



CITY OF MENDOTA

"Cantaloupe Center Of The World"

ROLANDO CASTRO
Mayor

JESUS MENDOZA
Mayor Pro Tem

JOSE ALONSO

JOSEPH R. RIOFRIO

OSCAR ROSALES

AGENDA MENDOTA CITY COUNCIL

Regular City Council Meeting
CITY COUNCIL CHAMBERS
643 QUINCE STREET

January 26, 2021

6:00 PM

CRISTIAN GONZALEZ
City Manager

JOHN KINSEY
City Attorney

The Mendota City Council welcomes you to its meetings, which are scheduled for the 2nd and 4th Tuesday of every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phones on vibrate/off while in the council chambers.**

Any public writings distributed by the City of Mendota to at least a majority of the City Council regarding any item on this regular meeting agenda will be made available at the front counter at City Hall, located at 643 Quince Street Mendota, CA 93640, during normal business hours, 8 AM – 5 PM.

In compliance with the Americans with Disabilities Act, individuals requiring special assistance to participate at this meeting please contact the City Clerk at (559) 655-3291. Notification of at least forty-eight hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to the meeting.

Si necesita servicios de interpretación para participar en esta reunión, comuníquese con la Secretaria de la Ciudad al (559) 655-3291 o (559) 577-7692 entre las 8 a.m. y las 5 p.m. De lunes a viernes. La notificación de al menos veinticuatro horas antes de la reunión permitirá al personal adoptar las disposiciones necesarias para garantizar su participación en la reunión.

If you would like to participate in this meeting via Zoom, please use the following information:

Dial-in number: 1(669) 900-6833 Meeting ID: 481 456 459 Password: 93640

<https://zoom.us/j/481456459?pwd=S1ZEc0VYXRRTFp6c293cHMvQIA1dz09>

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adjustments to Agenda
2. Adoption of final Agenda

PRESENTATIONS

1. Public Works Superintendent Banuelos to present the Public Works Department's 2020 Employee of the Year award to Maintenance Worker I Maria Alvarez.
2. Chief of Police Smith to present the Police Department's 2020 Employee of the Year award to Police Officer Gerardo Galaviz.
3. City Manager Gonzalez to present the City Administration Department's 2020 Employee of the Year award to Director of Administrative Services Jennifer Lekumberry.

City Council Agenda

1

January 26, 2021

CITIZENS' ORAL AND WRITTEN PRESENTATIONS

At this time, members of the public may address the City Council on any matter not listed on the agenda involving matters within the jurisdiction of the City Council. Please complete a "request to speak" form and limit your comments to THREE (3) MINUTES. Please give the completed form to the City Clerk prior to the start of the meeting. All speakers shall observe proper decorum. The Mendota Municipal Code prohibits the use of boisterous, slanderous, or profane language. All speakers must step to the podium and state their names and addresses for the record. Please watch the time.

APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of January 12, 2021.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

CONSENT CALENDAR

Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Calendar and will be considered separately.

1. JANUARY 6, 2021 THROUGH JANUARY 19, 2021
WARRANT LIST CHECK NOS. 47715 THROUGH 47765
TOTAL FOR COUNCIL APPROVAL = \$1,295,208.84
2. Proposed adoption of **Resolution No. 21-08**, approving the Police Service Dog Contract with Top Dog Training Center.

BUSINESS

1. Council discussion and consideration of **Resolution No. 21-09**, acknowledging receipt of the annual audit of City funds.
 - a. *Receive report from Finance Officer Diaz*
 - b. *Receive presentation from Price, Paige, and Company*
 - c. *Inquiries from Council to staff*
 - d. *Mayor opens floor to receive any comment from the public*
 - e. *Council provides input and considers Resolution No. 21-09 for adoption*
2. Council discussion and appointment of residents to the Mendota Recreation and Planning Commissions.
 - a. *Receive report from City Clerk Cabrera-Garcia*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens floor to receive any comment from the public*
 - d. *Mayoral appointment of residents to the Planning Commission with Council motion of approval*
 - e. *Council motion to appoint residents to the Recreation Commission*

3. Council discussion of the 2018 and 2019 Annual Progress Reports on the Implementation of the Mendota General Plan Housing Element.
 - a. *Receive presentation from City Planner O'Neal*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens floor to receive any comment from the public*

4. Council discussion and consideration of **Resolution No. 21-10**, ratifying the First and Second Amendments to the Purchase and Sale Agreement with Valley Agricultural Holdings, LLC, for the Purchase of a 59-Acre Parcel Located in the Commercial Cannabis Overlay District.
 - a. *Receive report from City Manager Gonzalez*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens floor to receive any comment from the public*
 - d. *Council motion to adopt Resolution No. 21-10*

5. Council discussion and consideration of **Resolution No. 21-11**, approving the Third Amendment to the Purchase and Sale Agreement with Valley Agricultural Holdings, LLC, for the Purchase of a 59-Acre Parcel Located in the Commercial Cannabis Overlay District.
 - a. *Receive report from City Manager Gonzalez*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens floor to receive any comment from the public*
 - d. *Council motion to adopt Resolution No. 21-11*

6. Council discussion and consideration of **Ordinance No. 21-02**, amending the Official Zoning Map of the City of Mendota in the matter of Application No. 20-23, the Valley Agricultural Holdings, LLC, Commercial Cannabis Project (APN 013-030-68ST); and **Ordinance No. 21-03**, Approving a Development Agreement between the City of Mendota and Valley Agricultural Holdings, LLC, in the matter of Application No. 20-23, the Valley Agricultural Holdings, LLC, Commercial Cannabis Project (Portion of APN 013-030-68ST).
 - a. *Receive report from City Planner O'Neal*
 - b. *Inquiries from City Council to staff*
 - c. *Mayor Castro opens floor to receive any comment from the public*
 - d. *Council considers waiving the second reading and adoption of Ordinance Nos. 21-02 and 21-03*

CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
 - a. Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code section 54956.9 (one case).

BUSINESS CONTINUED

7. Council discussion and consideration of **Ordinance No. 21-04**, entrance into a development agreement in the matter of Application No. 20-24, the Left Mendota 1, LLC project.
 - a. *Receive report from City Planner O'Neal*
 - b. *Inquiries from City Council to staff*
 - c. *Mayor Castro opens floor to receive any comment from the public*
 - d. *Council considers waiving the second reading and adoption of Ordinance Nos. 21-04*

DEPARTMENT REPORTS AND INFORMATIONAL ITEMS

1. City Attorney
 - a) Update
2. City Manager

MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS

1. Council Member(s)
2. Mayor

ADJOURNMENT

CERTIFICATION OF POSTING

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of January 26, 2021, was posted on the outside bulletin board located at City Hall, 643 Quince Street, on Friday, January 22, 2021 at 4:50 p.m.



Celeste Cabrera-Garcia, City Clerk



MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

Regular Meeting

January 12, 2021

Meeting called to order by Mayor Castro at 6:02 p.m.

Roll Call

Council Members Present: Mayor Rolando Castro, Mayor Pro Tem Jesus Mendoza, Councilors Jose Alonso, Joseph Riofrio, and Oscar Rosales

Council Members Absent: None

Flag salute led by Mayor Castro

FINALIZE THE AGENDA

1. Adjustments to Agenda.
2. Adoption of final Agenda.

A motion was made by Councilor Riofrio to adopt the agenda, seconded by Councilor Rosales; unanimously approved (5 ayes).

CITIZENS ORAL AND WRITTEN PRESENTATIONS

None offered.

APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of December 8, 2020.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

A motion was made by Councilor Riofrio to approve items 1 and 2, seconded by Councilor Rosales; unanimously approved (5 ayes).

CONSENT CALENDAR

1. DECEMBER 08, 2020 THROUGH JANUARY 05, 2021
WARRANT LIST CHECK NOS. 47601 THROUGH 47714
TOTAL FOR COUNCIL APPROVAL = \$1,345,063.73
2. Proposed adoption of **Proclamation No. 21-01**, declaring the week of January 24 – January 30, 2021 as “School Choice Week” in the City of Mendota.
3. Proposed adoption of **Resolution No. 21-03**, authorizing the City Manager, or his designee, to execute all documents necessary to receive the Active Transportation Program funding for the ATPSB1L-5285(022) “Safe Routes to School Master Plan”.
4. Proposed adoption of **Resolution No. 21-04**, authorizing the submittal of an application for CalRecycle’s payment programs and related authorizations.
5. Proposed adoption of **Resolution No. 21-05**, approving the Second Amendment to the Amended and Restated Memorandum of Understanding between the County of Fresno and the City of Mendota and authorizing the City Manager to execute the same.
6. Proposed adoption of **Resolution No. 21-07**, approving the Air Quality Monitoring Equipment Installation Agreement with the LEAP Institute and authorizing the City Manager to execute the same.

Discussion was held on the total amount of the warrant list.

A motion was made by Councilor Riofrio to approve items 1 through 6 of the Consent Calendar, seconded by Councilor Rosales; unanimously approved (5 ayes).

BUSINESS

1. Council discussion and consideration of **Resolution No. 21-06**, appointing Council Members to various boards, commissions, and subcommittees.

Mayor Castro introduced the item and City Clerk Cabrera-Garcia summarized the report, including the various positions that need to be appointed.

Discussion was held and decisions were made on what Council Members would fill what seats.

A motion was made by Councilor Rosales to adopt Resolution No. 21-06, seconded by Mayor Pro Tem Mendoza; unanimously approved (5 ayes).

PUBLIC HEARING

1. Council discussion and consideration of **Resolution No. 21-01**, adopting a mitigated negative declaration pursuant to the California Environmental Quality Act in the matter of Application No. 20-23 the Valley Agricultural Holdings, LLC, Commercial Cannabis Project (Portion of APN 013-030-68ST); **Resolution No. 21-02**, approving an amendment to the land use element of Mendota's general plan update 2005-2025 in the matter of Application No. 20-23, the Valley Agricultural Holdings, LLC, Commercial Cannabis Project (APN 013-030-68ST); **Ordinance No. 21-02**, Amending the Official Zoning Map of the City of Mendota in the matter of Application No. 20-23, the Valley Agricultural Holdings, LLC, Commercial Cannabis Project (APN 013-030-68ST); and **Ordinance No. 21-03**, Approving a Development Agreement between the City of Mendota and Valley Agricultural Holdings, LLC, in the matter of Application No. 20-23, the Valley Agricultural Holdings, LLC, Commercial Cannabis Project (Portion of APN 013-030-68ST).

Mayor Castro introduced the item and City Planner O'Neal summarized the report.

Discussion was held on the item.

Dustin Moore (Valley Agricultural Holdings, LLC) – commented on the item.

Councilor Mendoza left the Council Chambers at 6:26 p.m. and returned at 6:28 p.m.

Discussion was held on the item.

At 6:35 p.m. Mayor Castro opened the public hearing.

Joseph Amador – commented on the item.

Discussion was held on the item.

Dustin Moore (Valley Agricultural Holdings, LLC) – commented on the item.

Discussion was held on the item.

At 6:40 p.m. Mayor Castro closed the public hearing.

A motion was made by Councilor Rosales to adopt Resolution Nos. 21-01 and 21-02 and introduce and waive the first readings of Ordinance Nos. 21-02 and 21-03, seconded by Councilor Riofrio; unanimously approved (5 ayes).

2. Council discussion and consideration of **Ordinance No. 21-04**, entrance into a development agreement in the matter of Application No. 20-24, the Left Mendota 1,

LLC project.

Mayor Castro introduced the item.

City Attorney Kinsey stated that Councilor Rosales would be recusing himself and Mr. Rosales left the meeting at 6:42 p.m.

Mayor Castro expressed his concerns regarding Councilor Rosales's recusal, and City Attorney Kinsey responded to Mayor Castro's concerns.

City Planner O'Neal summarized the report.

Discussion was held on the item.

At 6:54 p.m. Mayor Castro opened the hearing to the public and, hearing no one present willing to comment, closed it in that same minute.

A motion was made by Councilor Riofrio to introduce and waive the first reading of Ordinance No. 21-04, seconded by Councilor Alonso; unanimously approved (5 ayes).

DEPARTMENT REPORTS AND INFORMATIONAL ITEMS

1. Animal Control, Code Enforcement, and Police Department
 - a) Monthly Report

Chief of Police Smith provided information on police activities over the holidays.

Chief Smith provided the report for the Code Enforcement department, including a summary of statistics, and provided a personnel update.

Chief Smith provided the report for the Animal Control department including an update on animal control activities and statistics; and the status of purchasing a new animal control truck.

Chief Smith provided the report for the Police Department including the status of the police canine program; an update on the motorcycle unit; and summarized crime statistics and significant cases.

Discussion was held on the possibility of implementing a neighborhood watch program; the possibility of creating a City-wide volunteer program; and the new police canine that will be purchased.

2. City Attorney
 - a) Update

City Attorney Kinsey thanked Assistant City Attorney Castro for his work on various projects.

Discussion was held on a discussion that was held at a previous City Council meeting.

3. City Manager

City Manager Gonzalez provided COVID-19 statistics and commented on upcoming projects.

Discussion was held on the possibility of installing additional guidance at the Bass and Barboza roundabout; when the landscaping at the roundabout will be installed; whether the ballfields at Rojas-Pierce Park will be open to the public in light of the pandemic; the status of COVID-19 in the community; and the need for additional lighting in certain areas of the City.

MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS

1. Council Member(s)

Councilor Rosales wished everyone well.

Councilor Alonso stated that accessible parking spots are meant to be used by those authorized to do so; and reported on Mendota residents who held a fundraiser to assist an individual.

Councilor Riofrio reported on the importance of Council Members meeting with the City Manager to discuss their items; ongoing criminal activity in Fresno; a Mendota resident who had recently passed away; the impacts of COVID-19; and the importance of the COVID-19 vaccine.

Mayor Pro Tem Mendoza reported on the importance of Council Members meeting with the City Manager to discuss their items; and thanked Mayor Castro for hosting his annual toy drive.

2. Mayor

Mayor Castro reported on the importance of Council Members meeting with the City Manager to discuss their items in safe manner; encouraged Council Members to have a ride along with the City Manager; encouraged everyone to follow COVID-19 precautionary measures; the Mendota Smog annual toy giveaway; and wished Finance Director Marquez well.

CLOSED SESSION

- 1. CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to CA Government Code §§ 54954.5(f), 54957.6
 - a. Agency Designated Representatives: Cristian Gonzalez, City Manager;
Jennifer Lekumberry, Director of Administrative Services
 - b. Employee Organization: Mendota Police Officers Association

At 7:45 p.m. the Council moved into closed.

At 8:07 p.m. the Council reconvened in open session and City Attorney Kinsey stated that in regard to item 1 there was no reportable action.

ADJOURNMENT

With no more business to be brought before the Council, a motion for adjournment was made at 8:08 p.m. by Councilor Rosales, seconded by Mayor Pro Tem Mendoza; unanimously approved (5 ayes).

