide direction to Staff regarding the design and placement of the proposed restroom building at Eaton Park

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilwoman Minerva Pineda, Council directed staff to develop the plans then put it out to bid and bring back the results for Council's approval. (Yes Vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

2. **SUBJECT:** Consideration of a Resolution accepting the bid for the replacement of flooring at the Julia A. Lopez Child Development Center Restrooms and awarding the contract to A & M Flooring, Inc. in the amount of \$8,730.00

Recommendation: Council to adopt a Resolution accepting bid for the Julia A. Lopez Child Development Center Restroom Flooring Project and awarding the contract to A&M Flooring.

Per City Attorney Mayor Lopez and Mayor Pro Tem Silva no need to recuse themselves from this item has nothing to do with T8

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilwoman Josie Cervantes, Council approved the Resolution accepting bid for the Julia A. Lopez Child Development Center Restroom Flooring Project and award the contract to A & M Flooring. (Yes Vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

Finance Director:

3. **SUBJECT:** Consideration of a Resolution approving a request to the Fresno County Transportation Authority for Fiscal Year 2015-16 Measure C Extension Local Transportation Pass Through Funds

Recommendation: Council to adopt the Resolution approving a request to the Fresno County Transportation Authority for Fiscal Year 2015-16 Measure C Extension Local Transportation Pass Through Funds and requesting distribution of said funds.

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilman Gilbert Garcia, Council approved the Resolution approving a request to the Fresno County Transportation Authority for Fiscal Year 2015-16 Measure C Extension Local Transportation Pass Through Funds and requesting distribution of said funds. (Yes Vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

City Manager:

4. **SUBJECT:** Consideration of the Second Amendment to the Facilities Use and Maintenance Agreement between the City of Orange Cove and Target Eight Advisory Council

Recommendation: Council to approve the Second Amendment to the Facilities Use and Maintenance Agreement between the City of Orange Cove and Target Eight Advisory Council changing the monthly payment rate.

Mayor Lopez and Mayor Pro Tem Silva recuse themselves from this item due to the fact they are members of the Target Eight Board Advisory Council.

Upon the motion by Councilwoman Josie Cervantes and seconded by Councilwoman Minerva Pineda, Council approved the Second Amendment to the Facilities Use and Maintenance Agreement between the City of Orange Cove and Target Eight Advisory changing the monthly payment rate (motion passes Yes Vote, Pineda and Cervantes)(No Vote Garcia)

Mayor and Mayor Pro Tem rejoined the meeting at 7:24 pm

F. City Manager's Report

State energy grant over 200,000 dollar only gave money for fixture once agreement is set the rule is first come first serve. Local contractors.

Security cameras at Skate Park

Buy local campaign working with Fresno State, the businesses love it and want to buy banners. This is good for the businesses.

Police Chief Report.

Staff levels remains the same.

Explorer program is good.

Training 2 SRO 1 week long class

Cops grant

Cameras are good At the Skate Park

Vehicles are in waiting for parts for the other 2 vehicles

Chief presented the monthly crime stats for June 2015

G. City Attorney's Report

Nothing

H. City Council Communications

Councilman Gilbert Garcia:

Nothing to report

Councilwoman Josie Cervantes

Thanked the City for putting together a great fireworks event.

Councilwoman Minerva Pineda:

The Fireworks event had a great turn out and thanked the Orange Cove Fire Protection District and Police Department.

Mayor Pro Tem Diana Guerra Silva:

Mayor Pro Tem was out of town during the Fireworks event but heard throughout the town it was a fantastic show and a lot of entertainment.

Mayor Victor P. Lopez:

Thanked the Fire and Police Chief for attending the fireworks event. Stated one of the biggest event in Orange Cove and the entertainment was excellent. A family from Corcoran was at the event. Thanked Mario Villarreal, Josie, Minerva and David Lopez for helping out and being present. Thanked City Manager and Staff for their support. It's about community not about personalities and there are people who want to talk bad in this world. Very honored to be presented. Thanked Mr. Manuel Ferreira for having the veterans and the Chambers of Commerce at the event.

Today attended a meeting forming a new nonprofit organization that will include Kern, Tulare, Madera and Fresno County. This will be a new board in order to apply for funds for Temperance Flats. Senator Feinstein is very happy with this new board.

Mayor was invited to the National Convention by EPA to be a speaker.

Mr. Mario Villarreal Chairman of the Events Committee thanked Council for allowing the committee in having the 4th event and thanked the veterans.

I. Closed Session:

Public comments.

Irene Alvarado regarding Local 39 item stated that Councilmembers Pineda and Cervantes gave money to Target Eight Advisory and with this should not cut employees. That's wrong.

5. Conference with Labor Negotiators pursuant to Government Code Section 54957.6
Agency designated representatives: Sam Escobar, City Manager; Bianca Sparks, City Attorney
Employee Organization: International Union of Operating Engineers, Local 39
6. Conference with Labor Negotiators pursuant to Government Code Section 54957.6
Agency designated representatives: Sam Escobar, City Manager; Bianca Sparks, City Attorney
Employee Organization: Orange Cove Police Officers Association

Mayor and Mayor Pro Tem recuse themselves at 7:45 pm from item I7

7. Conference with Real Property Negotiators – Government Code Section 54956.8
Property Address: 555 “G” Street, Orange Cove CA
City Negotiator: Sam Escobar, City Manager
Negotiating Parties: Target Eight Advisory Council
Under Negotiation: Price and terms of payment

J. Reconvene City Council Meeting:

Report out of Closed Session

Mayor and Mayor Pro Tem returned to the meeting at 7:59 p.m.

City Attorney presented in respect to item I5 & 6 direction was given to Staff with respect to Item I7 no action was taken no other matters were discussed nothing further to report.

K. Adjournment

Mayor Lopez adjourned the City Council Meeting at 8:05 pm

RESPECTFULLY SUBMITTED:

June V. Bracamontes, City Clerk
City of Orange Cove

PRESENTED TO COUNCIL:

DATE: _____ ACTION: _____



MINUTES

Victor P. Lopez, Mayor

Diana Guerra Silva, Mayor Pro Tem
Minerva Pineda, Council Member

Gilbert Garcia, Council Member
Josie Cervantes, Council Member

WEDNESDAY, JULY 22, 2015 - 6:30 P.M.
Orange Cove Council Chambers
633 6th Street, Orange Cove, California 93646

A. Call to Order/Welcome

COUNCIL PRESENT: Mayor Victor P. Lopez
Mayor Pro Tem Diana Guerra Silva
Councilmember Gilbert Garcia
Councilmember Minerva Pineda
Councilman Josie Cervantes

STAFF PRESENT: City Manager Samuel A. Escobar
Finance Director, LAN Bui
Police Chief, Marty Rivera
City Clerk June V. Bracamontes

INVOCATION: Mayor Pro Tem Diana Guerra Silva

FLAG SALUTE: Mayor Victor P. Lopez

B. Confirmation of Agenda

City Manager requested to remove Item #7 off the agenda and consider moving item D after item #6

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilwoman Josie Cervantes, Council approved to remove Item #7 off the agenda and consider moving item D after item #6 as presented. (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

C. Presentations

1. Presentation by the Orange Cove Knights of Columbus awarding this Year's scholarship recipients

Mr. John Chavez from the Knights of Columbus presented the names of students from Orange Cove High School who received scholarships Anise Huerta, Abigail Vidrio, Candelaria Solozano and Melady Y. Quintero. Only 2 out of the 4 students were present Candelaria Solozano and Melady Y. Quintero. Both students thanked the Knights of Columbus. Each recipient will received \$300.00.

Mayor and Council commended the students for doing a very good job and with this it will benefit everyone.

D. Public Forum

(Item moved item after #6)

Members of the public wishing to address the City Council on an item that is not on the agenda may do so now. No action will be taken by the City Council this evening. But items presented may be referred to the City Manager for follow up and a report. In order to allow time for all comments, each individual is limited to three minutes. When addressing the Council, you are requested to come forward to the speakers microphone, state your name and address, and then proceed with your comments.

E. Consent Calendar:

1. Consideration of Resolution No. 2015-37 approving the City's Warrants (037611-037751)
2. City Council Minutes, Meeting of May 27, 2015
3. City Council Minutes, Meeting of June 10, 2015
4. Consideration of Resolution regarding the Recycling Market Development Zone Designation Renewal
5. Consideration of Resolution Awarding Bid to ERS Industrial Services, Inc. for Maintenance Work at the Water Treatment Plant and Authorizing City Manager to sign a Standard Construction Agreement
6. Consideration of Resolution approving the contract between the City of Orange Cove and Fresno Madera Area Agency on Aging (FMAAA) for Fiscal Year 2015-2016

Ms. Irene Alvarado from Orange Cove had a concern about the warrant 037110 Bank payment which was over \$9,000 out of the \$9,000 over \$8,000 that came out of the city council's budget for travel, conference and registration. For the Fiscal Year 2014-2015 budget only allowed \$8,500 and with researching it came to about \$25,000 that was spent for travel, conference and registration. This is

very irresponsible and the benefits is very high over \$20,000. Council was budgeted for \$44,000 and all expenses came out to over \$68,000 almost \$70,000. Council is way over budget. Council is accountable. Also her request was incomplete did not receive the information for Mayor and Mayor Pro Tem will request again.

Mayor Pro Tem Diana Guerra Silva stated that Ms. Alvarado can have her paperwork anytime and for the record has gone to one meeting in the whole fiscal year. Pro Tem Silva stated that Ms. Alvarado is welcome to any copies. As a reminder the last Council spent \$10 million.

Mr. Mario Villarreal support the Council with the Travel and the warrants. This Council has a record. Need to stick to the item.

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilwoman Josie Cervantes, Council approved the Consent Calendar as presented. (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

F. Administration

City Engineer:

1. **SUBJECT:** Consideration of a Resolution Accepting Dedication of Right of Way from Orchard Village for Orange Street south of South Avenue

Recommendation: Council to adopt the resolution accepting the dedication of rights of way for public street and utility purposes from Orchard Village 188, LP for the west side of Orange Street south of South Avenue

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilwoman Minerva Pineda, Council adopted the resolution accepting the dedication of rights of way for public street and utility purposes from Orchard Village 188, LP for the west side of Orange Street south of South Avenue. (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

2. **SUBJECT:** Consideration to award bid for the 2015 "G" Street Reconstruction Project

Recommendation: Council to adopt the attached Resolution approving to award the bid to AJ Excavation, Inc. for the 2015 "G" Street Reconstruction Project and authorize the City Manager to sign the standard construction agreement

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilwoman Josie Cervantes, adopted a Resolution approving to award

the bid to AJ Excavation, Inc. for the 2015 "G" Street Reconstruction Project and authorize the City Manager to sign the standard construction agreement. (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

3. **SUBJECT:** Consideration and Discussion regarding the Anchor Avenue Reconstruction Project. Change Order No. 1

Recommendation: Council to approve Change Order No. 1 for the Anchor Avenue Reconstruction Project in the amount of \$14,772.00 for the replacement of 349 feet of concrete curb and gutter.

Upon the motion by Councilman Gilbert Garcia and seconded by Councilwoman Josie Cervantes, Council approved the Change Order No. 1 for the Anchor Avenue Reconstruction Project in the amount of \$14,772.00 for the replacement of 349 feet of concrete curb and gutter. (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

Finance Director:

4. **SUBJECT:** Presentation and discussion regarding the Monthly Financials for May 31, 2015

Recommendation: Informational item only

Finance Director Lan Bui presented to Council an overview of the monthly Financials for May 31, 2015

5. **SUBJECT:** Consideration of Agreement for the Collection of Special Assessments between the City of Orange Cove and the County of Fresno

Recommendation: Council to approve the Agreement for the Collection of Special Assessments between the City of Orange Cove and the County of Fresno

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilwoman Minerva Pineda, Council approved the Agreement for the Collection of Special Assessments between the City of Orange Cove and the County of Fresno (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

City Manager:

6. **SUBJECT:** Consideration of Resolution regarding Support of the Establishment of a San Joaquin Valley Joint Powers Authority for the purpose of pursuing new water storage facilities

Recommendation: Council to approve the Resolution in support of the Establishment of a San Joaquin Valley Joint Powers Authority for the purpose of pursuing new water storage facilities

Upon the motion by Mayor Pro Tem Diana Guerra Silva and seconded by Councilwoman Minerva Pineda, Council approved the Resolution in support of the Establishment of a San Joaquin Valley Joint Powers Authority for the purpose of pursuing new water storage facilities (Yes vote: Mayor Lopez, Silva, Garcia, Pineda and Cervantes)

7. **SUBJECT:** Consideration and Discussion regarding Solar Energy Management Development and Community Solar Initiative

Recommendation: Council to authorize staff to work with the Solar Energy Management Development and Community Solar Initiative for future Proposal(s)

Item remove from the agenda.

PUBLIC FORUM

Ms. Irene Alvarado stated that she was badgered by Mayor Pro Tem Diana Guerra Silva under the Public Comment Right under the Brown Act. Giving Council Notice tonight will be forwarding a complaint to the District Attorney. This is an open meeting law. Has every right to be here and hold Council accountable as a as elected city official. Has a concern resident and tax payer of the city. This Council is very disrespectful, selfish. Also looking at her options to obtain a restraining order on Mr. Mario Villarreal. He is like a Body Guard and like a pit bull. Council you have people to take care of and represent. It's a shame that this comes down to this. Council you will not yell at me or disrespect her. The attitude has to go. If it takes the law to open your eyes. There are major concerns that this Council collects a check every month and goes to Las Vegas and not bring anything back. This Council has a city to run. Council did a recall now you have to deal with it.

Mr. Mario Villarreal stated that Ms. Alvarado needs to stick to the topic. Ms. Alvarado has never been elected to an elected position only once. The people elected this Council and is doing an excellent job. Don't appreciate someone coming in every meeting to stop the process to do Orange Cove business. Everything Ms. Alvarado is never on topic. She is not a taxpayer she doesn't own a home in Orange Cove. Mr. Villarreal stated he is a tax payer and

owns property in Orange Cove.

(Ms Alvarado stated her comments from the audience) Mayor Lopez asked to be quiet.

Mayor asked the City Manager to read the decorum.

Mayor Pro tem Diana Guerra Silva stated that she doesn't appreciate threats, and this Council has been threaten by Ms. Irene Alvarado and is out of order. Believes Council should let her speak but every time she speaks it's a threat. Basically Mayor Pro Tem Diana Guerra Silva feels threaten. Ms. Alvarado has every right to get copies of whatever she want and go ahead and go the County Attorney. Just do it.

