

AMENDMENT NO. 1

Dated: October 26, 2020

City Council Special Meeting Agenda



OCTOBER 27, 2020

5:00 p.m.

City of Turlock Yosemite Room

156 S. Broadway, Turlock, California

NOTICE: THIS MEETING WILL BE HELD IN ACCORDANCE WITH EXECUTIVE ORDER N-29-20, ISSUED BY CALIFORNIA GOVERNOR GAVIN NEWSOM ON MARCH 17, 2020, THE RALPH M. BROWN ACT (CALIFORNIA GOVERNMENT CODE SECTION 54950, ET SEQ.), AND THE FEDERAL AMERICANS WITH DISABILITIES ACT.

THIS MEETING WILL NOT BE PHYSICALLY OPEN TO THE PUBLIC.

THE MEETING WILL BE STREAMED ON THE CITY OF TURLOCK WEBSITE AT WWW.CITYOFTURLOCK.ORG AND BROADCASTED ON SPECTRUM CHANNEL 2.

MEMBERS OF THE PUBLIC MAY ALSO PARTICIPATE IN THE MEETING VIA THE FOLLOWING METHODS:

JOIN BY CLICKING ON THE MEETING LINK: <https://us02web.zoom.us/j/84924629186>

OR

**JOIN BY ACCESSING THE ZOOM WEBSITE: <https://zoom.us/join>
WEBINAR ID: 849 2462 9186**

OR

**JOIN BY TELEPHONE: 669-900-6833
WEBINAR ID: 849 2462 9186**

Mayor
Amy Bublak

Council Members

Nicole Larson

Gil Esquer

Andrew Nosrati

Becky Arellano

Vice Mayor

City Manager
Toby Wells, P.E.
City Clerk
Jennifer Land
City Attorney
Douglas L. White

NOTICE REGARDING NON-ENGLISH SPEAKERS: The Turlock City Council meetings are conducted in English and translation to other languages is not provided. Please make arrangements for an interpreter if necessary.

EQUAL ACCESS POLICY: If you have a disability which affects your access to public facilities or services, please contact the City Clerk's Office at (209) 668-5540. The City is committed to taking all reasonable measures to provide access to its facilities and services. Please allow sufficient time for the City to process and respond to your request.

NOTICE: Pursuant to California Government Code Section 54954.3, any member of the public may directly address the City Council on any item appearing on the agenda, including Consent Calendar and Public Hearing items, before or during the City Council's consideration of the item. Members of the public will be allowed three (3) minutes for comments.

AGENDA PACKETS: Prior to the City Council meeting, a complete Agenda Packet is available for review on the City's website at www.cityofturlock.org and in the City Clerk's Office at 156 S. Broadway, Suite 230, Turlock, during normal business hours. Materials related to an item on this Agenda submitted to the Council after distribution of the Agenda Packet are also available for public inspection in the City Clerk's Office. Such documents may be available on the City's website subject to staff's ability to post the documents before the meeting.

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0. A. CALL TO ORDER
 - B. ROLL CALL
 - C. DECLARATION OF CONFLICTS

1. **APPROVAL OF AGENDA AS POSTED OR AMENDED**

This is the time for the City Council to remove items from the agenda or to change the order of the agenda. Matters may be taken up out of order of the established agenda by a four-fifths vote of the City Council.

2. **PUBLIC PARTICIPATION – LIMITED TO ITEMS DESCRIBED IN THE NOTICE FOR THIS MEETING**

MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE CITY COUNCIL WILL BE GIVEN THE SAME TIME ALLOTMENT FOR COMMENTS (3 MINUTES) AS NORMALLY ALLOWED FOR MEETINGS SUBJECT TO THE PROVISIONS OF EXECUTIVE ORDER N-29-20.

Pursuant to California Government Code Section 54954.3(a), this is the time set aside for citizens to address the City Council concerning any item that has been described in the notice for this meeting, including Consent Calendar items, before or during consideration of that item. You will be allowed three (3) minutes for your comments. If you wish to speak regarding an item on the agenda, you may be asked to defer your remarks until the Council addresses the matter.

