



AGENDA

Joint Meeting of City Council and Successor Agency to the Redevelopment Agency of the City of Orange Cove

Victor P. Lopez, Mayor

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

Gilbert Garcia, Council Member
Josie Cervantes, Council Member

WEDNESDAY, OCTOBER 12, 2016 - 6:30 P.M.
Orange Cove Council Chambers
633 6th Street, Orange Cove, California 93646

A. Call to Order/Welcome

- a. Roll Call
- b. Invocation
- c. Flag Salute

B. Confirmation of Agenda

C. Consent Calendar

1. City Council Minutes of September 14, 2016
2. Approve the revised School Resources Officer Agreement between the City of Orange Cove and Kings Canyon Unified School District
3. Approve the City's 2014 HOME Grant Homebuyer Assistance and Housing Rehab Program Guidelines

D. Administration

City Engineer:

4. **SUBJECT:** Consideration and Discussion regarding the Master Agreements for Federal Funds and Supplemental Agreement for Adams Avenue Reconstruction Project, Friant-Kern Canal to Hills Valley Road

Recommendation: Council to consider approving the Master Agreements for Federal Funds and Supplemental Agreement for Adams

Avenue Reconstruction Project, Friant-Kern Canal to Hills Valley Road and Resolution authorizing the City Manager to sign the agreements on behalf of the City.

5. **SUBJECT:** Consideration and Discussion regarding the Engineering Agreements for Water Treatment Plant Expansion and Retention Basin Lining Planning Study with Yamabe & Horn Engineering, Inc. and AM Consulting Engineers

Recommendation: Council to consider approving Resolution regarding the Engineering Agreements for Water Treatment Plant Expansion and Retention Basin Lining Planning Study with Yamabe & Horn Engineering, Inc. and AM Consulting Engineers

6. **SUBJECT:** Consideration and Discussion designation of Voting Member Kings River East Groundwater Sustainability Agency

Recommendation: Council to consider nominating a Councilmember and an Alternate for the Board of the Kings River East Groundwater Sustainability Agency (GSA)

Mayor and Councilmembers:

7. **SUBJECT:** Consideration and Discussion regarding the Marijuana Ordinance

Recommendation: Council to give Staff direction to amend the Marijuana Ordinance

City Manager:

8. **SUBJECT:** Consideration and Discussion regarding the Facility Use Application by La Unika Mexicana for the usage of the Gene Welch Park

Recommendation: Council to consider the Facility Use Application by La Unika Mexicana for the usage of the Gene Welch Park Waving all fees.

9. **SUBJECT:** Consideration and Discussion regarding the Purchase Sale Agreement and Development Agreement between Capitol Rivers, Inc., a California corporation (“Buyer”) and The City of Orange Cove, a municipal corporation (“Seller”).

Recommendation: Council to consider approving the Purchase Sale Agreement and Development Agreement between Capitol Rivers, Inc., a California corporation (“Buyer”) and The City of Orange Cove, a municipal corporation (“Seller”).

E. City Council and Successor Agency:

10. **SUBJECT:** Consideration and Discussion regarding the Orchard Village permanent loan closing

Recommendation: Council and the Successor Agency to consider approving the Orchard Village of the Subordination Agreement for the permanent lender

F. 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.

G. City Manager's Report

H. City Attorney's Report

I. City Council Communications

J. 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 cityoforange Cove.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

Victor P. Lopez, Mayor

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

Gilbert Garcia, Council Member
Josie Cervantes, Council Member

WEDNESDAY, SEPTEMBER 14, 2016 - 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 (absent)
Councilmember Minerva Pineda
Councilmember Josie Cervantes(absent)

STAFF PRESENT: City Manager Samuel A. Escobar
City Attorney, Dan McCloskey
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 #6 off the Agenda.

C. Presentation

1. Presentation by Corina Mendoza, Cross Country Coach and P.E. Teacher from Orange Cove High School regarding the Cross Country Team and Health Fair.

Upon the motion by Councilwoman Pineda and seconded by Mayor Pro Tem Silva, Council approved the usage of the BMX for the twilight school race on September 23, 2016 in the evening and approved \$500.00 donation for future watches and track. (Yes Vote: Lopez, Silva, Pineda)(Absent: Garcia and Cervantes)

2. Presentation and Introduction of new Regional Public Affairs Manager, Raj Rakkar.

No presentation not present.

D. Consent Calendar

3. City Council Minutes of August 10, 2016
4. City Council Minutes of Special Meeting of August 17, 2016

Upon the motion by Mayor Pro Tem Silva and seconded by Councilmember Pineda, Council approved the Consent Calendar as presented; (Yes Vote: Lopez, Silva, Pineda)(Absent: Garcia and Cervantes)

E. Administration

City Engineer:

5. **SUBJECT:** Consideration and Discussion regarding the Fixture Retrofit Project Guideline Modifications

Recommendation: Council to review and approve the Water-Energy Grant 2015 Fixture Rebate Program Modifications to be opened to rental units and allow rebates without a paid invoice from the plumber, subject to approval by California Department of Water Resources

Upon the motion by Mayor Pro Tem Silva and seconded by Pineda, Council approved to modify the guidelines allow rebates without a paid invoice from the plumber, subject to approval by California Department of Water Resources(Yes Vote: Lopez, Silva, Pineda)(Absent: Garcia and Cervantes)

6. **SUBJECT:** Consideration and Discussion regarding the Application for Reconstruction of the Bridge over the Friant-Kern Canal at Hills Valley Road

Recommendation: Council to authorize the City Manager to sign an application for the Federal Highway Bridge Program for the reconstruction of the bridge over the Friant-Kern Canal at Hills Valley Road

Item removed

City Manager:

7. **SUBJECT:** Consideration and Discussion regarding the Graffiti Program

Recommendation: Update Report on the Graffiti Program and Council give Staff Direction

City Manager gave an update report on the Graffiti Program and presented a slide show of the graffiti problem in the City and requested that 4 paint colors will be provided to the resident. Resident can come into city hall and chose a color and the City will do the work covering the graffiti. If the residents do not like the color they can provide the paint and the city will do the work.

8. **SUBJECT:** Consideration and Discussion regarding the 8th Annual Tour de Fresno scheduled on Saturday, September 17, 2016.

Recommendation: Council to approve participating in the 8th Annual Tour de Fresno in their efforts to help the needy in the Central Valley.

Upon the motion by Mayor Pro Tem Silva, and seconded by Councilmember Pineda, approve participating in the 8th Annual Tour de Fresno in their efforts to help the needy in the Central Valley. (Yes Vote: Lopez, Silva, Pineda)(Absent: Garcia and Cervantes)

Chief of Police:

9. **SUBJECT:** Monthly Activity Report.

Recommendation: Informational Item Only.

Chief presented the Monthly Activity Report for the month of August 2016 and presented the following items:

- SRO position filled by Office Soto.
- Gave the contract info to Maryann Carouso KCUSD raised the cost to \$50,000 show and explained why.
- Explorer program continuing
- The COPS grant still pending.
- Chief Vehicle will be in next week.
- Cameras installed at city yard
- Wastewater cameras will be finished tomorrow
- Cameras at park waiting for a pole.
- Events this weekend bike ride and Mexican Independence Day event.
- Knights of Columbus Oct 8th dance at community center
- Phone problem at the P.D. recommending new phone system and computers are not working correctly. Will be presenting proposal to Council for approval

F. 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.

Mr. Ralph Pardo presented to Council an update of the events during the Farmers Market held every Thursday at Eaton Park. Mr. Ralph Alvarez will have a live DJ and a band working with the radio station and planning to have food eating contest with a \$100 prize.

G. City Manager's Report

David Lopez, Vice Chairman, of the Events Committee gave an update report on the events this weekend. Full day event starts at 10am to 10pm live D.J. and along with other activities. Knights of Columbus will be helping. Also want to bring to you discussion about for the future installing some poles to place banners in town to give more community pride.

City Manager looked at cost easy to put banners up its more for marketing. Cost approximately \$15,000-29,000 to do it. Will work with city engineer to place poles on Park and Center.

H. City Attorney's Report

None

I. City Council Communications

Councilwoman Minerva Pineda:

No report.

Mayor Pro Tem Diana Guerra Silva:

No report.

Mayor invited to ceremony Governor Brown, Speaker Rendon and Arambula signed 4 bills for jobs education and job training and Mayor of Fresno was present did a great job. Tomorrow morning going to Sacramento speak to the Water Commission.

Thursday talking to official who will work on the temperance flats.

J. Closed Session: at 7:25 p.m

10. Pursuant to Government Code Section 54956.9(a)
Conference with Legal Counsel —Existing Litigation
Case: Central Valley Bio-Fuels, LLC v. City of Orange Cove

K. Reconvene City Council Meeting:

Mayor Victor P. Lopez reconvened City Council Meeting at 7:36 p.m. and announced no action was taken in Closed Session and nothing to report.

L. Adjournment

Mayor Lopez adjourned the City Council Meeting at 7:37pm

RESPECTFULLY SUBMITTED:

June V. Bracamontes, City Clerk
City of Orange Cove

PRESENTED TO COUNCIL:

DATE: _____

ACTION: _____

Sent to June
Sam + June
10-4-16

Contract No. 16-0184

Board Approval Date 9/27/16

AGREEMENT REGARDING SCHOOL RESOURCES OFFICER
CITY OF ORANGE COVE, CALIFORNIA
AND KINGS CANYON UNIFIED SCHOOL DISTRICT

THIS AGREEMENT ("Agreement") is made and entered into effective July 1, 2013 by and between the CITY of Orange cove, a municipal corporation (hereinafter referred to as "CITY"), and Kings Canyon Unified School District (hereinafter referred to as "DISTRICT").

RECITALS

WHEREAS, DISTRICT recognizes that the Orange Cove Police Department's provides necessary public safety and law enforcement services to the CITY which benefits DISTRICT; and

WHEREAS, DISTRICT further recognizes that the Orange Cove Police Department's assignment of a School Resource Officer assigned to the DISTRICT'S schools to perform regular duty law enforcement services is greatly beneficial to DISTRICT in assisting DISTRICT in providing its students with campuses which are safe, secure, and peaceful; and

WHEREAS, CITY is willing to assign a School Resource Officer to provide services to Orange Cove High School, Citrus Middle School and Orange Cove Elementary; and

WHEREAS, DISTRICT desires to contribute monies to CITY partially off-set CITY'S personnel costs related to a School Resources Offer.

