

AMENDED AND RESTATED JOINT POWERS AGREEMENT OF  
MERCED COUNTY ASSOCIATION OF GOVERNMENTS [MCAG]

This Amended and Restated Joint Powers Agreement is made this 28th day of November, 2007, to continue and further the existence of the Merced County Association of Governments ("MCAG"), and is by and between the County of Merced, the City of Merced, the City of Los Banos, the City of Atwater, the City of Livingston, the City of Dos Palos, and the City of Gustine. This Agreement supersedes the original "Cooperative Agreement" entered into on November 28, 1967, as amended January 19, 1978, May 27, 1982, October 22, 1987, and November 28, 1997. Terms beginning with capital letters are defined in Exhibit A. The County and cities are collectively referred to as the Agencies. MCAG shall continue pursuant to the Act.

RECITALS

1. Common Power. Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code authorizes two or more public agencies to jointly exercise any power common to them.
2. Common Authority. The City of Merced, by virtue of its charter, and the Cities of Los Banos, Atwater, Livingston, Dos Palos and Gustine, and the County of Merced, by virtue of California Government Code §§65600 – 65604, inclusive, possess in common the authority:
  - a) To study, discuss, and develop solutions to area-wide problems of direct concern to the performance of their constitutional and statutory functions and to establish an area planning organization and expend public funds for these purposes.
  - b) To do all acts necessary to participate in federal programs and receive federal funds for health, education, welfare, public works, and community improvement activities, including contracting and cooperating with other Agencies.

3. Orderly Development. The citizens residing within the incorporated and unincorporated areas of Merced County have an interest in the orderly development of their communities.

4. Independent Agency. The continued growth and extensive development within the incorporated and unincorporated areas of Merced County have evidenced the need to create a wholly independent regional agency capable of dealing with area-wide issues and problems.

5. Merced County Association of Governments. The foregoing needs led to the creation and establishment of Merced County Association of Governments on November 28, 1967, which has operated by such name [or as MCAG] from that date to the present.

6. Transportation Authority. MCAG has been designated as the Merced County Transportation Authority.

7. Effects. The establishment of MCAG as the Authority has:

- a) Provided a forum to study and develop solutions to area-wide problems of mutual concern to the Agencies.
- b) Provided efficiency and economy in governmental operations through the cooperation of the Agencies and the pooling of common resources.
- c) Provided for the establishment of a Joint Powers Authority responsible for identifying, planning, and developing solutions to regional problems requiring multi-jurisdictional cooperation.
- d) Provided for the establishment of a Joint Powers Authority capable of developing regional plans and policies and performing area-wide planning duties.
- e) Facilitated cooperation among and agreement between the Agencies for specific purposes, interrelated developmental actions, and for the

adoption of common policies with respect to issues and problems which are common to the Agencies.

f) Allowed for imposition of a Regional Transportation Impact Fee with the Authority as the planning, administrative and implementation entity.

8. Amendment. The Agencies desire to amend and restate the "Cooperative Agreement"/Joint Powers Agreement dated November 28, 1967 as subsequently amended.

WHEREFORE, the Agencies do continue and empower the Authority as follows:

#### ARTICLE 1. DEFINITIONS

1.1 Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit A, which is attached and incorporated by this reference.

#### ARTICLE 2. PURPOSE

2.1 This Agreement is made pursuant to the Act to provide for the joint exercise of certain powers common to the Agencies and the additional powers granted under the Act. To the extent currently applicable, those powers and/or functions are set forth in Article 7 below.

#### ARTICLE 3. CONTINUATION OF AUTHORITY

3.1 Continuation. Pursuant to the Act, the Agencies continue the public entity known as the Merced County Association of Governments.

3.2 Separate Entity. The Authority shall be a public entity separate from the Agencies.

3.3 Assets, Rights and Liabilities. The assets, rights, debts, liabilities, and obligations of the Authority shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies. However, nothing in this Agreement shall prevent any Agency from separately contracting for, or assuming responsibility for,

specific debts, liabilities, or obligations of the Authority, provided that both the Board and that Agency approve such contract or assumption.

#### ARTICLE 4. TERM

4.1 Effective Date. This Agreement shall be dated as of and become effective on the date of its execution by the last Agency to adopt it.

4.2 Term. This Agreement shall continue until terminated or dissolved by a vote taken in accordance with Article 11 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the Authority if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of the Authority, including, without limitation, indentures, resolutions, and letter of credit agreements.

#### ARTICLE 5. BOUNDARIES

5.1 Service Area. The Authority shall exercise its powers within its Service Area. If an Agency withdraws from the Authority, the boundary of the Authority shall be modified to exclude the area of the withdrawing Agency.

