

MEMORANDUM OF AGREEMENT BY AND AMONG THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH ITS GENERAL SERVICES ADMINISTRATION, THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER AND THE CITY OF MERCED REGARDING THE CONVEYANCE, REHABILITATION AND PRESERVATION OF THE MERCED FEDERAL BUILDING AND POST OFFICE

WHEREAS, the General Services Administration, is the federal agency that owns and operates the real property located at 415 West 18th Street, Merced, California including the Property located thereon and commonly known as the “Merced Federal Building and Post Office” (the “Property”); and

WHEREAS, the Property is listed on the National Register of Historic Places; and

WHEREAS, acting upon the request of the City of Merced (City), the United States of America is proposing to convey the Property to the City of Merced pursuant to the Public Benefit Allowance authority set forth in 40 U.S.C. 550(h) and the regulation promulgated thereunder; and

WHEREAS, the City of Merced is acquiring the Property in order to use it as a Historic Monument and proposes to alter the Property in order to adapt the Property for these purposes; and

WHEREAS, in accordance with 36 C.F.R. §800.6(a)(1), GSA has consulted with the California State Historic Preservation Officer (SHPO) and notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR §800.6(a)(1)(iii); and

WHEREAS, the City of Merced participated in this consultation and has been invited to concur in this Memorandum of Agreement (MOA); and

WHEREAS, the City of Merced agrees that the rehabilitation and preservation shall be in accordance with the following stipulations.

NOW THEREFORE, GSA, the SHPO, and the City agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effects of this project on historic properties and to satisfy GSA’s Section 106 responsibilities for all aspects of the project.

Stipulations

A. DEFINITIONS

1. “ACHP” means the Advisory Council on Historic Preservation.

2. "SHPO" means the California State Historic Preservation Officer.
3. "GSA" means the United States General Services Administration.
4. "City" means the City of Merced, California.
5. "Commercially Reasonable Efforts" means that, as and when required hereunder, the party charged with making such efforts is diligently taking, or causing to be taken, in good faith in a commercially reasonable manner the steps that would usually, reasonably and customarily be taken by an experienced real estate developer, lessee or owner, as applicable, under similar circumstances seeking with reasonable diligence to lawfully achieve the objective to which the particular effort pertains.
6. "Consultation" means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. GSA, SHPO and ACHP, with the concurrence of the City, if applicable, may adjust the timing and extent of Consultation, depending upon the urgency of the required action and other factors. The Secretary of Interior's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on Consultation.
7. "Consulting Parties" means, collectively, GSA, SHPO, ACHP, and the City of Merced, or its successors and assigns, and every successor-in-interest to the Property.
8. "Historic Preservation Covenant" means restrictions on the deed for the Merced Federal Building and Post Office.
9. "MOA" means Memorandum of Agreement.
10. "Development" means adaptation of the property for its new use, consistent with the Secretary's Standards.
11. "HSR" means Historic Structures Report prepared by Architectural Resources Group, San Francisco, CA, 1989, including 2006 Amendment. The HSR is a guide that has specified what aspects of the Property are considered historic and fall under the authority of this MOA. Alterations to non-historic portions of the interior of the property need to be considered for their potential to affect historic portions.
12. "Property" means the real property located at 415 West 18th Street, Merced, CA 95340.
13. "Secretary's Standards" means the "Secretary of the Interior's Standards for the Treatment of Historic Properties".
14. "SHBC" means State Historical Building Code, Title 24, Part 8 of the California Administrative Code relating to Building Standards.

15. "Transfer" means (a) conveyance of fee simple title to any parcel of the Property by deed or (b) conveyance of possession of all or substantially all of the Property.