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. CITT Responsibility to Provide Law Enforcement Services

(a) CITY will provide a School Resource Officer to perform regular duty law enforcement services at Orange Cove High School, Citrus Middle School and Orange Cove Elementary during the school's normal hours of operation and during the time frame that includes the standard school year. The home base for the School Resource Officer will be Orange Cove High School where office, desk, and a secure computer will be provided. It is understood that the School Resource Officer will respond to non-school calls as needed and attend meetings and training as required by the Orange Cove Police Department.

(b) The parties agree that CITY retains control over assignments, wages, and other terms and conditions of employment by CITY of police officers. DISTRICT acknowledges that the School Resource Officer is held to the requirements of the law and Orange Cove Police Department.

DISTRICT agrees that it shall not have authority to direct the officer's law enforcement activity. DISTRICT will immediately notify the Police Chief of any concerns regarding such activity.

2. DISTRICT Responsibility.

- (a) In consideration for the assignment of a School Resources Officer as set forth in this Agreement, DISTRICT shall pay CITY \$50,000.00 for the school year. Payment will be paid upon being invoiced by the CITY.
- (b) DISTRICT shall provide an office, desk, and a secure computer at Orange Cove High School for the School Resource Officer.

3. Term of Agreement. It is the intent of the parties that the term of this Agreement begins July 1, 2016 effective as to all terms and conditions of the Agreement, and end on June 30, 2019, unless terminated earlier in accordance with this Agreement.

4. Termination of Agreement.

(a) Either party may terminate this Agreement without cause upon 90 calendar days' prior written notice to the other party.

(b) This Agreement may be terminated immediately by either party upon 7 calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any term or condition in accordance with this Agreement. A party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured within 7 calendar days' prior written notice and this shall constitute a material default and breach of this Agreement. The party terminating the Agreement 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 Agreement, or to recover direct, indirect, consequential or incidental damages for the breach of the Agreement.

(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 indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the DISTRICT, CITY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of DISTRICT or any of its officers, directors, trustees, employees, agents or volunteers in the performance of this Agreement.

(b) CITY shall indemnify, hold harmless and defend DISTRICT and each of its officers directors, trustees, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, DISTRICT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

(c) In the event of concurrent negligence on the part of DISTRICT or any of its officers, directors, trustees, employees, agents or volunteers, and CITY or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeiture, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

(d) This section shall survive termination or expiration of this Agreement.

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 Agreement.

7. Nondiscrimination. Neither party shall employ discriminatory practices in their respective performance under this Agreement 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 Agreement, CITY and DISTRICT shall act in an independent capacity and not as officers or employees or agents of the other. Nothing in this Agreement establishes, constitute, or will be construed as establishing or constituting a partnership or agency or employment relationship between CITY and DISTRICT. Officers providing services under this Agreement shall remain the employees of CITY, and shall not be employees of DISTRICT.

9. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be dully 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 Agreement or at such other address as the parties may from time to time designate by written notice.

10. Binding. Once this Agreement 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 Agreement 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 Agreement shall not constitute a continuing waiver or waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. 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 Agreement 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 Agreement and any rights and duties hereunder shall be Fresno County, California.

14. Headings. The section headings in this Agreement 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 Agreement.

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

16. Interpretation. The parties acknowledge that this Agreement in its final forms is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement 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 Agreement, 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. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, attached and incorporated into and made a part of this Agreement.

19. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

20. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this

Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

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

IN WITNESS WHEREOF, the parties have executed this Agreement at Orange Cove, California, the day and year first above written.

Dated: 9/27/14

KINGS CANYON UNIFIED SCHOOL
DISTRICT

Juan Giza
Superintendent

Dated: _____

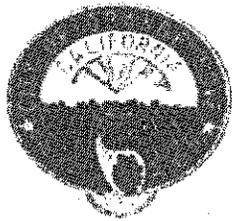
CITY OF ORANGE COVE
A Municipal Corporation

Gabriel Jimenez, Mayor

ATTEST:

June Bracamontes, City Clerk

Dated: _____



For the Meeting of: October 12, 2016

CITY OF ORANGE COVE REPORT TO THE CITY COUNCIL

To: Orange Cove City Council
From: Gary D. Horn, City Engineer
Subject: Master Agreements for Federal Funds
 And Supplemental Agreement for Adams Avenue Reconstruction
 Project, Friant-Kern Canal to Hills Valley Road
Attachments: Resolution and Agreements

RECOMMENDATION:

We recommend that the City Council adopt the attached resolution which approves a new Master Agreement for all Federal Highway Transportation Administration (FHWA) and a Program Supplement, and authorizes the City Manager to sign the agreements on behalf of the City.

EXECUTIVE SUMMARY:

The City of Orange Cove has receives FHWA funds for various street projects. The Federal funds are administered through Caltrans, and the City has an existing Master Agreement to administer these projects. The Master Agreements are updated from time to time and requires Council approval. The city has also received an allocation of RSTP FHWA funds for the reconstruction of Adams Avenue form the Friant-Kern Canal to Hills Valley Road. Each individual project requires a separate Program Supplement in order for the City to be reimbursed for expenses incurred on that project.

BACKGROUND:

The allocation for individual projects is divided into two phases: design and construction, and this Program Supplement is for the design phase. The Federal funding amount is \$12,925.

These are standard agreements required on all FHWA funded projects. In exchange for receiving

Prepared by: GH

Approved by: SE by A

REVIEW: City Manager: _____

Finance: _____

City Attorney: _____

TYPE OF ITEM:

COUNCIL ACTION: APPROVED DENIED NO ACTION

- ___ Consent
- ___ Info Item
- ___ Action Item
- ___ Department Report
- ___ Redevelopment Agency

- ___ Public Hearing
- ___ Matter Initiated by a Council Member
- ___ Other
- ___ Continued to: _____

funding the city is agreeing to abide by the laws adopted by Congress and the regulations promulgated by FHWA. Failure to follow the rules will result in loss of funding. The instructions specifically state that "alterations should not be made to the agreement language."

The full agreements are available in the City Clerk's office for review.

REASON FOR RECOMMENDATION:

This action is necessary for the City to submit invoices to Caltrans and maintain funding.

FISCAL IMPACT:

The City will receive Federal funding for the project.

ALTERNATIVES:

Council may decide not to accept Federal funding for street construction projects.

ACTIONS FOLLOWING APPROVAL:

The Agreement will be signed and returned to Caltrans.

CONFLICT OF INTEREST:

None.

RESOLUTION NO. 2016-55

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE COVE APPROVING
MASTER AGREEMENT 06-5301F15 AND PROGRAM SUPPLEMENT NO. F-013,
AGREEMENT FOR RECONSTRUCTION OF ADAMS AVENUE FROM FRIANT-KERN
CANAL TO HILLS VALLEY ROAD

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

WHEREAS, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer agreements need to be executed with the California Department of Transportation before such funds could be claimed; and

WHEREAS, the City of Orange Cove wishes to delegate authorization to execute these agreements and any amendments thereto.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE COVE
DOES find, determine, resolve and order as follows:

1. Master Agreement No. 06-5301F15 Administering Agency-State Agreements for Federal Projects is hereby approved.
2. Program Supplement No. F-013, Agreement to Local Agency – State for Federal Aid Project No. STPL-5301(018) is approved.
3. The City Manager is authorized to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and/or any amendments thereto with the California Department of Transportation on behalf of the city.

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 October, 2016, and passed at said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

Victor P. Lopez, Mayor

ATTEST:

June Bracamontes, City Clerk

not hold a sufficient amount of water to supply the City's needs during this period.

The State offers funding for drinking water system improvements through its SRF program. This program is funded by the US EPA and Proposition 1. SRF is generally a low-interest loan program, but does offer grants for severely disadvantaged communities. The water meter project was also funded by a grant from SRF.

The work done under the Planning Grant will include the following work:

1. Project Evaluation and Pre-design Engineering – This phase will identify various options for the improvements. Previous studies completed for the WTP will reviewed an updated as needed.
2. Surveying –Topographic surveys will be conducted to be used in the design.
3. Engineering Report – A report will summarize all of the alternatives and select a preferred alternative, basis for design, cost estimates and conceptual design.
4. Plans and Specifications – Preparations of construction documents ready for bid so that an accurate application for construction funding can be submitted.

Additional agreements with soils engineers will be needed to investigate the soil conditions at the WTP and Raw Water Basins and environmental studies once the preliminary design work is completed.

The amount of the grant is \$476,000. The agreement with AM Consulting Engineers will cover the WTP expansion and is for a maximum of \$250,000. The agreement with Yamabe & Horn Engineering is for a maximum of \$215,000 covers the surveying, basin lining project and contract administration. The estimated time to complete the Planning Study is 24 months. The Water Board is requiring that these agreements be approved prior to releasing their Grant Funding Agreement to the City for approval. The two engineering agreements state that if the City does not receive the grant, their agreements are void.

REASON FOR RECOMMENDATION:

The City needs to expand capacity at the WTP and line the Raw Water Retention Basins. Completing the engineering studies and preparation of the plans and specifications will allow the City to apply for construction funds later.

FISCAL IMPACT:

There is no required City match because Orange Cove is a disadvantaged community.

ALTERNATIVES:

The Council may choose not to participate.

ACTIONS FOLLOWING APPROVAL:

The City Manager will sign the agreements and engineering work will begin.

CONFLICT OF INTEREST:

None.

**AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES
TO THE CITY OF ORANGE COVE
WATER TREATMENT PLANT EXPANSION AND
RETENTION BASIN LINING PROJECT**

This Agreement made and entered into this _____ day of _____, 2016, between the **City of Orange Cove**, a municipal corporation of the State of California, hereinafter called "CITY", and **AM Consulting Engineers (CONSULTANT)**, hereinafter called "ENGINEER".