3. **ACTION ITEMS:**

- A. Request to ratify the final Memorandum of Understanding (MOU) with the County of Stanislaus as more fully described in the Attachment and authorize the City Manager to execute all necessary documents (*Wells*)

Recommended Action:

Motion: Ratifying the final Memorandum of Understanding (MOU) with the County of Stanislaus as more fully described in the Attachment and authorizing the City Manager to execute all necessary documents

4. **CLOSED SESSION:**

- A. Conference with Labor Negotiators, Cal. Gov't Code §54957.6(a)
"Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation."

Agency Designated Representative: City Manager Toby Wells

Employee Organization: Turlock Associated Police Officers

Employee Organization: Turlock City Employees Association

Employee Organization: Turlock Firefighters Association-Local 2434

Employee Organization: Turlock Management Association-Public Safety

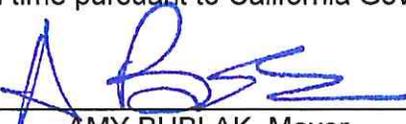
Unrepresented Employees: Accountant, Sr., Administrative Analyst, Administrative Services Director, Assistant to the City Manager for Economic Development/Community Housing, Chief Building Official, City Clerk, Community Housing Program Supervisor, Deputy Director Development Services/Planning, Development Services Director, Development Services Supervisor/City Surveyor, Executive Administrative Assistant/Deputy City Clerk, Executive Administrative Assistant/Municipal Services, Executive Administrative Assistant/Public Safety, Fire Chief, Human Resources Analyst, Sr., Human Resources Manager, Human Resources Technician, Information Technology Manager, Legal Assistant, Municipal Services Deputy Director, Municipal Services Director, Office Assistant I, Parks, Recreation and Public Facilities Director, Parks, Recreation and Public Facilities Manager, Payroll Coordinator, Police Business Unit Supervisor, Police Chief, Principal Civil Engineer, Regulatory Affairs Manager, Transit Manager, Utilities Manager, and Water Quality Control Division Manager.

- B. *Public Employee Performance Evaluation*, Cal. Gov't Code §54957(b)(1)
"Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session."
Title: City Attorney

5. REPORTS FROM CLOSED SESSION

6. ADJOURNMENT

The foregoing meeting is hereby called by Mayor Amy Bublak at the above mentioned date and time pursuant to California Government Code §54956.



AMY BUBLAK, Mayor

City Council Staff Report

October 27, 2020



3A

From: Maryn Pitt, Assistant to the City Manager for
Economic Development and Housing

Prepared by: Maryn Pitt, Assistant to the City Manager for
Economic Development and Housing

Katie Quintero, Deputy Director Development Services

Agendized by: Toby Wells, P.E., City Manager

1. ACTION RECOMMENDED:

Motion: Ratifying the final Memorandum of Understanding (MOU) with the County of Stanislaus as more fully described in the Attachment and authorizing the City Manager to execute all necessary documents

2. SYNOPSIS:

This action ratifies the final version of a Memorandum of Understanding (MOU) with Stanislaus County in exchange for the extension of municipal services and authorizes the City Manager to execute an out-of-boundary service agreement and apply to LAFCO to extend water and sewer services outside the jurisdictional boundary of the City of Turlock as originally approved by the City Council on October 13, 2020.

3. DISCUSSION OF ISSUE:

At the August 22, 2018 regular City Council meeting, the Council acted to provide notice to terminate a long-standing agreement, called the Third Restated Mutual Support Agreement, with Stanislaus County. This agreement, dated July 19, 1994, focused on land use policies, the collection of County-wide Public Facilities Fees by the City, and the collection of the City's Public facilities Fees within the City's sphere of influence. Further, it served as a legal settlement of the lawsuit entitled City of Turlock v. County of Stanislaus, et al., Patchett's Motor, Inc., and C. Kenneth Sanders, Stanislaus County Superior Court Case No. 301599, and other potential development projects between Taylor and Keyes Road. The agreement required the City to make Taylor Road the northern most boundary of the City unless the County consents to additional expansion beyond that point. The amendment also required the County not to oppose the City's request(s) before

LAFCO for the expansion of the City's sphere of influence to the west of Highway 99 for the "Northwest Triangle Specific Plan area".