#### ARTICLE 6. FUNCTIONS/POWERS

6.1 Authority Functions. The Authority will function or continue to function as:

- a. The area-wide planning organization as designated by the United States Department of Housing and Urban Development.
- b. The Metropolitan Planning Organization as designated by the United States Department of Transportation pursuant to Title 23 of United States Code §134 and Title 49 of the United States Code §5303(b)(2).
- c. The Regional Transportation Planning Agency as designated by the Secretary of Business and Transportation of the State of California pursuant to California Government Code §§65080, et seq.

d. The Regional Transportation representative as designated by the parties hereto for the purpose of acting upon any appropriate proposals which may be presented to the Board for consideration or which the Board may elect to take up and for transmission of proposed recommendations to federal, state and local agencies, including, but not limited to, the member entities of MCAG.

e. The designated E.O. 12372 Intergovernmental Review of Federal Programs Clearing Housing and as such review all applications for federal funds by any participating entity wherein such review is a requirement of the particular federal aid program involved.

f. The State Census Affiliate Data Center for Merced County.

g. The agency to administer, coordinate, plan and implement/effectuate the Regional Transportation Impact Fee Program as adopted by the Agencies.

h. The Authority shall perform any functions directed by the Board in furtherance of the foregoing or other programs as determined by the Board.

6.2 Powers. The Authority is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations, subject only to such restrictions upon the manner and exercise of such power as are imposed upon the County of Merced in the exercise of similar powers:

a. Make and enter into contracts.

b. Acquire, improve, hold, lease, and dispose of real and personal property of all types.

c. Accept gifts, donations, advances and contributions and act as regional lead jurisdiction/applicant and grant administrator for grants, including block grants, in the name of Members/regional participants.

- d. Hire agents and employees
- e. Sue and be sued in its own name.
- f. Incur and discharge debts, liabilities and obligations.
- g. Issue bonds or notes and incur other forms of indebtedness, and make associated covenants, for designated purposes, subject to the provisions and limitations of the California Constitution and the Government Code.
- h. Adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.
- i. By majority vote of the Board, add new Member Agencies from within the County of Merced.
- j. Any additional power granted to joint exercise of powers agencies under the Act.
- k. All powers necessary to the exercise of the enumerated powers.

#### ARTICLE 7.

#### ARTICLE 8. ORGANIZATION

8.1 The Board. The Authority shall be governed by the Board, which shall exercise or oversee the exercise of all powers and authority on its behalf. The Board shall meet not less than once yearly and all meetings shall be called, noticed and conducted subject to the Brown Act.

8.2 Directors.

(a) The Board shall consist of each of the five Merced County Supervisors and one elected legislative official from each of the other Member Agencies. As of the date hereof, there are 11 voting Members. No Person shall be eligible for appointment to the Board unless he or she is serving in an elective

position. Each of the city Agencies may appoint one elective Person as an alternate to serve in the absence of an appointed director. Directors and alternate Directors who have been duly appointed and are serving at the time of the restatement of this Agreement may continue to serve in that capacity without any further action of the Member Agency.

(b) Each Director shall hold office from the first meeting of the Board after appointment by the Member Agency until his or her successor is selected by such Member Agency.

8.3 Principal Place of Business. The principal place of business of the Authority shall be located at 369 W. 18<sup>th</sup> Street, Merced, California, 95340.

8.4 Officers.

(a) The Board shall select a Chair and a Vice Chair from among the Directors who shall hold office for a period of one year commencing July 1<sup>st</sup>. The Chair and Vice Chair shall alternate between the Chair of the Merced County Board of Supervisors and a city Agency Member. The positions shall rotate and there shall be no consecutive terms.

(b) Executive Director. The Authority Board shall utilize an Executive Director who shall be the chief executive officer of the Authority.

(c) Secretary. The Authority Board shall utilize the services of a Secretary who shall be an employee of the Authority.

(d) General Counsel. The Authority shall contract with an attorney licensed to practice in the State of California who shall serve as General Counsel to the Authority.

8.5 Designation of Law. As required by section 6509 of the Act, and in the absence of conflicting procedural rules, ordinances and resolutions adopted by the Authority Board, the procedural rules, ordinances and resolutions of the County of Merced are the governing law for the Authority.

## ARTICLE 9. FINANCIAL MATTERS

### 9.1 Financial Matters.

(a) Budget. The Authority shall prepare and submit to the Board a budget and work plan for adoption prior to July 1 of each year for the ensuing Fiscal Year.

(b) Treasurer. The County Treasurer of Merced County shall be the Treasurer of the Authority pursuant to Government Code section 6505.5.