B. PROPERTY DESCRIPTION, HISTORIC SIGNIFICANCE

The City acknowledges and understands that the MERCED FEDERAL BUILDING AND POST OFFICE, located at 415 West 18th Street, Merced, California, is an historic structure, including the site, subject to preservation protections set forth in this MOA. On the National Register, the Property address is listed as 401 West 18th Street, Merced, California. The City hereby acknowledges receipt of the HSR. The Property and setting are described in detail in the HSR which noted, among other items, the following facts:

1. Construction of the Property was completed in 1933. The Property was designed by the architectural firm of Allison and Allison, Los Angeles, California.
2. The Property is significant on a local level to the City of Merced under National Register Criterion A within the context of politics/government and art, and under Criterion C for its architecture.
3. The building is a 15,492 square foot single story, with basement. The building is set back from the street and is roughly centered on its site. A staircase leads to the public entrance on the south side of the Property. The staircase has granite steps and is flanked by low granite walls, terminating in spiral-shaped newels. There are three brass handrails on the stairs: one on each side of the stairs featuring three posts, each, and a center rail with two posts.
4. The building was designed in a Mediterranean Classical style, and constructed with a steel frame, reinforced concrete floor and roof systems, and brick exterior walls. The building is Classical in the bilateral symmetry of its facades and its reliance on the Classical hierarchy of base, shaft and capitol in its vertical organization. Classical decorative elements include the round-headed arches, surrounded by voussoirs, molded terra cotta panels with swag motifs below the principal windows, and a cornice with terra cotta modillions surrounding the main body of the structure. Other, more vernacular, Mediterranean influences include "Mission" clay tile hipped roof over the main portion of the building, the plain stucco wall surfaces, and the relative simplicity of the façades' organization. The building has a bronze entablature and eagle above the entry doors at the south façade, and bronze lanterns, original double-hung windows, and stone ventilator grilles adorn the exterior. The building interior has a pink and green marble tiled floor. The walls are plaster above a marble wainscot. The postal lobby has a coffered ceiling of square-shaped recessed plaster. An ornate bronze light fixture is suspended from the coffered ceiling. The postal lobby door is a wood panel door with a green marble surround, carved with dentils at the top. The word "Postmaster" is inscribed into the marble surround above the door, with a bronze plate now covering the name. Other features include the inspection lookout area, water closet and lavatory, vault room with a steel 1933 Mosler safe inside, post office boxes, and bronze tables.

5. The Post Office occupies a portion of the first floor of the building. Originally, the lobby was divided into two major areas: a public lobby, occupying the southern third of the building, and the post office work room, occupying the northern two-thirds. The lobby extended across the building's width, within the hipped-roof main block of the building. It was shaped in a shallow "U" with the ends extended approximately eighteen feet to the north. The Postmaster's and Inspector's offices were located at both ends of the lobby, within the building's side wings. North of the lobby, the remainder of the first floor was used as the Post Office work room. An enclosed lookout, for the observation of the workroom by Postal Inspectors, was suspended above the Post Office workroom.
6. Currently, in 2007, the lobby is divided by aluminum-framed glass walls into three portions:
 - i. The West Portion: The west portion remains in use as a postal lobby and leads to the Post Office workroom that is still in use in the western portion of the building;
 - ii. The East Portion: The east portion was used as part of a Congressman's office suite that led to the full Congressional suite of offices in the eastern portion of the building. The Congressional offices were vacated in approximately 2002; and
 - iii. The Entry Lobby: The east and west portion are separated by a small entry lobby.
7. The Property has undergone various alterations, including:
 - i. A major alteration to the Property occurred in 1967 when the postal work area to the north of the public lobby was subdivided. The eastern portion of the workroom, approximately two thirds of the original space, was converted into a suite of offices, while the western portion remained as the post office workroom. The new office suite was arranged along a double-loaded corridor, running north-south from the lobby to the mailing platform, and along a smaller double-loaded corridor branching east off the main corridor.
 - ii. The public lobby was also altered during this remodeling: a small entry vestibule was removed and new walls were constructed isolating the central bay of the lobby. The original space to the west remained a post office lobby, with a new extension running north along the east wall, while the eastern portion of the original lobby was turned into a Congressional office. At the same time, the mechanical system and lighting were upgraded. The main entry, entry lobby, and postal lobby still retain such architectural significance that the City is required to comply with Stipulation E of this MOA prior to making any changes to these areas.
 - iii. Changes to the Property after 1967 were generally limited to repairs of existing building elements, such as replacement of the exterior cement plaster veneer in

1969, and the roofing in 1977. Modifications for disabled access occurred in 1979, and included installing an exterior ramp and reconfiguring the restrooms.