To ensure the provisions of the agreement, the Turlock Redevelopment Agency recorded deed restrictions on the parcel at 5202 North Golden State Boulevard, to ensure that the development of an automobile dealership would be prohibited for the thirty-five-year restriction and would remain in force (until 2033). The deed restriction served its purpose in the aftermath of the legal settlement between the City of Turlock and the County of Stanislaus.

The proposed Memorandum of Understanding (MOU), as Attached, sets forth the terms and conditions of a sales tax sharing agreement and is patterned largely from the current agreement the County of Stanislaus has executed with the City of Modesto for the North McHenry area that was developed with a large number of automobile dealerships adjacent to but outside the Modesto City limits. The proposed agreement is parcel specific and only applies to 5202 and 5200 North Golden State Boulevard. Any other connections for municipal services will require additional written agreements with the County and will be brought back to Council for ratification.

To extend water and sewer lines to the existing Price Ford Dealership and to the adjacent vacant lot, the City will have to apply to LAFCO for approval of an out-of-boundary service connection because the parcels are outside the jurisdictional boundary of the City of Turlock.

On October 13, 2020, Council approved all of the projects and the draft MOU. Final negotiations with the County have been completed and the final version of the MOU is attached for consideration. The primary terms of the agreement have not been changed. Stanislaus County Board of Supervisors is scheduled to consider the MOU as a consent item at 9:00 am on October 27, 2020.

4. BASIS FOR RECOMMENDATION:

- A. Price Ford has been awarded an additional franchise for a second automobile dealership that they would like to locate on the adjacent parcel, 5202 North Golden State, that has the lien restriction recorded on. In addition, the existing dealership located at 5200 North Golden State has health and safety issues relative to their potable water supply that is produced from their onsite well. In order for the dealership to move forward in the planning entitlement process as well as development and construction, the easement (lien) must be released. City Engineering staff have completed the design and bid package for the extension of water and sewer services from the City limit line at Golden State Boulevard and Taylor Road out to the parcels and must obtain approval from LAFCO to extend utilities and provide services outside the City limits.

- B. The rescission of this easement (lien) and approval of the Memorandum of Understanding are the initial steps necessary for the development of this additional local car dealership. The "Can and Will Serve" letter from the City is required for the land use entitlement to be able to move forward with Stanislaus County. The City must also apply to the Stanislaus County Local Agency Formation Commission (LAFCO) for the out of boundary municipal services request.
- C. The final version of the MOU is consistent with the negotiated terms and conditions and is necessary to move the project forward.

5. FISCAL IMPACT / BUDGET AMENDMENT:

Fiscal Impact:

All parcels which connect to the newly extended water and sewer lines outside the city limits will be subject to the standard connection charges. In addition, through the MOU, the City will also realize additional sales tax revenue from the new dealership based on a 50/50 split. The sales tax will be apportioned to each jurisdiction as part of the regular sales tax process. It is estimated that Turlock will realize in the range of \$100,000 to \$200,000 of additional sales tax annually.

6. CITY MANAGER'S COMMENTS:

Recommend Approval.

7. ENVIRONMENTAL DETERMINATION:

The project consists of the extension of a water and sewer main and allowing the properties located at 5202 and 5200 North Golden State Boulevard to connect to the extended services. The project involves a minor expansion of the utility and is therefore exempt from CEQA under Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines.

8. ALTERNATIVES:

- A. The Council could defer acting on this item until a later date. This option is not recommended by staff. Staff began work on this effort in 2018 by rescinding the previous agreement. Price Ford needs to move forward with their entitlement process and meet performance benchmarks as part of the new franchise dealership contract.