WITNESSETH

WHEREAS, CITY plans to Prepare and engineering study, construction plans and specifications for the expansion of its Water Treatment Plant and Lining of the raw water basins for the treatment plant hereinafter called "Project"; and

WHEREAS, CITY requires the services of a Professional Engineer for Project; and

WHEREAS, ENGINEER is a California corporation consisting of and employing engineers duly licensed by the State of California to perform the work contemplated by this Agreement; and

WHEREAS, ENGINEER has the required professional experience and expertise to perform the work contemplated by this Agreement.

NOW THEREFORE:

The parties hereto mutually agree as follows:

A. SERVICES OF ENGINEER:

CITY hereby retains ENGINEER to provide civil engineering reports and design and other engineering services as set forth herein in connection with the PROJECT. Said work to be performed pursuant to this agreement is more particularly described in Scope of Work.

B. SCOPE OF WORK:

ENGINEER shall provide the professional services set forth in EXHIBIT B attached hereto and incorporated herein by reference. ENGINEER accepts full responsibility for the scope of services provided by subcontractors necessary for delivery of the project. ENGINEER shall comply with all City of Orange Cove standards and requirements.

C. PROGRESS MEETINGS:

ENGINEER shall communicate and meet with CITY staff at project progress meetings at intervals mutually agreed to between CITY and ENGINEER to verify, refine and complete the project requirements and review the progress of the project. Such meetings shall not exceed one per month during the course of the work during the design of the Project. ENGINEER shall prepare brief minutes of such meetings and submit them to CITY for review and approval.

D. CITY'S OBLIGATIONS

The CITY shall provide the consultant with the following:

1. Provide a Project Director to work with ENGINEER;
2. Review all submittals timely;
3. Pay all fees for permits required by other governmental agencies in connection with the Project.
4. Provide City utility data and maps and monument information;
5. Provide copy of Title Reports and deeds as necessary;
6. Conduct any public meetings.

E. COMPENSATION

CITY Agrees to compensate ENGINEER on a time and material basis according to the Fee Schedule in attached Exhibit B, not to exceed Two Hundred Fifty Thousand Dollars \$250,000. The City will be receiving a grant from the State Water Board to pay for the project. If the City should not receive the grant, then this agreement is null and void. It is understood and agreed by both parties that all expenses incidental to ENGINEER'S performance of services are included in the maximum fee.

F. CONFIDENTIAL INFORMATION AND CITYSHIP OF DOCUMENTS

1. Any reports, information, or other data prepared or assembled by ENGINEER under this Agreement shall not be made available to any individual or organization by ENGINEER without the prior written approval of CITY. During the term of this Agreement, and thereafter, ENGINEER shall not, without the prior written consent of CITY, disclose to anyone any confidential information. The term "confidential information" for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All confidential information shall be and remain confidential and proprietary in CITY.
2. Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by ENGINEER pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement or default by ENGINEER. ENGINEER grants CITY a copyright license to use such drawings and writings. ENGINEER shall not use for purposes other than performance of this Agreement, nor shall ENGINEER release, reproduce, distribute, distribute, publish, adapt for future use or any other purposes, or otherwise use any data or other material first produced in the performance of this Agreement, nor authorize others to do so without prior written permission of CITY.
3. This Section G shall survive expiration or termination of this Agreement.

G. PROFESSIONAL SKILL

It is further mutually understood and agreed by and between the parties hereto that inasmuch as ENGINEER represents to CITY that ENGINEER is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of ENGINEER to do and perform such services in a skillful manner and ENGINEER agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of ENGINEER from said professional standards.

H. LICENSES

Prior to execution of this Agreement by CITY, ENGINEER shall have provided evidence to CITY that ENGINEER is licensed to perform the services called for by this Agreement (or that no license is required). If ENGINEER should subcontract all or any portion of the work or services to be performed under this Agreement, ENGINEER shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

I. INDEMNIFICATION

1. To the furthest extent allowed by law, ENGINEER shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, claims and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of ENGINEER, its principals, officers, employees, agents or volunteers in the performance of this Agreement.
2. ENGINEER agrees to reimburse CITY for any expenditures, including reasonable attorney fees, incurred in the defense against claims ultimately determined to be due to ENGINEER's negligent, or deliberately wrongful, acts, errors, or omissions in connection with the performance of this Agreement. Likewise, CITY agrees to reimburse ENGINEER for any expenditures, including reasonable attorney fees, incurred in the defense against claims ultimately determined to be due to CITY's negligent, or deliberately wrongful, acts, errors, or omissions in connection with the performance of this Agreement.
3. If ENGINEER should subcontract all or any portion of the services to be performed under this Agreement, ENGINEER shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.
4. This section shall survive termination or expiration of this Agreement.

J. INSURANCE

1. Throughout the life of this Agreement, ENGINEER shall pay for and maintain in full force and effect all insurance as required in Exhibit "A".
2. If at any time during the life of the Agreement or any extension, ENGINEER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to ENGINEER shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve ENGINEER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
3. The fact that insurance is obtained by ENGINEER shall not be deemed to release or diminish the liability of ENGINEER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by ENGINEER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of ENGINEER, its principals, officers, agents, employees, persons under the supervision of ENGINEER, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.
4. Upon request of CITY, ENGINEER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.
5. If ENGINEER should subcontract all or any portion of the services to be performed under this Agreement, ENGINEER shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with ENGINEER and CITY prior to the commencement of any services by the subcontractor.

K. CONFLICT OF INTEREST

ENGINEER and its officers, employees, contractors, subcontractors, and agents that perform work under this Agreement shall comply with federal and state conflict of interest

laws, regulations and policies, and applicable provisions of CITY's Conflict of Interest Code.

L. INDEPENDENT CONTRACTOR

1. In the furnishing of the services provided for herein, ENGINEER is acting solely as an independent contractor. Neither ENGINEER, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which ENGINEER shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that ENGINEER is performing its obligations in accordance with the terms and conditions thereof.
2. This Agreement does not evidence a partnership or joint venture between ENGINEER and CITY. ENGINEER shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, ENGINEER shall bear its own costs and expenses in pursuit thereof.
3. Because of its status as an independent contractor, ENGINEER and its officers, agents and employees shall have no right to employment rights and benefits available to CITY employees. ENGINEER shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, ENGINEER shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of ENGINEER's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, ENGINEER may be providing services to others unrelated to CITY or to this Agreement.

M. ASSIGNMENT

1. This Agreement is personal to ENGINEER and there shall be no assignment by ENGINEER of its rights or obligations under this Agreement without the prior written approval of CITY.
2. ENGINEER hereby agrees not to assign the payment of any monies due ENGINEER from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due ENGINEER directly to ENGINEER.

N. COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS

In providing the services required under this Agreement, ENGINEER shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement. The City will be receiving a grant from the State Water Board to pay for the project. Consultant agrees to abide by the grant requirements.

O. WAIVER

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

P. 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 Agreement, 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.

Q. EXHIBITS

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

R. PRECEDENCE OF DOCUMENTS

In the event of any conflict between the body of this Agreement, Exhibit or Attachment, or the terms and conditions of the body of shall control and take precedence over the terms and conditions expressed within the Exhibit, Attachment, or Agreement. Furthermore, any terms or conditions contained within any Exhibit, Attachment or Agreement hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

EFFECTIVE DATE

This Agreement is effective as of the ____th day of _____, 2016.

IN WITNESS WHEREOF, duly authorized representatives of the CITY and of the ENGINEER have executed this Agreement evidencing its issuance by CITY and acceptance by ENGINEER.

**CITY
CITY OF ORANGE COVE**

**ENGINEER
AM Consulting Engineers**

By _____
Samuel A. Escobar, City Manager

By _____

ATTEST:

June Bracamontes, City Clerk

Exhibit A

**INSURANCE REQUIREMENTS
AGREEMENT FOR PROFESSIONAL SERVICES**

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to ENGINEER'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

ENGINEER shall maintain limits of liability of not less than:

1. General Liability:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate
2. Automobile Liability:
 - \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
 - \$1,000,000 each accident for bodily injury
 - \$1,000,000 disease each employee
 - \$1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

\$1,000,000 per claim/occurrence

\$2,000,000 policy aggregate

Umbrella or Excess Insurance

In the event ENGINEER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.
3. ENGINEER'S insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: ENGINEER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by ENGINEER.
2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, ENGINEER must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, ENGINEER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, ENGINEER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Management Authority.

Verification of Coverage

ENGINEER shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by City Manager or her designee prior to ENGINEER'S execution of the Agreement and before work commences.

EXHIBIT B

Scope of Work and Fee

BACKGROUND

The City of Orange Cove operates a Water Treatment Plant (WTP) to supply all of the water needed within the City. Source Water for the WTP is obtained from the Bureau of Reclamation through the Friant-Kern Canal. The City does not use any groundwater wells. The WTP has two treatment filter trains that employ different types of filter processes. Plant A was constructed in 1974 with a capacity of 1,050 gallons per minute (gpm) and consists of a circular flocculator-clarifier and four modular steel rapid sand filters. Plant B was constructed in 1996, also has a capacity of 1,050 gpm and contains two modular steel contact clarifier-filters. The two plants are designed to produce a total of 2,100 gpm or 3 million gallons per day (mgd).

Treated water is stored in a ground level 2-million-gallon steel tank. Booster pumps deliver the treated water from the storage tank to the City's water distribution system as needed. The flow rate to the treatment filters is adjusted each day at a particular rate in 100-gallon increments needed to maintain an adequate water level in the storage tank. That filter rate is then maintained for a 24-hour period. The plant operator records the filter rate that is set for each day.

The WTP maximum design filter capacity is 2,100 gpm. Using the current maximum day flow rate of 1,600 gpm, the WTP is operating at 76% of capacity. As stated earlier, each of the two filter trains is designed to produce 1,050 gpm. Plant A was constructed in 1974 and due to its age, the operational capacity of that filter train is limited to 800 gpm. Plant B is newer but its treatment capacity is also limited to 90 percent of its design capacity, or 945 gpm. The actual combined capacity is therefore 1,745 gpm.