- iv. The current site plan is relatively unchanged from the original design. The significant features include the main front entry stairs and the lawns on three sides of the Property.

C. ARTWORK

1. There are two original murals located in the Post Office lobby and business window areas of the building. The artworks were each commissioned in 1937 by the Department of the Treasury under the Treasury Relief Arts Project. The murals are identified as:

Title and Date: **Jedidiah Smith Crossing Merced River, 1937**

Artist: Forbes, Helen Katherine

Medium: Fresco painting

Dimensions: 6' x 8'

Location: Federal Building & Post Office, 415 W. 18th Street, Merced, CA

Former GSA Identification Number: FA341

Title and Date: **Vacheros, 1937**

Artist: Puccinelli, Dorothy Wagner

Medium: Fresco painting

Dimensions: 6' x 8'

Location: Federal Building & Post Office, 415 W. 18th Street, Merced, CA

Former GSA Identification Number: FA340

2. The City agrees to the following conditions regarding display and ultimate disposition of the above-referenced two murals:
 - i. Protection and Maintenance: The City shall be responsible for the protection and maintenance of the two murals.
 - ii. Public Access: The City shall provide for public display of the murals, in accordance with Stipulation F.3 of this MOA.
 - iii. Attribution: The City shall ensure that the murals will be accompanied by an interpretive plaque provided by GSA identifying the artist and noting that it was commissioned for the people of the United States by the Federal Government.
 - iv. Disposition: The City acknowledges that the murals are significant, character-defining elements of the Property that should remain with the Property. In the event demolition of the Property is proposed, the murals shall be offered as a donation to the GSA. In the event that GSA accepts the donation, GSA will bear the reasonable cost of removal and transportation to an appropriate place; provided, however, that GSA will not be responsible for costs to restore the

Property resulting from the removal of the murals. If, after a period of 90 days following receipt of notice of proposed donation from the City, GSA declines to accept the murals, then the City must:

- a. convey the murals to a local municipality, local public museum or local non-profit organization with a charitable and/or educational mission on condition that if the murals cease to be displayed or used for public purposes, the GSA may reclaim the murals; or
- b. consult with GSA in the event the City is unable to perform under (i), if authorized by GSA, the City may sell the murals and remit the net proceeds from such sale to GSA.

D. DESIGNATION OF PROPERTY AS LOCAL HISTORIC RESOURCE AND REVIEW OF ALTERATIONS

1. By no later than 30 days after conveyance of the Property to the City, GSA will submit an application to the City of Merced for designation of the Property as a City of Merced Historic Resource. The City shall cooperate and provide reasonable assistance to GSA in this application process.
2. The City shall use its best efforts to ensure that all improvements to the Property shall be planned, developed, and executed in accordance with the Secretary's Standards, the SHBC and prevailing applicable codes, and in a manner consistent with the recommended approaches contained in the HSR.
3. The City will submit to GSA, for review and approval, all plans and applications for alteration of the Property as required by Stipulations E, F, G and H of this MOA. The address is:

U.S. General Services Administration
450 Golden Gate Avenue, 3W
San Francisco, CA 94102
Attn: Regional Historic Preservation Officer (9PCN)

- a. GSA will review the project documents to determine conformance to the criteria outlined in Stipulation D.2. Within 30 calendar days from receipt of each submittal, GSA will either approve the submittal and the City can proceed with the project or make comments and notify the City. The City will incorporate comments by GSA to the fullest, reasonable extent. If the City modifies the project in response to the comments then no further review is required for that submittal.
- b. If GSA does not provide written comments within the agreed upon time frames, the City may presume agreement with the submittal and proceed with the project.