G. City Manager's Report

Good Meetings in Sacramento set up by the Townsend Group. Discussion meeting regarding the Prop 1 projects. Moving forward in submitting the applications.

H. City Council Communications

Councilman Gilbert Garcia:

No comment

Councilwoman Josie Cervantes:

Attended a meeting with the State Water Resource in Sacramento regarding the Prop. 1 funding. Discussion regarding all proposed water. Going to be competitive and the City of Orange Cove stands a good position to receive some of this funding.

Councilwoman Minerva Pineda:

No comment

Mayor Pro Tem Diana Guerra Silva:

Regarding the comment made that this Council does not bring back nothing after the meetings/conference and explain that this Council always come back with knowledge maybe not always money. Part of the work duties is to gather information. The NALEO conference was in Las Vegas this year and next year in San Diego and next year in Washington and hopes to attend.

Mayor Victor P. Lopez

Happy with City Manager, Councilwoman Cervantes and consulting firm. This meeting in Sacramento was very positive. Townsend Group scheduled the meetings and the City of Orange Cove hit a jack pot. They are experts in the fields guiding us what to do and their staff did an outstanding job. Have to be knowledgeable in a lot areas.

Mayor Lopez was invited by the EPA from Chicago to speak on the drought.

Diana Guerra Silva stated to all fellow councilmembers appreciate your work, time and dedication every workshop attended don't question your integrity thank you council.

Comment regarding the closed session items:

1. Mr. Ralph Pardo of Orange Cove would like to present a concern about Item #9 under Closed Session. The city of Orange Cove is losing jobs due to the drought. Do we really need low income apartment filled with people that don't work? Do we have the capacity? Need to ask ourselves do we have the water for the public. If and until we get more water the city should look at this issue before we move forward on this project.
2. Ms. Irene Alvarado of Orange Cove elaborated on item #10 under Closed Session. Regarding the City Attorney it is the rumored that she gave her resignation due to the intimidation led by Mayor Lopez appointing a new city attorney. Leader of this gang alarming to the members of the community. You think you can hide your stuff under the rug. This is United States. Shameful and sad so much time and energy to manipulate. Let the light shed upon the darkness he's a great God and a merciful God.

Mayor Pro Tem Diana Guerra Silva stated that this Council is not a gang or part of a gang this is an insulting thing, we are professionals here. You need to look at yourself first don't appreciate it at all. Mayor Pro Tem stated she is comfortable with her relationship with Lord.

I. Closed Session

Mayor and Council went into Closed Session at 7:42 p.m.

8. Conference with Labor Negotiators pursuant to Government Code Section 54957.6
Agency designated representatives: Sam Escobar, City Manager
Employee Organization: International Union of Operating Engineers, Local 39
9. Conference with Real Property Negotiators – Government Code Section 54956.8
Property Address: 5.45 acre parcel
700 Feet West of Anchor Avenue, Orange Cove CA
City Negotiator: Sam Escobar, City Manager
Negotiating Parties: AMG

- 10. Pursuant to Government Code Section 54957
Public Employee Appointment
Title: City Attorney

- 11. Pursuant to Government Code Section 54957(b) (1):
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: City Manager

- J. Reconvene City Council Meeting**
Report out of closed session

City Manager reported on items #8, #9, #10 Council directed City Manager and Staff and item #11 no reportable action taken.

K. Adjournment

Mayor Lopez adjourned the City Council Meeting at 8:50 p.m.

RESPECTFULLY SUBMITTED:

June V. Bracamontes, City Clerk
City of Orange Cove

PRESENTED TO COUNCIL:

DATE: _____ ACTION: _____

STAFF INFORMATION MEMORANDUM

DATE: August 12, 2015

TO: Mayor and City of Orange Cove City Council Members

SUBJECT: Consider Approval for Extension of Local Agency Formation Commission (LAFCo) Conditional Annexation of "Jacobs-South Reorganization (Del Rey Villas LLC) LAFCo File No. RO-09-3, referred to as City of Orange Cove Tentative Tract Map (TTM) 5940.

RECOMMENDATION:

That the Orange Cove City Council Support Extension Request, and the City of Orange Cove forward Letter Regarding Development for the City of Orange Cove.

Background:

The City of Orange Cove approved the processing of TTM 5940 for a mixed use 700 + unit residential development located at the Southwest corner of Jacobs and South Avenues in November 2009. The project met all City procedural, environmental and mandated State guidelines for approval. The project was then approved by Fresno LAFCo, thereafter, for possible future annexation with mandatory requirements conforming with all elements of State of California law and regulations.

LAFCo operates by issuing "Conditional Annexation" approval of development projects on an annual 12 month basis. Thus, annually, all variety of annexation prospect developments in Fresno County are required to go through an annual review approval process, including TTM 5940 in the City of Orange Cove.

Real Estate residential development throughout California has been impacted by both local and nationwide Real Estate trends; such to the degree that the Governor's Office and the CA Legislature have enacted mandates to continue to support approved housing projects. The most recent mandate is AB 115 which was approved to extend the time frame of active Tentative Tract Maps such as Orange Cove TTM 5940.

Fresno LAFCo has officially advised the City of the potential expiry of the above, which would terminate November 2015. LAFCo has advised the City that a renewal extension may be considered subject to approval by the Fresno LAFCo Board. The Developers have contacted the City of Orange Cove requesting consideration of extension of Conditional Annexation approval by LAFCo. Should the Developers choose to move forward with the

Development, this project will have to conform to all original Conditions of Approval directed by the City of Orange Cove and other specific LAFCo Conditions established for the project. Last year 2014, the City of Orange Cove approved the similar annual Conditional Extension request.

A copy of the LAFCo Notification Letter and Draft of City Response Letter is included with this Staff Memorandum.

Fiscal Impact:

None to the City of Orange Cove. There is no fiscal impact or out of pocket costs for the City of Orange Cove. The Developer bears all costs for processing of the present LAFCo Extension Request and the costs of any further feasibility for development of this prospect project.

Attachments:

1. LAFCo Notification Letter, July 30, 2015
2. City of Orange Cove Draft Response Letter RE "Jacobs-South Reorganization (Del Rey Villas LLC) LAFCo File No. RO-09-3"

INFORMATION MEMORANDUM

DATE: August 3, 2015

TO: Samuel Escobar, City Manager City of Orange Cove,
June Bracamontes, City Clerk, City of Orange Cove

FROM: Julian Chapa, 559.260.8823 (Tel.), jcc.01@hotmail.com

RE: "Jacobs-South Reorganization (Del Rey Villas LLC) for LAFCo File No. RO-09-3"

Please see attached Draft Letter Response regarding the above.

Following steps to consider, as you determine:

1. Transfer Draft Letter to City of Orange Cove Letterhead for review and final signature, by Sam Escobar.
2. City of Orange Cove response letter forwarded to LAFCo
Attention: Candi Fleming: cfleming@cofresno.ca.us
3. Developer is forwarding \$750 Check to LAFCo directly.
4. Forward copy of Final approved Letter back to Developers and myself.

Please call me should you have any questions regarding the attached letter. I am set to meet with you to discuss further RE final Orange City Council and Staff approval, this week.

**Orange Cove City Letterhead
(Draft)**

August _____, 2015

Mr. David E. Fey, AICP
Executive Officer
Local Agency Formation Commission (LAFCo)
2607 Fresno Street, Ste. B
Fresno, CA 93721

RE: “Jacobs-South Reorganization (Del Rey Villas LLC) for LAFCo File No. RO-09-3”

Dear Mr. Fey:

Per your correspondence of July 30, 2015, please accept this letter as written request for extension of time for the above Tract. We request that LAFCo move forward to approve a 2 (Two) year extension of the above Tract Map Conditional Annexation originally approved by the City of Orange Cove in October 2009. The City of Orange Cove supports an extension of time to address the above map (LAFCo File No. RO-09-3) proceedings, subject to the Developers of the property providing the extension fee payment of \$750 to LAFCo.

The following information is provided to address requirements for extension of conditional approval, per your most recent letter of July 30th.

1. **Progress made ... during the past year.**

The City via the City Manager’s and the City Engineer’s office(s) is aggressively in the process of addressing current water management issues dealing with violation letters with the State of CA for both the (1) Drinking Water Treatment Plant and the (2) City Waste Water Treatment Plant system. RE Issue (1), Engineering construction plans are currently being developed to address this issue and implement improvements. Construction of improvements is scheduled to begin in Spring 2016, based on actual State CDBG funding that has been awarded to Orange Cove. RE Issue (2) funding has been provided and the City is approximately 75% completed with improvements to clear this item. The City is moving to address improvements for the benefit of the City and future development opportunity.

2. **Any circumstances that ... suitability for annexation.**

No circumstances have changed in the vicinity of the project area directly. However, the City is under notice from the State of CA, to clear up “backwash water from the City Drinking Water Treatment Plant”, of which a channel of water runs through the property within the “Jacobs-South Reorganization” area. This violation issue occurred subsequent to City and LAFCo Conditional Annexation approvals for this Tract, in 2009.

3. **Action taken by the proponent... within the extension period.**

Meetings were held in 2010 between the City, City Engineer and Developer to broach the possibility of moving forward with development of an initial Phase 1 – 56 single family (SFR) units. It was determined that development of this Phase 1 was not feasible, based on the pipeline of other SFR and MFR units proposed for construction due to capacity issues impacting the City Water Treatment Plant. Some of those other projects have fallen by the wayside. Infrastructure improvement issues dealing with water management issues are being addressed with more CA state infrastructure funding now coming to the plate. However, capacity issues will have to be addressed by the Developers and the City working jointly for any project moving forward, as expressed in the Conditions of Approval.

4. **If a condition of approval ... and date that it will expire.**

The tentative track map # 5940 is set to expire in November 2015, based on AB 116 legislation approved the State of CA, extending the life of Tentative Tract Maps due to real estate conditions existing in the state overall. This request is to extend the life of this map until November 2017, subject to LAFCo approval, of course.

5. **If proponent is unable ... presence of adversarial market or economic condition justify the extension.**

The Orange SFR home market is improving slowly; as with regional real estate SFR family home sales trends. Current SFR building construction is expected to improve, as the City is initiating down payment and subsidy assistance programs to promote home ownership in the community. The Developer believes in the project's feasibility, over time, as the above issues are addressed and the RE market improves.

A check is being forwarded by the Developer, to cover the extension fee request of \$750 to your offices immediately.

Sincerely,

Samuel Escobar, City Manager

cc:

Mr. Hormoz Faryab, Del Rey Villas, LLC, Los Angeles CA



Fresno Local Agency Formation Commission

July 30, 2015

Mr. Samuel A. Escobar, City Manager
City of Orange Cove
633 Sixth Street
Orange Cove, CA 93646

Dear Mr. Escobar:

Subject: "Jacobs-South Reorganization (Del Rey Villas, LLC)"

The LAFCo Resolution approving your proposal will expire on November 4, 2015, unless the Commission grants an extension of time within which to complete the proceedings. You may request a one-year extension of time by addressing your request to our office, accompanied by a fee of \$750.00

Please include the following information with your request:

1. Written request for an extension of time, including the requested period of time and appropriate fee as described in Commission fee schedule section 350.
2. Description of the changed circumstances of the project that have delayed completion of proceedings.
3. An explanation of the project's feasibility and what progress will be made to complete conditions of approval and all necessary prerequisite actions by any party.
4. Written confirmation from the city or district representative to which annexation is proposed supporting the extension request; a district located within the unincorporated area, written correspondence in support of the extension request shall also be provided from the County of Fresno.

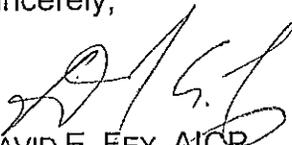
The Commission's policies state that extensions of time shall only be granted when it can be shown that the imminent need for the proposal still exists, the project is still viable, and progress is being made toward completion.

Mr. Samuel A. Escobar
July 30, 2015
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We must receive your request by **September 18, 2015**, in order for the Commission to consider it prior to the expiration date. Attached for your information are the items necessary to issue a certificate of completion.

If you need assistance, please contact our office.

Sincerely,



DAVID E. FEY, AICP
EXECUTIVE OFFICER

DEF:cf

cc: Hormoz Faryab, Managing Partner, Del Rey Villas LLC
June Bracamontes, Orange Cove City Clerk
Julian Chapa

AGREEMENT

This Agreement is entered into by and between the City of Orange Cove (hereinafter referred to as "City") and Tuttle and McCloskey, a Professional Corporation (hereinafter referred to as "Attorney") for the performance of City Attorney services and to provide those services required bylaw to be provided by a City Attorney.

WHEREAS, City desires to retain Attorney for a fixed term on specified conditions providing more services for three (3) years; and

WHEREAS, Attorney is willing to be retained for three (3) years.

NOW, THEREFORE, in consideration of the mutual covenants herein the parties agree as follows:

1. **SCOPE OF SERVICES.** Attorney shall provide the following services to City:

(a) Represent and advise the City Council and all City officers in all matters of law pertaining to their office.

(b) Represent and appear for any City officer and/or employee or any former City officer and/or employee, in legal proceedings in which any such officer or employee is entitled by law to representation furnished by the City.

(c) Attend all regular meetings of the City Council (2nd and 4th Wednesday of each calendar month) and give advice or opinion in writing whenever requested to do so by the City Council or any of the boards or commissions of the City or by the City Manager.

(d) To be promptly available for telephone consultation and to render written opinions on given issues related to City business in a timely manner.

(e) Approve the form and content of all contracts made by and all performance bonds, insurance of certificates and like documents tendered to the City.

(f) Prepare/review all Ordinances, Resolutions, Contracts, Deeds, Leases, and all other legal documents as requested by the City Manager.

(g) Provide recommendation and advice when requested by the City Council pertaining to the retention of and employment of outside law specialists in complex and important cases in which the City may be involved.

(h) Investigate all claims and complaints by or against the City and prepare civil cases and act as trial counsel as required and requested by City Manager.

(i) Prepare extended legal opinions of a complex nature for the City Council, officers, boards, commissions and the City Manager as required and requested.

(j) Prepare extended legal opinions of a complex nature for the City Council, officers, boards, commissions and the City Manager as required and requested.