TAX SHARING AGREEMENT

BETWEEN

THE COUNTY OF STANISLAUS

AND

THE CITY OF TURLOCK

DATED: OCTOBER , 2020

TAX SHARING AGREEMENT

THIS TAX SHARING AGREEMENT ("Agreement") is entered into by and between the **COUNTY OF STANISLAUS**, a subdivision of the State of California ("County") and the **CITY OF TURLOCK**, a California municipal corporation ("Turlock "). The City is referred to herein as "City", or "Cities", and the City and County may sometimes be referred to herein individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

RECITALS

The Parties enter into this Agreement based on the following facts, understandings and intentions:

WHEREAS, the City of Turlock and the County of Stanislaus entered a Mutual Support Agreement dated November 24, 1987, the purpose of which was to deal with impacts of growth for both the City and the County; and

WHEREAS, the City and the County entered into three subsequent amended versions of the Mutual Support Agreement, dated June 27, 1989, July 11, 1989, and the Third Amended Mutual Support Agreement, dated July 19, 1994; and

WHEREAS, the City provided the County notice of termination of the Mutual Support Agreement on August 29, 2018; and

WHEREAS, City and County desire to create a model of cooperation and revenue sharing in the North Golden State Boulevard area north of Taylor Road area in City; and

WHEREAS, this Agreement specifically pertains to Assessor Parcel no. 045-053-038 (referred to hereinafter as "Price Honda") a 5.94-acre parcel and Assessor Parcel no. 045-053-039 (referred to hereinafter as "Price Ford") a 6.79-acre parcel, and as more particularly shown on Assessor Parcel Map Book 45 page 53, attached hereto as **Exhibit A**.

WHEREAS, City and County desire to remove impediments so that businesses may capitalize on opportunities for development and expansion without being concerned by jurisdictional financial concerns; and

WHEREAS, businesses should not become entangled in disputes between City and County over revenue allocations, jurisdictional boundaries and development standards; and

WHEREAS, article VIII, section 29(b) of the California Constitution and Government Code sections 55700-55707 authorizes cities and counties to share between them the revenue derived from any sales or use tax imposed by them and collected for them by the State of California under the Bradley-Burns Uniform Local Sales and Use Tax Law, when the resolution or ordinance proposing such contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract; and

WHEREAS, the goals of the Parties in entering this Agreement are as follows:

- A. Agree upon a revenue sharing formula for all existing and future uses at the Price Honda property;
- B. Establish the City as the provider of water and waste water services for Price Ford and Price Honda; and

- C. Dedicate sales tax revenue for the planning, design and construction of the Taylor Road Interchange at Highway 99.

The Parties hereby agree as follows:

1. *Definitions*

A. "CDTFA" means the California Department of Tax and Fee Administration and any successor agency.

B. "Sales Tax Revenues" means that portion of the Sales Tax, if any, attributable to Taxable Sales, paid by Price Honda and which is allocated and received by County pursuant to the Sales Tax Law. Local Sales Tax Revenues will not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local law, rule or regulation, (v) any Sales Tax attributable to any transaction not consummated prior to the effective date of this agreement, (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside or pledged to a specific use other than for deposit into or payment from a Party's general fund, or (vii) any Sale Tax paid in error or which is subject to correction, adjustment or offset pursuant to an amended return or otherwise where the effect of the error, adjustment or amendment is to change the amount of Sales Tax attributable to Taxable Sales.

C. "Sales Tax" means all sales and use taxes levied under the authority of the Sales Tax Law attributable to Taxable Sales, excluding Sales Tax which is to be refunded to Price Honda because of an overpayment of Sales Tax.

D. "Sales Tax Law" means (i) California Revenue and Taxation Code Section 6001 et seq., and any successor law thereto, including the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code § 7200 et seq.), and any successor law thereto, (ii) any legislation allowing other public agency with jurisdiction in the City to levy any form of Sales Tax on the operations of Fisher Scientific and/or the Distribution Center, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof.

E. "Taxable Sales" means the commercially reasonable business practices and activities of the Price Honda associated with the sale or lease of Material.

F. "Material" means any and all tangible personal property which is offered for sale or lease and which is subject to the Sales Tax Law.

