

SPECIAL MEETING ORANGE COVE CITY COUNCIL

DATE: TUESDAY, June 30, 2015 – 6:00 P.M.

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

Victor P. Lopez, Mayor

Diana Guerra Silva, Mayor Pro Tem

Gilbert Garcia, Council Member

Minerva Pineda, Council Member

Josie Cervantes, Council Member

A. CALL TO ORDER/WELCOME

1. Roll Call
2. Invocation
3. Flag Salute

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.

C. ADMINISTRATION

Finance Director

1. **SUBJECT:** Consideration of a Resolution approving the City's Annual Appropriations Limit for Fiscal Year 2015-2016

Recommendation: Council to adopt the Resolution approving the City's Annual Appropriations Limit for Fiscal Year 2015-2016

2. **SUBJECT:** Consideration of a Resolution adopting a Budget for the City of Orange Cove for Fiscal Year 2015-2016

Recommendation: Council to adopt the Resolution Adopting a Budget for the City of Orange Cove Fiscal Year 2015-2016

City Manager

3. **SUBJECT:** Consideration of a Memorandum of Understanding between the City and the Orange Cove Fire Protection District

Recommendation: Council to adopt the Memorandum of Understanding between the City and the Orange Cove Fire Protection District for a Monetary Contribution by the City to the District to Assist in the Purchase of Equipment.

4. **SUBJECT:** Presentation and Discussion Concerning the Forensic Investigation Report Concerning the Target Eight Advisory Council

Recommendation: Informational Item Only

5. **SUBJECT:** Consideration of a Settlement and Release Agreement between the City and Target Eight Advisory Council

Recommendation: Council to adopt the Settlement and Release Agreement between the City and Target Eight Advisory Council

D. CLOSED SESSION:

6. Conference with Legal Counsel-Anticipated Litigation
Initiation of Litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: (One potential case)

7. 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

8. 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

E. RECONVENE CITY COUNCIL MEETING

Report out of closed session

F. 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

1. The Mayor or other presiding officer shall request that a person speaking at the podium during a public comment period or a member of the audience who is violating the rules of decorum, comply immediately with the rules of decorum.
2. 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.

NOTICE AND CALL OF SPECIAL MEETING
City of Orange Cove
City Council

NOTICE IS HEREBY GIVEN that a Special Meeting of the City Council of the City of Orange Cove is hereby called to be held on Tuesday, June 30, 2015, commencing at 6:00 p.m. in the City Council Chambers, at 633 6th Street, Orange Cove, California 93646, for the purpose of discussing the following matters:

ADMINISTRATION

Finance Director

1. **SUBJECT:** Consideration of a Resolution approving the City's Annual Appropriations Limit for Fiscal Year 2015-2016

Recommendation: Council to adopt the Resolution approving the City's Annual Appropriations Limit for Fiscal Year 2015-2016

2. **SUBJECT:** Consideration of a Resolution adopting a Budget for the City of Orange Cove for Fiscal Year 2015-2016

Recommendation: Council to adopt the Resolution Adopting a Budget for the City of Orange Cove Fiscal Year 2015-2016

City Manager

3. Consideration of a Memorandum of Understanding between the City and the Orange Cove Fire Protection District

Recommendation: Council to adopt the Memorandum of Understanding between the City and the Orange Cove Fire Protection District for a Monetary Contribution by the City to the District to Assist in the Purchase of Equipment.

4. **SUBJECT:** Presentation and Discussion Concerning the Forensic Investigation Report Concerning the Target Eight Advisory Council

Recommendation: Informational Item Only

5. **SUBJECT: SUBJECT:** Consideration of a Settlement and Release Agreement between the City of Orange Cove and Target Eight Advisory Council

Recommendation: Council to adopt the Settlement and Release Agreement between the City of Orange Cove and Target Eight Advisory Council

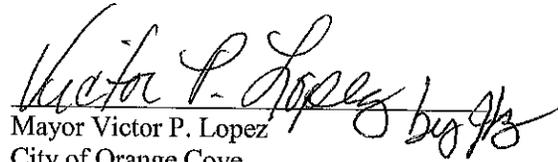
- D. **CLOSED SESSION:**

6. Conference with Legal Counsel-Anticipated Litigation
Initiation of Litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9:
(One potential case)

7. 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
8. 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

The public will be provided an opportunity to provide public comment on these items only.