(k) Generally to oversee and manage the legal affairs of the City and to insure that the policies, programs, and activities of the City and its employees and agents are carried out in compliance with all applicable law and that the best interests of the City are otherwise protected to the fullest extent possible.

Attorney shall provide the full normal range of services of the City Attorney as described above. **Attorney** may use the City's facilities and/or staff on a mutually agreed basis to accomplish his commission. **Attorney** shall establish and maintain his own office service capacity. **Attorney** shall also maintain services to the City in case of his unavoidable absence through temporary Attorney services satisfactory to the City. **Attorney** will provide the City with education and in-service seminars as mutually agreed upon to maintain a level of education among the City Council members, staff and management in order, to the fullest extent possible, to reduce liability and increase knowledge on the part of the City pertaining to any and all legal matters.

2. **TERM.** The term of this contract shall be the term of three (3) years from the date of execution. The parties agree that **Attorney** shall provide the services delineated herein for the City in accordance to this written agreement and as an independent contractor.

3. **TERMINATION.** City can terminate this agreement at any time in the City's sole discretion. This contract shall terminate three (3) years from the date of execution hereof. Either party to this agreement may terminate this contract by giving notice thereof in writing to the other party no less than one hundred and eighty (180) days prior to the date of termination elected. **Attorney** agrees, upon termination of the agreement or expiration of the notice of termination, **Attorney** shall deliver all files, City property, and City records in its possession or control to the City.

4. **CITY RESPONSIBILITY.** City agrees to cooperate with **Attorney** in the performance of its duties under this contract, to keep **Attorney** informed of all developments, to abide by this agreement, and to pay **Attorney** bills within thirty (30) days of receipt thereof.

5. **INSURANCE AND INDEMNIFICATION.**

(a) **Attorney** will supply all tools and instrumentalities required to perform the services under this agreement.

(b) **Attorney** will provide workers compensation insurance for **Attorney's** employees and agents and agrees to indemnify, defend and hold harmless the City from any and all claims arising out of any injury, disability, or death of any of **Attorney's** employees or agents.

(c) **Attorney** shall maintain a policy of professional liability insurance in the minimum amount of one million dollars, (\$1,000,000) to cover any negligent acts committed by **Attorney** or **Attorney's** employees or agents during the performance of any duties under this agreement. **Attorney** further agrees to hold City free and harmless from any and all claims arising from any such negligent act or omission.

(d) **Attorney** shall maintain a policy of automobile insurance in the minimum amount of one million dollars. (\$1,000,000) to cover any negligent act committed by **Attorney** or **Attorney's** employees or agents during operation of an automobile during the performance of any duties under this agreement. **Attorney** further agrees to hold City free and harmless from any and all claims arising from any such negligent act or omission.

6. **INDEPENDENT CONTRACTOR.** **Attorney** is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. **Attorney** is not **City's** agent, and shall have no authority to act on behalf of **City**, or to bind **City** to any obligation whatsoever, unless **City** provides prior written authorization to **Attorney**. **Attorney** is not an officer or employee of **City**, and **Attorney** shall not be entitled to any benefit, right, or compensation other than that provided in this agreement.

7. **COMPENSATION.** **City** agrees to pay **Attorney** the rate of \$150.00 per hour for attorneys and \$90.00 per hour for legal assistants for the time spent on **City** legal matters by **Attorney's** legal personnel except as noted below.

(a) **Attorney** agrees to charge **City** the flat rate of three (3) hours or \$450.00 for **Attorney's** attendance at the regularly scheduled **City** Council meeting on the 2nd and 4th Wednesday of each month.

(b) Except as stated above, **Attorney** will charge **City** for the time **Attorney** spends on telephone calls relating to **City** legal matters, including telephone calls with **City** staff and personnel, opposing counsel or court personnel. **Attorney** will also charge travel time as incurred for **City** matters. The legal personnel assigned to **City** matters will confer among themselves about the matter as required. When they do confer, each person will charge for the time expended. **Attorney** will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

8. **COSTS AND OTHER CHARGES.**

(a) **Attorney** will incur various costs and expenses in performing legal services under this agreement. **City** agrees to pay for those costs and expenses in addition to the hourly fee. The costs and expenses incurred commonly include process server fees, fees fixed by law or assessed by courts and other agencies, court reporter fees, long distance telephone calls, messenger and other delivery fees, postage, parking and other travel expenses, photocopying and other reproduction costs, and other similar items. All costs and expenses will be charged at **Attorney's** cost.

(b) To aid in the preparation and presentation of **City** legal matters, it may be necessary to hire expert witnesses, consultants or investigators. **Attorney** will not hire such persons unless **City** agrees to pay their fees and charges. **Attorney** will select any expert witnesses, consultants or investigators to be hired.

9 **BILLING STATEMENTS.** **Attorney** will send **City** monthly statements for fees and costs incurred. Each statement will be due within thirty (30) days of its date. **City** may request a statement at intervals of no less than thirty (30) days. **Attorney** agrees to provide a statement upon request within ten (10) days of said request.

10. **DISCLAIMER OF GUARANTEE.** Nothing in this agreement and nothing in **Attorney's** statements to **City** will be construed as a promise or guarantee about the outcome of any particular **City** matter. **Attorney** makes no such promises or guarantees. **Attorney's** comments about the outcome of any particular city matter are expressions of opinion only.

11 **EFFECTIVE DATE.** This agreement will take effect when it has been executed, but its effective date will be retroactive to the date that **Attorney** provided services hereunder. Even if this agreement does not take effect, **City** will be obligated to pay **Attorney** for the reasonable value of any services **Attorney** may have performed for **City**.

12. **PERIODIC REVIEW.** **City** and **Attorney** agree to meet on an annual basis to review the terms and conditions of this agreement and modify the same by mutual written agreement.

13. **DURATION.** This agreement shall begin on August 1, 2015, and end on July 31, 2018, unless otherwise extended or amended by mutual agreement.

DATED: _____

TUTTLE & McCLOSKEY
A Professional Corporation
By Daniel T. McCloskey

DATED: _____

CITY OF ORANGE COVE
By Samuel Escobar, City Manager

ACCEPTANCE

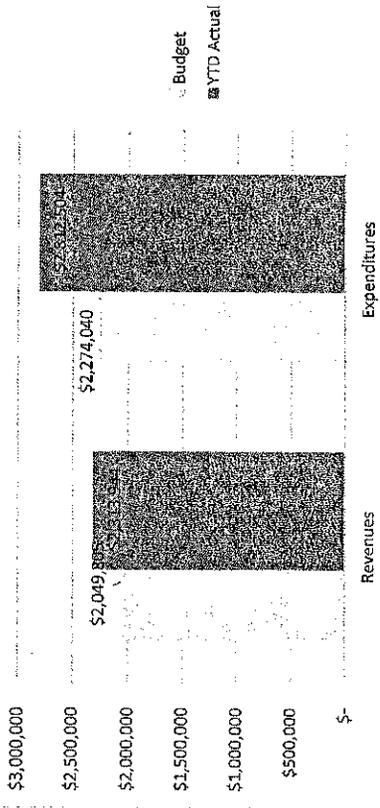
The above retainer agreement was agreed to and accepted by motion duly adopted at a regular meeting of the City of Orange Cove's City Council which was duly held on the 12th day of August, 2015.

CITY OF ORANGE COVE
A Municipal Corporation
By Victor Lopez, Mayor

ATTEST:

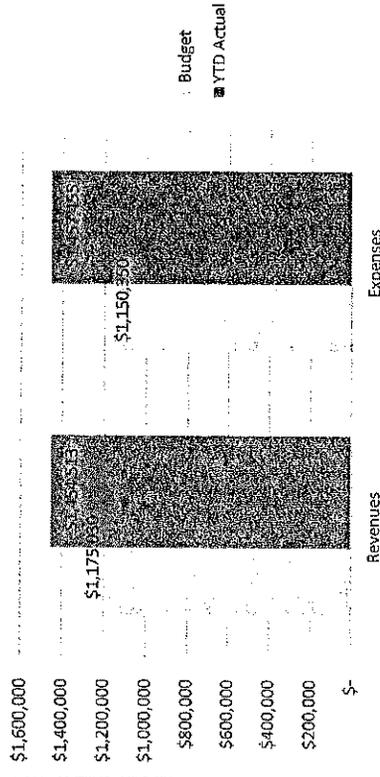
CITY CLERK, June Bracamontes

General Fund Analysis



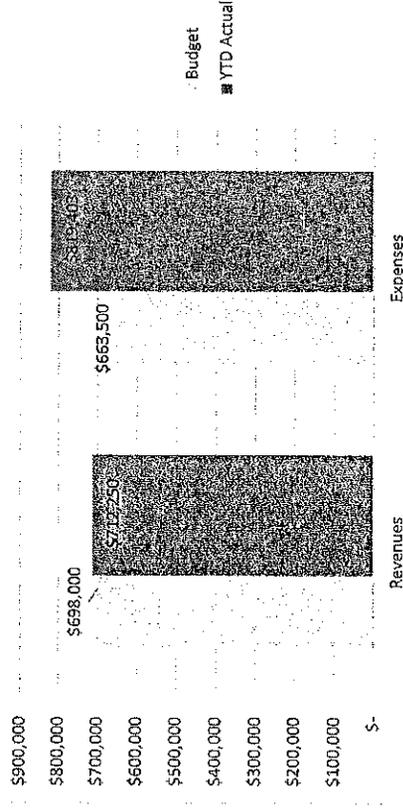
% Accumulated 113% 124%

Water Fund Analysis



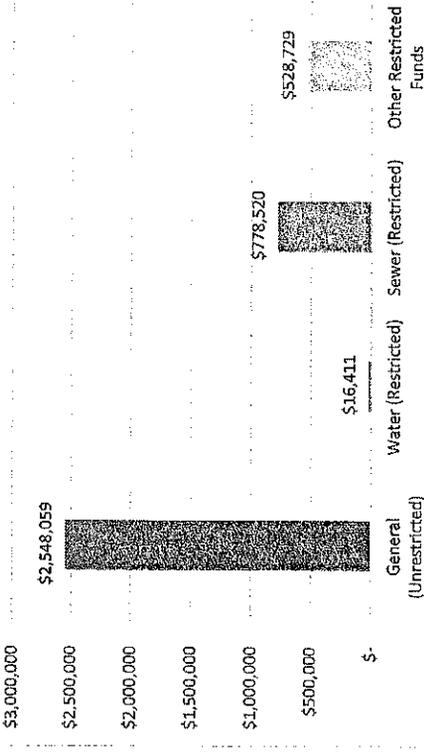
% Accumulated 124% 127%

Sewer Fund Analysis



% Accumulated 102% 123%

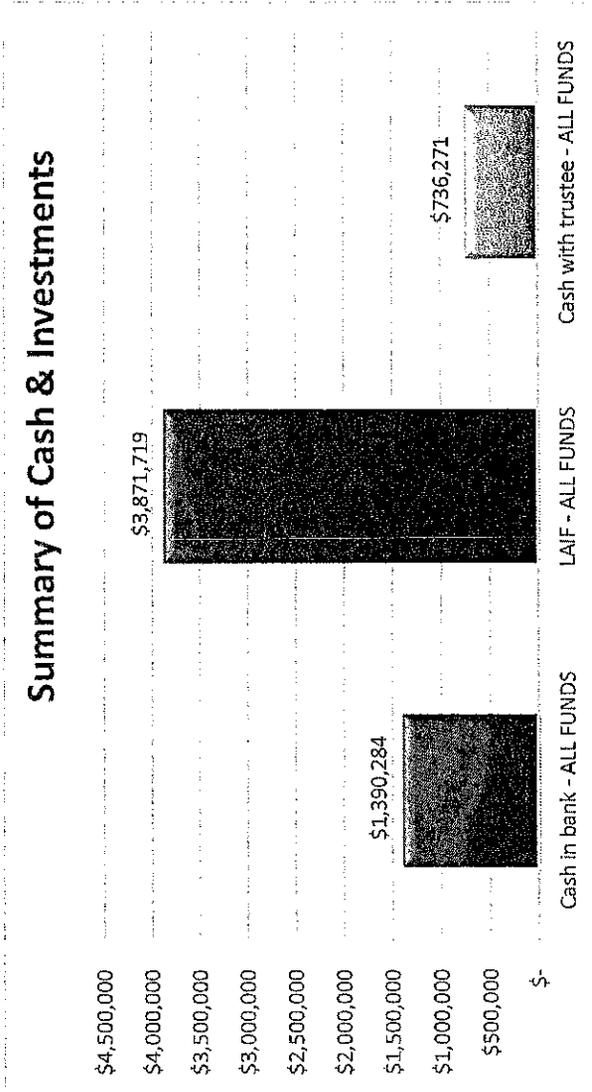
Reserve Breakdown



Total Reserve: \$ 3,871,719

**CITY OF ORANGE COVE
CASH SUMMARY
(UNAUDITED)
June 30, 2015**

Cash in bank - ALL FUNDS	\$ 1,390,284	23% Cash account used for our day-to-day operations
LAIF - ALL FUNDS	\$ 3,871,719	65% City's only investment account
Cash with trustee - ALL FUNDS	\$ 736,271	12% Cash with fiscal agent used for restricted purposes
	<u>\$ 5,998,275</u>	100%
Restricted	\$ 3,569,445	60%
Unrestricted	\$ 2,428,829	40%
	<u>\$ 5,998,275</u>	100%



CITY OF ORANGE COVE
SUMMARY OF CASH AND INVESTMENTS
(UNAUDITED)
June 30, 2015

	Per GL		Per Bank	(Short)/Over
	Restricted	Unrestricted		
Accounts:				
Operating Cash Account (Pooled)	\$ 1,457,127	\$ (154,281)	\$ 1,641,841	\$ (154,281)
Investment Account -LAIF (Pooled)	1,323,660	2,548,059	3,871,719	-
USDA	52,387	-	52,387	-
Money Market Account (General Fund)	-	35,051	35,051	-
Total Cash and Investments	<u>2,833,174</u>	<u>2,428,829</u>	<u>5,600,998</u>	
Accounts held with trustee:				
1995 Water Bonds (Water Fund)	13,854	-	13,854	\$ -
2004 Tax Allocation Bond (Successor Agency)	722,418	-	722,418	\$ -
Total cash with fiscal agent	<u>736,271</u>	<u>-</u>	<u>736,271</u>	
GRAND TOTAL	<u>\$ 3,569,445</u>	<u>\$ 2,428,829</u>	<u>\$ 6,337,270</u>	