G. "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected.

2. *Term*

This Agreement shall take effect upon being fully executed by all Parties and be effective for a period of twenty (20) years, unless sooner terminated as provided herein. This Agreement will be automatically extended four (4) times ("Extension"), with each Extension extending the Term of

the Agreement an additional five (5) years, unless otherwise terminated sooner or the Parties mutually agree to modify the Agreement pursuant to the provisions herein.

3. *Sales Tax Revenue Collection and Share*

A. The Parties agree that each shall receive fifty percent (50%) of the Sales Tax Revenues generated from Price Honda beginning the first day of the month immediately following full execution of this Agreement by all Parties.

B. This Agreement shall not apply to any general or special sales and use tax which might be adopted by the County at any time and the County shall retain one hundred percent (100%) of any such special sales or use tax.

C. The Parties agree that there may be changes in the facts and/or amendments to the current law after the effective date of this Agreement that may change the distribution of sales tax to the County or City under this Agreement. The Parties recognize that legislation may be enacted or a court may issue an order that affects or changes the revenues from the subject properties which may impact the type of revenues, the percentage of taxes or fees, the person or entity subject to the taxes and fees, or the manner in which the revenues are distributed to entities. Therefore, if either Party believes that any change in law, whether by legislation or Court decision has occurred that is inconsistent with a Parties' intent, that Party may request and negotiate in good faith a revision of the Agreement to conform with the intent of this Agreement.

4. *Reconciliation of Sales Tax Revenue and Payments*

A. As soon as possible following the end of each Fiscal Year ("Fiscal Year," means any year commencing on July 1 of any calendar year and ending on June 30 of the subsequent year), the County's Auditor Controller's Office and City's Director of Finance, shall reconcile the amount of the sales tax payments made to the county based on (1) the actual amount received by the County from the CDTFA attributable to the Price Honda; and (2) the allocation percentages enumerated in this Agreement between the Parties. If at any time this reconciliation shows an overpayment was made to the City, the County shall notify the City of the overpayment. The County and the City shall work together to determine the true overpayment. The County shall make an adjustment for the overpayment from the next payment due to the City. If the County makes an underpayment to the City, the County and the City shall work together to ascertain the true amount of the underpayment, and the County shall include the under paid amount in the next payment due to City.

B. If at any time during or after the term of this Agreement, the CDTFA discovers that any portion of Sales Tax Revenue attributed to the Price Honda property was inaccurately allocated and paid to the County, and CDTFA requires repayment or offsets against future distribution of County Sales Tax Revenues, the County shall make a written request for repayment from the City of any amount that was improperly paid to the City. If the City fails to make such repayment within ninety (90) calendar days after the County's written demand, and notwithstanding the provisions of Government Code § 907, the County may satisfy such repayment from any City funds on deposit with the County without additional notice and the repayment obligation of the City shall accrue simple interest of two percent (2%) per annum as of the 91st day from the County's written request.

C. The County Auditor Controller shall work with a designee of the City Manager to make a final reconciliation of the Sales Tax Revenues received by County attributable to Price Honda for

the payments made to City pursuant to this Agreement. The Parties shall notify each other of any over or under payment amounts. The Parties agree to reimburse each other for all underpayments or overpayments identified in the final reconciliation within three months of the date of the notification to the other Party. Should either Party fail to make a required reimbursement within three (3) months, the reimbursement obligation shall accrue interest commencing on the 91st day after the notification to City or County at a two percent (2%) interest rate on the outstanding obligation, compounded monthly, until paid. Notwithstanding the provisions of Government Code § 907, the County may satisfy such repayment from any City funds on deposit with the County without additional notice.

5. *Taylor Road Interchange at Highway 99*

A. The City and County will each set aside Five Hundred Thousand Dollars (\$500,000) over a 10-year period from their respective shares of the Sales Tax Revenues generated by the Price Honda property for a cumulative amount of One Million Dollars (\$1,000,000) (the "Sales Tax Reserve"). This Sales Tax Reserve is to be used as seed funding for the planning and development of improvements required for the Taylor Road Interchange project at Highway 99.