Rolando Castro, Mayor

ATTEST:

Celeste Cabrera-Garcia, City Clerk

CITY OF MENDOTA
CASH DISBURSEMENTS
1/6/2021-1/19/2021
CHECK# 47715-47765

Date	Check #	Check Amount	Vendor	Department	Description
1/6/2021	47715	\$ 103,981.00	CITY OF MENDOTA PAYROLL	GENERAL	PAYROLL TRANSFER FOR 12/21/2020-1/3/2021
1/7/2021	47716	\$ 924,364.25	AMERICAN PAVING COMPANY	WATER	MOWRY BRIDGE REPLACEMENT PROJECT 12/1/20-12/31/20
1/7/2021	47717	\$ 42.93	UPS SUPPLY CHAIN SOLUTIONS, INCORPORATED	SEWER	TRACKING #17276E6X36895767578 UPS PACKAGE (SEWER)
1/13/2021	47718	\$ 164.50	THE BUSINESS JOURNAL	STREETS	REQUEST FOR PROPOSAL FOR PRELIMINARY ENGINEERING (STBG)
1/15/2021	47719	\$ 1,900.00	AMERICAN ARBITRATION ASSOCIATION	GENERAL	FILING FEE FOR DEMAND FOR ARBITRATION
1/19/2021	47720	\$ 840.00	ADMINISTRATIVE SOLUTIONS - FRESNO	GENERAL	MONTHLY MEDICAL ADMINISTRATION- DECEMBER 2020
1/19/2021	47721	\$ 34.60	AIRGAS USA, LLC	WATER	(1) RENT CYL IND SMALL CARBON DIOXIDE DEC. 2020
1/19/2021	47722	\$ 700.00	ALL VALLEY	GENERAL-WATER-SEWER	4TH QUARTER 2020 RETIREMENT PLAN ADMINISTRATION, 1ST QUARTER 2021 RETIREMENT PLAN ADMINISTRATION
1/19/2021	47723	\$ 208.32	ARAMARK	GENERAL-WATER-SEWER	PUBLIC WORKS UNIFORM SERVICE FOR 1/7/21, 1/14/21
1/19/2021	47724	\$ 38.97	AUTOZONE, INC.	GENERAL	(2) LONG LIFE MINI BULBS (1) DURALAST WIPER (PD)
1/19/2021	47725	\$ 161.96	BATTERIES PLUS BULBS	STREETS	(1) CUSTOM BATTERY PK 16 CELL (STREET SIGNS)
1/19/2021	47726	\$ 740.00	BC LABORATORIES, INCORPORATED	WATER	DRINKING WATER- EDT TTHM/HAA5 4TH QUARTER
1/19/2021	47727	\$ 1,196.86	JOSE BENITEZ	WATER	RESIDENT PAID FOR METER INSTALLATION AUG & DEC 2020, REIMBURSING DECEMBER 2020
1/19/2021	47728	\$ 991.88	BSK ASSOCIATES	WATER-SEWER	MONTHLY WASTEWATER WW MONTHLY (WEEK 1, 2-5) 11/24/20, GENERAL EDT WEEKLY TREATMENT & DISTRIBUTION 12/1/20
1/19/2021	47729	\$ 8,149.69	CDW GOVERNMENT	GENERAL	(8) PANASONIC PREMIUM KEYBOARD F/CF-33, (12) PANASONIC LIND 120W 12-32V CAR ADAPTOR (PD)
1/19/2021	47730	\$ 71,214.00	CSJVRMA	GENERAL	2020/2021 3RD QTR: LIABILITY PROGRAM & WORKERS COMPENSATION
1/19/2021	47731	\$ 1,506.25	COMCAST	GENERAL-WATER-SEWER	CITYWIDE XFINITY PHONE & INTERNET SERVICES 1/6-2/5/21
1/19/2021	47732	\$ 494.56	COMCAST BUSINESS	GENERAL	FRESNO SHERIFF TO MENDOTA PD CIRCUIT JAN. 2021
1/19/2021	47733	\$ 159.14	CORELOGIC INFORMATION	GENERAL-WATER-SEWER	REAL QUEST SERVICES FOR DECEMBER 2020
1/19/2021	47734	\$ 1,090.00	CORBIN WILLITS SYS INCORPORATED	GENERAL-WATER-SEWER	(1.5) SERVICE & ENHANCEMENT, BILLABLE HOURLY, (3) HRS BILLABLE HOURLY (UPDATE METER READ)
1/19/2021	47735	\$ 2,000.00	FRESNO COUNCIL OF GOVERNMENTS	STREETS	LOCAL ROADWAY SAFETY PLAN (LRSP)
1/19/2021	47736	\$ 327.02	DATAMATIC, INC.	WATER	MONTHLY SOFTWARE LICENSE AND SERVICE FEBRUARY 2021
1/19/2021	47737	\$ 34,595.19	DIAMONDBACK FIRE & RESCUE, INCORPORATED	GENERAL	(1) AMKUS ION SPREADER TOOL ONLY, (1) ITR230 RAM , OTS GRANT-MENDOTA FIRE DEPARTMENT
1/19/2021	47738	\$ 512.18	FARMERS LUMBER AND SUPPLY COMPANY	STREETS	(1) PGE POLE 35' 448 LOLITA STREET
1/19/2021	47739	\$ 12,250.00	FIREBAUGH POLICE	GENERAL-WATER-SEWER	POLICE DEPARTMENT DISPATCH DECEMBER 2020
1/19/2021	47740	\$ 434.00	FRESNO MOBILE RADIO INCORPORATED	GENERAL	(31) POLICE DEPARTMENT RADIOS FOR DECEMBER 2020
1/19/2021	47741	\$ 24.89	GUTHRIE PETROLEUM INC	GENERAL-WATER-SEWER	(6.8) BLK PROPANE FOR FACILITIES
1/19/2021	47742	\$ 68.00	HARBOR FREIGHT TOOLS	STREETS	(1) 70PC SCREWDRIVER SET (1) UNDER HOOD WORK-STREETS
1/19/2021	47743	\$ 8,123.97	ICAD INC.	WATER	(8) HRS OF SERVICE WORK (6) HRS SERVICE WORK OVER TIME, (1) 1769-SDN DEVICENET SCANNER, (1) 1769-IF4 4 PNT
1/19/2021	47744	\$ 180.00	INSYARATH, KHAMPHOU	GENERAL	MONTH OF DECEMBER STATS FOR POLICE DEPARTMENT (PD)
1/19/2021	47745	\$ 175.00	INTERNATIONAL INSTITUTE	GENERAL-WATER-SEWER	ANNUAL MEMBERSHIP FEE THROUGH 3/31/2022
1/19/2021	47746	\$ 431.91	SIMPLOT GROWER SOLUTIONS	STREETS	(RIGHT OF WAY) (105) GAL AGRI STAR OXYSTAR 4L
1/19/2021	47747	\$ 1,135.45	KOPPEL & GRUBER	CFD	CFD NO. 2006-1 ANNUAL ADMINISTRATION SERVICE OCTOBER-DECEMBER 2020
1/19/2021	47748	\$ 131.65	METRO UNIFORM	GENERAL-WARER	(2) TAPER LEGS SEW JS (2) SEW ON PATCH (1)NAMETAPE, (1) LINER BELT (BLACK) 1.5 FOR D. CRUZ (PD)
1/19/2021	47749	\$ 56,277.35	MID VALLEY DISPOSAL, INCORPORATED	REFUSE	SANITATION CONTRACT SERVICES FOR DECEMBER 2020, ROLL OFF BIN EXCHANGE 30Y QTY: 4.45
1/19/2021	47750	\$ 1,105.11	MUNICIPAL CODE	GENERAL-WATER-SEWER	(53) SUPPLEMENT PAGES (7) BLANK SUP. PGS (1) UPDATE

CITY OF MENDOTA
 CASH DISBURSEMENTS
 1/6/2021-1/19/2021
 CHECK# 47715-47765

1/19/2021	47751	\$ 2,519.36	NORTHSTAR CHEMICAL	WATER	(640) GALLON SODIUM HYPOCHLORITE-12.5% & FREIGHT, (260)GALLONS SODIUM BISFLFITE-25% FREIGHT & FUEL
1/19/2021	47752	\$ 28.17	OFFICE DEPOT	GENERAL-WATER-SEWER	(1) ENERGIZER AA ALKALINE BATTERIES PACK OF 24, (1) PYRAMID TIME CLOCK REPLACEMENT RIBBON
1/19/2021	47753	\$ 42,017.45	PG&E	GENERAL-WATER-SEWER- STREETS-AIRPORT	CITYWIDE UTILITIES FOR 10/8/2020-11/5/2020, WATER DEPARTMENT UTILITIES FOR 12/8/2020-1/7/2021
1/19/2021	47754	\$ 818.09	PLATT ELETRIC SUPPLY	STREETS	(24) IMT LED 4535SC SPECIFIC GRADE (STREET LIGHTS), (500) BLK, WHITE AND GREEN COPPER WIRE (STREET LIGHTS)
1/19/2021	47755	\$ 3,500.00	PRICE, PAIGE & COMPANY	GENERAL-WATER-SEWER- STREETS-REFUSE	AUDIT OF CITY'S FINANCIAL STATEMENTS YEAR END 6/30/20
1/19/2021	47756	\$ 1,444.30	R&B COMPANY	WATER	(240) ORION CELLULAR, (2) END POINT ORIOIN, 1" E-S METER
1/19/2021	47757	\$ 25.00	RAMON'S TIRE & AUTO	GENERAL	FORD EXPLORER UNIT# 81 TIRE REPAIR (PD)
1/19/2021	47758	\$ 1,734.48	SORENSEN MACHINE WORKS	GENERAL-WATER-SEWER- STREETS	MULTIPLE DEPARTMENT SUPPLIES FOR DECEMBER 2020
1/19/2021	47759	\$ 200.00	STATE WATER RESOURCES	WATER	STATE WATER RESOURCES CB ANNUAL PERMIT JAN-DEC 2021
1/19/2021	47760	\$ 1,837.89	BANKCARD CENTER	GENERAL	CREDIT CARD EXPENSES FROM 12/4/2020-12/18/2020, (2) CHRISTMAS TREES, CITY COUNCIL JACKETS
1/19/2021	47761	\$ 2,040.50	THE BANK OF NEW YORK MELLON	SEWER	MENDOTA JPFA WASTEWATER PERIOD FEE 1/1/21-12/31/21
1/19/2021	47762	\$ 709.45	TRIANGLE ROCK PRODUCTS, LLC	STREETS	(6.52) ST 3/8 CM SC3000 AGG & ASPHALT (POTHOLE), (17.53) WASHED CONCRETE SAND AGG & ASPHALT- STREETS
1/19/2021	47763	\$ 323.40	USA BLUEBOOK	WATER	HORIZONTAL WATER SAMPLER WITH 20 METER LINE
1/19/2021	47764	\$ 1,075.12	VERIZON WIRELESS	GENERAL-WATER-SEWER	CITYWIDE CELL PHONE SERVICE FOR 12/7/20-1/6/21
1/19/2021	47765	\$ 1,185.00	VIDEO INSPECTION SPECIALIST	SEWER	(3) OAK CREEK MOBILE HOME PARK-VAC/PUMPER @PRISON

\$ **1,295,208.84**

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: KEVIN W. SMITH, CHIEF OF POLICE
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: APPROVING THE POLICE SERVICE DOG CONTRACT WITH TOP DOG TRAINING CENTER
DATE: JANUARY 26, 2021

ISSUE

Shall the City Council adopt Resolution No. 21-08, approving the Police Service Dog Contract with Top Dog Training Center and authorizing the City Manager to execute the same?

BACKGROUND

In 2020, the Mendota City Council expressed an interest in implementing a Police Canine program within the Mendota Police Department. The Police Department has also received donations from private citizens/corporations to cover the startup costs to implement a Police Canine program within the Police Department.

ANALYSIS

The acquisition of a canine trained in searching out narcotics and for ensuring human protection would be a significant benefit to the City and its Police Department. The City of Mendota has a methamphetamine problem as many cities do. We investigate over 275 narcotics-related cases a year. Studies show that aggressive enforcement will not only reduce crime, but it will also force offenders into needed drug awareness programs. Additionally, the mere presence of a canine will also serve as a deterrent to potential offenders.

FISCAL IMPACT

Initial startup costs for the purchase of the canine and upfitting a new Ford Police Interceptor have been covered through private donations. Once those funds have been exhausted, the funding of the program will impact the General Fund. Expenses in the future will include some training on overtime and expenses associated to the maintenance of the Canine, such as equipment, food, and veterinarian care. The Officer (handler) was selected within the current ranks and therefore no additional salaries are required. The dedicated Officer, while assigned to handle the canine will receive an additional 7% above his/her base salary.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 21-08, approving the Police Service Dog Contract with Top Dog Training Center and authorizing the City Manager to execute same.

Attachment(s):

1. Canine Photo
2. Resolution No. 21-08
3. Exhibit "A" – Police Service Dog Contract



**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPROVING
THE POLICE SERVICE DOG CONTRACT
WITH TOP DOG TRAINING CENTER AND
AUTHORIZING THE CITY MANAGER
TO EXECUTE THE SAME**

RESOLUTION NO. 21-08

WHEREAS, the Mendota Police Department (the "Department") is charged with preserving health and safety in the City of Mendota by providing law enforcement services; and

WHEREAS, having a dedicated Police Officer assigned to manage/train a certified Police Canine broadens the Department's investigative ability and enhances its Officers' safety; and

WHEREAS, the Police Canine and its handler will promote community relationships, especially within the School District, and their partnership will also enhance the physical security of Mendota's citizens and police officers; and

WHEREAS, the Department is proposing to enter into a Police Service Dog Contract, attached hereto as Exhibit "A" and incorporated herein by this reference, with Top Dog Training Center for the purchase and professional training of the Police Canine; and

WHEREAS, expanding the Department's law enforcement resources by purchasing and utilizing a Police Canine will benefit the School District, the Police Officers, and the community as a whole.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Mendota hereby approves the Police Service Dog Contract with Top Dog Training Center, in substantially the form attached hereto as Exhibit "A," and authorizes the City Manager to execute the same.

Rolando Castro, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26th day of January, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit A



POLICE SERVICE DOG CONTRACT

This Agreement is between **Top Dog Training Center, LLC** (“**TRAINER**”) and the **CITY OF MENDOTA POLICE DEPARTMENT** (“**AGENCY**”) (collectively referred to herein as the “Parties”) for the specified purposes listed below:

SCOPE OF SERVICES

A. The **TRAINER** shall provide the **AGENCY** with a male German Shepherd (“**POLICE SERVICE DOG**”) that is suitable for “dual purpose” service (Patrol and Detection Service). The **TRAINER** shall ensure that the **POLICE SERVICE DOG** will pass California Peace Officer Standards and Training (“**POST**”) K-9 standards at the conclusion of **TRAINER**’s training courses, as long as the training is provided by the **TRAINER**, and all directions of the **TRAINER** are strictly followed by the **AGENCY** assigned dog handler (“**HANDLER**”).

B. The **TRAINER** will provide a five-week narcotic detection course to the **AGENCY** for the purpose of training the **POLICE SERVICE DOG** and **HANDLER** to locate illegal narcotics (methamphetamine, cocaine, and heroin). The **TRAINER** shall ensure that the **POLICE SERVICE DOG** will pass certification in accordance with California **POST** K-9 standards at the conclusion of this narcotic detection course.

C. The **TRAINER** will provide a five-week patrol course to the **AGENCY** for the purpose of training the **POLICE SERVICE DOG** and **HANDLER** in the areas of obedience, searching (building/area), handler protection, and apprehension. The **TRAINER** shall ensure that the **POLICE SERVICE DOG** will pass certification in accordance with California **POST** K-9 standards at the conclusion of this patrol course.

D. At the conclusion of the above listed training courses (Detection and Patrol) the **TRAINER** will provide the **AGENCY** one (1) eight (8) hour maintenance training session per month for its **POLICE SERVICE DOG** team (patrol and detection trained). The training locations will vary to provide different environments with which to train in and efforts will be made to also train within the **AGENCY** jurisdiction when possible. The purpose of this training is to problem solve, improve performance, and to ensure that the **POLICE SERVICE DOG** team remains at or above California **POST** standards at all times. Additional monthly maintenance training sessions can be added at **AGENCY's** request.

E. The **TRAINER** will train the **AGENCY** canine team (**POLICE SERVICE DOG** and **HANDLER**) to conform to Mendota Police Department K-9 Policy.

F. The training services described above shall only be performed by **TRAINER** or its authorized representatives.

COMPENSATION

A. **AGENCY** shall pay **TRAINER** the sum of nine thousand one hundred sixty-eight dollars and twenty-five cents (\$9,168.25) for the **POLICE SERVICE DOG**.

B. **AGENCY** shall pay **TRAINER** the sum of three thousand six hundred dollars (\$3,600.00) for the five-week narcotic detection course.

C. **AGENCY** shall pay **TRAINER** the sum of four thousand fifty dollars (\$4,050.00) for the five-week patrol course.

D. **AGENCY** shall pay the **TRAINER** the sum of one hundred and twenty dollars (\$120.00) per eight (8) hour maintenance training session per police service dog team (**POLICE SERVICE DOG** and **HANDLER**) that attends a training session.

E. Payments for the monthly maintenance training will be made on a monthly basis. The **TRAINER** shall submit invoices to the **AGENCY** following each training session. Within thirty (30) days after the **AGENCY's** receipt of the invoice, **AGENCY** shall make payment to the **TRAINER**.

INDEPENDENT CONTRACTOR STATUS

TRAINER is an independent contractor and is solely responsible for all acts of its employees or agents, including any negligent acts or omissions. **TRAINER** is not **AGENCY's** employee and **TRAINER** shall have no authority, express or implied, to act on **AGENCY's** behalf as an agent, or to otherwise bind **AGENCY** to any obligation whatsoever, unless the **AGENCY** provides prior written authorization to **TRAINER**.

TERMINATION

Once signed, this Agreement will remain in effect for all purposes until and unless **AGENCY** provides **TRAINER** express written notice of termination at least thirty (30) days prior to termination. **TRAINER** also has the option to terminate this Agreement by providing **AGENCY** written notice of termination at least thirty (30) days prior to termination of **TRAINER's** services. If **TRAINER** elects to terminate this Agreement, any and all prepaid training costs shall be returned to the **AGENCY** for the remaining training time left unperformed on this Agreement.

WARRANTY

TRAINER agrees to warranty the **POLICE SERVICE DOG** for a period of one (1) year from date of delivery against congenital defects. If the **POLICE SERVICE DOG** is unable to work for **AGENCY** as a result of a congenital defect during the one (1) year warranty period, **TRAINER** shall replace the **POLICE SERVICE DOG** free of any charge to **AGENCY**. The replacement shall be subject to approval by **AGENCY**.

INSURANCE

A. **TRAINER** shall, throughout the duration of this Agreement, maintain insurance to cover **AGENCY** and its agents, representatives, and employees in connection with the performance of **TRAINER's** services under this Agreement at the minimum levels set forth herein.

B. General Liability. **TRAINER** shall maintain general liability coverage to cover damages that may be the result of errors, omissions, or negligent acts of **TRAINER** in an amount not less than one million dollars (\$1,000,000) per claim.

C. Automobile Liability. **TRAINER** shall maintain automobile liability coverage in an amount not less than one million dollars (\$1,000,000) per accident for bodily injury and property damage.

D. Workers' Compensation. **TRAINER** does not maintain workers' compensation coverage because **TRAINER** is a sole proprietor and has no employees (neither paid nor volunteer).

E. Endorsements. **TRAINER** shall obtain endorsements to its general liability coverage for **AGENCY** (including its elected officials, officers, employees, agents, and volunteers) to be named as additional "insured."