There is no redundancy built into the WTP. If one of the filter trains develops a mechanical problem, the City will not be able to provide adequate water for its customers. If the City had to rely upon Plant A capacity only at 800 gpm during peak demand days of 1,600 gpm, then the 2 MG storage tank would provide less than 2 days of capacity.

The City retained a consultant to prepare a Facilities Concept Planning Report for the expansion of the WTP for the City of Orange Cove in May 2007. The consultant's report recommendation was to install a new microfiltration or ultrafiltration (MF/UF) system to increase capacity. This would mean that the City would have three different treatment processes at the WTP. The report did not consider installing a newer version of the existing Plant B filter process that would be familiar to the plant operators. The consultant's report did not address the clarifier in Plant A which is in need of repair, rehabilitation or replacement. As part of this planning and design phase the City would like to evaluate those elements that were not previously addressed and determine the preferred project to plant upgrade the WTP to provide continuing service.

SCOPE OF WORK

Task 1 - Project Evaluation & Preliminary Engineering and Design

AM Consulting Engineers, Inc. (AMCE) will conduct an evaluation of water treatment options and treatment plant improvements that are needed to meet the water quality standards and drinking water system demands. The following alternatives will be evaluated:

1. Refurbish Plants A and B and add a Plant C. Plant C would be sized to meet future water demand.
2. Abandon Plant A, Refurbish Plant B and add a Plant C. Plant C would be sized to meet future water demand and replace the capacity of Plant A.

AMCE's evaluation will provide a comparison of the following treatment technologies being considered for Plant C:

- ❖ Microfiltration/Ultrafiltration
- ❖ Ballasted Flocculation followed by Filtration (process used by existing Plant B)

Finally, AMCE will also conduct an evaluation of existing Plants A and B, ancillary equipment and processes and provide recommendations to improve their performance.

AMCE will prepare a Preliminary Engineering Report (PER) that includes a summary of alternatives evaluated, the selection of a preferred alternative, and the proposed construction project. AMCE will submit a copy of the DRAFT PER to the City and to the State Water Resources Control Board (SWRCB) for review and comment. AMCE will attend a review meeting to review the findings and recommendations of the PE with SWRCB and City staff. AMCE will incorporate comments from City and SWRCB and re-submit the PER to the SWRCB for approval.

Task 2 – Preparation of Construction Documents (Plans and Specifications)

AMCE will develop construction plans, specifications, and detailed cost breakdown for the selected (and approved) construction project. The construction documents will cover all the engineering disciplines (i.e. civil, process, structural, electrical and instrumentation).

Formal submittals to the City and SWRCB will be prepared at the 80 percent and 100 percent completion stages. Submittals will include a set of plans (half-size), specifications, and an opinion of probable construction cost. A review meeting will be held with City and SWRCB staff after each submittal to review and discuss comments. After the review and approval of the 100 percent completion construction documents by the City and the SWRCB, AMCE will prepare a final update of the opinions of probable construction costs.

FEE

AMCE proposes to complete the tasks in the Scope of Work for a not to exceed fee of \$250,000. The total fee will be invoiced monthly according to the most recent hourly rate schedule.

Task	Fee
Task 1 - Project Evaluation & Preliminary Engineering and Design	\$25,000
Task 2 – Preparation of Construction Documents	\$225,000

SCHEDULE

The following table shows a preliminary time schedule for the completion of the tasks included in the Scope of Work. The schedule provides the estimated days to completion of the various tasks counted from the City's Notice-to-Proceed (NTP). The preliminary time schedule includes a two-week review period for City and SWRCB to provide comments after each submittal.

Design Milestone	Days to Completion (From NTP)
Pre-Design Report	90 days
Construction Document Submittal No. 1 (80% Completion Level)	180 days
Construction Document Submittal No. 2 (100% Completion Level)	270 days

**Fees for Professional Services
Hourly Rate Schedule
(Effective January 1, 2016)**

CLASSIFICATION	RATE
Engineering	
Associate Engineer	\$85.00 per hour
Senior Engineer	\$100.00 per hour
Principal Engineer	\$125.00 per hour
Project Manager	\$125.00 per hour
Designing/Drafting	
Design CADD Operator	\$75.00 per hour
Support Staff	
Technical Typist/Word Processor	\$65.00 per hour
Miscellaneous	
Fax	\$0.10 per page
8"x11" Copies/Impressions	\$0.10 per page
Reproducible Copies (Mylar)	\$1.00 per sq. ft.
Reproducible Copies (Bond)	\$1.00 per sq. ft.
Mileage	\$0.55 per mile
Meals and Lodging	At cost

Notes:

1. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. It is understood and agreed that these rates and charges include normal equipment and materials used in connection with the production of the required engineering and/or architectural services. If authorized by the client, an overtime premium multiplier of 1.5 will be applied to the direct wage cost of hourly personnel who work overtime in order to meet a deadline which cannot be met during normal hours. Applicable sales taxes, if any, will be added to these rates.
3. Fee schedule is subject to general revision. New equipment categories and charges may be added or revised from time to time.

**AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES
TO THE CITY OF ORANGE COVE
WATER TREATMENT PLANT EXPANSION AND
RETENTION BASIN LINING PROJECT**

This Agreement made and entered into this _____ day of _____, 2016, between the **City of Orange Cove**, a municipal corporation of the State of California, hereinafter called "**CITY**", and **Yamabe & Horn Engineering, Inc.** (**CONSULTANT**), hereinafter called "**ENGINEER**".

WITNESSETH

WHEREAS, CITY plans to Prepare and engineering study, construction plans and specifications for the expansion of its Water Treatment Plant and Lining of the raw water basins for the treatment plant hereinafter called "Project"; and

WHEREAS, CITY requires the services of a Professional Engineer for Project; and

WHEREAS, ENGINEER is a California corporation consisting of and employing engineers duly licensed by the State of California to perform the work contemplated by this Agreement; and

WHEREAS, ENGINEER has the required professional experience and expertise to perform the work contemplated by this Agreement.

NOW THEREFORE:

The parties hereto mutually agree as follows:

A. SERVICES OF ENGINEER:

CITY hereby retains ENGINEER to provide surveying, civil engineering design and other engineering services as set forth herein in connection with the PROJECT. Said work to be performed pursuant to this agreement is more particularly described in Scope of Work.

B. SCOPE OF WORK:

ENGINEER shall provide the professional services set forth in EXHIBIT B attached hereto and incorporated herein by reference. ENGINEER accepts full responsibility for the scope of services provided by subcontractors necessary for delivery of the project. ENGINEER shall comply with all City of Orange Cove standards and requirements.

C. PROGRESS MEETINGS:

ENGINEER shall communicate and meet with CITY staff at project progress meetings at intervals mutually agreed to between CITY and ENGINEER to verify, refine and complete the project requirements and review the progress of the project. Such meetings shall not exceed one per month during the course of the work during the design of the Project. ENGINEER shall prepare brief minutes of such meetings and submit them to CITY for review and approval.

D. CITY'S OBLIGATIONS

The CITY shall provide the consultant with the following:

1. Provide a Project Director to work with ENGINEER;
2. Review all submittals timely;
3. Pay all fees for permits required by other governmental agencies in connection with the Project.
4. Provide City utility data and maps and monument information;
5. Provide copy of Title Reports and deeds as necessary;
6. Conduct any public meetings.

E. COMPENSATION

CITY Agrees to compensate ENGINEER on a time and material basis according to the Fee Schedule in attached Exhibit B, not to exceed Two Hundred Fifteen Thousand Dollars (\$215,000). The City will be receiving a grant from the State Water Board to pay for the project. If the City should not receive the grant, then this agreement is null and void. It is understood and agreed by both parties that all expenses incidental to ENGINEER'S performance of services are included in the maximum fee.

F. CONFIDENTIAL INFORMATION AND CITYSHIP OF DOCUMENTS

1. Any reports, information, or other data prepared or assembled by ENGINEER under this Agreement shall not be made available to any individual or organization by ENGINEER without the prior written approval of CITY. During the term of this Agreement, and thereafter, ENGINEER shall not, without the prior written consent of CITY, disclose to anyone any confidential information. The term "confidential information" for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All confidential information shall be and remain confidential and proprietary in CITY.
2. Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by ENGINEER pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement or default by ENGINEER. ENGINEER grants CITY a copyright license to use such drawings and writings. ENGINEER shall not use for purposes other than performance of this Agreement, nor shall ENGINEER release, reproduce, distribute, distribute, publish, adapt for future use or any other purposes, or otherwise use any data or other material first produced in the performance of this Agreement, nor authorize others to do so without prior written permission of CITY.
3. This Section G shall survive expiration or termination of this Agreement.

G. PROFESSIONAL SKILL

It is further mutually understood and agreed by and between the parties hereto that inasmuch as ENGINEER represents to CITY that ENGINEER is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of ENGINEER to do and perform such services in a skillful manner and ENGINEER agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of ENGINEER from said professional standards.

H. LICENSES

Prior to execution of this Agreement by CITY, ENGINEER shall have provided evidence to CITY that ENGINEER is licensed to perform the services called for by this Agreement. If ENGINEER should subcontract all or any portion of the work or services to be performed under this Agreement, ENGINEER shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

I. INDEMNIFICATION

1. To the furthest extent allowed by law, ENGINEER shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, claims and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of ENGINEER, its principals, officers, employees, agents or volunteers in the performance of this Agreement.
2. ENGINEER agrees to reimburse CITY for any expenditures, including reasonable attorney fees, incurred in the defense against claims ultimately determined to be due to ENGINEER's negligent, or deliberately wrongful, acts, errors, or omissions in connection with the performance of this Agreement. Likewise, CITY agrees to reimburse ENGINEER for any expenditures, including reasonable attorney fees, incurred in the defense against claims ultimately determined to be due to CITY's negligent, or deliberately wrongful, acts, errors, or omissions in connection with the performance of this Agreement.
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J. INSURANCE

1. Throughout the life of this Agreement, ENGINEER shall pay for and maintain in full force and effect all insurance as required in Exhibit "A".
2. If at any time during the life of the Agreement or any extension, ENGINEER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to ENGINEER shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve ENGINEER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
3. The fact that insurance is obtained by ENGINEER shall not be deemed to release or diminish the liability of ENGINEER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by ENGINEER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of ENGINEER, its principals, officers, agents, employees, persons under the supervision of ENGINEER, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.
4. Upon request of CITY, ENGINEER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.
5. If ENGINEER should subcontract all or any portion of the services to be performed under this Agreement, ENGINEER shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with ENGINEER and CITY prior to the commencement of any services by the subcontractor.