¹ See page 3 for breakdown of cash by major funds

² See page 4 for the breakdown of pooled investments by major fund

³ Unspent bond proceeds

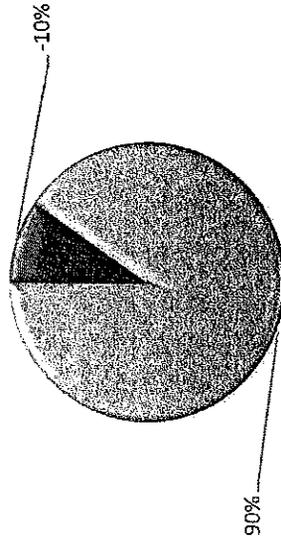
⁴ Restricted for debt service payments on 1995 Bonds

CITY OF ORANGE COVE
BREAKDOWN OF OPERATING ACCOUNT
(UNAUDITED)
June 30, 2015

Operating Cash Account (Pooled):

General	\$ (154,281)
Local Transportation	703,362
Low Mod	66,244
Housing	5,037
Daycare	90,115
Water	(748,462)
Sewer	662,651
Disposal	25,327
Other governmental funds	<u>652,852</u>
Total	<u>\$ 1,302,846</u>
Unrestricted	\$ (154,281)
Restricted	<u>1,457,127</u>
	<u>\$ 1,302,846</u>

Operating Cash
Restricted vs. Unrestricted

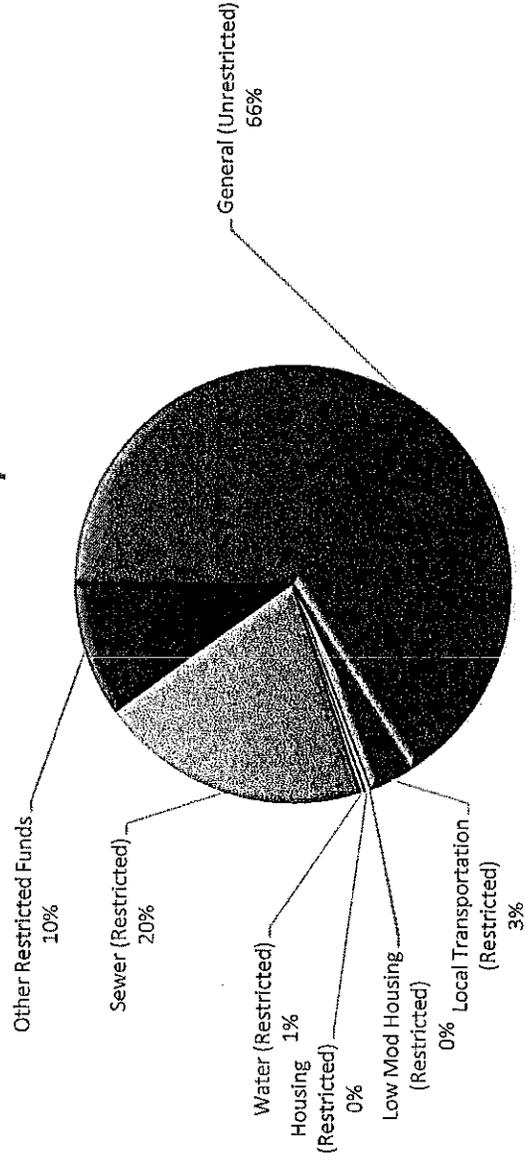


**CITY OF ORANGE COVE
BREAKDOWN OF LAIF ACCOUNT
(UNAUDITED)
June 30, 2015**

General (Unrestricted)	\$ 2,548,059	66%
Local Transportation (Restricted)	127,301	3%
Low Mod Housing (Restricted)	4,695	0%
Housing (Restricted)	8,719	0%
Water (Restricted)	16,411	0%
Sewer (Restricted)	778,520	20%
Other Restricted Funds	<u>388,015</u>	10%

\$ 3,871,719 100%

LAIF Breakdown by Fund



BALANCE SHEET - GOVERNMENTAL FUNDS
JUNE 30, 2015

	General	Local Transportation	Low-Moderate		Day Care	Other Governmental Funds	Total Governmental Funds
			Housing Asset	Housing Grant			
ASSETS							
Cash and investments	\$ 2,430,300	\$ 830,663	\$ 70,939	\$ (60,530)	\$ 90,145	\$ 849,429	\$ 4,210,946
Accounts receivable	103,239	-	-	-	30,000	-	133,239
Interest receivable	-	-	136,487	50,600	-	-	187,087
Due from other governments	-	23,616	-	77,085	-	324,741	425,442
Due from other funds	-	-	-	-	-	-	-
Notes receivable	-	-	275,000	1,652,212	-	27,593	1,954,805
Land held for resale	376,000	-	-	-	-	599,986	975,986
Total assets	\$ 2,909,539	\$ 854,279	\$ 482,426	\$ 1,719,368	\$ 120,145	\$ 1,801,748	\$ 7,887,506
LIABILITIES							
Accounts payable and accrued expenses	\$ 93,293	\$ 15,013	\$ -	\$ 2,800	\$ 72,866	\$ 17,431	\$ 201,403
Due to other funds	-	-	-	-	-	-	-
Unearned revenues	-	-	-	-	47,218	-	47,218
Total liabilities	93,293	15,013	-	2,800	120,084	17,431	248,621
DEFERRED INFLOWS OF RESOURCES							
Unavailable revenues	-	-	411,487	1,702,812	-	-	2,114,299
Total deferred inflows of resources	-	-	411,487	1,702,812	-	-	2,114,299
FUND BALANCE							
Nonspendable:							
Notes receivables	-	-	-	-	-	27,593	27,593
Land held for resale	376,000	-	-	-	-	599,986	975,986
Restricted:							
Low-income housing activities	-	-	70,939	13,755	-	-	84,694
Circulation improvements	-	839,267	-	-	-	481,008	1,320,275
Capital improvement projects	-	-	-	-	-	433,208	433,208
Debt service	-	-	-	-	-	357,272	357,272
Unassigned	2,440,246	-	-	-	61	(114,751)	2,325,556
Total fund balance	2,816,246	839,267	70,939	13,755	61	1,784,316	5,524,584
Total liabilities, deferred inflows of resources, and fund balance	\$ 2,909,539	\$ 854,280	\$ 482,426	\$ 1,719,368	\$ 120,145	\$ 1,801,747	\$ 7,887,505

**CITY OF ORANGE COVE
STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCE- GOVERNMENTAL FUNDS
FOR THE MONTH ENDED JUNE 30, 2015**

	General	Local		Low-Moderate		Housing Grant	Daycare	Other Governmental Funds	Total Governmental Funds
		Transportation	Asset	Housing	Grant				
Revenues									
Taxes	\$ 1,378,435	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 142,160	\$ 1,520,595
Intergovernmental	310,748	299,928	-	189,450	958,397	-	-	1,166,538	2,925,062
Charges for service	106,412	-	-	-	-	-	-	-	106,412
Licenses, permits and impact fees	148,508	-	-	-	-	-	-	24,008	172,516
Interest and rent	65,571	248	9	5,017	61	-	-	2,297	73,202
Other	190,749	-	-	-	-	-	-	-	190,749
Total revenues	2,200,424	300,176	9	194,467	958,458	-	-	1,335,003	4,988,536
Expenditures									
Current:									
General government	411,285	-	-	-	-	-	-	-	411,285
Public safety	1,802,434	-	-	-	-	-	-	-	1,802,434
Public works	159,376	-	-	-	-	-	-	-	159,376
Streets	-	117,239	-	-	-	-	-	1,131,152	1,248,391
Planning and development	93,522	-	18,504	165,797	-	-	-	34,286	312,109
Parks and recreation	246,225	-	-	-	-	-	-	-	246,225
Day care	-	-	-	-	958,397	-	-	-	958,397
Capital outlay	99,663	-	-	-	-	-	-	-	99,663
Debt service:									
Principal	-	-	-	-	-	-	-	58,726	58,726
Interest and other charges	-	-	-	-	-	-	-	73,354	73,354
Total expenditures	2,812,504	117,239	18,504	165,797	958,397	-	-	1,297,519	5,369,959
Revenue over/(under) expenditures	(612,080)	182,937	(18,495)	28,670	61	-	-	37,484	(381,423)
Other Financing Sources/(Uses)									
Transfers in/(out) - net	113,520	(14)	-	(21,229)	-	-	-	14	92,291
Total other financing sources/(uses)	113,520	(14)	-	(21,229)	-	-	-	14	92,291
Change in Fund Balance	(498,560)	182,923	(18,495)	7,441	61	-	-	37,498	(289,132)
Fund Balance									
Beginning of year	3,314,806	656,344	89,433	6,314	-	-	-	1,725,580	5,792,478
End of year	\$ 2,816,246	\$ 839,267	\$ 70,939	\$ 13,755	\$ 61	\$ -	\$ -	\$ 1,763,078	\$ 5,503,346

CITY OF ORANGE COVE
STATEMENT OF NET POSITION- PROPRIETARY FUNDS
JUNE 30, 2015

	Business-Type Activities - Enterprise Funds			Total Business-Type Funds
	Water	Sewer	Disposal	
ASSETS				
Current assets				
Cash and Investments	\$ (665,810)	\$ 1,441,171	\$ 25,327	\$ 800,688
Accounts receivable	136,045	704,391	62,703	903,139
Interest receivable	-	-	-	-
Total current assets	<u>(529,765)</u>	<u>2,145,562</u>	<u>88,030</u>	<u>1,703,827</u>
Non-current assets				
Property, plant and equipment (net of allowances for depreciation)	<u>5,798,244</u>	<u>10,285,351</u>	<u>-</u>	<u>16,083,595</u>
Total noncurrent assets	<u>5,798,244</u>	<u>10,285,351</u>	<u>-</u>	<u>16,083,595</u>
Total assets	<u>5,268,479</u>	<u>12,430,913</u>	<u>88,030</u>	<u>17,787,422</u>
LIABILITIES				
Current liabilities				
Accounts payable and accrued expenses	30,363	11,483	-	41,845
Accrued interest	14,707	-	-	14,707
Deposits	37,387	-	-	37,387
Compensated absences	23,197	18,661	-	41,858
Due to other funds	-	-	-	-
Current portion of long-term debt	-	-	-	-
Total current liabilities	<u>105,653</u>	<u>30,144</u>	<u>-</u>	<u>135,797</u>
Non-current liabilities				
Long-term debt	<u>1,463,393</u>	<u>114,865</u>	<u>-</u>	<u>1,578,258</u>
Total liabilities	<u>1,569,046</u>	<u>145,009</u>	<u>-</u>	<u>1,714,055</u>
NET POSITION				
Net investment in capital assets	4,334,851	10,170,486	-	14,505,337
Restricted for debt services	13,854	-	-	13,854
Unrestricted	<u>(649,272)</u>	<u>2,115,418</u>	<u>88,030</u>	<u>1,554,176</u>
Total net position	<u>\$ 3,699,433</u>	<u>\$ 12,285,904</u>	<u>\$ 88,030</u>	<u>\$ 16,073,366</u>

CITY OF ORANGE COVE
STATEMENT OF REVENUE, EXPRESS, AND CHANGES IN FUND NET POSITION
PROPRIETY FUNDS
FOR THE MONTH ENDED JUNE 30, 2015

	Business-Type Activities - Enterprise Funds			Total Business-Type Funds
	Water	Sewer	Disposal	
Operating Revenue				
Charges for service	\$ 1,196,221	\$ 704,391	\$ 571,850	\$ 2,472,462
Connection fees	1,270	-	-	1,270
Total operating revenue	<u>1,197,492</u>	<u>704,391</u>	<u>571,850</u>	<u>2,473,733</u>
Operating Expense				
Contractual service and utilities	739,705	406,308	488,605	1,634,618
Personnel	471,050	390,326	-	861,376
Supplies and materials	184,331	22,470	-	206,800
Depreciation expense	201,897	431,952	-	633,849
Total operating expense	<u>1,596,983</u>	<u>1,251,055</u>	<u>488,605</u>	<u>3,336,643</u>
Operating income/(loss)	<u>(399,491)</u>	<u>(546,664)</u>	<u>83,245</u>	<u>(862,911)</u>
Nonoperating Revenue/(Expense)				
Intergovernmental	252,387	-	5,000	257,387
Development impact fees	3,988	6,344	-	10,332
Interest income	646	1,515	-	2,161
Interest expense	(62,369)	-	-	(62,369)
Total nonoperating revenue/(expense)	<u>194,651</u>	<u>7,859</u>	<u>5,000</u>	<u>207,510</u>
Net income/(loss) before transfers	<u>(204,840)</u>	<u>(538,805)</u>	<u>88,245</u>	<u>(655,400)</u>
Operating Transfers In/(Out)	<u>-</u>	<u>-</u>	<u>(58,878)</u>	<u>(58,878)</u>
Changes in Net Position	<u>(204,840)</u>	<u>(538,805)</u>	<u>29,367</u>	<u>(714,278)</u>
Net Position				
Beginning of year	3,904,273	12,824,709	58,663	16,787,645
End of the year	<u>\$ 3,699,433</u>	<u>\$ 12,285,904</u>	<u>\$ 88,030</u>	<u>\$ 16,073,366</u>



California State Board of Equalization



PREPAID MOBILE TELEPHONY SERVICES (MTS) SURCHARGE AGREEMENTS

January 1, 2016, the new Prepaid Mobile Telephony Services (MTS) Surcharge will become effective. This is mandated under Assembly Bill 1717, which requires local jurisdictions to contract with the Board of Equalization (BOE) for the collection of the MTS surcharges.

If your city or county currently imposes the local utility user taxes (UUT), local 911 charges, and/or other related local charges, please review, complete, and return the attached documents to ensure the timely collection of these local revenues. For contracts executed by September 1, 2015, collections will begin on 1/1/2016; for contracts executed by December 1, 2015, collections will begin on 4/1/2016.

Enclosed with this packet you will find the following attachments:

- Local Charge Agreement
- Certification Agreement
- MTS Resolution and instructions
- MTS Surcharge Checklist

Once your completed MTS agreement package is received by our office, it will be reviewed and processed upon receipt. Therefore, it is pertinent that the returned package includes all the required documents listed on the MTS Surcharge Checklist and is completed accurately. Incomplete packages may be returned and result in the delay of the contract with BOE.

Should you wish to expedite the processing of your MTS package, please email us a copy prior to mailing us the package with the original wet signatures.