F. Insurance Certificates. **TRAINER** shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to **AGENCY**, no later than five (5) days after the execution of this Agreement.

INDEMNIFICATION

To the fullest extent allowable by law, the Parties agree to indemnify, defend, and hold harmless each other and their officials, officers, employees, agents, and volunteers from and against all claims, demands, actions, injuries, liabilities, losses, costs, or damages, direct or indirect, and any and all attorneys' fees and other expenses which the Parties or their officials, officers, employees, agents, or volunteers may sustain as a consequence of or are in any way related to the acts of the respective Parties or their owners, directors, officers, managers, employees, agents, or subcontractors' willful or negligent acts or omissions in the performance of the services and the Parties' responsibilities and obligations to be performed

under this Agreement or failure to perform or comply with any obligations or responsibilities contained in this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from the Parties' sole or active negligence or willful acts. This duty to indemnify, defend, and hold harmless shall survive the termination of this Agreement.

ASSIGNMENT

This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of **TRAINER's** duties be delegated, without the written consent of **AGENCY**. Any attempt to assign this Agreement or otherwise delegate its performance without **AGENCY's** written consent shall be void and of no force and effect.

COMPLIANCE WITH ALL LAWS

TRAINER shall comply with all local, state, and federal laws in the performance of this Agreement, whether or not said laws are expressly stated in this Agreement.

ATTORNEYS' FEES

In the event any legal action is commenced to enforce this Agreement or its terms, the prevailing party is entitled to the recovery of reasonable attorneys' fees, costs, and expenses incurred in that pursuit.

ENTIRE AGREEMENT

This Agreement comprises the entire integrated understanding between the Parties concerning the services to be performed by **TRAINER** for **AGENCY**. This Agreement supersedes all prior negotiations, representations, or agreements between **TRAINER** and **AGENCY**.

MODIFICATIONS

This Agreement may not be modified orally or in any manner other by an agreement in writing signed by both **TRAINER** and **AGENCY**.

SIGNATURES

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the **TRAINER** and the **AGENCY**. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the Parties do hereby agree to the full performance of the terms set forth herein.

Signed this _____ day of _____ in the year of _____.

*Signature*_____

By: Jay W. Brock

Top Dog Training Center, LLC Representative

*Signature*_____

By: Cristian Gonzalez, City Manager

Authorized City of Mendota Representative

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: NANCY M. DIAZ, FINANCE OFFICER
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: ACKNOWLEDGING RECEIPT OF THE ANNUAL AUDIT OF CITY FUNDS
DATE: JANUARY 26, 2021

ISSUE

Should the City Council direct staff to approve Resolution No. 21-09 acknowledging receipt of the annual audit of City funds?

BACKGROUND

After the close of each fiscal year, the City contracts an external auditor(s) to conduct a formal audit of all its financial accounts. The vital objective of general purpose external financial reporting is accountability. The goal of a financial statement audit is to provide readers with a reasonable assurance from an independent source that the information presented in the financial statements is reliable. The external auditor(s) for fiscal year ended June 30, 2020 was recently completed by Price, Paige and Company and complies with all applicable standards contained in *Government Auditing Standards*.

ANALYSIS

The Auditor, Price, Paige and Company has given an unmodified opinion as a result of their annual independent audit of the City’s financial records and statements. In their opinion, “the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Mendota, California, as of June 30, 2019, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.”

A detailed analysis of the City’s financial position as of June 30, 2020 is included in this agenda item. As for the financial statement findings, there were two to report; 1) Bank Reconciliation and 2) Segregation of Duties over Payroll.

In response to the “Bank Reconciliation”, it is the City’s understanding that the timeline in which bank reconciliations should be completed were not previously discussed with the Finance Department. Previously, the deadline for which bank reconciliations should be completed was not thirty (30) days after month-end. Due to the lack of information, staff (specifically the Finance Officer) was unable to ensure that the City prepared the bank reconciliations in a timely manner. Despite the fact, bank statements were being reviewed for returned checks, direct deposits for the prison utility payment, and bond payment withdrawals. Furthermore, the

quarterly reporting for the Federal and State taxes were completed in a timely manner since there is a specified deadline, as such, all reporting was completed. Moreover, should staff have been aware that there is a specified period in which bank reconciliations should be completed, the task would have been done in a timely manner.

It is also important to take into account that the Finance Department was short-staffed. Two full-time senior-ranking employees were on long-term leave during portions of the year, and one full-time employee was laid-off. As a result of these changes in personnel, the Finance Department was left with two (2) employees to complete all finance tasks for the City as well as other tasks as assigned, including processing building permits, utility payments, and bank deposits, apply for grants, post revenues, process a bi-weekly payroll, process business license payments, prepare and deliver the fiscal year budget for 2020-2021, and various other duties within the Finance Department. Additionally, the ongoing COVID-19 pandemic created additional tasks for the department aside from those conducted during normal operations and in numerous complications that created burdens for the department.

As for the “Segregation of Duties of Payroll”, prior to August 2019, payroll processing was completed by the Finance Officer or Finance Director. Due to the Finance Director’s leave of absence that began in August 2019 and the lack of trained management employees, payroll processing was solely completed by the Finance Officer as it was impossible to allow for a segregation of duties. However, when Price, Paige & Company met with staff to discuss internal controls, this deficiency was discussed, and the City immediately corrected the condition and assigned an additional management employee to be cross-trained and allow for a segregation of duties.

Despite the fact, that this condition has resulted in a finding, it is important to note that this condition was only caused due to the Finance Director taking an unexpected long-term leave of absence and thus removing the secondary employee to allow for segregation of duties. Given that the staffing within the Finance Department was not at full capacity, it was extremely difficult to ensure that the segregation of duties existed during the absence of the Finance Director. However, as noted earlier, once the City was informed that the condition could not continue as is during the absence of the Finance Director, it ensured that another employee was cross trained to allow for an adequate segregation of duties over all transaction classes when the Finance Department is short-staffed.

FISCAL IMPACT

None. The cost of preparing the formal audit was budgeted as part of the 2020-21 operating budget.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 21-09, acknowledging receipt of the annual audit of City funds.

Attachment(s):

1. Resolution No. 21-09
2. Exhibit “A” - City of Mendota Financial Statements for the year ended June 30, 2020.

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA
ACKNOWLEDGING RECEIPT OF THE
ANNUAL AUDIT OF CITY FUNDS**

RESOLUTION NO. 21-09

WHEREAS, the City of Mendota (“City”) conducts a formal audit of all of its financial accounts each year; and

WHEREAS, an audit of all City financial accounts for fiscal year 2019-2020 has been conducted by Price, Paige, and Company; and

WHEREAS, the auditors have found that City management has complied in all material respects with the types of compliance requirements and all applicable standards contained in *Government Auditing Standards* for fiscal year 2019-2020.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota that the City Council hereby formally acknowledges receipt of the report for the financial audit of the City of Mendota for fiscal year 2019-2020, attached hereto as Exhibit “A.”

Rolando Castro, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26th day of January, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit A

**CITY OF MENDOTA
CALIFORNIA**

FINANCIAL STATEMENTS

**FOR THE YEAR ENDED
JUNE 30, 2020**

CITY OF MENDOTA
FINANCIAL STATEMENTS
JUNE 30, 2020

TABLE OF CONTENTS

	<u>Page</u>
INDEPENDENT AUDITOR'S REPORT	1
MANAGEMENT'S DISCUSSION AND ANALYSIS.....	3
BASIC FINANCIAL STATEMENTS	
Government-Wide Financial Statements:	
Statement of Net Position.....	17
Statement of Activities	18
Fund Financial Statements:	
Balance Sheet – Governmental Funds	20
Reconciliation of the Governmental Funds Balance Sheet to the Government-Wide Statement of Net Position	21
Statement of Revenues, Expenditures and Changes in Fund Balances – Governmental Funds.....	22
Reconciliation of the Statement of Revenues, Expenditures and Changes in Fund Balances of Governmental Funds to the Government-Wide Statement of Activities.....	23
Statement of Net Position – Proprietary Funds	24
Statement of Revenues, Expenses and Changes in Fund Net Position – Proprietary Funds.....	26
Statement of Cash Flows – Proprietary Funds.....	27
Notes to the Basic Financial Statements	31
REQUIRED SUPPLEMENTARY INFORMATION	
Budgetary Comparison Schedule – General Fund.....	59
Budgetary Comparison Schedule – Development Fees – Special Revenue Fund	60
Budgetary Comparison Schedule – Local Transportation Fees – Special Revenue Fund	61
Notes to the Budgetary Comparison Schedule.....	62

CITY OF MENDOTA
FINANCIAL STATEMENTS
JUNE 30, 2020

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
REQUIRED SUPPLEMENTARY INFORMATION (Continued)	
Proportionate Share of Net Pension Liability (Asset).....	63
Schedule of Contributions	64
SUPPLEMENTARY INFORMATION	
Combining and Individual Fund Financial Statements:	
Combining Balance Sheet – Nonmajor Governmental Funds	67
Combining Statement of Revenues, Expenditures and Changes in Fund Balances – Nonmajor Governmental Funds	68
Combining Balance Sheet – Nonmajor Governmental Funds – Special Revenue Funds	69
Combining Statement of Revenues, Expenditures and Changes in Fund Balances – Nonmajor Governmental Funds – Special Revenue Funds	72
Combining Balance Sheet – Nonmajor Governmental Funds – Capital Projects Funds	75
Combining Statement of Revenues, Expenditures and Changes in Fund Balances – Nonmajor Governmental Funds – Capital Projects Funds	76
OTHER AUDITOR’S REPORT	
Independent Auditor’s Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	79
FINDINGS AND QUESTIONED COSTS	
Schedule of Findings and Questioned Costs.....	83
Summary Schedule of Prior Audit Findings	85



INDEPENDENT AUDITOR'S REPORT

To the Honorable Mayor and City Council
City of Mendota, California

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Mendota, California (the City) as of and for the year ended June 30, 2020, and the related notes to the financial statements, which collectively comprise the City's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the City's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Mendota, California, as of June 30, 2020, and the respective changes in financial position and cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

570 N. Magnolia Avenue, Suite 100
Clovis, CA 93611

tel 559.299.9540
fax 559.299.2344

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3-14, budgetary comparison information on pages 59-62, proportionate share of net pension liability (asset) on page 63, and schedule of contributions on page 64 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City's basic financial statements. The combining and individual nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The combining and individual nonmajor fund financial statements are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the combining and individual nonmajor fund financial statements are fairly stated in all material respects in relation to the basic financial statements as a whole.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report January 19, 2021, on our consideration of the City's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control over financial reporting and compliance.



Clovis, California
January 19, 2021

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

The management of the City of Mendota, California (the City) offers readers of the City's financial statements this narrative overview and analysis of the financial activities of the City for the fiscal year ended June 30, 2020. We encourage readers to read the information presented here in conjunction with additional information that we have furnished in the City's financial statements, which follow this narrative.

FINANCIAL HIGHLIGHTS

The assets and deferred outflows of resources of the City exceeded its liabilities and deferred inflows of resources at close of the most recent fiscal year by \$37,077,043 (net position). Of this amount, \$5,093,708 (unrestricted net position) may be used to meet the City's ongoing obligation to its citizens and creditors.

The City's total net position increased by \$2,686,918 from the prior fiscal year. Governmental activities increased the City's total net position by \$2,055,274 and business-type activities increased by \$631,644. The overall increase in net position is due to several factors. The business-type activities of the City, which represent utility service for water, sewer and waste disposal, benefitted by an increase in utility service revenue of approximately five percent, or \$229,743, over the prior fiscal year due to an increase in both commercial and residential system connections and higher overall water usage, including a one-time receipt of \$120,030 from the Firebaugh Canal Water District for agreed upon prior usage of City water resources for fiscal years 2014 through 2018. In addition, the City recognized \$480,844 in federal grant revenue related to reconstruction of a bridge supporting the City's water enterprise fund. These revenue increases were partially offset by higher electric utility charges and depreciation expense attributable to the water enterprise fund and higher facility maintenance expenditures incurred by the sewer enterprise fund as compared to the prior year. With regard to the governmental-type activities, the City reported several large receipts of revenue during the fiscal year, including a one-time impact fee of \$884,051 from the developer of the LaColonial residential housing project in August, 2019, along with \$566,667 in assessed franchise fees from Canna-Hub, a marijuana collective operating within City limits, which represented an increase of \$471,667 over the prior fiscal year. Other increases in property tax revenue, federal highway grant funds for a completed road reconstruction project and police services also contributed to the significant increase in governmental-type revenue over the prior fiscal year. Overall operating expenses of the City increased by approximately 5% over the prior fiscal year due primarily to higher wage and employee benefits incurred within the City's police and parks departments, offset by lower expenditures for outside engineering and legal services related to planning and zoning, which showed a significant reduction due to a decrease in the number of large-scale commercial and residential development projects and compared to the prior fiscal year. In addition, higher depreciation expense attributable to park and road infrastructure projects placed in service also contributed to the increase in operating expenses incurred by the City.

At June 30, 2020, the City's governmental funds reported combined ending fund balances of \$6,774,302, an increase of \$1,417,487 in comparison with the prior year. The increase is due primarily to the receipt of developer impact fees and franchise fee assessments, along with increases in property tax revenue and federal transportation grants, as discussed in the preceding paragraph. The large revenue increase was partially offset by significantly higher capital outlay expenditures, primarily related to the completion of the Rojas-Pierce Park expansion, along with overall higher wages and benefits.

At the end of the current fiscal year, unassigned fund balance for the General Fund was \$2,256,829. This represents a \$754,544 increase from the unassigned fund balance of \$1,502,285 reported at June 30, 2019. The increase from the prior year is primarily the result of significant increases in property tax revenue, franchise fee revenue and police services related to fines and forfeitures and security for intergovernmental agencies and community events. Operational expenditures of the General Fund showed a 45% increase from the prior year due primarily to higher capital outlay expenditures incurred for park and road improvements, coupled with higher labor and supplies costs associated with parks and public safety.

The City's total long-term debt of \$9,239,035 decreased by \$295,031 compared to last year. There were no new debt obligations entered into by the City during the current fiscal year. The \$295,031 reduction represents scheduled repayment of the City's existing debt as required under its various loan agreements.

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis are intended to serve as an introduction of the City's basic financial statements. The City's basic financial statements comprise three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the basic financial statements. This report also contains other supplementary information in addition to the basic financial statements themselves.

Government-wide financial statements. The *government-wide financial statements* are designed to provide readers with a broad overview of the City's finances, in a manner similar to a private-sector business.

The *statement of net position* presents information on all of the City's assets and liabilities, with the difference between the two reported as *net position*. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the City is improving or deteriorating.

The *statement of activities* presents information showing how the City's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, *regardless of the timing of related cash flows*. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (i.e. uncollected taxes and earned but unused vacation leave).

Both of the government-wide financial statements distinguish functions of the City that are principally supported by taxes and intergovernmental revenues (governmental activities) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (business-type activities). The governmental activities of the City included general government, public safety, municipal airport, highways and streets, public works, building and planning, parks, redevelopment and housing, and economic development and assistance. The business-type activities of the City include water, sewer and sanitation.

The Mendota Community Corporation, although legally separate, functions for all practical purposes as a department of the City and, therefore, has been included as an integral part of the primary government.

The government-wide financial statements can be found on pages 17 through 18 of this report.

Fund financial statements. A *fund* is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The City, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. All of the funds of the City can be divided into three categories: governmental funds, proprietary funds, and fiduciary funds.

Governmental funds. *Governmental funds* are used to account for essentially the same functions reported as *governmental activities* in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund finance statements focus on *near-term inflows of spendable resources*, as well as on *balances of spendable resources* available at the end of the fiscal year. Such information may be useful in evaluating a City's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for *governmental funds* with similar information presented for *governmental activities* in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the City's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between *governmental funds* and *governmental activities*.

The City maintains 42 individual governmental funds. Information is presented separately in the governmental fund balance sheet and in the governmental fund statement of revenues, expenditures, and changes in fund balances for the General Fund, HOME Investment Partnership Program Special Revenue Fund, Development Fees Special Revenue Fund, and the Local Transportation Fund (LTF) Special Revenue Fund. All of these are considered to be major funds. Data from the remaining governmental funds are combined into a single, aggregated presentation. Individual fund data for each of these non-major governmental funds is provided in the form of *combining statements* elsewhere in this report.

The basic governmental fund financial statements can be found on pages 20 through 23 of this report.

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

Proprietary funds. The City maintains one type of proprietary fund. *Enterprise funds* are used to report the same functions presented as *business-type activities* in the government-wide financial statement. The City uses enterprise funds to account for its water, sewer, and sanitation.

Proprietary funds provide the same type of information as the government-wide financial statements, only in more detail. The proprietary fund financial statements provide separate information for the water, sewer, and sanitation operations, as all of these are considered to be major funds of the City.

The basic proprietary fund financial statements can be found on pages 24 through 28 of this report.

Notes to the basic financial statements. The notes provide additional information that is essential to fully understand of the data provided in the government-wide and fund financial statements. The notes to the basic financial statements can be found on pages 31 through 55 of this report.

Other information. In addition to the basic financial statements and accompanying notes, this report also presents certain required supplementary information concerning the City's General Fund and major Special Revenue Funds budgetary comparison schedule to demonstrate compliance with the City's adopted budget. The City adopts an annual appropriated budget for its general fund.