Dated: June 29, 2015


 Mayor Victor P. Lopez
 City of Orange Cove

STATE OF CALIFORNIA)
 COUNTY OF FRESNO) SS
 CITY OF ORANGE COVE)

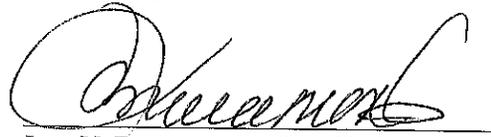
AFFIDAVIT OF POSTING

I, June V. Bracamontes, City Clerk for the City of Orange Cove, hereby certify that a copy of the Notice of the Special meeting of the City of Orange Cove City Council, to be held on Tuesday, June 30, 2015 at the hour of 6:00 p.m. was posted at City Hall, and delivered not less than twenty-four hours before the time of the meeting to the following:

Mayor Victor P. Lopez;
Mayor Pro Tem Diana Guerra Silva;
Council Member Gilbert Garcia
Council Member Minerva Pineda
Council Member Josie Cervantes

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 29, 2015


 June V. Bracamontes, City Clerk
 City of Orange Cove

Memo

To: Honorable Mayor and City Council

From: Lan Bui, Finance Director

cc: Sam Escobar, City Manager

Date: June 29, 2015

Re: Adopt Resolution No. 2015-34 Adopting the Annual Appropriations Limit for Fiscal Year 2015-16

BACKGROUND

In November 1979, the voters of the State of California approved Proposition 4, commonly known as the "Gann Initiative". The proposition created Article XIII B of the State Constitution placing limits on the amount of revenue which can be spent by all entities of the government. Proposition 4 became effective for the 1980-81 fiscal year, however the formula for calculating the limits was based on the 1978-79 "base year" revenues. Proposition 111, approved by the voters in June 1990, provided new adjustment formulas to make the Appropriations Limit more responsive to local growth issues.

The Appropriation Limit applies to "all taxes levied by and for" an agency. This would include revenue received from property tax, sales tax, business license tax, motor vehicle fines, etc. It does not include Enterprise Fund revenues or Successor Agency's tax increment revenues. (Successor Agencies did not have the power to levy a property tax and were therefore exempt from the Appropriation Limit requirements.)

Article XIII B of the California Constitution specifies that each City, when calculating their Appropriation Limit, may choose the growth in California per Capita Income or the growth in non-residential assessed valuation due to new construction within the City and the population growth of the City or that of the County of Fresno. These are both annual elections.

For the 2015-16 Appropriation Limit, the City of Orange Cove has used the change in California's per capita personal income and the population growth of the City of Orange Cove. Proposition 111 requires a review of the Appropriations Limit during the annual financial audit. The limit applies both to appropriation of tax proceeds and taxes received. For fiscal year 2014-15, both revenues and appropriations are well within the Constitutional limit of \$2,876,603.

RECOMMENDATION:

That the City Council adopt Resolution No. 2015-34 establishing the 2015-16 Appropriation Limit at \$2,981,412.

FISCAL IMPACT

None

ACTIONS FOLLOWING APPROVAL:

The Mayor will sign the resolution

CONFLICT OF INTEREST:

None.

CITY OF ORANGE COVE
 APPROPRIATIONS LIMIT SCHEDULE
 FOR THE FISCAL YEAR ENDING JUNE 30, 2016

	AMOUNT	SOURCE
A. Appropriations limit for the year ending June 30, 2015	\$2,876,603	Prior year schedule
B. Calculation Factors:		
1. Population increase %	0.9983	County of Fresno
2. Inflation increase %	<u>1.0382</u>	Dept. of Finance
3. Total adjustment factor %	1.0364	
C. Annual Adjustment Increase	<u>\$ 104,809</u>	(B3 x A)
D. Appropriation limit for the year ending June 30, 2016	<u>\$ 2,981,412</u>	(A+C)

1. Pursuant to Government Code Section 7910, the Orange Cove City Council will consider adopting a resolution on June 30, 2015 to establish its appropriation limit for fiscal year 2015-16. Documentation used in the determination of the appropriations limit is available for public inspection during regular business hours, at the City Hall located on 633 6th Street, Orange Cove, CA 93646.
2. The 2015-16 appropriations limit was developed based upon information provided by the State of California Department of Finance and Government Code Section 7900 et seq. using the per capital personal income and population change method.
3. The above illustrates the appropriation limit for the 2015-16 fiscal year has been calculated at \$2,981,412. This limit applies both to appropriation of tax proceeds and taxes received. Both revenues and appropriation for fiscal year 2015-16 are well within the Constitutional limits.