(c) Auditor. The County Auditor-Controller of Merced County shall be the Auditor of the Authority pursuant to Government Code section 6505.5.

(d) Duties of Treasurer and Auditor. The Treasurer and/or Auditor, as appropriate, shall do all of the following:

(1) Provide for the transfer of funds held by the County.

(2) Receive and receipt for all money of the Authority and place it in the treasury of the Treasurer so designated to the credit of the Authority.

(3) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Authority money so held by him or her.

(4) Pay, when due, all sums payable with respect to outstanding indebtedness of the Authority.

(5) Pay any other sums due from the Authority only upon warrants of the public officer performing the functions of auditor or controller who has been designated by this Agreement.

(6) Make or contract to make an annual audit of the accounts and records of the Authority. The minimum standards of the audit shall be those prescribed for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing practices. A report of the audit shall be filed as public record with each of the Agencies within 12 months of the end of the Fiscal Year under examination. Any costs in making an audit in accordance

with this Agreement shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

(7) Draw warrants to pay demands against the Authority when the demands have been approved by any Person authorized to so approve in this Agreement.

(8) File an official bond with Merced County in an agreed amount pursuant to section 6505.1 of the Act.

(9) Perform any and all other functions necessary to effectuate this Agreement.

(e) Insurance.

(1) The Authority shall maintain general liability insurance relating to its enumerated functions and shall indemnify, protect, defend and hold harmless all of the Member Agencies. This indemnity shall include Environmental Laws as herein defined.

(2) Notwithstanding Government Code section 895, et seq., liability imposed on the Authority or any Member relating to Authority functions, shall be apportioned proportionately among all Member Agencies based upon population.

#### ARTICLE 10. WITHDRAWAL FROM THE AGENCY

10.1 Withdrawal Conditions. A Member may not withdraw from the Authority unless and until that Member achieves the following:

a. The liquidation in full of its proportion of any and all existing debts, obligations and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including, but not limited to, certificates of participation, notes, revenue bonds and other indebtedness, if any, as determined by the Board. The liabilities of a withdrawing Member shall specifically include those resulting from acts or

omissions when the withdrawing Member was a participating Member of the Authority.

b. The provision to the Authority of a written notice of intent to withdraw from the Authority at least twelve (12) months prior to the end of the current Fiscal Year, specifying the date on which the Member intends to withdraw.

c. The approval of such withdrawal by a two-thirds affirmative vote of the Board.

## ARTICLE 11. TERMINATION

11.1 Termination Requirements. This Agreement may only be terminated by consent of all Members, and upon full and complete liquidation of all liabilities, including, but not limited to, certificates of participation, notes, revenue bonds and other indebtedness, if any. Upon the date of termination ("Termination Date"), payment of any and all obligations and division of any and all assets of the Authority shall be conducted subject to the then applicable requirements of the law (currently Section 6511, et seq., of the Act) as follows:

(a) In the event of termination of the Authority where there is a successor public entity that will conduct all of the activities and assume all of its obligations, any and all Authority assets and liabilities remaining upon termination shall be transferred to the successor public agency.

(b) If there is no successor public agency that would conduct the Authority's activities, all assets and liabilities, including surplus money, shall be apportioned to each Member in proportion to population.

(c) If there is a successor public agency that would conduct some of the Authority's activities, then the Board shall allocate the Authority's assets and liabilities, including surplus money, between the successor public agency and the Members. In such case the Member's portion of the allocation shall be based on subparagraph (b) above.

(d) By unanimous agreement of the Members, assets and liabilities may be disposed of, divided or distributed on a basis different from that established in this Article 11.

#### ARTICLE 12. BYLAWS

12.1 Bylaws. Bylaws may be adopted by the Board pursuant to which meetings of the Board shall be called. The Bylaws shall contain appropriate provisions for the transaction of business and describe the duties and powers of the Chair and Vice Chair and such other officers as may be appointed. The Bylaws may be amended from time to time by majority vote of the Board after notice in accordance with the Bylaws.

#### ARTICLE 13. AMENDMENTS

13.1 This Agreement may only be amended by the affirmative vote of two-thirds of the Members of the Board of Directors, except that Article 11 may not be amended without the agreement of all the Members. Furthermore, no amendment may add to the duties or obligations of a Member without the agreement of such Member.

#### ARTICLE 14. MISCELLANEOUS

14.1 Filing with the Secretary of State. All notices required by Government Code §§6503.5 and 53051 shall be filed by the Authority with the California Secretary of State.

14.2 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of each Member. Notwithstanding the foregoing, no Member may assign any right or obligation hereunder without the written consent of all other Members.