E. GENERAL REQUIREMENTS, CARETAKER MAINTENANCE AND REHABILITATION, DESIGN SUBMISSION AND SEMI-ANNUAL PROGRESS REPORTING

1. DEVELOPMENT OF THE PROPERTY

- a. Prior to commencing with the Development of the Property, the City shall submit to GSA, for review and approval, all plans for proposed work for the Initial Development.
- b. The City shall, beginning with respect to the six-month period following the Effective Date of this Agreement, and with respect to each six-month period thereafter through Completion of the Development of the Property, provide a semi-annual progress report to GSA and SHPO within ninety (90) calendar days following the expiration of each such six-month period, addressing the following topics:
 - i. General summary of how this MOA has been implemented during such six-month period with respect to such Property;
 - ii. General summary of the status of development at such Property as it relates to historic preservation, and a discussion of any material problems or issues relating to compliance with this MOA that have arisen in the course of the six months regarding the Property.
 - iii. The City shall make each such semi-annual progress report available to the general public at the same time that such report is issued to GSA and SHPO through such means, for example, as providing a copy of the report to the Merced County Library and the Merced County Historical Society.

2. ALTERATIONS AFTER COMPLETION OF DEVELOPMENT OF THE PROPERTY

- a. The City shall not, after Completion of Development of the Property, perform any alteration, or permit any inaction (excluding in-kind replacement, repairs, and maintenance) that would materially affect the Property (e.g., demolition of a façade, removal of significant historic materials, or the addition of material which may impact historic fabric, such as paint, signage or new construction) without:
 - i. the prior written approval of GSA in accordance with Stipulation D.3 of this MOA.
- b. After Completion of Development of the Property, the City shall perform:
 - i. no material demolition of the Property; and

- ii. no material disturbance of the ground surface of the Property, except for routine maintenance and repair of the streets, sidewalks, curbs and gutters and the emergency or routine repair of infrastructure underlying the streets, in a location that has not previously been the subject of an archeological investigation carried out by or on behalf of the City or GSA, without the prior written approval of the GSA.

F. MAINTENANCE PROGRAM

1. The City, its successors and assigns, shall preserve and maintain the Property in a manner that preserves and maintains its attributes that contribute to the eligibility of the Property for inclusion in the National Register of Historic Places. The City agrees at all times to maintain the Property in good repair and in a clean and safe condition and in a manner that will not exacerbate the normal aging of the Property or accelerate its deterioration, all in accordance with the recommended approaches set forth in the Secretary's Standards and as described in the HSR.
2. Commencing upon the effective date of this MOA, the City, its successors and assigns, shall promptly take commercially reasonable actions to secure the Property from the elements, vandalism and arson, and shall carefully undertake any stabilization that is necessary to prevent deterioration, using the Secretary's Standards.
3. The City, its successors and assigns, will make every effort to maintain reasonable public access to the Property, while providing appropriate security for Property tenants. Should major changes in Property use become necessary in the future, the City, its successors and assigns, will give first preference to economically viable uses that meet the public access and stewardship goals of this deed restriction, and invite GSA to comment upon the use options.
4. The City shall conduct seismic analyses of the Property, if necessary, prior to any ground disturbing activity on the Property that may affect the structural integrity of the Property, and as warranted thereafter. The City shall take into consideration the results of seismic analyses, so that the structural integrity of the Property is not adversely affected by such development.
5. The City, its successors and assigns, shall provide GSA with a written summary of actions taken to implement the provisions of this MOA within one (1) year after the date of the Completion of the Development of the Property. After submission of this report, the City, its successors and assigns, shall provide GSA with such other written documentation regarding the City's, implementation of and compliance with the MOA as GSA reasonably requires.