RESOLUTION NO. 2015-34

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF ORANGE COVE ADOPTING THE ANNUAL
APPROPRIATIONS LIMIT FOR FISCAL YEAR 2015-16**

WHEREAS, Article XIII B of the California Constitution requires cities to adopt annual appropriation limits; and

WHEREAS, the annual adjustment factors used in determining the appropriation limit require a recorded vote of the City Council; and

WHEREAS, any challenge to the appropriation limit must be brought within 45 days of the effective date of this resolution.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Orange Cove, California, as follows:

1. The above recitals are true and correct and are adopted as the findings of the City Council.

2. That the Appropriation Limit for Fiscal Year 2015-16 is hereby set at \$2,981,412 and that one copy of the Appropriation Limit Worksheet, attached hereto and made a part of hereof, describes how the appropriation limit was computed.

3. That the City has used the change in California's per capita personal income and the City's population growth as annual adjustment factors for determining the Appropriation Limit, but that these factors may change in the future should other pertinent information become available.

4. Any challenges to said Appropriation Limit must be filed in writing with the City no later than 45 days after the adoption of this Resolution.

5. The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

6. That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

This Resolution was adopted at a Special Meeting of the City Council of the City of Orange Cove held on June 30, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Victor P. Lopez, Mayor

ATTEST:

APPROVED AS TO FORM

June Bracamontes, City Clerk

Bianca Sparks, City Attorney

RESOLUTION NO. 2015-35

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF ORANGE COVE ADOPTING A BUDGET
FOR THE CITY OF ORANGE COVE FOR
FISCAL YEAR 2015-2016**

WHEREAS, in accordance with Section 2.08.060 of the City's Municipal Code, the City Manager has prepared and submitted to the City Council the Fiscal Year 2015-16 Budget; and

WHEREAS, the City Council has reviewed and accepted the Budget; and

WHEREAS, the City Council has determined that it is necessary for the efficient management of the City that certain sums of revenue of the City be appropriated to the various department and activities of the City.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Orange Cove, California, as follows:

1. The above recitals are true and correct and are adopted as the findings of the City Council.
2. That, after having reviewed, revised and carefully considered the projected revenues and expenses of the City of Orange Cove, the attached City of Orange Cove budget for Fiscal Year 2015-2016 is hereby adopted as the annual budget for the City and its funds for said fiscal year.
3. The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.
4. That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

This Resolution was adopted at a Special Meeting of the City Council of the City of Orange Cove held on June 30, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Victor P. Lopez, Mayor

ATTEST:

APPROVED AS TO FORM

June Bracamontes, City Clerk

Bianca Sparks, City Attorney

ATTEST:

I, June V. Bracamontes, City Clerk of the City of Orange Cove, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Orange Cove Council Chambers on June 30, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

June Bracamontes, City Clerk
City of Orange Cove

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ORANGE COVE AND THE ORANGE COVE FIRE PROTECTION DISTRICT FOR A MONETARY CONTRIBUTION BY THE CITY TO THE DISTRICT TO ASSIST IN THE PURCHASE OF EQUIPMENT

This Memorandum of Understanding ("MOU") is made and entered into this ___ day of June, 2015, ("Effective Date") by and between the City of Orange Cove, a municipal corporation (hereafter referred to as "CITY") and the Orange Cove Fire Protection District, a California special district (hereafter referred to as "DISTRICT"). The City and District are collectively referred to herein as the "Parties", and individually as "Party".

WHEREAS, the DISTRICT serves an area that includes the CITY as well as area surrounding the CITY; and

WHEREAS, the Parties have cooperated in many ways over the years to ensure that fire protection and suppression services are provided to the City's residents; and

WHEREAS, the DISTRICT has requested a donation from the CITY in the amount of \$10,000.00 to assist with the purchase of certain equipment for fire protection services; and

WHEREAS, the City Council finds that cooperation with and assisting the DISTRICT in the form of a monetary donation for equipment is in the best interests of public health and safety; and

WHEREAS, the City Council finds that the donation to the DISTRICT constitutes a public benefit to the CITY and its residents.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective Parties, it is mutually agreed as follows:

1. Use of Equipment

(a) DISTRICT will use the contribution provided by CITY to offset the purchase cost of five fire pagers, two structure fire coats, two structure fire paints, five radios and four fire helmets, to be used by the DISTRICT.