14.3 Severability. If any provision of this Agreement or its application to any Person or circumstances is held invalid or illegal by a final judgment of a court

law in the State of California, the remainder of this Agreement and the application of the provision to other Persons or circumstances shall not be affected.

14.4 Headings. All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

14.5 Conflict of Interest Code. The Authority has adopted a conflict of interest code.

14.6 Arbitration. The Members desire to avoid the expense and delay associated with litigation, and therefore agree to submit any and all disputes which cannot be resolved by a good-faith effort to meet and confer to binding arbitration pursuant to the following terms. Despite the fact that such binding arbitration is pursuant to contract, it shall be conducted based on local (Merced County) and state rules of judicial arbitration. There shall be one arbitrator. He or she shall be chosen from the then active list of arbitrators maintained by the Merced County Superior Court Arbitration Administrator. The party seeking arbitration shall commence the case with a letter request which shall set forth, in clear and concise terms, the nature of the dispute and shall further list three names from the above-mentioned list of arbitrators agreeable to the requesting party. Within five days the other party shall select one of the listed attorneys, or submit a list of three names to the requesting party, who may within five days select one of the other parties' listed attorneys. If the parties cannot agree on the arbitrator, they shall submit the issue of appointment to the Presiding Judge of the Merced County Superior Court as though it is an ex parte hearing. None of the previously listed attorneys may be selected as an arbitrator. The arbitrator shall set the matter for hearing within sixty (60) days of his or her appointment. After submission of the matter the arbitrator shall issue a decision within ten (10) days. The decision of the arbitrator shall be

final and binding, and may be enforced as a judgment in the Merced County Superior Court.

IN WITNESS WHEREOF, the Members have caused this Agreement to be duly executed and attested by their respective officers, duly authorized so to act, as of the date set forth in the first paragraph of this Agreement.

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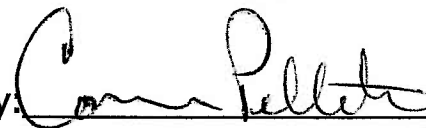
COUNTY OF MERCED

By:   
Chair – Board of Supervisors

JUL 17 2007

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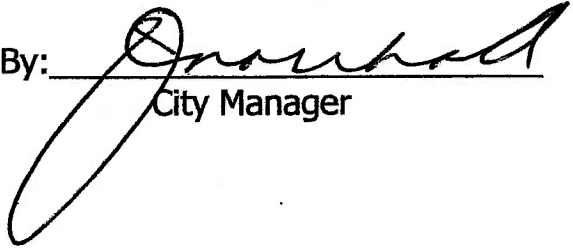
CLERK

By:   
Deputy Clerk


APPROVED AS TO FORM:

By:   
County Counsel

CITY OF MERCED  
A Municipal Corporation

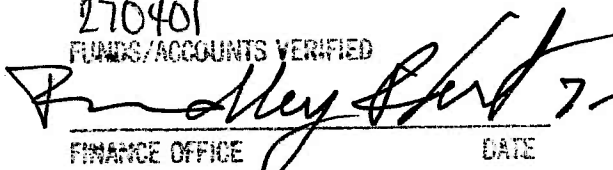
By:   
City Manager

ATTEST:  
JAMES G. MARSHALL, CITY CLERK

By:   
Deputy City Clerk

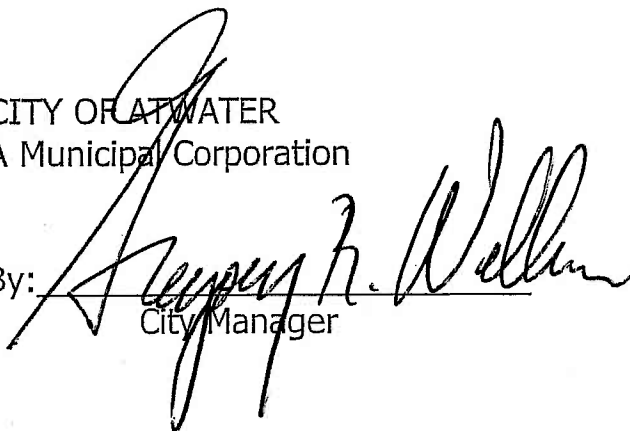
APPROVED AS TO FORM:

By:  7/11/2007  
City Attorney

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 7-11-07  
FINANCE OFFICE DATE  
NO Funds Required. New 7/11/07  
57

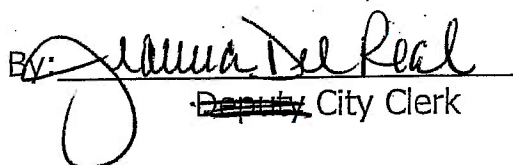
CITY OF ATWATER  
A Municipal Corporation