For more information or questions on this process, please contact any one of us below or email us at raadjuri@boe.ca.gov:

Donna Puchalski
(916) 323-0807

Terri Leach
(916) 324-1386

Olivia Siu
(916) 322-2563

For general information about the new MTS program, please see our [Mobile Telephony Services Surcharge](http://www.boe.ca.gov/industry/prepaid_mts_surcharge.html) guide at www.boe.ca.gov/industry/prepaid_mts_surcharge.html.



California State Board of Equalization

BOARD MEMBERS:

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Second District
San Francisco

JEROME E. HORTON
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DIANE L. HANKEY
Fourth District
Orange County

BETTY T. YEE
State Controller

Local Jurisdictions MUST Contract with BOE for Collection of Local Charges on Prepaid Mobile Telephony Services

Beginning January 1, 2016, a new law ([AB 1717](#)) requires local jurisdictions to contract with the California State Board of Equalization (BOE) in order to receive revenue from local utility user taxes (UUT), local 911 charges, and any other local charges imposed on consumers of prepaid mobile services.

To ensure the uninterrupted collection of these local revenues, local jurisdictions must contract with the BOE by **September 1, 2015**. If a local jurisdiction does not contract with the BOE, any local charges imposed upon prepaid mobile telephony services (MTS) will not be collected by the sellers and the local jurisdiction will not receive local charge revenue from prepaid MTS once the new law is effective on January 1, 2016.

If the local jurisdiction does not contract with BOE by September 1, 2015, the next deadline is December 1, 2015, for collection beginning April 1, 2016. In order to contract with the BOE, local jurisdictions must have an ordinance that applies its local charge to prepaid MTS.

Current law imposes a variety of surcharges on phone services, including prepaid mobile phone services. Currently, phone carriers are generally responsible for collecting and paying these surcharges (for example, the 911 emergency surcharge and California Public Utilities Commission surcharges) to the state. The new law replaces all current charges imposed upon prepaid mobile phone services with a new prepaid MTS surcharge. The prepaid MTS surcharge will be paid by purchasers of prepaid wireless services in California and be collected at the time of purchase.

Under the new law, the MTS surcharge will be the *only method* for local jurisdictions to collect taxes and surcharges imposed upon prepaid mobile telephone services sold in their jurisdiction.

For more information about contracting with BOE for the collection of UUT and/or local 911 charges, please contact the BOE's Local Revenue Allocation Unit at 1-916-324-3000 or by email at raadjuri@boe.ca.gov.

For general information about the new Prepaid MTS surcharge, please see our [Prepaid Mobile Telephony Services Surcharge](#) guide, or visit our website at www.boe.ca.gov.

RESOLUTION NO. 2015-44

A Resolution Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records

WHEREAS, pursuant to Ordinance No. 288 of the City of Orange Cove and the Local Prepaid Mobile Telephony Services Collection Act, the City of Orange Cove, hereinafter called Local Jurisdiction, entered into a contract with the State Board of Equalization, hereafter referred to as the Board, to perform all functions incident to the administration and collection of the prepaid mobile telephony services surcharge and local charges (Rev. & Tax. Code, § 42101.5); and

WHEREAS, the Local Jurisdiction deems it desirable and necessary for authorized representatives of the Local Jurisdiction to examine confidential prepaid mobile telephony services surcharge and local charge records pertaining to the prepaid mobile telephony services surcharge and local charges collected by the Board for the Local Jurisdiction pursuant to that contract;

WHEREAS, the Board will make available to the Local Jurisdiction any information that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the Local Jurisdiction by a seller, including a direct seller, subject to the confidentiality requirements of Sections 7284.6, 7284.7 and 19542 of the Revenue and Taxation Code; and

WHEREAS, Sections 42110 and 42103 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board of Equalization records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from the prepaid mobile telephony services surcharge and local charge records of the Board;

NOW, THEREFORE IT IS RESOLVED AND ORDERED AS FOLLOWS:

Section 1. That the City Manger or other officer or employee of the Local Jurisdiction designated in writing by the Orange Cove City Council to the Board is hereby appointed to represent the Local Jurisdiction with authority to examine prepaid mobile telephony services surcharge and local charge records of the Board pertaining to prepaid mobile telephony services surcharge and local charges collected for the Local Jurisdiction by the Board pursuant to the contract between the Local Jurisdiction and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of the Local Jurisdiction's prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract.

Section 2. That the City Manager or other officer or employee of the Local Jurisdiction designated in writing by the Orange Cove City Council to the Board is hereby appointed to represent the Local Jurisdiction with authority to examine those prepaid mobile telephony services surcharge and local charge records of the Board for purposes related to the following governmental functions of the Local Jurisdiction:

- a) Finance Director
- b) Economic Development Manager

The information obtained by examination of Board records shall be used only for those governmental functions of the Local Jurisdiction listed above.

Section 3. That Muni Services is hereby designated to examine the prepaid mobile telephony services surcharge and local charges records of the Board of Equalization pertaining to prepaid mobile telephony services surcharge and local charges collected for the Local Jurisdiction by the Board. The person or entity designated by this section meets all of the following conditions (Rev. & Tax. Code, § 42110, subd. (b)(2)):

- a) has an existing contract with the Local Jurisdiction that authorizes the person to examine the prepaid mobile telephony services surcharge and local charge records;
- b) is required by that contract with the Local Jurisdiction to disclose information contained in or derived from, those records only to an officer or employee of the Local Jurisdiction authorized by the resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a seller during the term of that contract;
- d) is prohibited by that contract from retaining information contained in, or derived from, those prepaid mobile telephony services surcharge and local charge records, after that contract has expired.

The contract between the Local Jurisdiction and Muni Services designated by the Local Jurisdiction to request information from the Board shall be subject to the following limitations (Rev. & Tax. Code, § 42103, subd. (g)):

- a) Muni Services shall, to the same extent as the Board, be subject to Section 55381, relating to unlawful disclosures.
- b) the contract between the Local Jurisdiction and Muni Services shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered.

BE IT FURTHER RESOLVED THAT the information obtained by examination of the Board records shall only be used for purposes related to the collection of the Local Jurisdiction's prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract between the Local Jurisdiction and Board, or for purposes related to other governmental functions of the Local Jurisdiction, as identified above in section 2.

Introduced, approved and adopted this 12th day of August, 2015.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Orange Cove held on the 12th day of August, 2015, and passed at said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**AGREEMENT FOR STATE COLLECTION AND ADMINISTRATION OF
LOCAL CHARGES**

This Agreement is for the purpose of implementing the Local Prepaid Mobile Telephony Services Collection Act (Part 21.1, commencing with Section 42100) of Division 2 of the Revenue and Taxation Code), hereinafter referred to as the Local Charge Act. The _____ and the State Board of Equalization, hereinafter called the Board, do agree as follows:

**ARTICLE I
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in this Agreement they shall be interpreted to mean the following:

A. "Administrative Expenses" means all expenses incurred by the Board in the administration and collection of the local charges, including preparation and wind down costs which are reimbursable to the Board from the revenues collected by the Board on behalf of the local jurisdiction.

B. "Contingent Fee" includes, but is not limited to, a fee that is based on a percentage of the tax liability reported on a return, a fee that is based on a percentage of the taxes owed, or a fee that depends on the specific tax result attained.

C. "Direct Seller" means a prepaid Mobile Telephony Service (MTS) provider or service supplier, as defined in section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited to, a telephone corporation, a person that provides an interconnected Voice over Internet Protocol (VoIP) service, and a retailer as described in section 42004(b)(1).

D. "Local Charges" means a utility user tax imposed on the consumption of prepaid mobile telephony services, as described in section 42102, and charges for access to communication services or to local "911" emergency telephone systems imposed by a local jurisdiction, as described in section 42102.5.

E. "Local Jurisdiction" or "local agency" means a city, county, or city and county, which includes a charter city, county, or city and county of this State, which has adopted an ordinance imposing a local charge of the kind described in Part 21.1 of Division 2 of the Revenue and Taxation Code and has entered into a contract with the Board to perform all functions incident to the collection of the local charges.

F. "Ordinance" means an ordinance of a local jurisdiction imposing a local charge, including any local enactment relating to the filing of a refund or a claim arising under the ordinance, attached hereto, as amended from time to time.

portion of the prepaid MTS surcharge, and (3) local charges. The Board shall charge a local jurisdiction its pro rata share of the Board's cost of collection and administration.

G. Transmittal of money. All local charges collected by the Board shall be transmitted to the local jurisdiction once in each calendar quarter. Transmittals may be made by mail or by deposit to the account of the local jurisdiction in a bank designated by that jurisdiction. The Board shall furnish a statement quarterly indicating the amounts paid and withheld for expenses of the Board.

H. Rules. The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

I. Security. The Board agrees that any security which it hereafter requires to be furnished under the FCPL section 55022 will be upon such terms that it also will be available for the payment of the claims of the local jurisdiction for local taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and the local jurisdiction shall not participate in any security now held by the Board.

J. Records of the Board.

1. Information obtained by the local jurisdiction from the examination of the Board's records shall be used by the local jurisdiction only for purposes related to the collection of the prepaid mobile telephony services surcharge and local charges by the Board pursuant to this Agreement.

2. When requested by resolution of the legislative body of a local jurisdiction, the Board shall permit any duly authorized officer or employee or other person designated by that resolution to examine any information for its own jurisdiction that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the local jurisdiction by a seller, including a direct seller, subject to the confidentiality requirements of sections 7284.6, 7284.7 and 19542. (sections 42110(b), 42103(e)).

3. The resolution of the local jurisdiction shall certify that any person designated by the resolution, other than an officer and an employee, meets all of the following conditions:

- a. Has an existing contract with the local jurisdiction that authorizes the person to examine the prepaid MTS surcharge and local charge records.
- b. Is required by that contract with the local jurisdiction to disclose information contained in or derived from, those records only to an officer or employee of the local jurisdiction authorized by the resolution to examine the information.
- c. Is prohibited by that contract from performing consulting services for a seller during the term of that contract.
- d. Is prohibited by that contract from retaining information contained in, or derived from, those prepaid MTS surcharge and local charge records, after that contract has expired.

5. Reallocating local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.
6. Collecting local charges on prepaid mobile telephony service and access to communication services or access to local 911 emergency telephone systems imposed on direct sellers.
7. Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the ordinance.
8. The local jurisdiction shall be the sole necessary party defendant on whose behalf the local charge is collected in any action seeking to enjoin collection of a local charge by a seller, in any action seeking declaratory relief concerning a local charge, in any action seeking a refund of a local charge, or in any action seeking to otherwise invalidate a local charge. There shall be no recovery from the State for the imposition of any unconstitutional or otherwise invalid local charge that is collected under the Local Act.
9. Entering into an agreement with the Board to perform the functions incident to the collection of the local charges imposed on sellers that are not direct sellers.
10. Submitting an executed Certification to the Board, certifying that:
 - (a) the local jurisdiction's ordinance applies the local charge to prepaid mobile telephony services;
 - (b) the amount of the rate charged for access to local 911 emergency telephone systems or access to communications services complies with the requirements of section 42102.5; and/or applies the tiered rate for the utility user tax, as identified in section 42102.
 - (c) The local jurisdiction shall further certify that it agrees to indemnify and to hold harmless the Board, its officers, agents, and employees for any and all liability for damages that may result from the Board's collection pursuant to this Agreement.
11. Submitting signed documents to the Board to include agreement(s), certification, copy of ordinance(s), and resolution(s).
12. Providing payment to the Board of the local jurisdiction's pro rata share of the Board's cost of collection and administration as established pursuant to subdivision (e) of section 42020.

enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), (4) and (5) of this subdivision.

2. New charges. When a local jurisdiction adopts a new local charge after September 1, 2015, the local jurisdiction shall enter into a contract with the Board, pursuant to section 42101.5, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

3. Increases in local charges. When a local jurisdiction increases an existing local charge after September 1, 2015, the local jurisdiction shall provide the Board written notice of the increase, on or before December 1st, with collection of the local charge to commence April 1st of the next calendar year.

4. Advance written notification. When a local charge is about to expire or decrease in rate, the local jurisdiction imposing the local charge shall notify the Board in writing of the upcoming change, not less than 110 days prior to the date the local charge is scheduled to expire or decrease. The change shall become operative on the first day of the calendar quarter commencing after the specified date of expiration or decrease in rate.

If advance written notice is provided less than 110 days prior to the specified date of expiration or decrease in rate, the change shall become operative on the first day of the calendar quarter commencing more than 60 days after the specified date of expiration or decrease.

5. Inaccurate Rate Posted on the Board's Web site. When a local jurisdiction notifies the Board in writing that the rate posted on the Board's Internet Web site (posted rate) for a local charge imposed by that local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated and the local jurisdiction failed to provide advance written notice pursuant to paragraph 4 of this subdivision, the recalculated rate applicable to the local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local jurisdiction's written notification that the posted rate is inaccurate. The local jurisdiction shall promptly notify the Board in writing of any such discrepancies with the posted rate that are known or discovered by the local jurisdiction.

ARTICLE V COMPENSATION

The local jurisdiction agrees to pay the Board its pro rata share of the Board's cost of collection and administration of the local charges, as established pursuant to section 42020, subdivision (e). Such amounts shall be deducted from the local charges collected by the Board for the local jurisdiction.

ARTICLE VI MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first-class United States Mail. A notification is complete when deposited in the mail. Communications and notices to be sent to the Board shall be addressed to:

CERTIFICATION

I, _____ am authorized to sign this certification on behalf of _____
(Insert name of local jurisdiction)

I certify to the following:

Please check all the following that apply to your jurisdiction:

1. ___ **911 Charges/Access to Communication Services** - Ordinance No. ___ of the _____
(Insert name of local jurisdiction) imposes the local charge set forth in the ordinance to prepaid mobile telephony services for access to communication services or to local 911 emergency telephone systems. As required by section 42102.5, the percentage reflecting the rate for access to the local 911 emergency telephone systems or access to communications services is _____.

2. ___ **Utility User Tax** - Ordinance No. ___ of the _____
(Insert name of local jurisdiction) imposes the local charge set forth in the ordinance to the consumption of prepaid mobile telephony services. The tiered rate for the utility user tax, as identified in section 42102 is _____.

3. The _____
(Insert name of local jurisdiction) agrees to indemnify and to hold harmless the Board of Equalization (Board), its officers, agents, and employees for any and all liability for damages that may result from the Board's collection pursuant to this agreement.