K. CONFLICT OF INTEREST

ENGINEER and its officers, employees, contractors, subcontractors, and agents that perform work under this Agreement shall comply with federal and state conflict of interest laws, regulations and policies, and applicable provisions of CITY's Conflict of Interest Code.

L. INDEPENDENT CONTRACTOR

1. In the furnishing of the services provided for herein, ENGINEER is acting solely as an independent contractor. Neither ENGINEER, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which ENGINEER shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that ENGINEER is performing its obligations in accordance with the terms and conditions thereof.
2. This Agreement does not evidence a partnership or joint venture between ENGINEER and CITY. ENGINEER shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, ENGINEER shall bear its own costs and expenses in pursuit thereof.
3. Because of its status as an independent contractor, ENGINEER and its officers, agents and employees shall have no right to employment rights and benefits available to CITY employees. ENGINEER shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, ENGINEER shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of ENGINEER's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, ENGINEER may be providing services to others unrelated to CITY or to this Agreement.

M. ASSIGNMENT

1. This Agreement is personal to ENGINEER and there shall be no assignment by ENGINEER of its rights or obligations under this Agreement without the prior written approval of CITY.

2. ENGINEER hereby agrees not to assign the payment of any monies due ENGINEER from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due ENGINEER directly to ENGINEER.

N. COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS

In providing the services required under this Agreement, ENGINEER shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement. The City will be receiving a grant from the State Water Board to pay for the project. Consultant agrees to abide by the grant requirements.

O. WAIVER

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

P. 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 Agreement, 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.

Q. EXHIBITS

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

R. PRECEDENCE OF DOCUMENTS

In the event of any conflict between the body of this Agreement, Exhibit or Attachment, or the terms and conditions of the body of shall control and take precedence over the terms and conditions expressed within the Exhibit, Attachment, or Agreement. Furthermore, any terms or conditions contained within any Exhibit, Attachment or Agreement hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

EFFECTIVE DATE

This Agreement is effective as of the ____th day of _____, 2016.

IN WITNESS WHEREOF, duly authorized representatives of the CITY and of the ENGINEER have executed this Agreement evidencing its issuance by CITY and acceptance by ENGINEER.

CITY
CITY OF ORANGE COVE

ENGINEER
YAMABE & HORN ENGINEERING,
INC.

By _____
Samuel A. Escobar, City Manager

By _____
Gary D. Horn, President

ATTEST:

June Bracamontes, City Clerk

Exhibit A

INSURANCE REQUIREMENTS AGREEMENT FOR PROFESSIONAL SERVICES

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to ENGINEER'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

ENGINEER shall maintain limits of liability of not less than:

1. General Liability:
\$1,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate
2. Automobile Liability:
\$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
\$1,000,000 each accident for bodily injury
\$1,000,000 disease each employee
\$1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

\$1,000,000 per claim/occurrence
\$2,000,000 policy aggregate

Umbrella or Excess Insurance

In the event ENGINEER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.
3. ENGINEER'S insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: ENGINEER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by ENGINEER.
2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, ENGINEER must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, ENGINEER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, ENGINEER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Management Authority.

Verification of Coverage

ENGINEER shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by City Manager or her designee prior to ENGINEER'S execution of the Agreement and before work commences.

EXHIBIT B

SCOPE OF WORK

Task 1 – Project Evaluation and & Preliminary Design

- A. Retention Basin Lining Options – The City uses basins to store raw canal water for use during times when the Friant-Kern Canal is out of service for maintenance. Yamabe & Horn will research various materials available for either lining the raw water basins or soil treatment and recommend the best option to stop percolation and seepage. Prepared an opinion of probable cost for the installation.
- B. Negotiate with the Bureau of Reclamation – The City receives surface water from the Central Valley Project through the Friant-Kern Canal. The current allocation of Class 1 water for municipal and industrial uses is 1,400 acre-feet (a-f) per year. The City also has an agreement with Lower Tule Irrigation District to be able to purchase up to an additional 2,000 a-f of Class 1 water. However, if the Class 1 allocations are less than 100%, the amount of water available to the City is limited. Yamabe & Horn will initiate discussions with the Bureau of Reclamation for an increase in its Class 1 allocation.
- C. Preliminary Engineering Report – Prepare an engineering report and submit it to the State Water Board for review and comments. Include a summary of alternatives evaluated, the selection of preferred alternative, and the proposed construction project. Incorporate or address any comments received into a final report for approval by the City and State Water Board.

Task 2 – Site Survey

- A. Site Survey – Yamabe & Horn Engineering will conduct a site survey of the Water Treatment Plant to be used in the design of the plant expansion plans. The area to be surveyed will be determined by the results of the Water Treatment Plant preliminary study.

Task 3 - Plans and Specifications

- A. Basin Lining Project – Prepare plans and specifications for the Basin Lining Project for the raw water basins. Submit plans, specifications and estimated cost to the State Water Board for review and comment.

Task 4 – Administration

- A. Prepare application and submit to the State Water Board.
- B. Administer the agreement with the State Water Board, submit invoices and required reports.
- C. Review engineering reports, plans and specifications prepared by other consultants.

FEE FOR SERVICES

The fee for the services described above will be paid on a time and material basis according to the attached Fee Schedule not to exceed Two Hundred Fifteen Thousand Dollars (\$215,000), summarized as follows:

Task 1 - Project Evaluation and & Preliminary Design	\$65,000
Task 2 - Site Survey.....	\$10,000
Task 3 - Plans and Specifications	\$105,000
Task 4- Administration	<u>\$35,000</u>
	Total
	\$215,000

CLASSIFICATION

HOURLY RATE

PRINICPAL ENGINEER	\$130.00
CIVIL ENGINEER III	\$125.00
LAND SURVEYOR II	\$115.00
LAND SURVEYOR I	\$110.00
CIVIL ENGINEER II	\$110.00
CIVIL ENGINEER I	\$100.00
ASSISTANT ENGINEER II	\$95.00
ASSISTANT ENGINEER I	\$90.00
CONSTRCUTION MANAGER II	\$105.00
CONSTRUCTION MANAGER I	\$95.00
INSPECTOR – Prevailing Wage	\$115.00
DRAFTER II	\$80.00
DRAFTER I	\$75.00
CLERICAL	\$55.00
2-MAN SURVEY CREW	\$220.00
1-MAN SURVEY CREW	\$150.00

RESOLUTION NO. 2016-56

A RESOLUTION OF THE COUNCIL OF THE CITY OF ORANGE COVE, CALIFORNIA,
APPROVING AGREEMENTS FOR ENGINEERING SERVICES WITH YAMABE & HORN
ENGINEERING, INC. AND AM CONSULTING ENGINEERS FOR THE WATER
TREATMENT PLANT EXPANSION AND RETENTION BASIN LINING SRF PLANNING
GRANT PROJECT

WHEREAS, the City has received approval for a State Revolving Fund grant from the State Water Board for a Planning Grant to study the expansion of the Water Treatment Plant and Lining of the Raw Water Retention Basins; and

WHEREAS, civil engineering services are required to complete the requirements of the planning grant; and

WHEREAS, the City has received proposals from Yamabe & Horn Engineering, Inc. and AM Consulting Engineers to provide civil engineering services for the project; and

WHEREAS, the City Manager has evaluated the proposals and recommends that Yamabe & Horn Engineering, Inc. and AM Consulting Engineers be selected to provide engineering services for the Water Treatment Plant Expansion and Lining of the Raw Water Retention Basins SRF Planning Grant Project.

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. Upon recommendation of the City Manager that Yamabe & Horn Engineering, Inc. and AM Consulting Engineers are hereby selected to provide civil engineering services for the Water Treatment Plant Expansion and Lining of the Raw Water Retention Basins SRF Planning Grant Project, and the City Manager is authorized to sign the City's standard form of agreement for engineering services with each company.

This resolution was adopted at a Regular Meeting of the City Council of the City of Orange Cove held on October 12, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Victor P. Lopez, Mayor

ATTEST:

June Bracamontes, City Clerk



CITY OF ORANGE COVE REPORT TO THE CITY COUNCIL

To: Orange Cove City Council
From: Gary D. Horn, City Engineer
Subject: Designation of Voting Member
Kings River East Groundwater Sustainability Agency

Attachments: Memo from Alta Irrigation District

RECOMMENDATION:

Council nominate a Councilmember to be the Voting Member and another councilmember Alternate Voting Member for the Board of the Kings River East Groundwater Sustainability Agency (GSA).

EXECUTIVE SUMMARY:

The Governor signed legislation in 2014 that requires that each hydrologic basin address groundwater sustainability to implement: Conservation, Water recycling, Expanded storage, Safe Drinking Water, Wetlands and Watershed protection. The goal of the law is for this area to return as much water to the aquifer as is pumped, thereby becoming sustainable.

Senator Vidak carried legislation that has now become law to allow the creation of a special district called the East Kings Groundwater Sustainability Agency (EKGSa). The EKGSa represents several agencies and agricultural interests and is governed by a seven member Board. One seat is to represent the cities of Orange Cove, Dinuba and Reedley. The city representative and alternative must be members of the City Council. The City representative will be chosen by the mayors of the three cities at a public meeting.

The Council must nominate one of its members for voting member and another for alternative.

BACKGROUND:

In 2104 SB 1319, SB 1168 and AB 1739 collectively called the "Sustainable Groundwater Management Act" (GSMA) became law. The law requires the formation of GSA for each

Prepared by: _____

Approved by:  _____

REVIEW: City Manager: _____

Finance: _____

City Attorney: _____

TYPE OF ITEM:

COUNCIL ACTION: APPROVED DENIED NO ACTION

- _____ Consent
- _____ Info Item
- _____ Action Item
- _____ Department Report
- _____ Redevelopment Agency

- _____ Public Hearing
- _____ Matter Initiated by a Council Member
- _____ Other
- _____ Continued to: _____

hydrologic basin. The City of Orange Cove lies within the Kings River Basin that covers a large part of Fresno County and northern sections of Kings and Tulare Counties. A map of the proposed area is attached. A brochure is attached that explains the Sustainable Groundwater Management Act.