(b) The Parties agree that the DISTRICT shall retain control over the equipment and that the equipment purchased using the CITY's contribution is the property of the DISTRICT.

2. CITY's Contribution.

(a) To assist the DISTRICT in its purchase, within sixty (60) days of the Effective Date of this MOU, the CITY shall contribute to DISTRICT Ten Thousand Dollars (\$10,000.00) pursuant to the terms of this MOU.

(b) This contribution shall be subject to the CITY's annual budget requirements.

3. Term of MOU. The Term of this MOU shall commence as of the Effective Date and shall terminate upon the DISTRICT's expenditure of the CITY's contribution, pursuant to the provisions set forth in Section 1(a).

4. Termination of MOU.

(a) Either Party may terminate this MOU without cause upon 30 calendar days' prior written notice to the other Party.

(b) This MOU may be terminated immediately by either Party upon seven (7) calendar days prior written notice should the other Party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this MOU. A Party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this MOU, if such failure is not cured within seven (7) calendar days' prior written notice and this shall constitute a material default and breach of this MOU. The Party terminating the MOU may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the MOU, or to recover direct, indirect, consequential or incidental damages for the breach of the MOU.

(c) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

5. Indemnification.

(a) DISTRICT shall defend, indemnify, and hold harmless CITY, its elected and appointed officers, officials, agents, contractors, consultants, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' fees, arising out of or in connection with its acts or omissions under this MOU, except such loss or damage which was caused by the sole negligence, or willful misconduct of CITY.

(b) CITY shall defend, indemnify, and hold harmless DISTRICT, its elected and appointed officers, officials, agents, contractors, consultants, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' fees, arising out of or in connection with its acts or omissions under this MOU, except such loss or damage which was caused by the sole negligence, or willful misconduct of DISTRICT.

(c) This section shall survive termination or expiration of this MOU.

6. Insurance. It is understood and agreed that DISTRICT and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either Party under this MOU.

7. Non discrimination. Neither Party shall employ discriminatory practices in their respective performance under this MOU on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disable veteran or veteran of the Vietnam era.

8. Independent Contractor and Not a Partnership. For the purposes of this MOU, CITY and DISTRICT shall act in an independent capacity and not as officers or employees or agents of the other. Nothing in this MOU establishes, constitute, or will be construed as establishing or constituting a partnership or agency or employment relationship between CITY and DISTRICT.

9. Notices. Any notice required or intended to be given to either Party under the terms of this MOU shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of this MOU or at such other address as the Parties may from time to time designate by written notice.

10. Binding. Once this MOU is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

11. Assignment. Neither Party may assign or transfer, by operation of law or otherwise, all or any of its rights or obligations under this MOU without the prior written consent of the other Party.

12. Waiver. The waiver by either Party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or waiver of any subsequent breach of either the same or a different provision of this MOU. No provisions of this MOU may be waived unless in writing and signed by all Parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

13. Governing Law and Venue. This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this MOU and any rights and duties hereunder shall be Fresno County, California.

14. Headings. The section headings in this MOU are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this MOU.

15. Severability. The provisions of this MOU are severable. The invalidity or unenforceability of any one provision in this MOU shall not affect the other provisions.

16. Interpretation. The parties acknowledge that this MOU in its final forms is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor of or against either Party, but rather by construing the terms in accordance with their generally accepted meaning.

17. Attorney's Fees. If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

18. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this MOU are intended for the specific Parties hereto as identified in the preamble of this MOU. Notwithstanding anything stated to the contrary in this MOU, it is not intended that any rights or interests in this MOU benefit or flow to the interest of any third parties.

19. Extent of MOU. Each Party acknowledges that they have read and fully understand the contents of this MOU. This MOU represents the entire and integrated MOU between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This MOU may be modified only by written instrument duly authorized and executed by both CITY and DISTRICT.

20. This MOU may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21. Each person executing this MOU hereby represents and warrants (i) their authority to do so, and (ii) that such authority has been duly and validly conferred.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed this MOU at Orange Cove, California, as of the Effective Date.

“CITY”
City of Orange Cove

“DISTRICT”
Orange Cove Fire Protection District

By: _____
Victor Lopez, Mayor

By: _____
Name, Title

ATTEST

ATTEST

By: _____
June Bracamontes, City Clerk

By: _____
Name, Title

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Bianca Sparks, City Attorney

By: _____
Name, Title

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made and entered into this ___ day of June, 2015 ("Effective Date") by and between the City of Orange Cove, a California municipal corporation (hereinafter "City" or "Orange Cove") and Target Eight Advisory Council (hereinafter "Target Eight"), a California corporation. As used herein, the term "the Parties" shall be used to refer to City/Orange Cove and Target Eight jointly, and the term "Party" shall reference each individually.