Executed in the _____ on _____
(Insert name of local jurisdiction) (Add date)

Printed name _____

Title of person _____

ORDINANCE NO. 288

AN ORDINANCE OF THE CITY OF ORANGE COVE
ESTABLISHING A UTILITY USERS TAX ON
INTRASTATE TELEPHONE SERVICES,
ELECTRICAL ENERGY SERVICES, AND
NATURAL GAS DELIVERED THROUGH MAINS OR PIPES

THE PEOPLE OF THE CITY OF ORANGE COVE ordain as follows:

Section 1: This section shall remain uncodified should this ordinance be adopted by the voters. If this ordinance does not pass, Ordinance No. 263 and the current Chapter 3.28 of the Municipal Code shall remain in effect. If this ordinance is passed by the voters, then this serves to repeal Ordinance No. 263 and the current Chapter 3.28 of the Municipal Code and to supersede each of them.

Section 2: Chapter 3.20 of the Municipal Code is hereby repealed and the following is hereby adopted in its place:

Chapter 3.20

UTILITY USERS TAX

3.20.010 Short title. This chapter shall be known as the "utility users tax chapter."

3.20.020 Purpose. This Chapter is enacted to raise revenue for general governmental purposes. All of the proceeds of the tax imposed by this Chapter shall be placed in the City's general fund and used for the current expenses of the City as determined by the City Council.

3.20.030 Definitions. The following terms whenever used in this chapter shall have the meanings assigned to them in this Section.

- A. "City" means the city of Orange Cove.

B. "Cogeneration technology" means the use for the generation of electricity of exhaust steam, waste steam, heat, or resultant energy from an industrial, commercial or manufacturing plant or process, or the use of exhaust steam, waste steam, or heat from a thermal power plant for an industrial, commercial, or manufacturing plant or process.

C. "Month" shall mean a calendar month.

D. "Person" means any domestic or foreign corporation, company, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society or individuals.

E. "Service supplier" means any person, (including but not necessarily limited to a utility company, telephone corporation, electrical corporation or gas corporation, as those terms are defined in this section), which is required to collect and remit the tax imposed by this chapter.

F. "Service user" means a person required to pay a tax imposed by this chapter.

G. "Tax Administrator" means the City Administrator or that person designated by the City Council to administer the provisions of this chapter.

H. "Telephone corporation," "electrical corporation" and "gas corporation," shall have the same meanings as defined in Sections 234, 218 and 222, respectively, of the California Public Utilities Code, except "electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electrical power to a service user, however, as specified by Section 218 of the Code, does not include a corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity.

3.20.040 Exemptions.

A. Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state.

B. No amendment to this ordinance that increases the rate of tax or extends the tax to a utility service not covered by this ordinance may be made without a vote of the people. However, the City Council of the city of Orange Cove may, by ordinance and without a vote of the people, amend this tax to do any one or more of the following:

1. expand the classes of exemptions provided herein;

2. establish a tax rate at or lower than the 7% rate approved by the voters;

3. alter the administrative provisions of this ordinance;

4. reflect changes in the technology of the telecommunications, gas or electric industries; or

5. in any manner which does not increase the tax burden on any rate payer imposed by this voter-approved tax.

C. The Tax Administrator shall prepare a list of the persons exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier.

3.20.050 Telephone users tax.

A. There is imposed a tax on the amounts paid for any intrastate telephone communications services by every person in the city other than a telephone corporation using such services. The tax imposed by this section shall be at the rate of seven percent of the charge made for such services and shall be paid by the person paying for such services.

B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplier subject to public utility regulations during any period in which the same or similar services or equipment are also available for sale or lease from persons other than

a service supplier subject to public utility regulation; nor shall the words "telephone communication services" include maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as the section existed on January 1, 1970. The term "telephone communication services" refers to that service which provides access to a telephone system and the privilege of telephone quality communication with substantially all persons having telephone stations which are part of such telephone system.

C. The tax imposed by this section shall be collected from the service user by the person who collects payment for the telephone services provided. The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the last day of the following month; remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers; or at the option of the person required to collect and remit the tax, and estimated amount of tax collected, measured by the tax billed in the previous month, shall be remitted to the Tax Administrator on or before the last day of each month.

D. Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communication services to the extent that the amount paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code.

3.20.060 Electricity users tax.

A. There is imposed a tax upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of seven percent of the charges made for such energy and shall be paid by the person paying for such energy. "Charges," as used in this section, shall include charges made for:

1. Metered energy;
2. Minimum charges for service, including customer charges, service charges, demand charges, standby charges and annual and monthly charges, fuel, cost adjustment, etc.

B. As used in this section, the term "using electrical energy" shall not be construed to mean the

storage of such energy by a person in a battery owned or possessed by him for such use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric utility supplier in the conduct of its business as an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the city for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

C. The tax imposed by this section shall be collected from the service user by the person who collects payment for the electric services provided. The amount of tax collected in one month shall be remitted by U.S. mail, to the Tax Administrator, postmarked on or before the last day of the following month; or at the option of the person required to collect and remit the tax, and estimated amount of tax, measured by the tax billed in the previous month, shall be remitted by U.S. mail, to the Tax Administrator, postmarked on or before the last day of each month. Remittance of tax may be predicted on a formula based upon the payment pattern of the supplier's customers.

3.20.070 Gas users tax.

A. There is imposed a tax upon every person in the city, other than a gas corporation or electrical corporation, using in the city gas which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of seven percent of the charges made for such gas and shall be paid by the person paying for such gas. "Charges," as used in this section shall include:

1. Gas which is delivered through mains or pipes;
2. Minimum charges for such services, including customer charges, service charges, transportation charges, and annual and monthly charges.

B. There shall be excluded from the base on which the tax imposed in this section is computed:

1. Charges made for gas which is to be resold and delivered through mains or pipes;

2. Charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;

3. Charges made by a gas public utility for gas used and consumed in the conduct of business of gas public utilities; and

4. Charges made for gas used in the propulsion of a motor vehicle, as the phrase is defined in the Vehicle Code of the state, utilizing natural gas.

C. The tax imposed in this section shall be collected from the service user by the person who collects payment for the gas services provided. A service supplier shall collect the tax from the service user based on the transportation charges. The person selling or transporting the gas shall, on or before the twentieth of each calendar month, commencing on the twentieth day of the calendar month after the effective date of the ordinance codified in this chapter, make a return to the Tax Administrator stating the amount of taxes billed during the preceding calendar month. At the time such returns are filed, the service supplier shall remit tax payments to the Tax Administrator in accordance with schedules established or approved by the Tax Administrator.

3.20.080 Interest and Penalties

A. Taxes collected from a service user which are not remitted to the City on or before the due dates provided in this chapter are delinquent and are subject to penalties and interest as set forth in this Section.

B. Penalties for delinquency in remittance of any tax collected or any deficiency determination, shall attach and be paid by the persons required to collect and remit at the rate of fifteen percent (15%) of the total tax collected or imposed herein.

C. Every penalty imposed under the provisions of this subsection shall become a part of the tax required to be remitted.

D. When fraud or gross negligence in reporting and remitting tax collections is discovered, the Tax Administrator shall have the power to impose additional penalties of up to twenty percent (20%) of the taxes owed upon persons required to collect and remit taxes under the provisions of this Chapter.

E. Any person required to remit to the Tax Administrator delinquent taxes as required in this section, shall pay interest at the rate of one and one-half percent (1.5%) per month or portion thereof, on the amount of tax owed exclusive of penalties, from the date on which the tax first became delinquent until paid.

F. Notwithstanding the provisions of subsections B and E of this section 3.20.080, no penalty or interest shall be applied if the delinquencies are the result of natural disasters or other phenomena beyond the control of the person charged with the collection and remittance of the tax, provided the person obliged to remit the tax notifies the Tax Administrator as soon as normal communications permit.

3.20.090 Actions to collect. Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has willfully been withheld from the Tax Administrator shall be deemed a debt owed to the city by the person required to collect and remit. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for recovery of such amount.

3.20.100 Duty to collect--Procedures. The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. The tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user may be applied to the charge first until such charge has been fully satisfied. Any remaining balance shall be applied to the taxes due, except in those cases where a service user pays the full amount of the charges but notifies the service supplier of his refusal to pay the tax imposed on the charges.

B. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. where a person receives more than one billing, one or

more being for different periods than another, the duty to collect shall arise separately for each billing period.

3.20.110 Tax Administrator--Powers and duties.

A. The Tax Administrator shall have the power and duty, and is directed to enforce each and all of the provisions of this chapter.

B. The Tax Administrator shall have power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the Tax Administrator's office.

C. The Tax Administrator may make administrative agreements to vary the strict requirements of this chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of a particular service supplier so long as the agreements result in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the Tax Administrator's office.

D. The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The Tax Administrator shall provide the service supplier with the name of any person who the Tax Administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is applied to any such exempt person. The Tax Administrator shall notify the service supplier of the termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person.

3.20.120 Tax Administrator--Assessment--Payment--Penalty.

A. The Tax Administrator may make an assessment for taxes not remitted by a person required to remit.

B. Whenever the Tax Administrator determines that service user has deliberately withheld the amount of the tax owed by such users from the amounts remitted to a person required to collect the tax, or that a service

user has refused to pay the amount of the tax to such person, or whenever the Tax Administrator deems it in the best interest of the city, he may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

C. The service supplier shall provide the city with amounts refused along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this chapter. Whenever the service user has failed to pay the amount of tax for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due.

D. The Tax Administrator shall notify the service user that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have changed his address, to his last known address. If a service user fails to remit the tax to the Tax Administrator within fifteen days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars. The penalty shall become part of the tax herein required to be paid.

3.20.130 Records. It shall be the duty of every person required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of an remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at all reasonable times.

3.20.140 Refunds.

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter it may be refunded as provided in this section.

B. Notwithstanding the provisions of subsection A of this section, a service supplier may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user, may refund such amount to the service user and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than six months from the date of overpayment.

C. Pursuant to the authority contained in Section 935 of the Government Code, the following claims procedures are established for those claims against the City for money damages not now governed by state laws. Notwithstanding the exemptions set forth in Section 905 of the Government Code, all claims against the City for damages or money under this Chapter shall be presented within the time limits set forth herein and in the manner prescribed by Section 910 through 915.2 of the Government Code. Such claims shall further be subject to the provisions of Section 945 through 946 of the Government Code relating to prohibition of suits in the absence of presentation of claims and action thereon by the City Council. No refund shall be paid under the provisions of this section unless the claimant files a claim with the City of Orange Cove and establishes his right thereto by written records showing entitlement thereto within six months of the date of the accrual of the cause of action. A cause of action shall be considered to have accrued as of the date of the alleged overpayment or the date of the second payment if the claim is that it was paid more than once, or on the date of the erroneous or illegal collection if the claim is that it has been erroneously or illegally collected or received by the Tax Administrator.

D. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such

refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly return. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the city.

E. A service supplier may refund the taxes collected to the service user in accordance with this section or by the service supplier's customary practice.

F. Prior to the adoption of the ordinance which added this chapter to the Municipal Code, a twelve month claim period applied to service user refund claims provided for and existing under the City's utility users' tax as it existed at that time. An such claim which was not already time-barred under the twelve month period on the effective date of the ordinance adopting this chapter, may be the basis of a claim filed within six months of the adoption of this ordinance, even if filed outside the six-month time period that would otherwise apply under Subsection C above. Notwithstanding any refund claims period provided by local law, it is the understanding of the City that state law which, at the time of the adoption of the ordinance adding this chapter to the Municipal Code, is found at Section 53728 of the Government Code, provides the exclusive remedy for any refund claim based on the alleged failure by the City to comply with that statute, and it is not the intent of the City that this ordinance, nor any other ordinance, create a local remedy for such alleged violation.

3.20.150 Penalty.

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and shall be punishable pursuant to Section 1.24.010 of this Code.

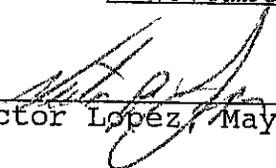
Section 3: If any section, subsection, sentence, clause, word or phrase of this ordinance is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this ordinance. The electors of the City of Orange Cove hereby declares that they would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, words or phrases be declared invalid or unconstitutional.

Section 4: Pursuant to Elections Code Section 9217, this

Ordinance shall be considered as adopted upon the date that the vote of a majority of the voters voting in favor of its adoption is declared by the City Council of the City of Orange Cove, and shall go into effect ten (10) days after that date.

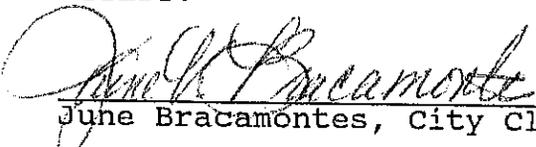
Section 5: The City Clerk shall certify to the passage and adoption of this ordinance by the electorate of the City and shall cause the same to be posted as required by law.

It is hereby certified that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the voters of the City of Orange Cove in an election the results of which will be certified by the City Council of the City of Orange Cove on November 19, 1997.



Victor Lopez, Mayor

ATTEST:



June Bracamontes, City Clerk



**SOLID WASTE COLLECTION AND RECYCLING FRANCHISE AGREEMENT CITY
OF ORANGE COVE AND PENA'S DISPOSAL, INC.
ADDENDUM NO. 2**

This Addendum No. 2 is entered into on this 12th day of August 2015, by and between the City of Orange Cove, a California municipality, hereinafter referred to as the "City" and, Pena's Disposal, Inc., hereinafter referred to as the "Franchisee."