Required supplementary information can be found on pages 59 through 64 of this report.

The combining fund statements referred to earlier in connection with nonmajor governmental funds are presented immediately following the required supplementary information. Combining fund statements can be found on pages 67 through 76.

GOVERNMENT-WIDE FINANCIAL ANALYSIS

As previously noted, net position may serve over time as a useful indicator of a government's financial position. In the case of the City, assets exceeded liabilities by \$37,077,043 at June 30, 2020.

**City of Mendota
Condensed Statement of Net Position
June 30, 2020 and 2019**

	Governmental Activities		Business-Type Activities		Total	
	2020	2019	2020	2019	2020	2019
Current and other assets	\$ 8,947,109	\$ 7,743,792	\$ 11,430,706	\$ 13,737,548	\$ 20,377,815	\$ 21,481,340
Capital assets, net	13,574,981	12,863,527	18,936,263	17,058,884	32,511,244	29,922,411
Total assets	22,522,090	20,607,319	30,366,969	30,796,432	52,889,059	51,403,751
Deferred outflows of resources	82,576	69,323	106,967	101,697	189,543	171,020
Long-term liabilities	411,997	492,939	8,827,038	9,041,127	9,239,035	9,534,066
Other liabilities	206,180	251,520	6,553,528	7,393,828	6,759,708	7,645,348
Total liabilities	618,177	744,459	15,380,566	16,434,955	15,998,743	17,179,414
Deferred inflows of resources	1,151	2,119	1,665	3,113	2,816	5,232
Net position:						
Net investment in capital assets	13,317,884	12,564,592	11,443,103	11,201,427	24,760,987	23,766,019
Restricted	6,571,109	5,981,748	651,239	642,856	7,222,348	6,624,604
Unrestricted	2,096,345	1,383,724	2,997,363	2,615,778	5,093,708	3,999,502
Total net position	\$ 21,985,338	\$ 19,930,064	\$ 15,091,705	\$ 14,460,061	\$ 37,077,043	\$ 34,390,125

The largest portion of the City's net position, \$24,760,987 (67 percent) represents investment in capital assets, less any related debt used to acquire those assets that are still outstanding. The City uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending. Although the City's investment in its capital assets is reported net of related debt, it should be noted that the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities.

An additional portion of the City's net position of \$5,093,708 (14 percent) represents unrestricted net position, which may be used to meet the City's ongoing obligations to its citizens and creditors. The remaining balance of \$7,222,348 (19 percent) represents resources that are subject to external restrictions on their use.

Governmental activities increased the City's net position by \$2,055,274, accounting for 76 percent of the total increase in the net position of the City of Mendota as compared to the prior fiscal year.

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

**City of Mendota
Condensed Statement of Activities
For the Years Ended June 30, 2020 and 2019**

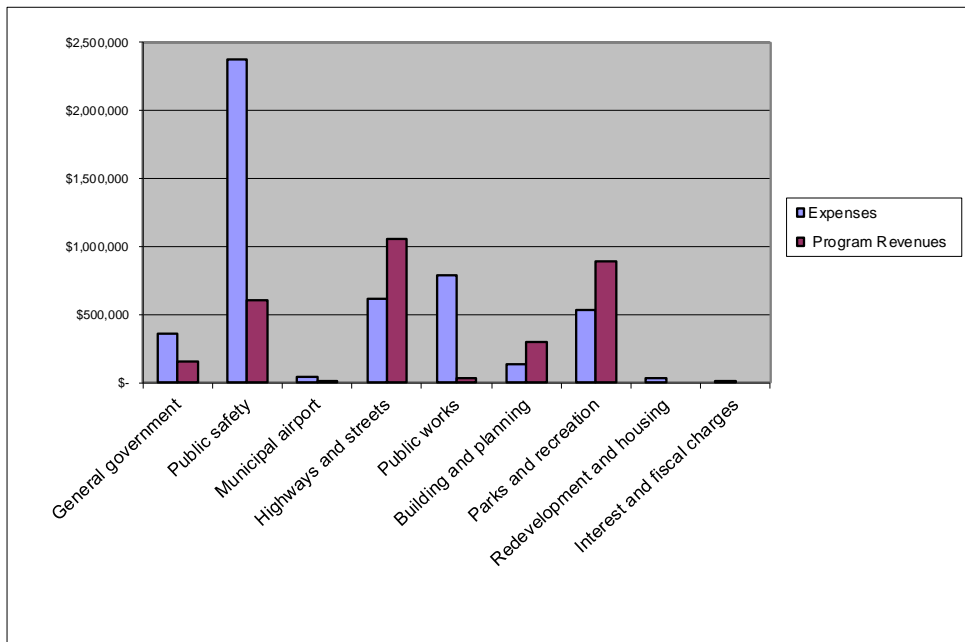
	Governmental Activities		Business-Type Activities		Total	
	2020	2019	2020	2019	2020	2019
Revenues:						
Program revenues:						
Charges for services	\$ 1,741,176	\$ 1,003,667	\$ 4,500,071	\$ 4,270,328	\$ 6,241,247	\$ 5,273,995
Operating grants and contributions	789,051	634,213	44,382	310,148	833,433	944,361
Capital grants and contributions	524,484	84,546	480,844	418,118	1,005,328	502,664
General revenues:						
Property taxes	1,421,731	1,299,446	-	-	1,421,731	1,299,446
Sales tax	710,409	716,048	-	-	710,409	716,048
Franchise taxes	684,636	210,173	-	-	684,636	210,173
Other taxes	931,214	721,881	-	-	931,214	721,881
Earnings on investments	103,925	102,503	22,272	22,038	126,197	124,541
Miscellaneous	49,963	50,274	-	-	49,963	50,274
Gain on sale of assets	-	39,140	-	6,982	-	46,122
Total revenues	6,956,589	4,861,891	5,047,569	5,027,614	12,004,158	9,889,505
Expenses:						
General government	363,288	372,327	-	-	363,288	372,327
Public safety	2,374,257	2,161,815	-	-	2,374,257	2,161,815
Municipal airport	46,407	48,220	-	-	46,407	48,220
Highways and streets	614,406	565,924	-	-	614,406	565,924
Public works	789,575	804,295	-	-	789,575	804,295
Building and planning	139,414	188,219	-	-	139,414	188,219
Parks and recreation	532,370	434,148	-	-	532,370	434,148
Redevelopment and housing	34,600	5,070	-	-	34,600	5,070
Interest and fiscal charges	6,998	9,726	-	-	6,998	9,726
Water	-	-	1,985,365	1,962,965	1,985,365	1,962,965
Sewer	-	-	1,700,932	1,449,689	1,700,932	1,449,689
Sanitation	-	-	729,628	719,671	729,628	719,671
Total expenses	4,901,315	4,589,744	4,415,925	4,132,325	9,317,240	8,722,069
Increase in net position before transfers	2,055,274	272,147	631,644	895,289	2,686,918	1,167,436
Transfers	-	(134,355)	-	134,355	-	-
Increase (decrease) in net position	2,055,274	137,792	631,644	1,029,644	2,686,918	1,167,436
Net position - beginning	19,930,064	19,792,272	14,460,061	13,430,417	34,390,125	33,222,689
Net position - ending	\$ 21,985,338	\$ 19,930,064	\$ 15,091,705	\$ 14,460,061	\$ 37,077,043	\$ 34,390,125

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

Key elements of the increase/decrease in revenue for governmental activities are as follows:

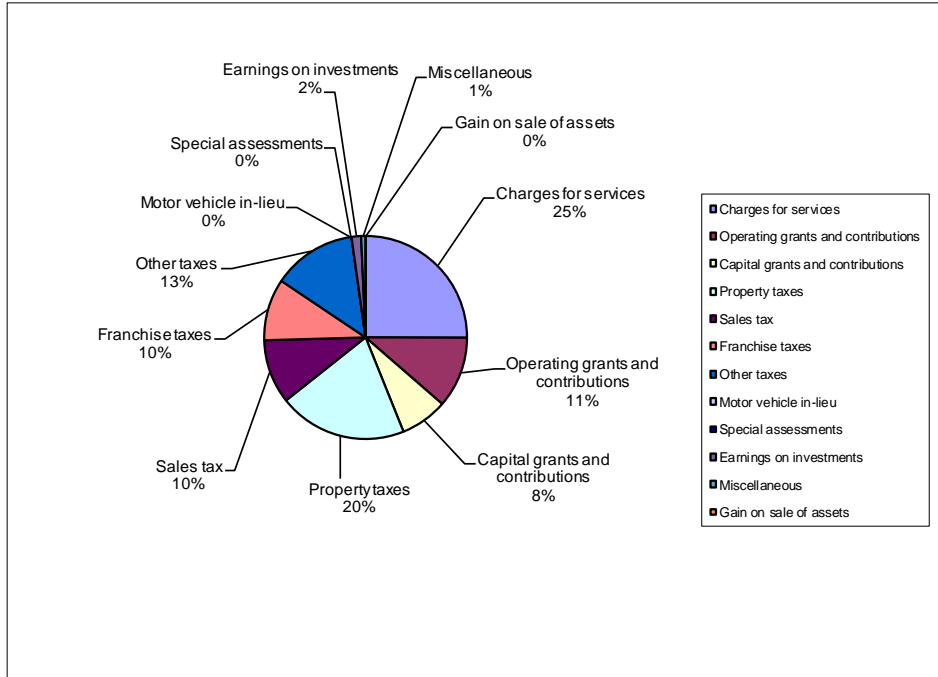
- Charges for services increased by \$737,509 to \$1,741,176 from the prior year. The increase is due almost exclusively to an \$884,051 one-time permitting fee assessed for the LaColonial residential housing development received from KSA Homes, Inc., and offset by lower planning and zoning fees as compared to the prior fiscal year.
- Operating grants and contributions increased by \$154,838 to \$789,051 from the previous year. The increase is due primarily to higher apportioned state gas tax revenue received from the State of California as compared to the prior fiscal year, coupled with higher intergovernmental income received for police services during the current fiscal year.
- Capital grants and contributions increased \$439,938 to \$524,484 during the fiscal year. Capital grants for the current fiscal year of \$524,484 consisted exclusively of federal reimbursement for the reconstruction of the Black, McCabe and Fleming Street Project, which was completed on May 31, 2020. Prior year grants totaling \$298,114 consisted primarily of one-time federal and state grants benefitting the City's police department, which were not available in the current fiscal year.
- Property taxes increased by \$122,285 or 9% during the fiscal year. The increase can be attributed to an increase in assessed values for property over the prior year, coupled with an increasing tax base from the addition of new residential housing within the City limits. The slightly lower sales tax revenue as compared to the prior fiscal year can be attributed to the COVID-19 pandemic, which had negatively affected retail sales in the first and second quarters of 2020.
- Franchise taxes increased by \$474,463 or 226% to \$684,636 during the fiscal year. The current year increase is due exclusively to the assessment and full year collection of franchise fees charged to Canna-Hub, Inc., a California marijuana collective, which began operations within the City towards the end of the prior fiscal year.
- Other taxes increased by \$209,333 to \$931,214 from the prior fiscal year. Federal highway user tax allocated to the City by the Fresno Council of Governments increased by \$172,806 from the prior year. In addition, Measure C funds, a local sales tax dedicated to highway maintenance and improvement and allocated to the City through an independent County agency, was \$41,431 higher than reported in the prior fiscal year.
- Earnings on investments increased by \$1,422 to \$103,925 from the prior fiscal year. The increase is due to higher rates of interest earnings on invested funds as compared to the prior year.

Expenses and Program Revenue – Governmental Activities



**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

Revenues by Source – Governmental Activities



Key elements of the increase/decrease in expenses for governmental activities are as follows:

- General government expenses decreased by \$9,039 to \$363,288 in 2020. The decrease is due primarily to lower administrative wages in the finance department due to the extended leave of a key employee, coupled with lower fees for administrative contract services as compared to the prior fiscal year.
- Public safety expenses increased by \$212,442 or approximately 10% from the prior year. The increase can be attributed almost exclusively to the City police department through salary raises, personnel turn-over and addition of front-line officers, increased overtime pay and higher benefits for health care insurance and retirement benefits for department staff. In addition, with the increase in departmental staffing, the City experienced corresponding increases in operational supplies, fuel, and vehicle maintenance as well.
- Highways and streets expenditures increased by \$48,482 or 9% to \$614,406. Continuing a trend that commenced in the prior fiscal year, the City has deployed more of its internal labor resources to City park projects to address several years of deferred maintenance. This realignment of labor for the past two fiscal years to City parks has resulted in a continuing reduction in salaries and related employee benefits charged to street and road maintenance. However, in total, the expenses increased because of a reclassification of the Storm Drain Master plan expenditures from construction in progress to this line item.
- Public works expenses decreased by \$7,979 to \$796,316. The decrease is due almost exclusively to a lower depreciation provision for the current fiscal year as compared to the prior year.
- Building and planning expenses decreased by \$48,805 or 26% to \$139,414. During the fiscal year, there was a significant reduction in the number of new, large-scale, commercial and residential developments requiring expenditures for outsourced engineering and legal services for planning and zoning as compared to the prior year.
- Parks and recreation expenses increased by \$98,222 to \$532,370. The increase is primarily attributable to higher employee wages and related benefits as the City allocated more of its labor force to address deferred maintenance projects, while also commencing operations at the newly expanded Rojas-Pierce Park. In direct correlation to the rise in labor and related benefits, expenditures for maintenance supplies to address the continuing maintenance backlog also showed a significant increase over the prior year.

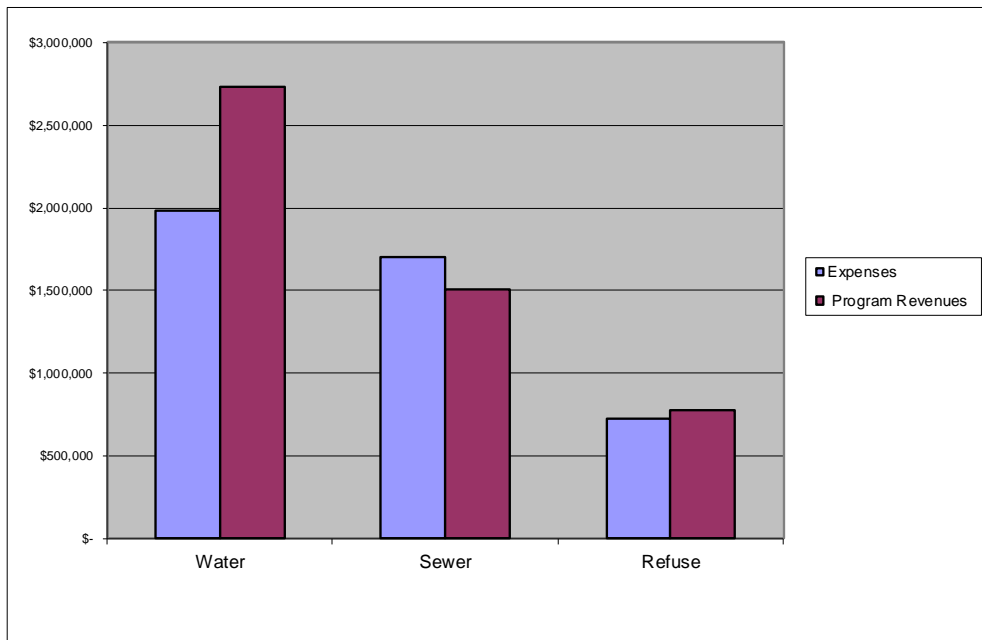
**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

- Interest and fiscal charges decreased by \$2,728 or 28% to \$6,998. The City has benefited from a significant drop in the interest rate charged on a variable rate obligation due to the successor agency of the Mendota Redevelopment Agency in the first and second quarter of 2020 due to the COVID-19 pandemic, resulting in lower interest expense as compared to the prior fiscal year.