By:

  
City Manager

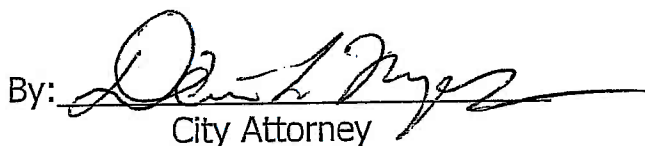
ATTEST:  
CITY CLERK

By:

  
~~Deputy~~ City Clerk

APPROVED AS TO FORM:

By:

  
City Attorney

CITY OF LOS BANOS  
A Municipal Corporation

By:   
City Manager

ATTEST:  
CITY CLERK

By: Lucia L. Macree  
Deputy City Clerk

APPROVED AS TO FORM:

By:   
City Attorney

CITY OF LIVINGSTON  
A Municipal Corporation

By:   
City Manager

ATTEST:  
CITY CLERK

By:   
Deputy City Clerk

APPROVED AS TO FORM:

By:   
City Attorney

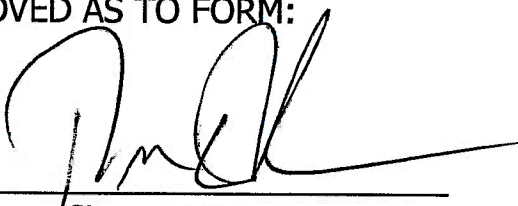
CITY OF GUSTINE  
A Municipal Corporation

By:  \_\_\_\_\_  
City Manager

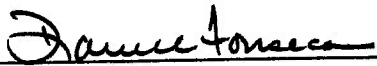
ATTEST:  
CITY CLERK

By:  \_\_\_\_\_  
Deputy City Clerk

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
City Attorney


CITY OF DOS PALOS  
A Municipal Corporation

By:   
City Manager , Darrell Fonseca

ATTEST:  
CITY CLERK

By:   
Gloria Calistro, City Clerk

APPROVED AS TO FORM:

By:   
City Attorney , Edward Amaral

## EXHIBIT A

### DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified below.

#### Act

"Act" means the California Joint Exercise of Powers Law (California Government Code Section 6500 et seq.)

#### Agency/Agencies

"Agency/Agencies" means the public entities which are or have been Members of the Authority.

#### Agreement

"Agreement" means this Amended and Restated Joint Exercise of Powers Agreement, as it may be amended from time to time.

#### Auditor

"Auditor" means the Auditor-Controller of the County of Merced.

#### Authority

"Authority" means the Merced County Association of Governments [MCAG].

#### Board

"Board" means the governing Board of Directors of the Authority, consisting of the five Members of the Merced County Board of Supervisors and one Mayor or Council person from each of the six incorporated municipal Agencies, for a total of 11 Directors as more fully described in Article 10 of this Agreement.

#### Chair

"Chair" means the Chair of the Authority Board, as described in Article 8 of this Agreement and the Bylaws.

## Director

“Director” means the Agency representatives who serve on the governing Board of Directors.

## Effective Date

“Effective Date” means the effective date of this Agreement, which is \_\_\_\_\_, 2006.

## Environmental Laws

“Environmental Laws” means all federal and state statutes; and all county, local, and Agency ordinances concerning public health, safety, and the environment including, by way of example and not limitations, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601, et seq.; the Resource Conservation and Recovery Act, 42 USC §6902, et seq.; the Federal Clean Water Act, 33 USC §1251, et seq.; the Toxic Substances Control Act, 15 USC §1601, et seq.; the Occupational Safety and Health Act, 29 USC §651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100, et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5, et seq.; the California Integrated Waste Management Act, California Public Resources Code §40000, et seq., as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

## Fiscal Year

“Fiscal Year” means the period commencing on each July 1 and ending on the following June 30.

## Legislation

“Legislation” means any code, ordinance, resolution, or any other forms or enactment of the Agencies or any Member which now exists or which may hereafter be adopted which constitutes law or regulation.

## Member

"Member" means any one of the public entities listed in Exhibit B and any public entity that becomes a new member in accordance with this Agreement.

## Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, special purpose district, town, city, county, state, or the United States.

## Service Area

"Service Area" means all territory within Merced County.

## Term

"Term" means the period of time specified in Article 4 of this Agreement.

## Treasurer

"Treasurer" means the Merced County Treasurer.

EXHIBIT B

MEMBERS

County of Merced

City of Merced

City of Los Banos

City of Atwater

City of Livingston

City of Gustine

City of Dos Palos