WHEREAS, the City and Franchisee entered into a Franchise Agreement effective May 1, 2013; and

WHEREAS, Section 9A relates to Rates to be charged for Residential and Commercial Services as set forth in Exhibit A to the Franchise Agreement; and

WHEREAS, the State of California passed AB 341 Mandatory Commercial Recycling Program effective July 1, 2012 with the purpose to reduce greenhouse gas emission by diverting commercial solid waste through recycling; and

WHEREAS, the State of California passed AB 818 Renter's right to Recycle Law, passed on January 1, 2012, requiring all property owners of multi-family dwellings with five (5) or more units to provide recycling services and information to its tenants; and

WHEREAS, the State of California mandates that mattresses be recycled instead of ending up in the landfill; and

WHEREAS, a fee will be applied when disposing of mattresses; and

WHEREAS, these laws, AB 341 and AB 818, are mandatory; and

WHEREAS, not complying with this mandate could have a negative effect on the City's annual audit and subject the City to penalties and/or possible fines; and

WHEREAS, the City has faced with having disposal enclosures and alleyways cluttered with bulky items, prohibiting Pena's Disposal drivers from collecting waste/recyclables on scheduled pick up days; and

WHEREAS, a bulky item is defined as anything that is not capable of fitting in a closed waste bin. Waste bin must be capable of being closed so items are not protruding out the top; and

WHEREAS, should this occur, the City will request Pena's Disposal remove the bulky items for a fee charged to the business or property owner; and

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE TO AMEND THE FRANCHISE AGREEMENT AS FOLLOWS:

A. Exhibit A

Exhibit A attached to this resolution is hereby include the recommended fees for recycle service for all qualified commercial & multi-family accounts, bulky item & tipping fee, and fee for recycle of mattresses for residential accounts, and it supersedes the prior Exhibit A.

B. TERMS AND CONDITIONS

Except as expressly modified in this Addendum No. 2, the terms and conditions of the Agreement and the rights, duties, and obligations of the parties thereunder are unchanged and remain in full force and effect.

. * * * * *

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Franchise Agreement as set forth below.

Dated: _____

PENA'S DISPOSAL, Inc.
A California Corporation

_____, President

Dated: _____

City of ORANGE COVE
A Municipal Corporation

Victor P. Lopez, Mayor

ATTEST:

June Bracamontes, City Clerk

Dated: _____

Exhibit A

City of Orange Cove

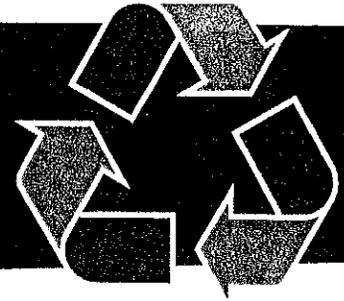
Residential	Current Rate	New Rate
90 gallon bin		<i>JULY 1, 2013</i>
	\$15.80	\$20.42
Services include:		
South East Regional Sur-Charge		
Admin/Billing/Reporting fees		
Green Can Service		
Franchise Fee & CPI 2011-2012		
 New Recycle of Mattress Fee	 \$0	 \$25.00 for the top mattress \$40.00 for both top & box spring

Commercial Bins Rates

Commercial	Current Rate	New Rate			
90 gallon bin		<i>JULY 1, 2013</i>			
	\$ 14.10	\$20.42			
Service Levels					
	x per week				
	1	2	3	4	5
Current Rates					
3 Yard	\$70.02	\$122.00	\$153.75	\$205.27	\$255.25
 Rate					
<i>JULY 1, 2013</i>					
3 yard	\$83.57	\$166.01	\$183.66	\$232.35	\$287.53
 New Rate					
Nov 1st, 2015					
Recycle Service					
3 Yard	\$75.00	\$135.00			
 Bulky Item Fee \$25.00					
Tipping Fee \$15.00					

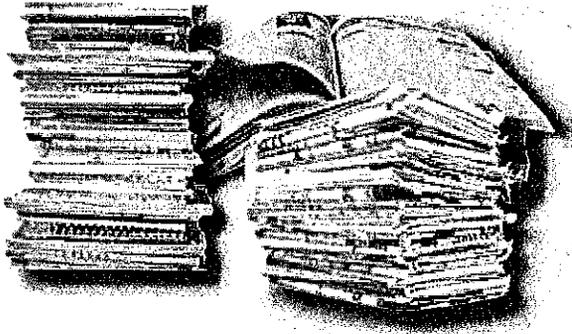
● Recycling Program

PROGRAMA DE RECICLAJE



Magazines, newspapers,
catalogs, phone books

Revistas, periodicos, catalogos, guia de telefonos



Dry food boxes, packaging,
paper bags, cardboard, milk
cartons & juice boxes

*Cajas de cereal y otros comestibles secos,
material de empaque, bolsas de papel,
cartones, cajas de jugos y cartones de leche*



White paper, colored paper,
letters & junk mail

*Papel blanco, papel de color, cartas,
correspondencia publicitaria*



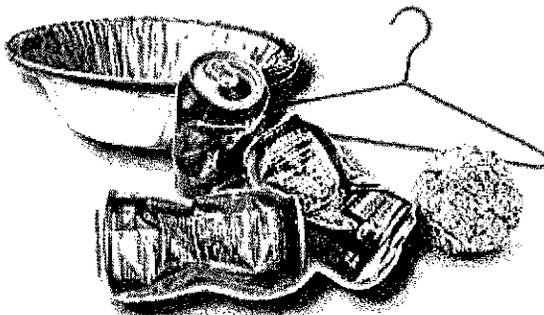
Glass or plastic bottles & jars

Botellas y frascos de plástico y vidrio



Steel, tin, pie tins, hangers,
aluminum cans, foil

*Latas de acero, estaño, aluminio, hojas de
aluminio, ganchos*



Questions? ¿Preguntas?

PEÑA'S
DISPOSAL SERVICE

Recycling • Material Recovery Facility • Construction & Demolition



12094 Avenue 408 • Cutler
528-3909 • www.penasdisposal.com

Mandatory Commercial Recycling Checklist

Name of Business: _____

Contact Person: _____ Title: _____

Mailing Address: _____
Street City State Zip

Physical Address: _____
(If different from Mailing Address) Street City State Zip

Phone: (_____) _____ - _____ Fax: (_____) _____ - _____

E-mail: _____

Please answer the following questions in regards to the Business or Multi-Family Residential Property listed above.

1. Based upon the size of the waste collection containers, this is the address of a business which generates four (4) or more cubic yards of waste per week. Yes No
(For example, a 2 cubic yard container collected twice per week would count as 4 cubic yards per week. If you are not sure, please check with Pena's Disposal the total capacity of your collection containers and how often they are collected.)
2. This is the address of a Multi-Family Residential Property with five (5) or more units. Yes No
(The amount of waste generated does not matter.)
3. Check the sentence below that best describes the current recycling arrangements at this Business or Multi-Family Residential Property:
 We are currently **not** recycling on a regular basis (e.g. weekly, monthly).
 We subscribe to recycling services provided by:

 We donate or sell our recyclables to the following organization:

 We haul our recyclables to a recycling center.
 Other means of handling recyclables. (Please describe.)

4. We would like to request more information about the recycling services available by Pena's Disposal. Yes No

Please use the information listed at the top of this form to contact us.

Please use the following alternate contact information to discuss recycling options and services:

Name: _____

Phone: _____

E-mail: _____

Mailing
Address: _____

www.penasdisposal.com

Mayor:
VICTOR P. LOPEZ

Mayor Pro-Tem:
DIANA GUERRA SILVA

City Council Members:
GILBERT GARCIA
JOSIE CERVANTES
MINERVA PINEDA



City Manager:
SAMUEL ESCOBAR
(559) 626-4488 Ext: 215

Finance Director:
LAN BUI
(559) 626-4488 ext.216

City Clerk:
JUNE V. BRACAMONTES
(559) 626-4488 ext.214

Incorporated Jan. 20, 1948

August 12, 2015

Business Name
Owner / Manager
Address
City, State ZIP

RE: State of California Mandatory Commercial Recycling Program
Title 14, Division 7, Chapter 9.4.

Dear Business Owner/Manager:

Effective July 1, 2012, the State of California passed AB 341 Mandatory Commercial Recycling Program. Its purpose is to reduce greenhouse gas emissions by diverting commercial solid waste through recycling.

- The law mandates all City of Orange Cove businesses generating four (4) or more cubic yards of waste per week and multi-family apartments with five (5) or more units participate in some kind of regular recycling program.

Additionally, AB 818 Renter's Right to Recycle Law, passed on January 1, 2012, requires all property owners of multi-family dwellings with five (5) or more units to provide recycling services and information to its tenants.

The State mandate requires your business and tenants separate recyclable materials (see attached flyer for list of acceptable material) from your solid waste and perform one of the following:

- Implement a recycle program with the City's local disposal service contractor (Peña's Disposal Service, Inc., 12094 Avenue 408, Cutler, CA 93615) for the collection of recyclables. Roll-offs and recycle bin rentals are available.
- Self-haul your recyclable materials to a reputable recycling facility and retain receipt.

These laws, AB 341 and AB 818, are **mandatory**. The City's compliance with these laws is audited by the State on an annual basis. **Not complying with this mandate could have a negative effect on the City's annual audit and subject the City to penalties and/or possible fines, which would in turn be passed on to the non-compliant customers.**

The City of Orange Cove, in partnership with Peña's Disposal Inc., is working diligently towards achieving full compliance with the State's mandate. Commercial businesses, meeting the waste

criteria, and multi-family dwellings, with five (5) or more units, must comply with the recycling requirements.

If you have questions, concerns, or would like to discuss this matter, contact Clara Camarena, at 559.626.4488 Ext# 211 or email at Clara@cityoforangecove.com. To set up your recycling program, contact Betty Ruelas, Peña's Disposal Recycling Outreach, directly at (559) 528-3909.

Sincerely,

Sam Escobar
City Manager
City of Orange Cove

Mayor:
VICTOR P. LOPEZ

Mayor Pro Tem:
DIANA GUERRA SILVA

City Council Members:
GILBERT GARCIA
JOSIE CERVANTES
MINERVA PINEDA



City Manager:
SAMUEL ESCOBAR
(559) 626-4488 Ext: 215

Finance Director:
LAN BUI
(559) 626-4488 ext.216

City Clerk:
JUNE V. BRACAMONTES
(559) 626-4488 ext.214

Incorporated Jan. 20, 1948

August 12, 2015

Business Name
Owner / Manager
Address
City, State ZIP

RE: Disposal Services

Dear Business Owner/Manager:

Effective November 1st, 2015, the City of Orange Cove, in partnership with Peña's Disposal, will implement the following changes in an effort to meet AB 341 State mandate and clean up our alleyways in compliance with Municipal Code Title 8, Chapter 8.20.

• **3 YD Recycle Bin:**

- Contaminated recycle bins will be charged a contamination fee of \$75 per scheduled pick up. Recycle bins should only contain recyclable material. See attached flyer for list of accepted recyclables. Peña's Disposal offers on-site training and will work with your business/multi-family dwellings on educating employees/tenants.

• **Bulky Items:**

- Disposal enclosures and alleyways are being cluttered with bulky items and at times, prohibiting Peña's Disposal drivers from collecting waste/recyclables on scheduled pick up days. Should this occur, Peña's Disposal drivers will take photos of the bulky items and provide them to the City. We will then send out a notice with a date by when these items must be removed. If they are not removed by that date, the City will request Peña's Disposal remove the bulky items for a fee. The bulky item fee will be \$25 plus a minimum tipping fee of \$15. The tipping fee is based on the per ton weight. The business or property owner will be responsible for these charges regardless of who disposed of these bulky items.

• **Mattresses:**

- California State law now mandates that mattresses be recycled instead of ending up in the landfill. For this reason, a fee of \$25 for the top mattress or \$40 for both the top and bottom (box spring) now applies when disposing of mattresses. The City yard will now accept mattress disposal - you can pay the fee at City Hall prior to drop off. Mattresses left in disposal enclosures and alleyways are subject to the same fees and the business or property owner will be responsible for these charges.

If you have questions, concerns, or would like to discuss this matter, contact Clara Camarena, at 559.626.4488 Ext#211 or email at clara@cityoforange Cove.com.

Sincerely,

Sam Escobar
City Manager
City of Orange Cove

633 Sixth Street Orange Cove, California 93646 Phone: (559) 626-4488 / FAX: (559) 626-4653

ORDINANCE NO. 372

AN ORDINANCE OF THE CITY OF ORANGE COVE AMENDING SECTIONS 13.17.030 (DECLARATION OF PURPOSE AND INTENT), 13.17.080 (LEVEL 2 WATER SUPPLY SHORTAGE AND EMERGENCY CONDITION), AND SECTION 13.17.090 (PROCEDURES FOR DETERMINATION/NOTIFICATION OF WATER SUPPLY STORAGE), AND ADDING SECTION 13.17.075 (LEVEL 2 WATER SUPPLY SHORTAGE) TO CHAPTER 13.17 (ORANGE COVE WATER CONSERVATION AND WATER SUPPLY SHORTAGE PLAN) OF TITLE 13 (PUBLIC SERVICES) OF THE ORANGE COVE MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF ORANGE COVE DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment to the Orange Cove Municipal Code

Section 13.17.030.B (Declaration of Purpose and Intent) of Chapter 13.17 (Orange Cove Water Conservation and Water Supply Shortage Plan) of Title 13 (Public Services) of the Orange Cove Municipal Code is hereby amended to read in its entirety as follows:

This chapter establishes permanent water conservation standards intended to alter behavior related to water use efficiency at all times and further establishes three levels of water supply shortage response actions to be implemented during times of declared water shortage or declared water shortage emergency, with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies.

SECTION 2. Amendment to the Orange Cove Municipal Code.