Business-type activities. Business-type activities increased the City's net position by \$631,644 over the prior fiscal year. Key elements of this increase are as follows:

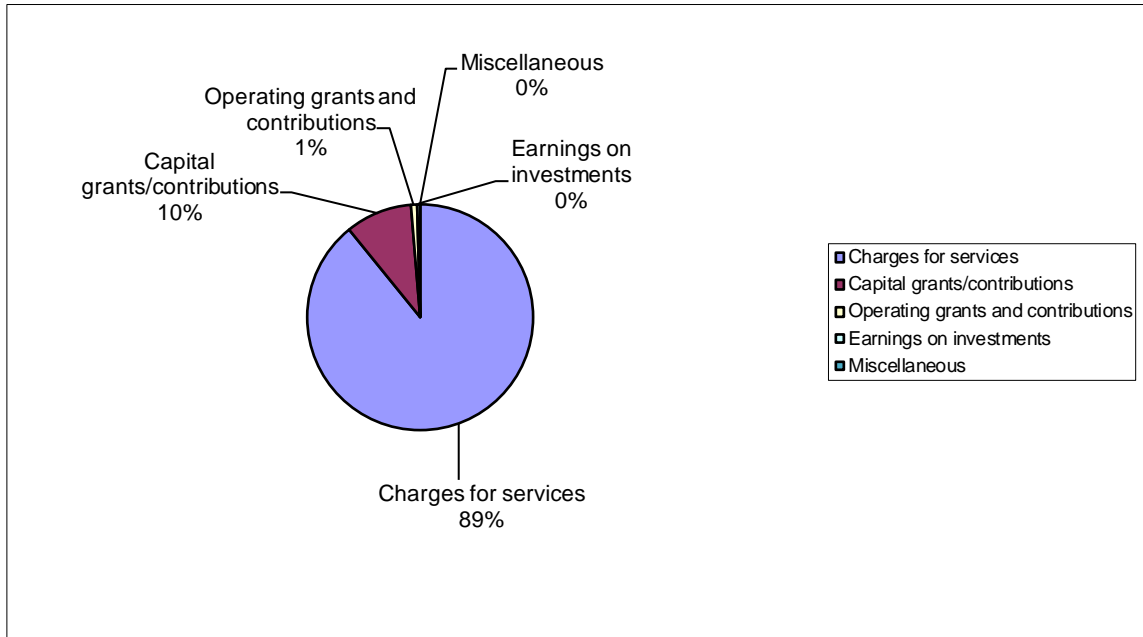
- Charges for services for the business-type activities increased by \$229,743 or 5% over the previous year. The increase is due to the growth in new connections, primarily being the addition of residential housing units in a new La Colonial development located in the northwest section of the City. In addition, the City's Water enterprise fund received a one-time payment of \$120,030 from the Firebaugh Canal Water District for past use of City water resources.
- Operating grants and contributions for the business-type activities decreased by \$265,766 or 86% from the previous year. The decrease is the result of a sharp decrease in approved large-scale development projects permitted by the City for which impact fees for water and sewer are assessed as compared to the prior fiscal year.
- Capital grant's and contributions in the amount of \$480,844 for the current fiscal year represents the earned portion of a federal cash grant the City received in the prior fiscal year for replacement of a bridge accessing the City's water wells.
- Expenses of the Water Enterprise Fund increased by \$22,400 to \$1,985,365 during the year. The increase is due to higher utility costs, depreciation expense and contract service fees, offset by lower labor costs as compared to the prior fiscal year.
- Expenses of the Sewer Enterprise Fund increased by \$251,243 or 17% from the prior fiscal year. During the current fiscal year, the City paid \$107,506 for the removal of approximately 1,800 tons of biosolids from the wastewater treatment plant, a procedure which is required every three to four years. In addition, the Lozano Lift Station project began operation at the end of the prior fiscal year, causing a significant rise in the depreciation provision reported by the fund for the current fiscal year.
- Expenses of the Sanitation Enterprise Fund increased \$9,957 over the prior year due entirely to an increase in fees charged by the City's contracted refuse service provider during the current fiscal year.

Expenses and Program Revenue – Business-Type Activities



**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

Revenue by Source – Business-Type Activities



FINANCIAL ANALYSIS OF CITY'S FUNDS

As noted earlier, the City uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental funds. The focus of the City's governmental funds is to provide information on near-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the City's financing requirements. In particular, the unassigned fund balance may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

At the end of the current fiscal year, the City's governmental funds reported combined ending fund balances of \$6,774,302 an increase of \$1,417,487 in comparison with the prior year. Of this total amount, \$4,706,061 is either nonspendable, restricted, committed or assigned to various projects and activities of the City, leaving an overall unassigned fund balance of \$2,068,241 at June 30, 2020. This represents an increase of \$759,380 over the prior year unassigned fund balance of \$1,308,861 at June 30, 2019.

The General Fund is the chief operating fund of the City. As a measure of the General Fund's liquidity, it may be useful to compare the unassigned fund balance to total fund expenditures. Current year expenditures for the General Fund total \$3,449,006 at June 30, 2020; the unassigned General Fund balance is currently showing a balance of \$2,256,829 at June 30, 2020.

The fund balance of the City's General Fund increased by \$714,131 during the current fiscal year. The following table provides an explanation of revenues by source that changed significantly over the prior year.

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

**Revenue by Source
GENERAL FUND**

	FY2020		FY2019		Increase/ (Decrease)	Percent of Total
	Amount	Percent of Total	Amount	Percent of Total	Amount	
	Taxes	\$ 2,437,146	70.48%	\$ 2,006,291	69.07%	
Licenses and permits	214,890	6.21%	127,134	4.38%	87,756	15.84%
Intergovernmental	58,937	1.70%	70,473	2.43%	(11,536)	-2.08%
Charges for services	469,738	13.58%	463,742	15.97%	5,996	1.08%
Fines	108,228	3.13%	87,814	3.02%	20,414	3.68%
Use of money and property	97,277	2.81%	90,583	3.12%	6,694	1.21%
Proceeds from sale of capital assets	22,371	0.65%	39,140	1.35%	(16,769)	-3.03%
Miscellaneous	49,963	1.44%	19,333	0.67%	30,630	5.53%
Total	\$ 3,458,550	100%	\$ 2,904,510	100%	\$ 554,040	100%

- Taxes increased by \$430,855 or 21% as compared to the prior fiscal year. The City assessed and collected from Canna-Hub, a marijuana collective operating within City limits, franchise fees totaling \$566,667 in the current fiscal year as compared to \$95,000 collected in the prior fiscal year. In addition, property tax revenue increased approximately \$122,000 from the prior fiscal year due to assessment of new residential housing and overall rising property values. These increases were offset by lower sales tax revenue, which was negatively impacted in the first and second quarters of 2020 by the COVID-19 pandemic.
- Charges for services increased by \$5,996 or 1%. During the prior fiscal year, the City significantly increased the charges to the Mendota Unified School District under a contract for the services of police resource officers assigned to the District. The current year increase in revenue can be attributed to a full fiscal year of collections on that contract. Additionally, there was a decrease in revenue attributable to lower planning and zoning fees, primarily being engineering services, charged to developers. As previously noted, there was a significant decrease in new large-scale development projects in the current fiscal year and compared to the prior year.
- Revenue from fines increased \$20,414 to \$108,228. The increase is due to a higher number of vehicle street and DUI citations issued during the year, coupled with higher revenue for police services provided for contracted public events.
- Use of money and property increased by \$6,694 to \$97,277. The primary reason for the increase is higher interest rates received on the City's invested funds as compared rates received in the prior fiscal year.
- The \$30,630 increase in miscellaneous revenue over the prior fiscal year can be attributable to one-time receipts of income not present in the prior fiscal year.

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

The following table provides an explanation of expenditures by function that changed significantly over the prior year:

**Expenditures by Function
GENERAL FUND**

	FY2020		FY2019		Increase/ (Decrease)	Percent of Total
	Amount	Percent of Total	Amount	Percent of Total	Amount	
General government	\$ 315,974	9.16%	\$ 332,461	13.96%	\$ (16,487)	-1.54%
Public safety	1,692,331	49.08%	1,387,675	58.28%	304,656	28.52%
Highways and streets	18,093	0.52%	-	0.00%	18,093	1.69%
Public works	57,774	1.68%	43,965	1.85%	13,809	1.29%
Building and planning	137,719	3.99%	188,485	7.92%	(50,766)	-4.75%
Parks and recreation	365,985	10.61%	286,096	12.02%	79,889	7.48%
Capital outlay	750,998	21.77%	47,266	1.99%	703,732	65.88%
Debt Service	110,132	3.19%	94,790	3.98%	15,342	1.44%
Total	\$ 3,449,006	100%	\$ 2,380,738	100%	\$ 1,068,268	100%

- General government expenditures decreased by \$16,487 to \$315,974. The decrease is due primarily to lower wages and benefits incurred in the City's finance department due to the extended leave of a key employee. This decrease was partially offset by higher administrative legal fees incurred by the City in the current fiscal year.
- Public safety expenditures increased by \$304,656 from the previous fiscal year. The significant increase is due primarily to higher wages and benefits for the City's police department. In addition, the City's General Fund was responsible for paying \$183,230 for County fire protection services in the current fiscal year due to the lack of available resources in special revenue funds dedicated to public safety, which had previously paid the County fire assessment in previous years.
- Building and planning expenditures decreased by \$50,766 or 27% from the previous year due to a substantial decrease in outsourced engineering and planning service fees incurred by the City. This decrease directly correlates with the decrease in charges for services related to planning and zoning fees discussed in the revenue section on the previous page.
- Parks and recreation expenditures increased by \$79,889 to \$365,985 over the prior fiscal year. The increase is primarily attributable to higher supplies and employment costs as the City continued to allocate more labor resources to reduce a backlog of deferred maintenance projects at several City park venues and start operational maintenance of the newly expanded Rojos-Pierce Park dedicated in the spring of 2020.
- Capital outlay expenditures for the fiscal year ended June 30, 2020 consist of the General Fund contributions to the expansion of the Rojos-Pierce Park in the amount of \$704,587, along with capital expenditures for a new computer system server, video camera upgrades at City Hall and the Police Department, and a highway message trailer utilized by the City's police department.
- Debt service payments increased by \$15,342 to \$110,132 from the prior fiscal year. The City made an additional principal payment of \$19,858 on the obligation due to the successor agency of the former Mendota Redevelopment Agency during the current fiscal year. This increase was partially offset by lower interest expense as previously discussed.

The Home Investment Partnership Program Special Revenue Fund has a total fund deficit of \$8,702. The fund had no activity during the current fiscal year due to lack of new funding for community housing assistance.

The Development Fees Special Revenue Fund has a total fund balance of \$266,224, all of which is restricted for public safety, road maintenance, and parks and recreation. Revenues of the fund, collected from developer impact fees and interest earnings on available cash, exceeded expenses by \$477,720 for the current fiscal year. In addition to expending \$437,052 in capital outlay for the expansion of the Rojos-Pierce Park, the fund transferred \$704,587 in available funds to the City General Fund to complete the expansion of the park, resulting in a \$266,867 overall reduction in the fund balance for the current fiscal year.

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

The Local Transportation Fund (LTF) Special Revenue Fund has a total fund balance of \$816,855, all of which is restricted to street maintenance and road improvement projects. The fund was allocated \$527,591 in federal gas tax revenue by the Fresno County Council of Governments during the year and received an intergovernmental federal reimbursement grant of \$241,262 for reconstruction of Black, McCabe and Fleming Streets project. Of the \$452,539 in fund expenditures for the fiscal year, \$190,325 was for general maintenance of City streets, while the remaining \$262,214 was devoted to capital outlay for the above mentioned Black, McCabe and Fleming Streets reconstruction.

Proprietary funds. The City's proprietary funds provide the same type of information found in the government-wide financial statements, but in more detail. Factors concerning these funds have already been addressed in the discussion of Government-Wide Financial Analysis of business-type activities.

GENERAL FUND BUDGETARY HIGHLIGHTS

At the end of the fiscal year, actual expenditures were \$521,880 lower than the final budgetary appropriations. The primary reason for the positive budget variance relates to lower than expected capital outlay expenditures. Capital outlay was budgeted for \$1,378,848, while actual expenditures for the fiscal year came in at \$750,998. One project in particular, the Rojas-Pierce Park expansion, came in approximately \$200,000 under final budget. In addition, during the fiscal year, the City made the decision to utilize funds from a special revenue fund dedicated to parks and recreation to pay \$437,052 of the park expansion costs originally intended for the General Fund. These two factors are the primary reason for the \$627,850 positive budget variance in capital outlay expenditures. This positive budget variance was partially offset by negative budget variances in debt service and parks expenditures. Principal reduction payments for two of the City's debt obligations were inadvertently not budgeted for the fiscal year ended June 30, 2020, while higher than anticipated labor costs, facility repair costs and supplies for maintenance of the City's park venues, resulted in the negative variance.

During the year, actual revenues were \$756,824 higher than the final budgetary estimates. The revenue variance is due primarily to \$566,667 in assessed franchise fees collected from Canna-Hub that inadvertently had not been budgeted for by the City. In addition, the City reported higher revenue for police services, issuance of business licenses and fines and forfeitures for the year, exceeding the City's expectations when developing the original budget and contributing to the overall positive budget variance.

CAPITAL ASSETS AND LONG-TERM OBLIGATIONS

Capital Assets. The City's investment in capital assets of its governmental and business-type activities as of June 30, 2020, amounts to \$32,511,244 (net of accumulated depreciation). This investment in capital assets includes land, construction in progress, infrastructure, land improvements, building and improvements, and equipment. The total increase in the City's investments in capital assets for the current year is approximately nine percent.

City of Mendota's Capital Assets

	Governmental Activities		Business-type Activities		Total	
	2020	2019	2020	2019	2020	2019
Land	\$ 357,322	\$ 357,322	\$ 2,098,220	\$ 2,098,220	\$ 2,455,542	\$ 2,455,542
Construction in progress	144,788	261,640	3,567,094	1,296,132	3,711,882	1,557,772
Infrastructure - non depreciable	-	-	61,425	61,425	61,425	61,425
Infrastructure - depreciable	12,712,674	12,075,787	10,546,505	10,294,101	23,259,179	22,369,888
Land improvements	5,770,695	4,585,148	10,279,996	10,274,882	16,050,691	14,860,030
Buildings and improvements	1,440,436	1,437,879	3,144,163	3,202,914	4,584,599	4,640,793
Equipment	2,022,805	2,181,212	-	-	2,022,805	2,181,212
Less: accumulated depreciation	(8,873,739)	(8,035,461)	(10,761,140)	(10,168,790)	(19,634,879)	(18,204,251)
Total capital assets	<u>\$ 13,574,981</u>	<u>\$ 12,863,527</u>	<u>\$ 18,936,263</u>	<u>\$ 17,058,884</u>	<u>\$ 32,511,244</u>	<u>\$ 29,922,411</u>

**CITY OF MENDOTA
MANAGEMENT'S DISCUSSION AND ANALYSIS
JUNE 30, 2020**

CAPITAL ASSETS AND LONG-TERM OBLIGATIONS (Continued)

Capital Assets (Continued)

This year's additions include:

Completion of the Black, McCabe & Fleming Street reconstruction project	\$ 568,536
Completion of the Rojas-Pierce Park expansion	1,109,206
Acquisition of a new City-wide computer server	29,990
Surveillance camera equipment and upgrade	13,351
Acquisition of highway message trailer	32,510
Engineering designs of a "roundabout" road improvement at Bass Street	100,707
Continued construction of the water and sewer enterprise funds solar project	1,865,094
Continued engineering work on the Mowry bridge reconstruction project	480,844
Expansion of the waste water treatment plant effluent settling ponds	80,900
Replacement of sewer main line on Main Street	120,850
Acquisition of various other equipment and improvements	<u>58,801</u>
Total additions	<u>\$ 4,460,789</u>

For further information, see Note 5 of the financial statements on pages 43 through 44 of this report.

Long-term debt. At the end of the current fiscal year, the City of Mendota has total debt outstanding of \$9,239,035. Of this amount, \$411,997 is the liability of governmental activities and \$8,827,038 is the liability of business-type activities.

City of Mendota's Outstanding Debt

	<u>Governmental Activities</u>		<u>Business-type Activities</u>		<u>Total</u>	
	<u>06/30/2020</u>	<u>06/30/2019</u>	<u>06/30/2020</u>	<u>06/30/2019</u>	<u>06/30/2020</u>	<u>06/30/2019</u>
Revenue bonds payable	\$ -	\$ -	\$ 4,379,788	\$ 4,539,107	\$ 4,379,788	\$ 4,539,107
Loans payable	317,097	418,935	464,279	534,350	781,376	953,285
Capital leases	-	-	3,920,000	3,920,000	3,920,000	3,920,000
Compensated absences	91,690	74,004	58,967	47,670	150,657	121,674
Net pension liability	3,210	-	4,004	-	7,214	-
Total long-term debt	<u>\$ 411,997</u>	<u>\$ 492,939</u>	<u>\$ 8,827,038</u>	<u>\$ 9,041,127</u>	<u>\$ 9,239,035</u>	<u>\$ 9,534,066</u>

Additional information on the City's long-term debt can be found in Note 6 of the financial statements on pages 45 through 49 of this report.

ECONOMIC FACTORS AND NEXT FIVE YEARS' BUDGETS AND RATES

In preparing the budget for the next fiscal year, the following factors were taken into consideration:

- No employee salary adjustments for the current year.
- Health care adjustments of less than 2.50 percent.
- Increases in intergovernmental revenue to be received on various programs from the State of California. Property tax revenue and sales tax increase due to additions of new retailers in the City.

REQUESTS FOR INFORMATION

This report is designed to provide an overview of the City's finances for those with an interest in this area. Any questions concerning the information found in this report or requests for additional information should be directed to the Director of Finance, City of Mendota, 643 Quince Street, Mendota, CA 93640.

GOVERNMENT-WIDE FINANCIAL STATEMENTS

THIS PAGE IS LEFT BLANK INTENTIONALLY.