G. CASUALTY DAMAGE TO THE PROPERTY AFTER COMPLETION OF THE INITIAL DEVELOPMENT

1. Immediate rescue and salvage operations are not subject to this paragraph. Subject to Stipulation G.2 below, if there is damage to the Property resulting from casualty loss after Completion of the Development of the Property, the City shall repair or restore, as appropriate, the Property in compliance with the Secretary's Standards unless it is not feasible to do so because of commercial or physical infeasibility, legal requirements or other circumstances. If it is not feasible because of commercial or physical infeasibility, legal requirements or other circumstances to repair or restore the Property in compliance with the Secretary's Standards, the City shall engage in Consultation with GSA on other redevelopment alternatives and modification of the Property. The City's design and plans for construction of any other redevelopment alternative for the Property shall comply with Stipulation E.2 of this MOA. All cost and expense of the design and construction of any such redevelopment alternative shall be borne by the City.
2. In the event of damage to the Property, whether covered by Stipulation G.1 above or by any other provision of this MOA, the City shall, in addition to all other obligations of this MOA, promptly take all steps necessary to render any remains of the Property in a reasonably safe condition and promptly take all Commercially Reasonable Efforts to render any remains of the Property in secure and watertight condition and to minimize additional damage to such structure.

H. EMERGENCY AND UNANTICIPATED ADVERSE EFFECTS SITUATIONS

1. The City shall ensure that any immediate rescue and salvage operations it undertakes on the Property that are:
 - i. required because of an emergency (i.e., a disaster or emergency declaration by the president, the governor, the mayor, or another threat to life or property) that adversely affects the Property; and
 - ii. necessary to preserve life or property shall be carried out in accordance with any emergency orders or citations issued by the appropriate above cited official of California or the United States, as applicable. The City shall use its best efforts to notify GSA of such operations within two (2) business days after commencement of such operations. Nothing in this deed restriction shall be deemed to prevent the City from taking immediate rescue and salvage operations on the site as necessary in an emergency to prevent the loss of life or property.
2. If the City proposes such an emergency undertaking, which may have an adverse effect on the Property, as an essential and immediate response to a disaster or emergency declaration by the president, the governor, or the mayor, or another threat to life or property, the City shall:

- i. Notify GSA within two (2) days and afford GSA an opportunity to comment within seven (7) business days of such notification. If the City determines that circumstances do not permit seven (7) business days for comment, then the City shall notify GSA and invite comments within the time available. The City shall consider, as applicable in light of the urgency of the circumstances, any comments received in reaching a decision on how to proceed with the emergency undertaking.
 - ii. These emergency procedures apply only to undertakings that may have an adverse effect on the Property, and that will be implemented within thirty (30) calendar days after such disaster or emergency occurred. The City may request an extension of the period of applicability from GSA prior to the expiration of the thirty (30) calendar days.
3. If unanticipated adverse effects occur to the Property prior to Completion of Development of the Property, the City shall notify GSA and SHPO, and the Consulting Parties of the unanticipated adverse effect within two (2) business days (not including a federal holiday) of learning of such unanticipated adverse effect, and for any efforts in response to these unanticipated adverse effects, the City shall comply with relevant stipulations of this MOA. The effect and the resulting repair/replacement or mitigation shall be documented within the corresponding semi-annual progress report required pursuant to Stipulation E.1.b of this MOA through Completion of the Property.

I. INSPECTION

Commencing with the effective date of this MOA and through the date of Completion of Development of the Property, GSA may, subject to reasonable prior notice in writing to the City, periodically perform reasonable visits of the Property to ascertain whether the City is complying with the conditions of this deed restriction. The City and GSA shall cooperate in scheduling such visits. After Completion of Development of the Property, the City shall allow GSA, at all reasonable times and upon reasonable advance written notice to the City, to inspect the Property in order to ascertain whether the City is complying with the conditions of this MOA.

J. DISPUTE RESOLUTION

Should any signatory or concurring party to the MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, GSA shall consult with such party to resolve the objection. If GSA determines that such objection cannot be resolved, GSA will:

1. Forward all documentation relevant to the dispute, including GSA's proposed resolution, to the ACHP. The ACHP shall provide GSA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, GSA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP,

signatories, and concurring parties, and provide them with a copy of this written response. GSA will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, GSA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, GSA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
3. The City's responsibility to carry out all other actions subject to the terms of this MOA are not the subject of the dispute remain unchanged.