A group of cities, irrigation districts and other interested parties have formed a smaller GSA that can address the unique groundwater conditions for the area lying east of the Kings River. The EKGSA is made up of the following entities and their representatives on the Board are:

- Counties – Two Board members
 - County of Tulare
 - County of Fresno
- Cities – One Board member
 - City of Orange Cove
 - City of Reedley
 - City of Dinuba
- Irrigation Districts – One Board member
 - Orange Cove Irrigation District
 - Hills Valley Irrigation District
 - Tri-Valley Water District
 - Kings River Water District
- Drinking Water Districts – One Board member
 - Cutler Public Utility District
 - East Orosi Community Services District
 - London Community Services District
 - Orosi Public Utility District
 - Sultana Community Services District
- Alta Irrigation District – One Board member
- Agricultural Representative – One Board member

Each agency will nominate members to be selected by the group associated by their respective members. The City representative will be chosen by the mayors of the three cities at a public meeting.

The State has listed the following powers and authority of a GSA:

- Develop a groundwater sustainability plan
- Fee authority
- Registration of extraction facility (discretionary)
- Water measurement device paid for by user of groundwater (discretionary)
- Annual statement of diversion (discretionary)
- Extractions as a basis for fees
- Service fees based on extraction of groundwater are to be used to implement the plan shall be based on subdivision (a) and (b) of Section 6 of Article XIII D of the California Constitution. (Prop. 218)
- Authorized to impose regulatory fees, i.e., permit fees, extractions, or as regulated activities, to fund preparation and enforcement of the plan following public hearings. (Prop. 26)
- Monitor, Compliance and Enforcement
- Excess unauthorized extraction subject to a civil penalty not to exceed \$500/AF
- Any rule, regulation, ordinance or resolution violation subject to civil penalty not to exceed \$1,000 plus \$100 per day
- Appropriate and acquire surface water or groundwater
- Water exchanges
- Transport, reclaim, purify, treat or otherwise manage polluted water, wastewater
- Impose spacing requirements on new groundwater well construction

- Control groundwater extractions
- Request that the county forward permit requests for new well construction prior to action being taken.

Your council approved a MOU on January 28, 2015 and a revised MOU on June 10, 2015 stating the City's interest and willingness to cooperate with other agencies to form a GSA for the area lying east of the King's River.

This is the next step in meeting the requirements of the GSMA. Administrative Costs for the formation of the GSA, legal costs and plan preparation costs will be borne by the member agencies. The city has been invoiced \$1,000 both this year and last year for start-up costs.

REASON FOR RECOMMENDATION:

Even though the City does not now have any groundwater wells we think it is important for us to be part of this group. One can imagine that future state funding for water projects would require that the city be part of a GSA. The GSA will also allow us to work more closely with neighboring groups for mutually beneficial water projects.

FISCAL IMPACT:

Staff time will be required for meetings and the administrative costs.

ALTERNATIVES:

None.

ACTIONS FOLLOWING APPROVAL:

Staff will forward the selected member to EKGSA for consideration.

CONFLICT OF INTEREST: None



SUSTAINABLE GROUNDWATER MANAGEMENT ACT

A Framework for Sustainability

The California Legislature enacted comprehensive legislation aimed at strengthening local control and management of groundwater basins throughout the state. Gov. Jerry Brown signed the three-bill package into law on Sept. 16, 2014.

Known as the Sustainable Groundwater Management Act of 2014, the legislation provides a framework for sustainable management of groundwater supplies by local authorities, with a limited role for state intervention when necessary to protect the resource.

Multiple discussions and a public stakeholder process that began in late 2013 helped shape the legislation, which the Brown Administration identified as a top priority for 2014. It is considered one element of a comprehensive water action plan advanced by the Administration that also includes investment in water conservation, water recycling, expanded water storage, safe drinking water, wetlands and watershed restoration.

The Sustainable Groundwater Management Act of 2014

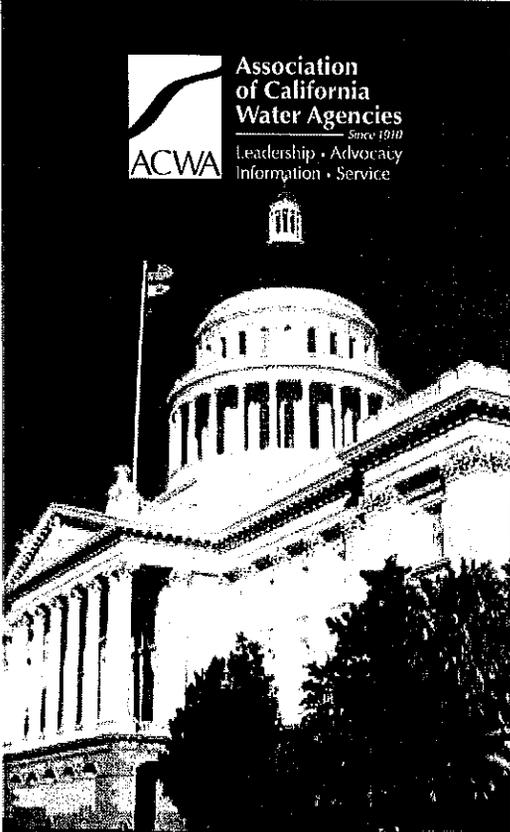
The Sustainable Groundwater Management Act of 2014 consists of three bills – AB 1739 (Dickinson), SB 1168 (Pavley) and SB 1319 (Pavley). Together the bills commit the state to locally controlled, sustainable groundwater management and provide tools and authorities for local agencies to achieve the sustainability goal over a 20-year implementation period.



Key Steps on the Road to Sustainability

The legislation lays out a process and a timeline for local authorities to achieve sustainable management of groundwater basins. It also provides tools, authorities and deadlines to take the necessary steps to achieve the goal. For local agencies involved in implementation, the requirements are significant and can be expected to take years to accomplish.

- **Step one:** Local agencies must form local groundwater sustainability agencies (GSAs) within two years.
- **Step two:** Agencies in basins deemed high- or medium-priority must adopt groundwater sustainability plans (GSPs) within five to seven years, depending on whether a basin is in critical overdraft.
- **Step three:** Once plans are in place, local agencies have 20 years to fully implement them and achieve the sustainability goal.
- **State role:** The State Water Resources Control Board may intervene if locals do not form a GSA and / or fail to adopt and implement a GSP.



Timeline for Sustainability

June 30, 2017: Local groundwater sustainability agencies formed.

Jan. 31, 2020: Groundwater sustainability plans adopted for critically overdrafted basins.

News Tools for Local Agencies

The legislation gives local agencies new tools to manage groundwater sustainably. For example, groundwater sustainability agencies may:

- Require registration of wells and measurement of extractions
- Require annual extraction reports
- Impose limits on extractions from individual groundwater wells
- Assess fees to implement local groundwater management plans
- Request a revision of basin boundaries, including establishing new subbasins

Creation of Groundwater Sustainability Plans

The legislation provides options for local agencies to develop the required groundwater sustainability plans. Agencies may opt to create a single plan covering the entire basin, or knit together multiple plans created by multiple agencies.

A plan must include measurable objectives and interim milestones to achieve the sustainability goal for the basin within a 20-year time frame. The plan also must include a physical description of the basin, including information on groundwater levels, groundwater quality, subsidence and groundwater-surface water interaction; historical and projected data on water demands and supplies; monitoring and management provisions; and a description of how the plan will affect other plans, including county and city general plans.



State Technical and Financial Assistance

The California Department of Water Resources (DWR) has several tasks under the Sustainable Groundwater Management Act. It must:

- Designate basins as high, medium, low or very low priority by Jan. 31, 2015
- Adopt regulations for basin boundary adjustments by Jan. 1, 2016
- Adopt regulations for evaluating adequacy of GSPs and GSA coordination agreements by June 1, 2016
- Publish a report estimating water available for groundwater replenishment by Dec. 31, 2016
- Publish groundwater sustainability best management practices by Jan. 1, 2017

State Review and Intervention

The State Water Resources Control Board may intervene if a GSA is not formed or fails to adopt or implement compliant plans by certain dates.

DWR reviews the GSAs for adequacy after they are adopted at the local level. If DWR determines that an adequate groundwater sustainability plan is not in place, the State Board may designate the basin as "probationary." If the local agency does not respond within 180 days, the State Board is authorized to create an interim plan that will remain in place until a local GSA is able to assume responsibility with a compliant plan.

Financial Assistance

If approved by voters, Proposition 1 would provide \$100 million in funding to GSAs to develop and implement sustainable groundwater management plans.

Jan. 31, 2022: Groundwater sustainability plans adopted for high- and medium-priority basins not currently in overdraft.

By 2040: All high- and medium-priority groundwater basins must achieve sustainability.

Probationary Status

In general, the State Water Resources Control Board may designate a basin as “probationary” if, after consulting with DWR, it is found that a groundwater sustainability plan has not been created, the plan is inadequate, or the plan is not being implemented in a way that will lead to sustainability.

Specifically, the State Board may designate a basin as probationary if:

- No local agency has formed a groundwater sustainability agency for the basin by the June 30, 2017, deadline
- No groundwater sustainability plan has been adopted for a high- or medium-priority basin in critical overdraft by the Jan. 31, 2020, deadline
- No groundwater sustainability plan has been adopted for a high- or medium-priority basin not currently in critical overdraft by the Jan. 31, 2022, deadline
- After Jan. 31, 2020, the groundwater sustainability plan for a basin in critical overdraft is found to be inadequate or is not being implemented to achieve sustainability
- After Jan. 31, 2022, the groundwater sustainability plan for any other high- or medium-priority basin is found to be inadequate, or is not being implemented to achieve sustainability, and the State Board determines the basin is in a condition of long-term overdraft
- After Jan. 31, 2025, a groundwater sustainability plan is found to be inadequate, or is not being implemented to achieve sustainability, and the State Board determines that groundwater extractions are resulting in significant depletions of interconnected surface waters

If a local agency fails to respond to a deficiency within 180 days, the State Board is authorized to create and develop an interim plan that would remain in place until a local groundwater sustainability agency is able to take over and manage the basin sustainably.