CITY OF MENDOTA

**STATEMENT OF NET POSITION
JUNE 30, 2020**

	Governmental Activities	Business-Type Activities	Total
ASSETS			
Cash and cash equivalents	\$ 6,060,095	\$ 2,918,257	\$ 8,978,352
Receivables, net	2,879,402	651,201	3,530,603
Prepaid expenses	6,458	8,375	14,833
Internal balances	1,154	(1,154)	-
Restricted assets:			
Cash and cash equivalents	-	7,854,027	7,854,027
Capital assets:			
Nondepreciable	502,110	5,726,739	6,228,849
Depreciable, net	<u>13,072,871</u>	<u>13,209,524</u>	<u>26,282,395</u>
Total assets	<u>22,522,090</u>	<u>30,366,969</u>	<u>52,889,059</u>
DEFERRED OUTFLOWS OF RESOURCES			
Pension deferrals	<u>82,576</u>	<u>106,967</u>	<u>189,543</u>
Total deferred outflows of resources	<u>82,576</u>	<u>106,967</u>	<u>189,543</u>
LIABILITIES			
Accounts payable	195,995	290,326	486,321
Deposits	-	199,263	199,263
Accrued interest	5,445	132,055	137,500
Unearned revenues	4,740	5,931,884	5,936,624
Long-term liabilities:			
Portion due or payable within one year:			
Compensated absences payable	10,578	21,777	32,355
Capital lease payable	-	54,325	54,325
Revenue bonds payable	-	170,000	170,000
Loans payable	16,638	55,970	72,608
Settlement payable	60,000	-	60,000
Portion due or payable after one year:			
Compensated absences payable	81,112	37,190	118,302
Capital lease payable	-	3,865,675	3,865,675
Revenue bonds payable	-	4,209,788	4,209,788
Loans payable	240,459	408,309	648,768
Net pension liability	<u>3,210</u>	<u>4,004</u>	<u>7,214</u>
Total liabilities	<u>618,177</u>	<u>15,380,566</u>	<u>15,998,743</u>
DEFERRED INFLOWS OF RESOURCES			
Pension deferrals	<u>1,151</u>	<u>1,665</u>	<u>2,816</u>
Total deferred inflows of resources	<u>1,151</u>	<u>1,665</u>	<u>2,816</u>
NET POSITION			
Net investment in capital assets	13,317,884	11,443,103	24,760,987
Restricted for:			
Redevelopment and housing	2,847,141	-	2,847,141
Public safety	1,427,086	-	1,427,086
Highways and streets	2,254,510	-	2,254,510
Parks and recreation	42,372	-	42,372
Debt service	-	651,239	651,239
Unrestricted	<u>2,096,345</u>	<u>2,997,363</u>	<u>5,093,708</u>
Total net position	<u>\$ 21,985,338</u>	<u>\$ 15,091,705</u>	<u>\$ 37,077,043</u>

The notes to the basic financial statements are an integral part of this statement.

CITY OF MENDOTA

**STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2020**

Functions/Programs	Program Revenues				Net (Expense) Revenue and Changes in Net Position		
	Expenses	Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
Governmental Activities:							
General government	\$ 363,288	\$ 109,863	\$ 43,872	\$ -	\$ (209,553)	\$ -	\$ (209,553)
Public safety	2,374,257	391,813	214,885	-	(1,767,559)	-	(1,767,559)
Municipal airport	46,407	-	10,000	-	(36,407)	-	(36,407)
Highways and streets	614,406	14,553	520,294	524,484	444,925	-	444,925
Public works	789,575	36,925	-	-	(752,650)	-	(752,650)
Building and planning	139,414	295,784	-	-	156,370	-	156,370
Parks and recreation	532,370	892,238	-	-	359,868	-	359,868
Redevelopment and housing	34,600	-	-	-	(34,600)	-	(34,600)
Interest and fiscal charges	6,998	-	-	-	(6,998)	-	(6,998)
Total governmental activities	4,901,315	1,741,176	789,051	524,484	(1,846,604)	-	(1,846,604)
Business-Type Activities:							
Water	1,985,365	2,234,002	18,802	480,844	-	748,283	748,283
Sewer	1,700,932	1,495,694	15,580	-	-	(189,658)	(189,658)
Sanitation	729,628	770,375	10,000	-	-	50,747	50,747
Total business-type activities	4,415,925	4,500,071	44,382	480,844	-	609,372	609,372
Total City of Mendota	\$ 9,317,240	\$ 6,241,247	\$ 833,433	\$ 1,005,328	(1,846,604)	609,372	(1,237,232)
General revenues:							
Taxes:							
Property taxes					1,421,731	-	1,421,731
Sales tax					710,409	-	710,409
Franchise taxes					684,636	-	684,636
Other taxes					931,214	-	931,214
Revenue from the use of money and property					103,925	22,272	126,197
Miscellaneous					49,963	-	49,963
Total general revenues					3,901,878	22,272	3,924,150
Change in net position					2,055,274	631,644	2,686,918
Net position - beginning					19,930,064	14,460,061	34,390,125
Net position - ending					\$ 21,985,338	\$ 15,091,705	\$ 37,077,043

The notes to the basic financial statements are an integral part of this statement.

FUND FINANCIAL STATEMENTS

CITY OF MENDOTA

**BALANCE SHEET – GOVERNMENTAL FUNDS
JUNE 30, 2020**

	Special Revenue Funds					Total Governmental Funds
	General	Development Fees	HOME Investment Partnership Program	Local Transportation Fund	Nonmajor Governmental Funds	
ASSETS						
Cash and cash equivalents	\$ 2,209,126	\$ 265,895	\$ -	\$ 450,423	\$ 3,134,651	\$ 6,060,095
Receivables	246,729	329	1,142,244	379,532	1,110,568	2,879,402
Due from other funds	48,260	-	-	-	-	48,260
Prepaid expenses	6,458	-	-	-	-	6,458
Total assets	\$ 2,510,573	\$ 266,224	\$ 1,142,244	\$ 829,955	\$ 4,245,219	\$ 8,994,215
LIABILITIES						
Accounts payable	\$ 154,714	\$ -	\$ -	\$ 13,100	\$ 28,181	\$ 195,995
Unearned revenues	4,740	-	-	-	-	4,740
Due to other funds	-	-	8,702	-	31,311	40,013
Settlement payable - current	60,000	-	-	-	-	60,000
Advances from other funds	7,093	-	-	-	-	7,093
Total liabilities	226,547	-	8,702	13,100	59,492	307,841
DEFERRED INFLOWS OF RESOURCES						
Unavailable revenue - loans	-	-	1,142,244	-	769,828	1,912,072
Total deferred inflows of resources	-	-	1,142,244	-	769,828	1,912,072
FUND BALANCES (DEFICIT)						
Nonspendable:						
Prepaid expenses	6,458	-	-	-	-	6,458
Restricted for:						
Redevelopment and housing	-	81,648	-	-	853,421	935,069
Public safety	-	269,833	-	-	1,157,253	1,427,086
Highways and streets	-	63,309	-	816,855	1,374,346	2,254,510
Parks and recreation	-	-	-	-	42,372	42,372
Assigned to:						
Public Safety	867	-	-	-	19,827	20,694
Highways and streets	19,872	-	-	-	-	19,872
Unassigned	2,256,829	(148,566)	(8,702)	-	(31,320)	2,068,241
Total fund balances (deficit)	2,284,026	266,224	(8,702)	816,855	3,415,899	6,774,302
Total liabilities, deferred inflows of resources, and fund balances (deficit)	\$ 2,510,573	\$ 266,224	\$ 1,142,244	\$ 829,955	\$ 4,245,219	\$ 8,994,215

The notes to the basic financial statements are an integral part of this statement.

CITY OF MENDOTA

**RECONCILIATION OF THE GOVERNMENTAL FUNDS BALANCE SHEET TO THE
GOVERNMENT-WIDE STATEMENT OF NET POSITION
JUNE 30, 2020**

Total fund balances - governmental funds		\$ 6,774,302
Capital assets used in governmental activities are not current financial resources and, therefore, are not reported in the governmental funds. The cost of the assets is \$22,448,720 and the accumulated depreciation is \$8,873,739.		13,574,981
Other long-term assets are not available to pay for current period expenditures and, therefore, are deferred in governmental funds.		1,912,072
Interest payable on long-term debt does not require current financial resources; therefore, interest payable is not reported as a liability in the governmental funds balance sheet.		(5,445)
Long-term liabilities are not due and payable in the current period and, therefore, are not reported as liabilities in governmental funds. Long-term liabilities at year-end consist of:		
Loan payable	(257,097)	
Compensated absences	<u>(91,690)</u>	(348,787)
Net pension liability and pension related deferred outflows and inflows of resources are not due in the current period and, therefore, are not reported in governmental funds.		
Net pension liability	(3,210)	
Deferred outflows	82,576	
Deferred inflows	<u>(1,151)</u>	<u>78,215</u>
Net position of governmental activities		<u>\$ 21,985,338</u>

CITY OF MENDOTA

**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES
GOVERNMENTAL FUNDS
FOR THE YEAR ENDED JUNE 30, 2020**

	<u>Special Revenue Funds</u>					Total Governmental Funds
	General	Development Fees	HOME Investment Partnership Program	Local Transportation Fund	Nonmajor Governmental Funds	
REVENUES						
Taxes	\$ 2,437,146	\$ -	\$ -	\$ 527,591	\$ 783,254	\$ 3,747,991
Licenses and permits	214,890	948,320	-	-	-	1,163,210
Intergovernmental	58,937	-	-	241,262	969,464	1,269,663
Charges for services	469,738	-	-	-	-	469,738
Fines	108,228	-	-	-	-	108,228
Loan repayments	-	-	-	-	144,598	144,598
Use of money and property	97,277	1,731	-	724	4,192	103,924
Miscellaneous	49,963	-	-	-	43,872	93,835
Total revenues	<u>3,436,179</u>	<u>950,051</u>	<u>-</u>	<u>769,577</u>	<u>1,945,380</u>	<u>7,101,187</u>
EXPENDITURES						
Current:						
General government	315,974	-	-	-	-	315,974
Public safety	1,692,331	35,279	-	-	562,555	2,290,165
Municipal airport	-	-	-	-	7,989	7,989
Highways and streets	18,093	-	-	190,325	411,396	619,814
Public works	57,774	-	-	-	-	57,774
Building and planning	137,719	-	-	-	-	137,719
Parks and recreation	365,985	-	-	-	22,328	388,313
Redevelopment and housing	-	-	-	-	10,600	10,600
Capital outlay	750,998	437,052	-	262,214	317,327	1,767,591
Debt service:						
Principal	101,838	-	-	-	-	101,838
Interest	8,294	-	-	-	-	8,294
Total expenditures	<u>3,449,006</u>	<u>472,331</u>	<u>-</u>	<u>452,539</u>	<u>1,332,195</u>	<u>5,706,071</u>
Excess (deficiency) of revenues over (under) expenditures	<u>(12,827)</u>	<u>477,720</u>	<u>-</u>	<u>317,038</u>	<u>613,185</u>	<u>1,395,116</u>
OTHER FINANCING SOURCES (USES)						
Proceeds from sale of capital assets	22,371	-	-	-	-	22,371
Transfers in	704,587	-	-	-	-	704,587
Transfers out	-	(704,587)	-	-	-	(704,587)
Total other financing sources (uses)	<u>726,958</u>	<u>(704,587)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>22,371</u>
Net change in fund balances	714,131	(226,867)	-	317,038	613,185	1,417,487
Fund balances (deficit) - beginning	<u>1,569,895</u>	<u>493,091</u>	<u>(8,702)</u>	<u>499,817</u>	<u>2,802,714</u>	<u>5,356,815</u>
Fund balances (deficit) - ending	<u>\$ 2,284,026</u>	<u>\$ 266,224</u>	<u>\$ (8,702)</u>	<u>\$ 816,855</u>	<u>\$ 3,415,899</u>	<u>\$ 6,774,302</u>

The notes to the basic financial statements are an integral part of this statement.

CITY OF MENDOTA

**RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS
TO THE GOVERNMENT-WIDE STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2020**

Net change in fund balances - total governmental funds \$ 1,417,487

Governmental funds report capital outlays as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense. This is the amount by which capital outlay exceeds depreciation expense in the current period. 816,266

The net effect of various miscellaneous transactions involving capital assets (i.e., sales and donations) is to decrease net assets. (104,812)

The issuance of long-term debt provides current financial resources to governmental funds, while the repayment of the principal of long-term debt consumes the current financial resources of the governmental funds. 101,838

In the statement of activities, compensated absences are measured by the amounts earned during the year. In governmental funds, however, expenditures for these items are measured by the amount of financial resources used (essentially the amounts paid). (17,686)

Prior year unavailable revenues previously recognized in the statement of activities were recognized in the governmental funds in the current fiscal year when made available. (168,598)

Interest on long-term debt in the statement of activities differs from the amount reported in the governmental funds because interest is recognized as an expenditure in the funds when it is due, and thus requires the use of current financial resources. In the statement of activities, however, interest expense is recognized as the interest accrues, regardless of when it is due. 1,296

Changes to the pension related deferred outflows do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds. 9,483

Change in net position of governmental activities \$ 2,055,274

CITY OF MENDOTA

**STATEMENT OF NET POSITION
PROPRIETARY FUNDS
JUNE 30, 2020**

	Business-Type Activities — Enterprise Funds			
	Water Fund	Sewer Fund	Sanitation Fund	Total
ASSETS				
Current assets:				
Cash and cash equivalents	\$ 2,321,921	\$ 596,336	\$ -	\$ 2,918,257
Receivables, net	378,970	182,137	90,094	651,201
Prepaid expenses	4,983	3,392	-	8,375
Total current assets	<u>2,705,874</u>	<u>781,865</u>	<u>90,094</u>	<u>3,577,833</u>
Noncurrent assets:				
Restricted assets:				
Cash and cash equivalents	7,202,788	651,239	-	7,854,027
Advances to other funds	1,324,547	14,186	-	1,338,733
Capital assets:				
Nondepreciable	2,306,044	3,420,695	-	5,726,739
Depreciable, net	5,160,097	8,049,427	-	13,209,524
Total noncurrent assets	<u>15,993,476</u>	<u>12,135,547</u>	<u>-</u>	<u>28,129,023</u>
Total assets	<u>18,699,350</u>	<u>12,917,412</u>	<u>90,094</u>	<u>31,706,856</u>
DEFERRED OUTFLOWS OF RESOURCES				
Pension deferrals	<u>67,595</u>	<u>34,167</u>	<u>5,205</u>	<u>106,967</u>
Total deferred outflows of resources	<u>67,595</u>	<u>34,167</u>	<u>5,205</u>	<u>106,967</u>
LIABILITIES				
Current liabilities:				
Accounts payable	125,779	51,185	113,362	290,326
Deposits	199,263	-	-	199,263
Due to other funds	-	-	8,247	8,247
Accrued interest	19,803	112,252	-	132,055
Unearned revenue	5,931,884	-	-	5,931,884
Compensated absences payable	12,730	6,398	2,649	21,777
Capital lease payable	54,325	-	-	54,325
Revenue bonds payable	-	170,000	-	170,000
Loans payable	48,000	7,970	-	55,970
Total current liabilities	<u>6,391,784</u>	<u>347,805</u>	<u>124,258</u>	<u>6,863,847</u>
Noncurrent liabilities:				
Advances from other funds	7,093	1,324,547	-	1,331,640
Compensated absences payable	20,846	15,835	509	37,190
Capital lease payable	3,865,675	-	-	3,865,675
Revenue bonds payable	-	4,209,788	-	4,209,788
Loans payable	395,000	13,309	-	408,309
Net pension liability	2,561	1,250	193	4,004
Total noncurrent liabilities	<u>4,291,175</u>	<u>5,564,729</u>	<u>702</u>	<u>9,856,606</u>
Total liabilities	<u>10,682,959</u>	<u>5,912,534</u>	<u>124,960</u>	<u>16,720,453</u>

The notes to the basic financial statements are an integral part of this statement.

CITY OF MENDOTA

**STATEMENT OF NET POSITION
 PROPRIETARY FUNDS
 JUNE 30, 2020
 (Continued)**

	Business-Type Activities — Enterprise Funds			
	Water Fund	Sewer Fund	Sanitation Fund	Total
DEFERRED INFLOWS OF RESOURCES				
Pension deferrals	<u>1,006</u>	<u>575</u>	<u>84</u>	<u>1,665</u>
Total deferred outflows of resources	<u>1,006</u>	<u>575</u>	<u>84</u>	<u>1,665</u>
NET POSITION (DEFICIT)				
Net investment in capital assets	5,698,595	5,744,508	-	11,443,103
Restricted for:				
Debt service	-	651,239	-	651,239
Unrestricted	<u>2,384,385</u>	<u>642,723</u>	<u>(29,745)</u>	<u>2,997,363</u>
Total net position (deficit)	<u>\$ 8,082,980</u>	<u>\$ 7,038,470</u>	<u>\$ (29,745)</u>	<u>\$ 15,091,705</u>

The notes to the basic financial statements are an integral part of this statement.