K. SUCCESSORS AND ASSIGNS

This MOA shall be binding on the City, its successors and assigns, and every successor-in-interest, to the Property or any part thereof. The restrictions, and stipulations contained herein shall be inserted by the City, its successors and assigns, and every successor-in-interest to the Property or part thereof conveyed by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any lesser estate in the Property, or any part thereof.

L. MISCELLANEOUS

1. Communication: Any notice or other communication under this MOA required or permitted to be given by the parties shall be sufficiently given or delivered if dispatched by hand, by certified mail, return receipt requested, or by overnight delivery service with confirmed receipt, addressed as follows:
 - a. In the case of a notice or communication to GSA:

U.S. General Services Administration
450 Golden Gate Avenue, 3W
San Francisco, CA 94102
Attn: Regional Historic Preservation Officer (9PCN)
 - b. With courtesy copies to:

U.S. General Services Administration
450 Golden Gate Avenue, 5W
San Francisco, CA 94102
Attn: Regional Counsel (9L)

U.S. General Services Administration
Room 3344
1800 F Street, NW
Washington, DC 20405
Attn: Federal Preservation Officer

c. In the case of a notice or communication to the SHPO:

Physical Address

State of California
State Historic Preservation Officer
Office of Historic Preservation
1416 – 9th Street, Room 1442-7
Sacramento, CA 95814

Regular Mail Address

State of California
State Historic Preservation Officer
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296

d. In the case of a notice or communication to ACHP:

Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Avenue, NW
Washington, D.C. 20004-2501
Attn: Executive Director

e. In the case of a notice or communication to the City of Merced, California

City of Merced
Attn: City Clerk
678 West 18th Street
Merced, CA 95340

or to such other address as any party from time to time shall designate by written notice to the others.

2. Professional Qualifications Standards: All historical, archaeological, architectural history, architectural, and historic architectural work carried out pursuant to this deed restriction shall be conducted by or under the direct supervision of an individual or individuals who meets, at a minimum, the applicable Secretary of the Interior's Professional Qualifications Standards for conducting the appropriate work (48 FR 44738-9, September 29, 1983).
3. All periods for performance specified in this deed restriction in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Covenant. A performance date that falls on a Saturday, Sunday or federal holiday is deemed extended to the next working day.

4. In the event that any party to this MOA shall at any time or times waive any condition, requirement, or breach of this MOA by the other, such waiver shall not constitute a waiver of any other or succeeding condition, requirement, or breach of this MOA, whether of the same or other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.
5. Alterations to non-historic portions of the interior of the property need to be considered for their potential to affect historic portions.
6. Amendment: This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.
7. This MOA shall take effect upon the date of conveyance of the Property to the City.

Execution of the MOA and implementation of its terms evidences that GSA has afforded ACHP a reasonable opportunity to comment on the undertaking and its effects on historic properties and that GSA has taken into account the effects of the undertaking on historic properties.

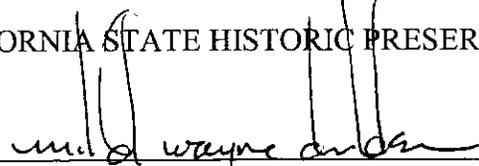
The parties hereto execute this MOA on the dates hereinafter identified.

U.S. GENERAL SERVICES ADMINISTRATION

By: 
Peter G. Stamison
Regional Administrator (9A)

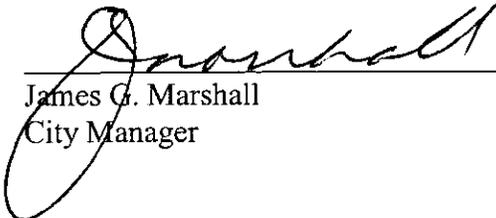
Date: 8/22/07

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: 
Milford Wayne Donaldson, FAIA

Date: 28 AUG 2007

CITY OF MERCED, CALIFORNIA

By: 
James G. Marshall
City Manager

Date: 8/16/07

270449

PLATE PURCHASE TO VEHICLE

Randy Smith 8-16-07

FINANCIAL OFFICE

DATE

NO funds required ✓
8/16/07 RWS 5-