RECITALS

WHEREAS, on or about July 1997, the City entered into an agreement with the California Department of Education to fund child care services at the Julia Lopez Day Care Center; and

WHEREAS, pursuant to the terms and conditions of the City's contract with the Department of Education, the City receives funding for the child care services; and

WHEREAS, Target Eight is a private, non-profit organization, and operates the Orange Cove Day Care Center through an independent contract with the California Department of Education; and

WHEREAS, in approximately 2001, the City began to subcontract its agreement with the Department of Education to Target Eight to provide child care services at the Julia Lopez Day Care Center; and

WHEREAS, since approximately 2001, with the exception of July 1997, Target Eight has operated the Julia Lopez Day Care Center as the City's subcontractor; and

WHEREAS, Target Eight was paid a fixed percentage of the Department of Education's contract amount to provide the child care services, and the City retained the balance for administrative fees; and

WHEREAS, for many years, and until approximately June 2011, the City provided accounting services to Target Eight for both the Julia Lopez and the Orange Cove Day Care Centers; and

WHEREAS, in the 2010-11 fiscal year audit, the City's auditor noted a receivable in the amount of \$220,390.00 related to the operation by Target Eight of the Julia Lopez Day Care Center; and

WHEREAS, in 2014, the City retained Price Page & Company ("Price Page"), an accountancy corporation, to conduct a forensic investigation regarding the receivable amount noted in the FY 2010-11 audit report; and

WHEREAS, in May 2015, the final Forensic Investigation Report (“Report”) was presented to the City for its review, a copy of the Report is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, pursuant to the Report, of the \$220,390.00 receivable amount, expenses in the amount of \$121,555.00, including building repairs and maintenance, classroom supplies, and building renovations, directly benefited the City; and

WHEREAS, the Report also sets forth a Target Eight liability of \$84,840.00 for the inadvertent payment of payroll taxes for the Orange Cove Day Care Center’s employees; and

WHEREAS, a dispute between the Parties exists regarding whether an amount is owed by Target Eight to the City for the receivable amount of \$220,390.00 and the payroll amount of \$84,840.00; and

WHEREAS, providing child care services to the community provides a public benefit, as studies have shown that children who attend child care programs and pre-kindergarten programs enter school more ready to learn than their peers. Moreover, studies have also documented significant cognitive and academic gains, and have determined that children who attend child care and pre-kindergarten programs are less likely to need remedial and special education services, have reduced incarceration rates, and lower rates of teen pregnancy; and

WHEREAS, the provision of child care services benefits the local economy by promoting and facilitating parents’ ability to participate in the workforce. Further, by providing child care services, the City is allowing opportunities for increased worker productivity, reductions in absenteeism and decreased turnover in the workplace. Child care options also allow parents to pursue their educational endeavors. The availability of child care services therefore promotes businesses and economic development in the community; and

WHEREAS, given the public benefit of child care services, the City desires to enter into a settlement agreement with Target Eight, foregoing any alleged amount owed by Target Eight to the City related to the provision of child care services.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Target Eight agree as follows:

1. **FISCAL YEAR 2010-11 AUDIT AMOUNT AND PAYROLL TAXES**

1.1 The City Council hereby finds that the operation of the Julia Lopez Day Care Center serves a public purpose as studies have shown that children who attend child care programs and pre-kindergarten programs enter school more ready to learn than their peers. Moreover, studies have also documented significant cognitive and academic gains, and have determined that children who attend child care and pre-kindergarten programs are less likely to need remedial and special education services, have reduced incarceration rates, and lower rates of teen pregnancy. The provision of child care services benefits the local economy by promoting and facilitating parents’ ability to participate in the workforce. Further, by providing child care

services, the City is allowing opportunities for increased worker productivity, reductions in absenteeism and decreased turnover in the workplace. Child care options also allow parents to pursue their educational endeavors. The availability of child care services therefore promotes businesses and economic development in the community.