CITY OF MENDOTA

**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN
FUND NET POSITION – PROPRIETARY FUNDS
FOR THE YEAR ENDED JUNE 30, 2020**

	Business-Type Activities — Enterprise Funds			
	Water Fund	Sewer Fund	Sanitation Fund	Total
Operating revenues:				
Charges for services	\$ 2,234,002	\$ 1,495,694	\$ 770,375	\$ 4,500,071
Miscellaneous	-	-	10,000	10,000
Total operating revenues	<u>2,234,002</u>	<u>1,495,694</u>	<u>780,375</u>	<u>4,510,071</u>
Operating expenses:				
Wages and benefits	559,324	423,873	49,041	1,032,238
Maintenance and supplies	998,043	620,086	680,587	2,298,716
Depreciation	325,279	346,816	-	672,095
Amortization	-	4,681	-	4,681
Bad debt	1,604	-	-	1,604
Total operating expenses	<u>1,884,250</u>	<u>1,395,456</u>	<u>729,628</u>	<u>4,009,334</u>
Operating income	<u>349,752</u>	<u>100,238</u>	<u>50,747</u>	<u>500,737</u>
Nonoperating revenue (expenses):				
Developer fees	18,802	15,580	-	34,382
Interest income	15,353	6,919	-	22,272
Interest expense	(69,733)	(274,734)	-	(344,467)
Capital grant revenue	480,844	-	-	480,844
Gain (loss) on sale of assets	(31,382)	(30,742)	-	(62,124)
Total nonoperating revenues (expenses)	<u>413,884</u>	<u>(282,977)</u>	<u>-</u>	<u>130,907</u>
Change in net position	763,636	(182,739)	50,747	631,644
Net position (deficit) - beginning	<u>7,319,344</u>	<u>7,221,209</u>	<u>(80,492)</u>	<u>14,460,061</u>
Net position (deficit) - ending	<u>\$ 8,082,980</u>	<u>\$ 7,038,470</u>	<u>\$ (29,745)</u>	<u>\$ 15,091,705</u>

The notes to the basic financial statements are an integral part of this statement.

CITY OF MENDOTA

**STATEMENT OF CASH FLOWS
PROPRIETARY FUNDS
FOR THE YEAR ENDED JUNE 30, 2020**

	Business-Type Activities — Enterprise Funds			
	Water Fund	Sewer Fund	Sanitation Fund	Total
Cash flow from operating activities:				
Cash received from customers	\$ 2,098,177	\$ 1,483,846	\$ 763,464	\$ 4,345,487
Cash payments to suppliers	(1,065,393)	(985,113)	(622,626)	(2,673,132)
Cash payments to employees	(556,222)	(417,560)	(47,628)	(1,021,410)
Other operating cash receipts	-	-	10,000	10,000
Net cash provided by operating activities	<u>476,562</u>	<u>81,173</u>	<u>103,210</u>	<u>660,945</u>
Cash flow from noncapital financing activities:				
Loans from/(to) other funds	<u>(1,332,571)</u>	<u>1,340,595</u>	<u>(103,210)</u>	<u>(95,186)</u>
Net cash provided (used) by noncapital financing activities	<u>(1,332,571)</u>	<u>1,340,595</u>	<u>(103,210)</u>	<u>(95,186)</u>
Cash flow from capital and related financing activities:				
Cash received from developers	18,802	15,580	-	34,382
Proceeds from sale of capital assets	6,663	6,663	-	13,326
Principal and interest paid on capital debt	(126,603)	(456,484)	-	(583,087)
Acquisition or construction of capital assets	<u>(1,084,606)</u>	<u>(1,540,318)</u>	<u>-</u>	<u>(2,624,924)</u>
Net cash provided (used) by capital and related financing activities	<u>(1,185,744)</u>	<u>(1,974,559)</u>	<u>-</u>	<u>(3,160,303)</u>
Cash flow from investing activities:				
Interest and dividends on investments	<u>15,245</u>	<u>7,690</u>	<u>-</u>	<u>22,935</u>
Net cash provided by investing activities	<u>15,245</u>	<u>7,690</u>	<u>-</u>	<u>22,935</u>
Net increase (decrease) in cash	(2,026,508)	(545,101)	-	(2,571,609)
Cash and cash equivalents, July 1, 2019	<u>11,551,217</u>	<u>1,792,676</u>	<u>-</u>	<u>13,343,893</u>
Cash and cash equivalents, June 30, 2020	<u>\$ 9,524,709</u>	<u>\$ 1,247,575</u>	<u>\$ -</u>	<u>\$ 10,772,284</u>

The notes to the basic financial statements are an integral part of this statement.

CITY OF MENDOTA

**STATEMENT OF CASH FLOWS
 PROPRIETARY FUNDS
 FOR THE YEAR ENDED JUNE 30, 2020
 (Continued)**

	Business-Type Activities — Enterprise Funds			
	Water Fund	Sewer Fund	Sanitation Fund	Total
Operating income	\$ 349,752	\$ 100,238	\$ 50,747	\$ 500,737
<i>Adjustments to reconcile operating income to net cash provided by operating activities:</i>				
Depreciation and amortization	325,279	351,497	-	676,776
<i>Change in assets and liabilities:</i>				
Decrease (increase) in receivables	(145,355)	(11,848)	(6,911)	(164,114)
Decrease (increase) in prepaid expenses	(4,983)	(3,392)	-	(8,375)
Decrease (increase) in pension deferred outflows	(6,025)	821	(66)	(5,270)
Increase (decrease) in accounts payable	(62,367)	(361,635)	57,961	(366,041)
Increase (decrease) in compensated absences	6,081	3,970	1,246	11,297
Increase (decrease) in customer deposits	11,134	-	-	11,134
Increase (decrease) in net pension liabilities	3,909	2,033	307	6,249
Increase (decrease) in pension deferred inflows	(863)	(511)	(74)	(1,448)
Net cash provided by operating activities	<u>\$ 476,562</u>	<u>\$ 81,173</u>	<u>\$ 103,210</u>	<u>\$ 660,945</u>

The notes to the basic financial statements are an integral part of this statement.

NOTES TO THE BASIC FINANCIAL STATEMENTS

THIS PAGE IS LEFT BLANK INTENTIONALLY.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 1 – ORGANIZATION AND ACCOUNTING POLICIES

The basic financial statements of City of Mendota (the “City”) have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP) as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles. The more significant of the government’s accounting principles are described below.

A. Reporting Entity

The City was incorporated in 1942 as a general law city of the State of California and, as such, can exercise the powers specified by the constitution and laws of the State of California. The City is governed by an elected five-member City Council under the administration of an appointed City Manager. The City provides the following services: public safety; community services; planning and zoning; street construction and maintenance; water; sanitation collection and disposal; sewer; street cleaning and general administrative services.

As required by generally accepted accounting principles, these financial statements present the City and its component units, entities for which the City is considered to be financially accountable. Blended component units, although legally separate entities are, in substance, part of the government’s operations. Further, the City Council has significant influence over the operations of the component units and data from these units are combined with data of the primary government. The blended component unit has a June 30 year-end.

B. Blended Component Unit

Mendota Community Corporation

The Corporation was incorporated in the State of California on April 13, 2015 by the Mendota City Council as a nonprofit entity under Internal Revenue Code Section 501(c)(3) to facilitate the receipt of tax-deductible donations from the public to fund various philanthropic causes within the City of Mendota. The activity of the Mendota Community Corporation (the “Corporation”) is reported in these financial statements as a special revenue fund.

C. Basis of Presentation

Management’s Discussion and Analysis

GASB Statement No. 34 requires that financial statements be accompanied by a narrative introduction and analytical overview of the City’s financial activities in the form of “management’s discussion and analysis” (MD&A). This analysis is similar to the analysis provided in the annual reports of private-sector organizations.

Government-Wide Financial Statements

The statement of net position and the statement of activities display information about the primary government (the City) and its component units. These statements include the financial activities of the overall government, except for fiduciary activities. Eliminations have been made to minimize the double-counting of internal activities. These statements distinguish between the *governmental* and *business-type activities* of the City. Governmental activities generally are financed through taxes, intergovernmental revenues, and other nonexchange transactions. Business-type activities are financed in whole or in part by fees charged to external parties.

The statement of activities presents a comparison between direct expenses and program revenues for the different business-type activities of the City and for each function of the City’s governmental activities. Direct expenses are those that are specifically associated with a program or function and, therefore, are clearly recipients of goods or services offered by the programs and (b) grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Revenues that are not classified as program revenues, including all taxes, are presented as general revenues.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 1 – ORGANIZATION AND ACCOUNTING POLICIES (Continued)

C. Basis of Presentation (Continued)

Fund Financial Statements

The fund financial statements provide information about the City's funds. Separate statements for each fund category – *governmental and proprietary* – are presented. The emphasis of fund financial statements is on major governmental and enterprise funds; each displayed in a separate column. All remaining governmental and enterprise funds are aggregated and reported as nonmajor funds.

Proprietary fund operating revenues, such as charges for services, result from exchange transactions associated with the principal activity of the fund. Exchange transactions are those in which each party receives and gives up essentially equal values. Nonoperating revenues, such as subsidies and investment earnings, result from nonexchange transactions or ancillary activities.

D. Major Funds

Major funds are defined as funds that have either assets, liabilities, revenues, or expenditures/expenses equal to ten percent of their fund-type total and five percent of the grand total. The General Fund is always a major fund. The City may also select other funds it believes should be presented as major funds.

The City reports the following major governmental funds in the accompany financial statements:

General Fund - This is the City's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

Development Fees Special Revenue Fund - This fund is used to account for impact fees charged to developers for new construction within the City of Mendota. Impact fees are assessed against developers based on the various aspects of the project to be constructed to address the impacts of the new infrastructure on City services provided, including public safety, road improvement, and parks and recreation.

HOME Investment Partnership Program Special Revenue Fund - This fund is used to account for grant funds received from the Federal Government for the purpose of developing viable urban communities and for the City's rehabilitation program.

Local Transportation Fund (LTF) Special Revenue Fund – This fund is used to account for the City's apportioned share of assessed federal gas tax revenue as determined by and passed through the Fresno Council of Governments, as well as other intergovernmental revenue for streets and roads projects. The funds are to be used exclusively for maintenance and improvement of the City's streets and roads.

The City reports the following major enterprise funds in the accompanying financial statements:

Water Fund - This fund is used to account for the activities of the City's water distribution operations.

Sewer Fund - This fund is used to account for the activities of the City's wastewater utility and collection.

Sanitation Fund - This fund is used to account for the activities of the City's sanitation services.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 1 – ORGANIZATION AND ACCOUNTING POLICIES (Continued)

E. Measurement Focus, Basis of Accounting

Government-Wide and Proprietary Fund Financial Statements

The government-wide and proprietary fund financial statements are reported using the economic resources measurement focus. The government-wide and proprietary fund financial statements are reported using the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded at the time liabilities are incurred, regardless of when the related cash flows take place. Nonexchange transactions, in which the City gives (or receives) value without directly receiving (or giving) equal value in exchange, include property taxes, grants, entitlements, and donations. On an accrual basis, revenue from property taxes is recognized in the fiscal year for which the taxes are levied. Revenue from grants, entitlements, and donations is recognized in the fiscal year in which all eligibility requirements have been satisfied.

Governmental Fund Financial Statements

Governmental funds are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under this method, revenues are recognized when measurable and available. The City considers certain revenues reported in the governmental funds to be available if the revenues are collected within sixty days after year-end. Property taxes, sales taxes, franchise taxes, licenses, and interest are considered to be susceptible to accrual. Expenditures are recorded when the related fund liability is incurred, except for principal and interest on general long-term debt, claims and judgments, as well as compensated absences, which are recognized as expenditures to the extent they have matured. General capital asset acquisitions are reported as expenditures in governmental funds. Proceeds of general long-term debt and acquisitions under capital leases are reported as other financing sources.

F. Assets, Liabilities, Deferred Outflows/Inflows of Resources, and Net Position/Fund Balance

Cash and Cash Equivalents

The City's cash and cash equivalents are considered to be cash on hand, demand deposits, and short-term investments with original maturities of three months or less from the date of acquisition. These investments are not specifically identified with any one fund. Interest is allocated to the individual funds on the basis of average cash balances.

Restricted Assets

Certain proceeds of general obligation debt and enterprise debt are classified as restricted assets on the balance sheet because their use is limited by applicable debt covenants. "Cash with Fiscal Agent" is used to report resources set aside for potential deficiencies in the repayment ability of the debt service fund and enterprise funds, and for payment of construction projects undertaken by the City.

Interfund Transactions

Activities between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are referred to as either "due to/from other funds" (i.e., the current portion of interfund loans) or "advances to/from other funds" (i.e., the noncurrent portion of interfund loans). Any residual balances outstanding between the governmental activities and business-type activities are reported in the government-wide financial statements as "internal balances."

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 1 – ORGANIZATION AND ACCOUNTING POLICIES (Continued)

F. Assets, Liabilities, Deferred Outflows/Inflows of Resources, and Net Position/Fund Balance (Continued)

Capital Assets

Capital assets, which include land, buildings and improvements, equipment, and infrastructure assets (e.g., roads, sidewalks, traffic lights and signals, street lights and similar items), are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. Such capital assets are recorded at historical cost. Donated capital assets are recorded at estimated fair value at the date of donation. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets lives are not capitalized.

The City's policy has set the capitalization threshold for reporting capital assets as follows:

<u>Capital Assets</u>	<u>Minimum Threshold</u>
Land	\$ 100,000
Land improvements	5,000
Buildings	100,000
Building improvements	5,000
Vehicles	5,000
Equipment/machinery	5,000
Infrastructure	100,000
Utility systems	100,000
Information technology equipment	5,000

For capital assets, depreciation is recorded on a straight-line basis over the estimated useful lives of the assets as follows:

<u>Capital Assets</u>	<u>Useful Life</u>
Land improvements	10-20 years
Buildings	25-40 years
Building improvements	25-40 years
Vehicles	5-10 years
Equipment/machinery	5-10 years
Infrastructure	20-40 years
Utility systems	25-40 years
Information technology equipment	3-5 years

The City has decided not to capitalize general infrastructure assets retroactively as allowed under paragraph 148 of GASB Statement No. 34.

Major outlays for capital assets and improvements are capitalized as projects are constructed.

Interest Payable

In the government-wide financial statements, interest payable of long-term debt is recognized as the liability is incurred for governmental fund types and proprietary fund types.

In the fund financial statements, proprietary fund types recognize the interest payable when the liability is incurred.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 1 – ORGANIZATION AND ACCOUNTING POLICIES (Continued)

F. Assets, Liabilities, Deferred Outflows/Inflows of Resources, and Net Position/Fund Balance (Continued)

Unearned Revenue

In the government-wide financial statements, unearned revenue is recognized for transactions for which revenue has not yet been earned. Typically, transactions recorded as unearned revenue in the government-wide financial statements are long-term loans receivable, advanced fees from developers, and prepaid charges for services.

Unavailable Revenue

In the fund financial statements, unavailable revenue is recorded when transactions have not yet met the revenue recognition criteria based on the modified accrued basis of accounting. The City records unavailable revenue for transactions for which revenues have been earned but are not available to meet current financial obligations. Typical transactions for which unavailable revenue is recorded are property taxes earned but not yet available.

Compensated Absences

Compensated absences are recorded in accordance with GASB. Vested or accumulated compensated absences that are expected to be liquidated with current financial resources are reported as an expenditure and a fund liability of the governmental fund that will pay it. Amounts of vested or accumulated compensated absences that are not expected to be liquidated with expendable available financial resources are reported in the governmental activities of the government-wide financial statements. Vested or accumulated compensated absences of proprietary funds are recorded as an expense and liability of those funds as the benefits accrue to employees.

Pensions

For purposes of measuring the net pension liability and deferred outflows/inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the City's California Public Employees' Retirement System (CalPERS) plan (Plan) and additions to/deductions from the Plan's fiduciary net position have been determined on the same basis as they are reported by CalPERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Net Position and Fund Balance

Net Position

In government-wide financial statements, net position is reported in three categories as follows:

- *Net Investment in Capital Assets* – This amount consists of capital assets net of accumulated depreciation and reduced by outstanding debt that attributed to the acquisition, construction, or improvements of the assets.
- *Restricted Net Position* – This amount is restricted by external creditors, grantors, contributors, or laws or regulations of other governments.
- *Unrestricted Net Position* – This amount is all net position that does not meet the definition of “net investment in capital assets” or “restricted net position.”

When an expense is incurred for purposes for which both restricted and unrestricted net position are available, the City's practice is to apply restricted net position first.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 1 – ORGANIZATION AND ACCOUNTING POLICIES (Continued)

F. Assets, Liabilities, Deferred Outflows/Inflows of Resources, and Net Position/Fund Balance (Continued)

***Net Position and Fund Balance* (Continued)**

Fund Balance Classification

The governmental fund financial statements present fund balances based on classifications that comprise a hierarchy that is based primarily on the extent to which the City is bound to honor constraints on the specific purposes for which amounts in the respective governmental funds can be spent. The classifications used in the governmental fund financial statements are as follows:

- *Nonspendable* - This classification includes amounts that cannot be spent because they are either (a) not in spendable form or (b) are legally or contractually required to be maintained intact.
- *Restricted* - This classification includes amounts for which constraints have been placed on the use of the resources either (a) externally imposed by creditors (such as through a debt covenant), grantors, contributors, or laws or regulations of other governments, or (b) imposed by law through constitutional provisions or enabling legislation.
- *Committed* - This classification includes amounts that can be used only for specific purposes pursuant to constraints imposed by formal action of the City Council. These amounts cannot be used for any other purpose unless the City Council removes or changes the specified use by taking the same type of action (ordinance or resolution) that was employed when the funds were initially committed. This classification also includes contractual obligations to the extent that existing resources have been specifically committed for use in satisfying those contractual requirements.
- *Assigned* - This classification includes amounts that are constrained by the City's intent to be used for a specific purpose but are neither restricted nor committed. This intent can be expressed by the City Council or through the City Council delegating this responsibility to the City Manager through the budgetary process. This classification also includes the remaining positive fund balance for all governmental funds except for the General Fund.
- *Unassigned* - This classification includes amounts that have not been assigned to other funds or restricted, committed or assigned to a specific purpose within the City. This classification also includes negative residual fund balance of any other governmental fund that cannot be eliminated by offsetting of assigned fund balance amount.