California Probationary Critical Overdraft Groundwater Basins

The Sustainable Groundwater Management Act applies to basins or subbasins designated by the Department of Water Resources as high- or medium-priority basins, based on a statewide ranking that uses criteria including population and extent of irrigated agriculture dependent on groundwater. Final basin prioritization by DWR is due by Jan. 31, 2015.

It is anticipated that about 125 basins throughout the state will be designated as high- or medium-priority basins for which a plan must be developed. Those basins account for about 90% of California's annual groundwater use. DWR's California Groundwater Bulletin 118 identifies a total of 515 alluvial groundwater basins and subbasins in California.

The Sustainable Groundwater Management Act does not apply to adjudicated basins that are managed by the courts, or to basins deemed by DWR to be low or very low priority.



Implementation Schedule

	Jan. 31, 2015 DWR prioritizes basins
June 1, 2016 DWR adopts regulations for evaluating Groundwater Sustainability Plans	Dec. 31, 2016 DWR publishes report on water available for replenishment of groundwater in the state
Jan. 1, 2017 DWR publishes best management practices for the sustainable management of groundwater	June 30, 2017 Groundwater Sustainability Agencies are formed
July 1, 2017 State may designate basin as probationary basin	January 31, 2020 Groundwater Sustainability Plans are adopted and implementation under way for basins in critical overdraft
January 31, 2022 Groundwater Sustainability Plans are adopted and implementation under way for basins not in overdraft	Plans are submitted to DWR for adequacy review upon adoption
Plans are submitted to DWR for adequacy review upon adoption	Interim milestones are reviewed by DWR every five years
Interim milestones are reviewed by DWR every five years	Jan. 31, 2040 Groundwater Sustainability Agencies in critically overdrafted basin achieve sustainability goal
Jan. 31, 2042 Groundwater Sustainability Agencies in basins not in overdraft achieve sustainability goal	

ACWA's Path on Advancing Sustainability

In response to mounting concerns about groundwater overdraft and subsidence in some areas of the state, ACWA's Board of Directors acted in November 2013 to establish a Groundwater Sustainability Task Force to help identify ways to address the issue.

Drawing on the expertise of ACWA Board members from across the state, the task force developed a series of recommendations on groundwater to build on the association's Statewide Water Action Plan as well as its 2011 Groundwater Framework.

The task force's work led to a suite of recommendations adopted by the ACWA Board in March 2014 as discussions intensified in the regulatory and legislative arenas to address groundwater.

ACWA's recommendations, issued formally on April 7, 2014, made a strong policy statement in support of sustainable, locally controlled management of the state's groundwater basins and called for new tools and authorities to help local agencies take action. At the same time, the recommendations recognized the need for a limited state backstop role in cases where locals cannot accomplish the goal.

ACWA's recommendations, together with recommendations from the California Water Foundation, provided the basis for many key provisions of the groundwater sustainability legislative package that ultimately emerged and was signed by Gov. Jerry Brown on Sept. 16, 2014.

Resources:

ACWA's Recommendations for Achieving Groundwater Sustainability
<http://www.acwa.com/content/groundwater/acwa-recommendations-achieving-groundwater-sustainability>

California Department of Water Resources Groundwater Information Center
<http://www.water.ca.gov/groundwater/>

California Water Foundation Information / Recommendations on Groundwater Sustainability
www.callfornlawaterfoundation.org

Contacts:

Association of California Water Agencies
916.441.4545 • www.acwa.com

Timothy Quinn, Executive Director
Email: timq@acwa.com

Jennifer Persike, Deputy Executive Director External Affairs / Operations
Email: jenniferp@acwa.com

Cindy Tuck, Deputy Executive Director, Government Relations
Email: cindy@acwa.com

CITY OF ORANGE COVE
633 Sixth Street, Orange Cove, California (559)626-4488
FACILITY USE APPLICATION

This reservation application is issued in accordance with the policies outlined in the attached packet. All reservation forms must be signed and returned before consideration of use approval. Submission of reservation request does not constitute approval. All applications must be presented to the City of Orange Cove and the office of City Manager for final approval.

Name: La Unika Mexicana ^{100.3FM.} Organization/Representative: Carlos Prada

Mailing Address 640 Park Way. City: Orange Cove. Zip: 93646.

Home Phone: (559) 270-5348 Work Phone: (559) 626-7922.

Date of Use: NOV-06-2016 Nature of Use: RECONOCIMIENTO
Los Originales de San Juan.

Expected Attendance: 300 to 400 Time: From 12 am/pm To: 10 am/pm
(Hours of operation shall not exceed 12:00 midnight unless approved by the City Council)

Other information, please specify: Victor Lopez va entregar
la llave de la ciudad.

DECORATING/REHEARSAL: Date: _____
From _____ a.m./p.m. To _____ a.m./p.m.

INSURANCE REQUIRED:

Name of Insurance Company: _____

(Please provide Certificate of Insurance showing the City of Orange Cove as an additional Insured)

(Insurance can be purchased through City of Orange Cove if requested for an additional fee. Rates will vary each year. Insurance will need to be provided with application when submitted before the date can be placed on hold.)

FACILITY REQUIRED:

(Please Check) _____ (R) Resident _____ (N) Non Resident

(No Smoking in Public Buildings pursuant to Ordinance No. 284)

- Gene Welch Park (Behind Orange Cove Community Center)
- _____ J.O. Eaton Park _____ Classroom area of 480 sf \$43.20 a day
- _____ Sheridan Park
- _____ Orange Cove Community Center
- _____ Senior Citizen Center
- _____ OTHER (Please specify)

RECORDING REQUESTED BY:

Placer Title Company

WHEN RECORDED MAIL TO:

Prince, Yeates & Geldzahler
15 West South Temple, Suite 1700
Salt Lake City, Utah 84101
Attn: John B. Lindsay

THIS SPACE FOR RECORDER'S USE ONLY

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

This Subordination Agreement ("Agreement") is entered into as of October ____, 2016 by and among ORCHARD VILLAGE 188, LP, a California limited partnership ("Borrower"); the CITY OF ORANGE COVE, a California municipal corporation ("City"); the SUCCESSOR AGENCY TO THE CITY OF ORANGE COVE REDEVELOPMENT AGENCY, a public body corporate and politic ("Agency"); JPMORGAN BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association ("AHP Lender"), and BONNEVILLE MORTGAGE COMPANY, a Utah corporation ("Bonneville"). The parties to this Agreement are referred to as the "Parties." Bonneville, City, Agency, and AHP Lender are referred to as the "Non-Borrowers."

RECITALS

A. Borrower has executed or is about to execute (i) a Multifamily Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (the "Bonneville Deed of Trust"), (ii) a Regulatory Agreement (the "Bonneville Regulatory Agreement"), (iii) a Deed Restriction (the "Bonneville Deed Restriction"), and (iv) a UCC-1 Financing Statement (fixture filing) (the "Bonneville UCC Fixture Filing") each for the benefit of Bonneville, to secure a multifamily note in the amount of \$4,481,240 (the "Bonneville Note"). The Bonneville Deed of Trust, Bonneville Regulatory Agreement Bonneville Deed Restriction and Bonneville UCC Fixture Filing encumber, among other things, the real property more particularly described in Exhibit A attached to this Agreement (the "Land") and is to be recorded concurrently herewith in the Official Records of Fresno County, California ("Official Records"). The Land, together with all improvements now or hereafter located on the Land and all fixtures and personal property located on the Land and encumbered by any of the Recorded Items (as defined below) are referred to, collectively, as the "Property."

B. A Development Agreement (the “Development Agreement”) among City, Agency’s predecessor and Borrower has been recorded against the Property August 24, 1994 as nos. 94132775, 94132776, 94132777, 94132778 and 94132785 in Official Records.

C. AHP Lender is the current owner and holder of a loan evidenced by a promissory note in the original face principal amount of \$564,000 in favor of AHP Lender’s predecessor, secured by a deed of trust (as it and the documents and obligations which it secures may be amended or otherwise modified to the date of recordation of this Agreement the “AHP Deed of Trust”) encumbering the Property recorded August 7, 1966 as no. 96102780 in Official Records, the erroneous reconveyance of which has been corrected pursuant to a Memorandum of Assignment of Deed of Trust, Substitution of Trustee and Cancellation of Erroneous Reconveyance of Deed of Trust; Loan Modification and Assumption Agreement recorded March 20, 2015 as no. 2015-0033128 in the Official Records.

E. The Bonneville Deed of Trust, Bonneville Regulatory Agreement, Bonneville Deed Restriction, Bonneville Fixture Filing, and AHP Deed of Trust are referred to as the “Recorded Items.”

G. It is the intent of the Parties that the order of priority of the Recorded Items as liens on or charges against the Property be as follows:

1. Bonneville Deed of Trust
2. Bonneville Regulatory Agreement
3. Bonneville Deed Restriction
4. Bonneville UCC Fixture Filing
5. Development Agreement
6. AHP Deed of Trust

H. It is a condition precedent to the respective obligations of each Party under the Recorded Items to which it is a party that such Recorded Item unconditionally be and remain at all times a lien or charge on the Property, having priority with respect to the other Recorded Items in the order set forth above, and that each Party specifically and unconditionally subordinate the lien or charge of each of the Recorded Items to which it is a party as necessary in order that the Recorded Items have the relative priority set forth above.

I. In consideration of the mutual benefits accruing to the Parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Bonneville to make the Bonneville Loan, the Parties agree as follows:

AGREEMENT

1. **Priority and Subordination**

(a) Each Recorded Item, and any and all renewals and extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Property, having the relative priority with respect to the other Recorded Items as set forth above. Each Party intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Recorded Items to which it is a party in favor of the lien or charge upon the Property of the other Recorded Items to the extent necessary so that the Recorded Items shall have the relative priority set forth above.