1.2 The City hereby acknowledges the benefits received with respect to building repairs and maintenance, classroom supplies, and building renovations at the Julia Lopez Day Care Center, in the amount of One Hundred Twenty-One Thousand Five Hundred Fifty-Five Dollars (\$121,555.00), from Target Eight. Further, given the public benefit of the child care services provided by Target Eight to the community, the City hereby forgives Target Eight of the payable balances set forth in the Report, which includes the Two Hundred Twenty Thousand Three Hundred Ninety Dollars (\$220,390.00) reported on the City's financial statements beginning in Fiscal Year 2008 and ending in Fiscal Year 2010-11, and the Eighty Four Thousand Eight Hundred Forty Dollars (\$84,840.00) in payroll taxes set forth on page 14 of the Report.

2. RELEASE

In exchange for the obligations set forth in Section 1 of this Agreement, and subject to full compliance by the Parties, Target Eight and its successors, transferees, heirs, devisees, legatees and assigns, as applicable, does hereby release, acquit and forever discharge the City from any and all claims, demands, damages, causes of action or suits in equity, of any kind whatsoever, at common law, statutory or otherwise, which they have or may have, known or unknown, now existing or that might arise hereafter that were or could have been asserted concerning the receivable amount the City reported on its financial statements beginning in Fiscal Year 2008, and ending in Fiscal Year 2010-11, totaling \$220,390.00; the payroll taxes set forth in the Report in the amount of \$84,840.00; any other claims related to any funds owed by Target Eight to the City; any claims related to any funds owed by the City to Target Eight; and/or any other claims related to Target Eight's subcontract with the City for child care services including any accounting services provided by the City to Target Eight, through the date of this Agreement, except for the promises and conditions set forth in this Agreement.

3. WAIVER OF SECTION 1542.

As to the matters released herein, the Target Eight expressly waives any and all rights against the City under Section 1542 of the California Civil Code which provides as follows:

"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 EFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Target Eight's Initials

4. INDEMNIFICATION.

City shall indemnify, protect, hold harmless and defend, Target Eight, and/or any of its officers, employees and agents from any and all claims (including any claims concerning eminent domain, takings, or relocation costs), actions, or proceedings against Target Eight, to attack, set aside, void, annul, seek monetary damages arising from this Agreement. Target Eight shall promptly notify the City of any claim, action, or proceeding to which this condition is applicable and shall further cooperate fully in the defense of the action.

Target Eight shall indemnify, protect, hold harmless and defend, with counsel selected by the City, the City and any agency or instrumentality thereof, and/or any of its officers, employees and agents from any and all claims (including any claims concerning eminent domain, takings, or relocation costs), actions, or proceedings against the City, to attack, set aside, void, annul, seek monetary damages arising from this Agreement. City shall promptly notify Target Eight of any claim, action, or proceeding to which this condition is applicable and shall further cooperate fully in the defense of the action. The City reserves its right to take any and all action the City deems to be in the best interest of the City and its citizens in regard to such defense.

5. MISCELLANEOUS PROVISIONS.

5.1 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

5.2 The waiver by City or Target Eight of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Target Eight unless in writing.

5.3 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any Party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such Party of any of all of such other rights, powers or remedies.

5.4 If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled. The venue for any litigation shall be Fresno County, California or in the United States District Court for the Eastern District of California.

5.5 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall

be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

5.6 This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

5.7 The Parties represent and warrant that they have had advice of counsel of their own choosing in the negotiations for and the preparation of this Agreement, and that they have read this Agreement, or had the same read to them by counsel, and that they have had this Agreement fully explained to them by their counsel, and they are fully aware of the Agreement's legal effect. This Agreement is to be construed fairly and not in favor of or against any Party, regardless of which Party or Parties drafted or participated in the drafting of its terms.

5.8 This instrument contains the entire Agreement between the City and Target Eight with respect to the transactions contemplated herein. No other prior oral or written agreement(s) are binding upon the Parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Target Eight.

5.9 The terms of this Agreement shall bind and inure to the benefit of each of the Parties, and each of their respective agents, officers, directors, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, transferees, representatives, employees, heirs, devisees, legatees and assigns, as applicable.

5.10 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

5.11 Each person executing this Agreement hereby represents and warrants (i) their authority to do so, and (ii) that such authority has been duly and validly conferred.

(SIGNATURES ON FOLLOWING PAGE)

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

“CITY”
City of Orange Cove

“Target Eight”
Target Eight Advisory Council

By: _____
Sam Escobar, City Manager

By: _____
Mario Villarreal, Member

Attest:

By: _____
June Bracamontes, City Clerk

Approved as to form:

By: _____
Bianca Sparks, City Attorney