B. The Parties will establish an interest-bearing fiduciary fund to hold the Sales Tax Reserve from Price Honda. Each party is responsible to ensure that at the end of the 10-year period the amount set aside in their respective fiduciary fund equals Five Hundred Thousand Dollars (\$500,000). Each Party will on an annual basis deliver a report to the other party of the balance set aside in their fiduciary fund.

C. The Parties will meet and confer in the 5th year of this Agreement if the Sales Tax Revenues from Price Honda do not average One Hundred Thousand Dollars (\$100,000) annually over the five-year period.

D. The City will act as the lead agency for development, design and construction of the Taylor Road Interchange project at Highway 99 and will work cooperatively with the County in project development.

6. *[Reserved]*

7. *Water and Wastewater Service*

The City shall extend water and wastewater services to the frontage of both Price Ford and Price Honda. The extension of City services is conditioned upon the property owner for Price Ford, and Price Honda, executing an out of boundary service agreement with City and that the out of boundary service extension is approved by LAFCO. The County agrees not to oppose the extension.

8. *Conditions.* The obligations and duties arising under this Agreement are contingent upon the following:

A. The Price Ford and Price Honda properties remaining within the unincorporated area. If the City annexes either, notwithstanding paragraph 9 below, this Agreement terminates on the first day of the next sales quarter following the effective date of the annexation as established by LAFCO.

B. The Price Ford and Price Honda properties are developed and continuously operated as vehicle dealerships and that the vehicle dealerships are operated in a commercially reasonable fashion and that together generate average annual Sales Tax Revenues of not less than \$100,000 for a period of ten (10) years commencing from the effective date of issuance of the certificate of occupancy for Price Honda.

C. The City extends water and wastewater services to the Price Ford and Price Honda as provided herein.

9. *Termination of Agreement.* This Agreement shall automatically terminate as to any property of Price Ford or Price Honda that is annexed, in whole or part, into the City. This Agreement may only otherwise be terminated by mutual agreement of the Parties.

10. *Indemnification.* Each Party shall indemnify, hold harmless, save and defend the other Party, their officials, agents and employees from and against any and all claims, demands, damages, causes of action, liens, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, arising out of or in connection with this Agreement. The foregoing shall not apply to the sole negligence of one of the Parties or its officers or employees.

11. *Mutual Defense of Agreement.* If the validity of this Agreement is challenged by a non-party, the Parties shall defend jointly against the legal challenge and shall share equally, damages awarded and any costs and fees awarded against a Party. Each Party shall promptly notify the other Parties of the pendency of any action initiated by a non-party that challenges the validity of this Agreement. The choice of counsel for defending such non-party action shall be made by the County, with the concurrence of the City Manager for City.

12. *Costs of Suit as Between the Parties.* If any Party determines to bring legal action related to the obligations and duties arising under this Agreement, each Party shall bear their own costs, expenses, and fees incurred.

13. *Assignment.* No Party may assign its rights, obligations or interests under this Agreement, directly or indirectly, voluntarily or by operation of law, without the prior written approval of each non-transferring Party. Such consent shall not be unreasonably withheld.

14. *Entire Agreement.* This Agreement constitutes the entire Agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the Parties in interest at the time of such modification.

15. *Amendments.* This Agreement may be amended only by a writing executed by the Parties hereto.

16. *Notices:* Any notices, documents, correspondence or other communications concerning this Agreement or the obligations or duties hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

City of Turlock Attn: City Manager 156 S. Broadway, Ste. 230 Turlock, CA 95380	County of Stanislaus Attn: Chief Executive Officer 1010 10 th Street, Suite 6400 Modesto, CA 95354
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17. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

18. *No Third-Party Beneficiary Rights.* This Agreement is entered into for the sole benefit of the Parties hereto and no other person or entity is intended to be direct or incidental beneficiaries of this Agreement and no third-party shall have any right in, under or to this Agreement.

19. *Severability.* If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, all parties shall substitute such provision(s) through good faith negotiations.

20. *Construction.* The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