(b) Each Party acknowledges that it has been offered a satisfactory opportunity to review each of the Recorded Items and related documents to the extent that it wishes to review them.

(c) Each Party will enter into a subordination agreement substantially similar to this Agreement with any lender (including but not limited to Bonneville Mortgage Corporation) which refinances the loan to Borrower evidenced by the Bonneville Note and secured by the Bonneville Deed of Trust, the Bonneville Regulatory Agreement, the Bonneville Deed Restriction and the Bonneville UCC Fixture Filing (the "Bonneville Loan").

2. **Reliance.** Bonneville would not make Bonneville Loan without this Agreement.

3. **Recording.** Each Party consents to the recording of the Bonneville Deed of Trust, the Bonneville Regulatory Agreement, the Bonneville Deed Restriction and the Bonneville UCC Fixture Filing and this Agreement.

4. **No Obligation.** Bonneville is not under any obligation to any other Party, nor has Bonneville represented that it will, see to the application of any proceeds of the Bonneville Loan except as may otherwise be set forth in a written agreement (other than this Agreement) executed by Bonneville.

5. **Notice of Default; Opportunity to Cure.**

(a) Each Party shall give each of the other Parties notice of default under each Recorded Item in favor of such Party prior to enforcing remedies for such default against Borrower or the Property, and each of the other Parties shall have the right to cure such default at any time that Borrower would have a right to cure it.

(b) If, prior to a foreclosure sale under a Recorded Item, a Non-Borrower or an entity wholly owned by a Non-Borrower takes title to the Property and cures the default on that Recorded Item, the beneficiary of that Recorded Item will not exercise any right it may have to accelerate the indebtedness secured by that Recorded Item solely by reason of that transfer (or will accept reinstatement if acceleration has already occurred).

(c) In the event a Non-Borrower acquires title to the Property, that Non-Borrower shall have the right to assume and succeed to Borrower's obligations under that Recorded Item and the documents secured by that Recorded Item, under the terms and conditions existing prior to the default, upon compliance with the reasonable requirements of the Non-Borrower which is the beneficiary of that Recorded Item as to assumptions.

6. **Actions by Bonneville; Certain Waivers.** Bonneville, without the consent of or notice to any other Non-Borrower, may enter into amendments of the Bonneville Deed of Trust, the Bonneville Regulatory Agreement, the Bonneville Deed Restriction and the Bonneville UCC Fixture Filing and the documents and obligations secured thereby (collectively, the "Bonneville Loan Documents") in any manner, may release any or all persons or entities liable for any obligation secured by the Bonneville Loan Documents, and may release any or all security for the obligations secured by the Bonneville Loan Documents, all without affecting the subordination under this Agreement. Notwithstanding the above, Bonneville shall not amend the Bonneville Loan Documents in any manner which would change the economic terms of the Bonneville Loan (e.g., interest rates, terms thereof, monthly or annual fees, principal amount or repayment terms) as such terms exist as of the date hereof, without the prior written consent of HCD, which consent will not be unreasonably withheld or delayed.

7. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the priority of the lien and charge of the Recorded Items against the Property and all prior understandings and agreements on that subject, if any, are superseded and replaced by this Agreement.

(b) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the state where the Land is located.

(c) **Successors; Assignment.** This Agreement is for the benefit of the Non-Borrowers and their respective successors and assigns, and any provision hereof may be waived or modified by agreement of Non-Borrowers without the consent of Borrower, and without affecting the priority of the liens and charges of the Recorded Items as provided in this Agreement. The heirs, administrators, assigns and successors-in-interest of the Parties shall be bound by this Agreement. This Agreement may be assigned by a Party only as a part of an assignment of such Party's interest in the Property.

(d) **Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered, or two business days after deposit in the U.S. mail, postage prepaid, to the Parties at the addresses set forth below, or to such other place as a Party may from time to time designate for itself by notice to the other Parties. No successor or assign of a Party

shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this subsection.

(e) **Amendment**. This Agreement may be amended only by a writing signed by the Parties, but this clause shall not impair the validity of any further agreements among fewer than all of the Parties as among themselves.

(f) **Legal Costs**. In the event of any litigation, arbitration or other legal proceeding in which any Party seeks to enforce its rights under this Agreement or to recover damages for the breach thereof, the prevailing Party or Parties shall be entitled to recover its legal costs and expenses, including but not limited to attorneys' fees, from the non-prevailing Party or Parties, whether such costs and expenses are incurred in connection with trial court proceedings, on appeal, in bankruptcy or other insolvency proceedings, in post-judgment collection proceedings, or otherwise.

(g) **Counterparts**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all Parties execute each counterpart.

(h) **Authority**. 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.

(Remainder of page intentionally left blank)

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BORROWER:

ORCHARD VILLAGE 188, LP,
a California limited partnership

By: RCC MGP LLC,
a California limited liability company
Its: Managing General Partner

By: Riverside Charitable Corporation,
a California nonprofit public benefit corporation
Its: Sole Member

By: _____
Kenneth S. Robertson, President

By: Benodet Enterprises, LP,
a California limited partnership
Its: Co-Administrative General Partner

By: LCA-GP, LLC,
a California limited liability company
Its: General Partner

By: _____
Chip Patterson, Managing Director and Member

By: Klein Financial Resources, Inc.,
a California corporation
Its: Co-Administrative General Partner

By: _____
Robert N. Klein, President

(Address follows on next page)

Address:

Orchard Village 188, LP
1640 School Street
Moraga, CA 94556

with a copy to:

Law Offices of Patrick R. Sabelhaus
1006 Fourth Street, Sixth Floor
Sacramento, CA 95814
Attention: Patrick Sabelhaus

and to:

Klein Financial Resources, Inc.
2607 Fresno Street, Suite A
Fresno, CA 93721 and also at
550 So. California Avenue
Suite, 330
Palo Alto, CA 94306

and to:

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Stephen C. Ryan

and to:

RCC MGP LLC
c/o Riverside Charitable Corporation
3803 E. Casselle Avenue
Orange CA 92869-5346
Attn.: Kenneth Robertson

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BONNEVILLE:

BONNEVILLE MORTGAGE COMPANY,
a Utah corporation

By: _____
Brent Petersen

Its: President, Multifamily Division

Address:
BONNEVILLE MORTGAGE COMPANY
111 East Broadway, Suite 200
Salt Lake City, Utah 84133
Attention: Brent Peterson

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AHP LENDER:

JPMORGAN BANK AND TRUST COMPANY, NATIONAL ASSOCIATION,
a national banking association

By: _____
Shani Searcy
Its: Authorized Officer

Address:
JPMorgan Bank and Trust Company, National Association
c/o JPMorgan Chase Bank, N.A.
300 South Grand Avenue, 4th Floor
Los Angeles, CA 90071
Attention: Chase Community Development Banking

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CITY:

CITY OF ORANGE COVE,
a municipal corporation

By: _____
Victor Lopez, Mayor

Address:
City of Orange Cove
633 Sixth Street
Orange Cove, CA 93646

AGENCY:

SUCCESSOR AGENCY TO THE CITY OF ORANGE COVE
REDEVELOPMENT AGENCY

By: _____
Victor Lopez, Chairperson

Address:
Successor Agency to the City of Orange Cove Redevelopment Agency
633 Sixth Street
Orange Cove, CA 93646

EXHIBIT A

LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF FRESNO, CITY OF ORANGE COVE, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

BEING A PORTION OF LOT 3 IN SECTION 23, TOWNSHIP 15 SOUTH, RANGE 24 EAST, MOUNT DIABLO BASE AND MERIDIAN, OF ORANGE COVE TRACT NO. 1, ACCORDING TO THE MAP THEREOF, RECORDED IN BOOK 9 PAGE 33 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF SAID LOT 3 AND THE NORTH LINE OF SAID SECTION 23; THENCE SOUTH $00^{\circ} 14' 27''$ EAST, ALONG THE EAST LINE OF SAID LOT 3 A DISTANCE OF 330.09 FEET; THENCE NORTH $89^{\circ} 32' 10''$ WEST, A DISTANCE OF 647.09 FEET TO A POINT ON THE WEST LINE OF SAID LOT 3; THENCE NORTH $00^{\circ} 07' 13''$ WEST, ALONG THE WEST LINE OF SAID LOT 3 A DISTANCE OF 330.13 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 23; THENCE SOUTH $89^{\circ} 31' 54''$ EAST, ALONG THE NORTH LINE OF SAID SECTION 23 A DISTANCE OF 646.40 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PARCEL 1 OF PARCEL MAP NO. 92-02, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 53 PAGE 75 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

APN: 378-021-48

PARCEL 3:

AN EASEMENT FOR THE USE, REPAIR AND DRAINAGE ON, OVER AND ACROSS THE PONDING BASIN PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE UNSUBDIVIDED REMAINDER AS SHOWN ON PARCEL MAP NO. 97-03, IN THE CITY OF ORANGE COVE, COUNTY OF FRESNO, STATE OF CALIFORNIA, RECORDED IN BOOK 58 OF PARCEL MAPS AT PAGES 49, 50 AND 51, FRESNO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 1 OF PARCEL MAP NO. 92-02, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 53 OF PARCEL MAPS AT PAGE 75, FRESNO COUNTY RECORDS; THENCE SOUTH $89^{\circ} 32' 10''$ EAST, ALONG THE SOUTH LINE OF SAID PARCEL 1, A DISTANCE OF 405.00 FEET; THENCE SOUTH $00^{\circ} 07' 13''$ WEST AND PARALLEL TO THE WEST LINE OF LOT 3, IN SECTION 23, TOWNSHIP 15

SOUTH, RANGE 24 EAST, MOUNT DIABLO BASE AND MERIDIAN, OF MAP OF ORANGE COVE, TRACT NO. 1, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 9 OF RECORD OF SURVEYS AT PAGE 33, FRESNO COUNTY RECORDS, A DISTANCE OF 215.00 FEET; THENCE NORTH 89° 32' 10" WEST AND PARALLEL TO THE SOUTH LINE OF SAID PARCEL 1, A DISTANCE OF 405.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 3, THENCE NORTH 00° 07' 13" WEST ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 215.00 FEET TO THE POINT OF BEGINNING.