Section 13.17.075 (Level 2 Water Supply Shortage) of Chapter 13.17 (Orange Cove Water Conservation and Water Supply Shortage Plan) of Title 13 (Public Services) of the Orange Cove Municipal Code is hereby added to the Code to read in its entirety as follows:

- A. Declaration of Level 2 Water Supply Shortage Emergency Condition. A Level 2 water supply shortage exists when the city council determines, in its sole discretion, that due to drought or other water supply conditions, a water supply shortage or threatened shortage exists and a consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city council by written resolution of a Level 2 water supply shortage condition, the city will implement the mandatory Level 2 conservation measures identified in this section.
- B. Additional Conservation Measures. In addition to the prohibited uses of water identified in sections 13.17.060 and 13.17.070 the following additional water conservation requirements apply during a declared Level 2 water supply shortage:
 1. Limits on Watering Days. Watering or irrigating landscape or other vegetated area with potable water is limited to one day per week on a schedule established and posted by the city. Watering or irrigating of any lawn is prohibited. This restriction does not apply to the following categories of use, if the city has determined that recycled water is available and may be applied to the use:
 - a. Maintenance of vegetation, including trees and shrubs, that are watered using a hand-held bucket or similar container, hand-held hose equipped with a positive self-closing water shut-off nozzle or device;
 - b. Maintenance of existing landscape necessary for fire protection;
 - c. Maintenance of existing landscape for soil erosion control;

- d. Maintenance of plant materials identified to be rare or essential to the well-being of protected species; maintenance of landscape within active public parks and playing fields, day care centers, golf course greens, and school grounds, provided that such irrigation does not exceed two days per week according to the schedule established in subsections 13.17.060A., B. and C.;
 - e. Actively irrigated environmental mitigation projects.
2. **Obligation to Fix Leaks, Breaks or Malfunctions.** All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within twenty-four hours of notification by the city unless other arrangements are made with the city.
 3. **Limits on Filling Ornamental Lakes or Ponds.** Filling or re-filling ornamental lakes or ponds is prohibited, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a supply shortage level under this chapter.
 4. **Limits on Washing Vehicles.** Using water to wash or clean a vehicle, including but not limited to, any automobile, truck, van, but, motorcycle, boat or trailer, whether motorized or not, is prohibited. This subsection does not apply to any commercial car washing facility.
 5. **Limits on Filling Residential Swimming Pools and Spas.** Re-filling of more than one foot and initial filling of residential swimming pools or outdoor spas with potable water is prohibited.
 6. **The City may impose either of the following restrictions:**
 - a. **No New Potable Water Service:** Upon declaration of a Level 2 water supply shortage emergency condition, no new potable water service will be provided, no new temporary meters or permanent meters will be provided, and no statements of immediate ability to serve or provide potable water service (such as, will-serve letters, certificates, or letters of availability) will be issued, except under the following circumstances:
 - (1) A valid, unexpired building permit has been issued for the project;
 - (2) The project is necessary to protect the public health, safety, and welfare; or
 - (3) The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of the city.
 - b. **Limits on Building Permits.** The city will limit or withhold the issuance of building permits which require new or expanded water service, except to protect the public health, safety and welfare, or in cases which meet the city adopted conservation offset requirements.
 7. **Discontinue Service.** The city, in its sole discretion, may discontinue service to consumers who willfully violate provisions of this section.
 8. **No New Annexations.** Upon the declaration of a Level 2 water supply shortage condition, the city will suspend consideration of annexations to its service area. This subsection does not apply to boundary corrections and annexations that will not result in any increased use of water.

SECTION 3. Amendment to the Orange Cove Municipal Code. Section 13.17.080 (Level 2 Water Supply Shortage) of Chapter 13.17 (Orange Cove Water Conservation and Water Supply Shortage Plan) of Title 13 (Public Services) of the Orange Cove Municipal Code is hereby amended to read in its entirety as follows:

13.17.080 – Level 3 water supply shortage emergency condition

- A. **Declaration of Level 3 Water Supply Shortage Emergency Condition.** A Level 3 water supply shortage exists when the city council determines, in its sole discretion, that due to drought or other water supply conditions, a water supply shortage or threatened shortage exists and a consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city council by written resolution of a Level 3

water supply shortage condition, the city will implement the mandatory Level 3 conservation measures identified in this section.

- B. Additional Conservation Measures. In addition to the prohibited uses of water identified in sections 13.17.060, 13.17.070, 13.17.075 the following additional water conservation requirements apply during a declared Level 2 water supply shortage:
1. Watering Days—No Watering or Irrigating. Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited. This restriction does not apply to the following categories of use, if the city has determined that recycled water is available and may be applied to the use:
 - a. Maintenance of vegetation, including trees and shrubs, that are watered using a hand-held bucket or similar container, hand-held hose equipped with a positive self-closing water shut-off nozzle or device;
 - b. Maintenance of existing landscape necessary for fire protection;
 - c. Maintenance of existing landscape for soil erosion control;
 - d. Maintenance of plant materials identified to be rare or essential to the well-being of protected species; maintenance of landscape within active public parks and playing fields, day care centers, golf course greens, and school grounds, provided that such irrigation does not exceed two days per week according to the schedule established in subsections 13.17.060A., B. and C.;
 - e. Actively irrigated environmental mitigation projects.
 2. Obligation to Fix Leaks, Breaks or Malfunctions. All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within twenty-four hours of notification by the city unless other arrangements are made with the city.
 3. Limits on Filling Ornamental Lakes or Ponds. Filling or re-filling ornamental lakes or ponds is prohibited, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a supply shortage level under this chapter.
 4. Limits on Washing Vehicles. Using water to wash or clean a vehicle, including but not limited to, any automobile, truck, van, but, motorcycle, boat or trailer, whether motorized or not, is prohibited. This subsection does not apply to any commercial car washing facility.
 5. Limits on Filling Residential Swimming Pools and Spas. Re-filling of more than one foot and initial filling of residential swimming pools or outdoor spas with potable water is prohibited.
 6. The City may impose either of the following restrictions:
 - a. No New Potable Water Service: Upon declaration of a Level 3 water supply shortage emergency condition, no new potable water service will be provided, no new temporary meters or permanent meters will be provided, and no statements of immediate ability to serve or provide potable water service (such as, will-serve letters, certificates, or letters of availability) will be issued, except under the following circumstances:
 - (1) A valid, unexpired building permit has been issued for the project;
 - (2) The project is necessary to protect the public health, safety, and welfare; or
 - (3) The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of the city.
 - b. Limits on Building Permits. The city will limit or withhold the issuance of building permits which require new or expanded water service, except to protect the public health, safety and welfare, or in cases which meet the city adopted conservation offset requirements.

7. Discontinue Service. The city, in its sole discretion, may discontinue service to consumers who willfully violate provisions of this section.
8. No New Annexations. Upon the declaration of a Level 3 water supply shortage condition, the city will suspend consideration of annexations to its service area. This subsection does not apply to boundary corrections and annexations that will not result in any increased use of water.

SECTION 4. Amendment to the Orange Cove Municipal Code. Section 13.17.090 (Procedures for determination/notification of water supply shortage) of Chapter 13.17 (Orange Cove Water Conservation and Water Supply Shortage Plan) of Title 13 (Public Services) of the Orange Cove Municipal Code is hereby amended to read in its entirety as follows:

The existence of Level 1, Level 2 or Level 3 water supply shortage conditions may be declared by resolution of the city council adopted at a regular or special public meeting held in accordance with state law. The mandatory conservation requirements applicable to Level 1, Level 2 or Level 3 conditions will take effect on the following day after the date the shortage level is declared. Following the declaration of the shortage level, the city must publish a copy of the resolution in a newspaper used for publication of official notices and shall provide for other notification by flyer, website, and other feasible methods. If the city activates a water allocation process, it must provide notice of the activation by including it in the regular billing statement or by any other mailing to the address to which the city customarily mails the billing statement for fees or charges for on-going water service. A water allocation will be effective on the fifth day following the date of mailing or at such later date as specified in the notice.

SECTION 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Effective Date.

In accordance with California Water Code § 376, this Ordinance shall take effect immediately upon adoption.

SECTION 7. Publication.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council of the City of Orange Cove held on _____ by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

ATTEST:

APPROVED:

City Clerk

Mayor, City of Orange Cove

ECWAG Grant Agreement
United States Department of Agriculture
Rural Utilities Service

THIS AGREEMENT dated _____, between

Orange Cove, City of
a public corporation organized and operating under

City

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ 0.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 0.00 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 0.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 500,000.00 or 100.00 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor, provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. Grant funds not expended within two years of obligation will be canceled. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 100.00 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

- B. Permit periodic inspection of the construction by a representative of Grantor during construction.
- C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.
- D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated _____, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.
- E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.
- F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.
- G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.
- H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.
- I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.
- J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes. The Applicant will ensure grant activities are implemented in a timely, efficient, and economical manner. Grant fund not expended within two years of obligation will be canceled.
- K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.
 - 1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.
 - 2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).
none

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

none

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/1997]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 500,000.00 which it will advance to Grantee to meet not to exceed 100.00 percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

City Manager

attested and its corporate seal affixed by its duly authorized

Attest:

By _____

(Title) _____

By _____

Samuel Escobar

(Title) **City Manager**

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By _____

(Title)

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made and entered into to be effective for all purposes as of June 30, 2015 (the "Effective Date"), by and between City of Orange Cove, a California municipal corporation (the "City") and Valley Small Business Development Corporation, a California nonprofit corporation and a nonprofit development organization as defined under CDBG regulations Section 105 (a) 15 ("Valley"). For convenience, City and Valley are individually referred to herein as a "Party" and collectively as "Parties."

RECITALS

A. City and Valley are the parties to that certain NONPROFIT DEVELOPMENT ORGANIZATION AGREEMENT BETWEEN CITY OF ORANGE COVE AND VALLEY SMALL BUSINESS DEVELOPMENT CORPORATION, A CALIFORNIA NONPROFIT CORPORATION FOR ADMINISTRATION OF THE CITY'S COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BUSINESS ASSISTANCE LOAN PROGRAM dated July 23, 2008 (the "CDBG Agreement").

B. Pursuant to the CDBG Agreement, Valley was to administer the City's Community Development Block Grant Business Assistance Loan Program (the "CDBG Program").

C. Due to recent regulatory changes affecting the CDBG Program, the City desired to terminate the CDBG Agreement and Valley consented to such termination.

D. In the process of termination the CDBG Agreement, a dispute has arisen between the City and Valley concerning certain accounting issues in connection with Valley's administration of the CDBG Program (the "Dispute").

E. After discussion and negotiation, the Parties have reached an agreement to settle the Dispute (the "Settlement").

F. The Parties now desire to memorialize the terms of the Settlement and finally and completely settle the Dispute and release any and all other claims between them concerning the CDBG Agreement, on the terms and subject to the conditions as set forth herein.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Termination of CDBG Agreement. As of the Effective Date, the CDBG Agreement is hereby terminated and shall be of no further force and effect.

2. Settlement Payment by Valley. Not later than August 13, 2015, Valley shall deliver to the City the sum of Two Hundred One Thousand Thirty-Three and 16/100ths Dollars (\$201,033.16) in good funds by check or wire transfer, together with CDBG Program income

notes receivable in the amount of \$39,323.44 (collectively, the "Settlement Payment"), as full, complete and final settlement and payment of all amounts due and owing by Valley to the City under the CDBG Agreement through the Settlement Date.

3. Delivery of Files and Documents. Not later than August 13, 2015, Valley shall deliver to the City all CDBG Program files in its possession related to the CDBG Agreement, except for those files related to defederalized CDBG loans originated by Valley ("Defederalized Loans") pursuant to the CDBG Agreement, which shall remain the sole and exclusive property of Valley.

4. Mutual Release and Waiver. The Parties now desire to settle, relinquish, waive, remand, remit and resolve the Dispute and any and all claims and disputes between them concerning the CDBG Agreement and all of their respective rights, duties, obligations, covenants, representations, and performances thereunder.

The Parties hereby agree that, except for their respective obligations under this Settlement Agreement, the Parties hereby mutually release one another, and their respective partners, officers, directors, shareholders, employees, agents and attorneys, and their respective successors and assigns (collectively, the "Released Parties"), from and against, any and all claims or causes of action of any kind whatsoever (if any), whether known or unknown, which any may have had against the other or their respective present or former officers, directors, shareholders, employees, attorneys or agents in their capacity as such, on account of any condition, act, omission, event, contract, liability, obligation, indebtedness, performance, duty, right, obligation claim, or cause of action, relating to the CDBG Agreement and all agreements, promises, covenants or undertakings whether written or oral, that may exist or have existed prior to the date of this Settlement and Release, relating thereto or arising therefrom.

No Party, nor any of their partners, officers, directors, shareholders, employees or agents, shall institute or prosecute (or except to the extent required by law, in any way aid or assist in or cooperate with the institution or prosecution of) any action, suit, hearing or other proceeding of any kind, nature or character at law or in equity against the other or any of its partners, officers, directors, members, employees or agents in order to collect, enforce, declare, assert, establish or otherwise raise, in any defense, claim, cause of action, contract, obligation, undertaking, liability, or indebtedness which is within the scope of the release contained in this paragraph 4, or which arises out of any defense, contract, claim, cause of action, liability, indebtedness which is released hereunder. This Settlement Agreement shall constitute a complete defense to any claim, defense, cause of action, contract, liability, indebtedness or obligation released hereunder. Nothing in this Settlement Agreement shall be construed (or shall be admissible in any legal action or proceeding as) any admission of any Party or any of its partners, employees or agents that any defense, indebtedness, obligation, liability, claim or cause of action exists which is within the scope of those released within this paragraph 4.

Both Parties acknowledge and agree that they understand the meaning and the effect of Section 1542 of California Civil Code which provides:

"A general release does not extend to the claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Both Parties hereby respectively agree to assume the risk of any and all unknown, unanticipated or misunderstood defenses, claims, causes of action, contracts, liabilities, indebtedness or obligations which are hereby released in favor of the other and both release and waive all rights and benefits that they might otherwise have had under the aforementioned Section 1542 of the California Civil Code with regard to the release of such unknown, unanticipated or misunderstood claims, causes of action, liabilities, indebtedness and obligations.

5. Authority. Each Party represents and warrants to the other that (a) it or he has full and complete authority to enter into this Settlement Agreement and make the representations, warranties, covenants, releases and waivers set forth herein; (b) the consent or approval of no other person or entity is necessary or required to make this Settlement Agreement binding on the Parties; and (c) each person executing this Settlement Agreement on behalf of Seller has the authority to do so.

6. Attorney's Fees. In the event of any action between the Parties or either of them, seeking enforcement or interpretation of any of the terms and conditions of this Settlement Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, including but not limited to taxable costs and reasonable attorney's fees.

7. Entire Agreement. This Settlement Agreement, and items incorporated herein, contain all of the agreements of the Parties hereto with respect to the matters contained herein and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Settlement Agreement may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the Parties hereto.

8. Assignment. Neither Party may assign its right hereunder without the prior written consent of the other Party.

9. Choice of Laws. This Settlement Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such law.

10. Headings. Headings at the beginning of each numbered Paragraph of this Settlement Agreement are solely for the convenience of the Parties and are not a part of this Settlement Agreement.

11. Counterparts. This Settlement Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on all

Parties. Signed facsimile copies shall be deemed binding provided that original copies are delivered within three (3) business days of delivery of such facsimile copy.

12. Joint and Several. The undertaking, covenants, obligations, promises, agreements, acknowledgments, representations and warranties of the Parties contained herein are expressly made jointly and severally by each of them.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement to be effective as of the date first herein above written.

“City”

CITY OF ORANGE COVE, a California municipal corporation

By: _____
Samuel A. Escobar, City Manager

“Valley”

Valley Small Business Development Corporation,
a California nonprofit corporation and
a nonprofit development organization

By: _____
Debbie Raven, President/CEO