City Council establishes (and modifies or rescinds) fund balance commitments by passage of an ordinance or resolution. This is typically done through adoption and amendment of the budget. A fund balance commitment is further indicated in the budget document as a designation or commitment of the fund (such as for special incentives). Assigned fund balance is established by the City Council through adoption or amendment of the budget as intended for specific purpose (such as the purchase of fixed assets, construction, debt service, or for other purposes).

When an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available, the City considers restricted funds to have been spent first. When an expenditure is incurred for which committed, assigned, or unassigned fund balances are available, the City considers amounts to have been spent first out of committed funds, then assigned funds, and finally unassigned funds, as needed, unless City Council has provided otherwise in its commitment or assignment actions.

In the General Fund, the City strives to maintain an unassigned fund balance to be used for unanticipated emergencies of approximately 20% of the actual GAAP basis expenditures and other financing sources and uses.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 1 – ORGANIZATION AND ACCOUNTING POLICIES (Continued)

F. Assets, Liabilities, Deferred Outflows/Inflows of Resources, and Net Position/Fund Balance (Continued)

Property Tax Calendar

Secured property taxes become a lien on the property as of January 1 and are levied in two equal installments: the first due November 1, and delinquent on December 11, and the second due February 1 and delinquent April 11. Property taxes on unsecured property are due on the lien date of March 1 and become delinquent on September 1. The County of Fresno is responsible for the assessment, collection, and apportionment for all jurisdictions within the County, including the City of Mendota.

The City accounts for property taxes in conformance with NCGA Interpretation 3 which requires that: (1) taxes relating to the current budget and collected within 60 days after the year-end of the budget period be recognized as revenue currently; and (2) a property tax assessment made during the current year, for the purpose of financing the budget of the following fiscal period, be recorded as receivable and the related revenue deferred to the period for which it was levied.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

NOTE 2 – CASH AND INVESTMENTS

The City of Mendota maintains a cash and investment pool that is available for all funds. Each fund type balance in the pool is reflected on the combined balance sheet as cash and investments. The City apportions interest earnings to all funds based on their monthly cash balances. Certain restricted funds which are held and invested by independent outside custodians through contractual agreements are not pooled. These restricted funds include cash and investment held by trustees.

Cash and investments as of June 30, 2020 are classified in the accompanying financial statements as follows:

Statement of Net Position:

Cash and cash equivalents	\$ 8,978,352
Cash and cash equivalents - restricted	<u>7,854,027</u>
Total cash and investments	<u>\$ 16,832,379</u>

Cash and investments as of June 30, 2020 consist of the following:

Cash on hand	\$ 700
Bank deposits	15,014,470
State investment pool	1,165,971
Investments	<u>651,238</u>
Total cash and investments	<u>\$ 16,832,379</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 2 – CASH AND INVESTMENTS (Continued)

A. Deposits

The carrying amount of the City's cash deposit was \$15,014,471 at June 30, 2020. The bank balance at June 30, 2020 was \$14,954,048 the total amount of which was insured and/or collateralized with securities held by the pledging financial institutions in the City's name as described below.

Custodial credit risk for *deposits* is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The California Government Code and the City's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local government units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The market value of the pledged securities in the collateral pool must equal at least 110 percent of the total amount deposited by the public agencies. California law also allows financial institutions to secure City deposits by pledging first trust deed mortgage notes having a value of 150 percent of the secured public deposits.

B. Investments

Investments Authorized by the City's Investment Policy

The City of Mendota's investment policy only authorizes investment in the local government investment pool administered by the State of California (LAIF). The City's investment policy does not contain any specific provisions intended to limit the City's exposure to interest rate risk, credit risk, and concentration of credit risk.

Investments Authorized by Debt Agreements

Investment of debt proceeds held by bond trustees are governed by provision of debt agreements, rather than the general provisions of the California Government Code or the City's investment policy. The table below identifies the investment types that are authorized for investments held by bond trustee. The table also identifies certain provisions of these debt agreements that address interest rate risk, credit risk, and concentration of credit risk.

<u>Authorized Investment Type</u>	<u>Maximum Maturity</u>
U.S. Treasury Obligations	None
U.S. Agency Securities	None
Banker's Acceptances	180 days
Commercial Paper	270 days
Money Market Mutual Funds	N/A

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 2 – CASH AND INVESTMENTS (Continued)

B. Investments (Continued)

Disclosures Relating to Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates.

Information about the sensitivity of the fair values of the City’s investments to market interest rate fluctuations is provided by the following table that shows the maturity date of each investment:

Investment Type	Amount	Remaining Maturity Date
State investment pool	\$ 1,165,971	12 months or less
Held by fiscal agents:		
Money market	<u>651,238</u>	12 months or less
Total	<u><u>\$ 1,817,209</u></u>	

Disclosure Relating to Credit Risk

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. Presented below is actual rating as of year-end for each investment type:

Investment Type	Amount	Ratings as of Year-End	
		AAAm	Not Rated
State investment pool	\$ 1,165,971	\$ -	\$ 1,165,971
Held by fiscal agents:			
Money market	<u>651,238</u>	<u>651,238</u>	<u>-</u>
Total	<u><u>\$ 1,817,209</u></u>	<u><u>\$ 651,238</u></u>	<u><u>\$ 1,165,971</u></u>

Concentration of Credit Risk

The investment policy of the City contains no limitations on the amount that can be invested in any one issuer beyond that stipulated by the California Government Code. The City holds investments in U.S. Bank Money Market Account that represents 5 percent or more of total City investments.

Investments in any one issuer that represent 5 percent or more of total investments by reporting unit (primary government, governmental activities, major funds, nonmajor funds in aggregate, etc.) are as follows:

- \$651,238 of cash and investments (including amounts held by bond trustee) reported in the Sewer Fund are held in the form of the above-described money market funds.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 2 – CASH AND INVESTMENTS (Continued)

B. Investments (Continued)

Custodial Credit Risk

The custodial credit risk for *investments* is the risk that, in the event of the failure of the counterparty (i.e., broker-dealer) to a transaction, a government will not be able to recover the value of its investment or collateral securities that are in the possession of another party. The California Government Code and the City's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for investments. With respect to investment, custodial credit risk generally applies only to direct investment in securities through the use of mutual funds or government investment pools (such as LAIF).

Investment in State Investment Pool

The City is a voluntary participant in the Local Agency Investment Fund (LAIF) that is regulated by California Government Code Section 16429 under the oversight of the Treasurer of the State of California. The fair value of the City's investment in this pool is reported in the accompanying financial statements at amount based upon the City's pro-rata share of the fair value provided by LAIF for the entire LAIF portfolio (in relation to the amortized cost of the portfolio). The balance available for withdrawal is based in the accounting records maintained by LAIF, which are recorded on an amortized cost basis.

Investments Valuation

The City categorizes the fair value measurements of its investments based on the hierarchy established by generally accepted accounting principles. The fair value hierarchy, which has three levels, is based on the valuation inputs used to measure an asset's fair value: Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; Level 3 inputs are significant unobservable inputs. The City does not have any investments that are measured using Level 3 inputs.

Fair value measurements of the City's investments are as follows at June 30, 2020.

- Investment in the Local Agency Investment Fund: valued at \$1,165,971, based on the City's pro-rata share of the fair value provided by the LAIF for the entire LAIF portfolio. LAIF invests in numerous types of investments ranging all levels in the fair value hierarchy. Accordingly, LAIF is not an investment type that can be categorized in any particular level in the fair value hierarchy.
- Investment in the money market is valued at \$651,238. Money market funds have a maturity of less than one year and are presented at amortized costs, which approximates fair value. Since they are presented at amortized costs, they are not an investment type that can be categorized in any particular level in the fair value hierarchy.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 3 – RECEIVABLES

Receivables as of June 30, 2020 consist of the following:

Governmental Activities

	General	Development Fees	HOME Investment Partnership Program	Local Transportation Fund	Nonmajor Governmental	Total
Receivables:						
Intergovernmental	\$ 246,276	\$ -	\$ -	\$ 379,393	\$ 339,909	\$ 965,578
Interest	453	329	-	139	831	1,752
Loans	-	-	1,142,244	-	769,828	1,912,072
Total receivables	<u>\$ 246,729</u>	<u>\$ 329</u>	<u>\$ 1,142,244</u>	<u>\$ 379,532</u>	<u>\$ 1,110,568</u>	<u>\$ 2,879,402</u>

Business-Type Activities

	Water Fund	Sewer Fund	Sanitation Fund	Total
Receivables:				
Accounts	\$ 424,694	\$ 194,230	\$ 100,699	\$ 719,623
Interest	2,320	182	-	2,502
Allowance for uncollectible	<u>(48,044)</u>	<u>(12,275)</u>	<u>(10,605)</u>	<u>(70,924)</u>
Total receivables, net	<u>\$ 378,970</u>	<u>\$ 182,137</u>	<u>\$ 90,094</u>	<u>\$ 651,201</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 4 – INTERFUND ACTIVITY

Due from/Due to Other Funds

Interfund receivable and payable balances arise from interfund transactions and are recorded by all funds affected in the period in which transactions are executed and are expected to be repaid shortly after the end of the fiscal year. Interfund receivable and payable balances have primarily been recorded when funds overdraw their share of pooled cash.

Activities within due from/due to other fund balances at June 30, 2020 are as follows:

	<u>Due From</u>	<u>Due To</u>
Major Funds:		
General Fund	\$ 48,260	\$ -
HOME Investment Partnership Program Special Revenue Fund	-	8,702
Sanitation Fund	-	8,247
Nonmajor Funds:		
Aviation Assistance Special Revenue Fund	-	5,508
Street Capital Projects Fund	-	25,803
	<u> </u>	<u> </u>
Total	<u>\$ 48,260</u>	<u>\$ 48,260</u>

Advances to/Advances from Other Funds

Advances receivable constitute long-term borrowing between funds. Advances typically carry a stated interest rate and have scheduled debt service payments. At June 30, 2020, the funds below have made advances that were not expected to be repaid in one year or less.

	<u>Advances To</u>	<u>Advances From</u>
Major Funds:		
General Fund	\$ -	\$ 7,093
Water Fund	1,324,547	7,093
Sewer Fund	14,186	1,324,547
	<u> </u>	<u> </u>
Total	<u>\$ 1,338,733</u>	<u>\$ 1,338,733</u>

Interfund Transfers

Interfund transfers consist of operating transfers from funds receiving revenue through which the resources are to be expended.

Interfund transfers for the year ended June 30, 2020 were as follows:

	<u>Transfer In</u>	<u>Transfer Out</u>
Major Funds:		
General Fund	\$ 704,587	\$ -
Development Fees Special Revenue Fund	-	704,587
	<u> </u>	<u> </u>
Total	<u>\$ 704,587</u>	<u>\$ 704,587</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 5 – CAPITAL ASSETS

A summary of governmental activities capital assets activity for the year ended June 30, 2020 is as follows:

	<u>Balance</u> <u>June 30, 2019</u>	<u>Additions</u>	<u>Dispositions</u>	<u>Balance</u> <u>June 30, 2020</u>
Governmental Activities				
Capital assets, not being depreciated:				
Land	\$ 357,322	\$ -	\$ -	\$ 357,322
Construction in progress	<u>261,640</u>	<u>1,787,691</u>	<u>(1,904,543)</u>	<u>144,788</u>
Total capital assets, not being depreciated	<u>618,962</u>	<u>1,787,691</u>	<u>(1,904,543)</u>	<u>502,110</u>
Capital assets, being depreciated:				
Infrastructure	12,075,787	636,887	-	12,712,674
Land improvements	4,585,148	1,185,547	-	5,770,695
Buildings and improvements	1,437,879	2,557	-	1,440,436
Equipment	<u>2,181,212</u>	<u>54,859</u>	<u>(213,266)</u>	<u>2,022,805</u>
Total capital assets, being depreciated	<u>20,280,026</u>	<u>1,879,850</u>	<u>(213,266)</u>	<u>21,946,610</u>
Less: accumulated depreciation	<u>(8,035,461)</u>	<u>(1,025,763)</u>	<u>187,485</u>	<u>(8,873,739)</u>
Total capital asset, being depreciated, net	<u>12,244,565</u>	<u>854,087</u>	<u>(25,781)</u>	<u>13,072,871</u>
Governmental activities capital assets, net	<u>\$ 12,863,527</u>	<u>\$ 2,641,778</u>	<u>\$ (1,930,324)</u>	<u>\$ 13,574,981</u>

Depreciation expense was charged to the following governmental activities functions on the statement of activities:

Governmental Activities	
General government	\$ 21,353
Public safety	66,406
Municipal airport	38,577
Highways and streets	691,901
Public works	32,520
Parks and recreation	<u>175,006</u>
Total depreciation expense - governmental activities	<u>\$ 1,025,763</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 5 – CAPITAL ASSETS (Continued)

A summary of business-type capital assets activity for the year ended June 30, 2020 is as follows:

	Balance June 30, 2019	Acquisitions	Dispositions	Balance June 30, 2020
Business-Type Activities:				
Capital assets, not being depreciated:				
Land	\$ 2,098,220	\$ -	\$ -	\$ 2,098,220
Construction in progress	1,296,132	2,346,413	(75,451)	3,567,094
Infrastructure	<u>61,425</u>	<u>-</u>	<u>-</u>	<u>61,425</u>
Total capital assets, not being depreciated	<u>3,455,777</u>	<u>2,346,413</u>	<u>(75,451)</u>	<u>5,726,739</u>
Capital assets, being depreciated:				
Infrastructure	10,294,101	252,404	-	10,546,505
Buildings and improvements	10,274,882	5,114	-	10,279,996
Equipment	<u>3,202,914</u>	<u>20,994</u>	<u>(79,745)</u>	<u>3,144,163</u>
Total capital assets, being depreciated	<u>23,771,897</u>	<u>278,512</u>	<u>(79,745)</u>	<u>23,970,664</u>
Less: accumulated depreciation	<u>(10,168,790)</u>	<u>(672,095)</u>	<u>79,745</u>	<u>(10,761,140)</u>
Total capital asset, being depreciated, net	<u>13,603,107</u>	<u>(393,583)</u>	<u>-</u>	<u>13,209,524</u>
Business-type activities capital assets, net	<u>\$ 17,058,884</u>	<u>\$ 1,952,830</u>	<u>\$ (75,451)</u>	<u>\$ 18,936,263</u>

Depreciation expense was charged to the following business-type activities functions on the statement of activities:

Business-Type Activities:	
Water	\$ 325,279
Sewer	<u>346,816</u>
Total depreciation expense - business-type activities	<u>\$ 672,095</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 6 – LONG-TERM LIABILITIES

A summary of governmental activities long-term debt transactions for the year ended June 30, 2020 are as follows:

	<u>Balance July 1, 2019</u>	<u>Issued/ Transferred</u>	<u>Retired/ Transferred</u>	<u>Balance June 30, 2020</u>	<u>Due Within One Year</u>
Governmental Activities:					
<i>Notes from direct borrowings and direct placements:</i>					
Westamerica Bank Loan, payable in monthly installments of \$1,626, including interest at 5.50%. Instrument matured on October 1, 2020 and is secured by first trust deed on real property acquired. There is a provision whereby if the City is unable to make payment then all principal and interest becomes immediately due and payable. Additionally, the lender may modify this loan without the consent or of notice to the City.	\$ 25,074	\$ -	\$ (18,579)	\$ 6,495	\$ 6,495
Loan due to the Successor Agency of the Mendota Redevelopment Agency. Interest is calculated and accrued quarterly based on the current rate of interest earned with the California Local Agency Investment Fund. Annual principal reductions of \$10,143, including interest equal to the Local Agency Investment Fund (LAIF) current rate, is payable on January 1 each year until paid in full on January 1, 2024. There is a provision in the loan whereby in an event of default the lender may declare the entire unpaid principal and interest immediately due and payable, with an increase in interest per annum of 10% or the maximum amount permitted by applicable law. Additionally, the lender may modify this loan without the consent or of notice to the City.	<u>273,861</u>	<u>-</u>	<u>(23,259)</u>	<u>250,602</u>	<u>10,143</u>
<i>Total notes from direct borrowings and direct placements:</i>	<u>298,935</u>	<u>-</u>	<u>(41,838)</u>	<u>257,097</u>	<u>16,638</u>
Contractual legal settlement in the case of <i>Warkentine et al. v. Soria et al.</i> , in which the City of Mendota was a party. Initial principal reduction of \$350,000 paid on March 11, 2016, to be followed by five equal, non-interest bearing, annual installments of \$60,000 beginning March 2, 2017. Maturing on March 2, 2021.	120,000	-	(60,000)	60,000	60,000
Compensated absences	<u>74,004</u>	<u>174,548</u>	<u>(156,862)</u>	<u>91,690</u>	<u>10,578</u>
Governmental activities long-term liabilities	<u>\$ 492,939</u>	<u>\$ 174,548</u>	<u>\$ (258,700)</u>	<u>\$ 408,787</u>	<u>\$ 87,216</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 6 – LONG-TERM LIABILITIES (Continued)

A summary of business-type activities long-term debt transactions for the year ended June 30, 2020 are as follows:

	<u>Balance July 1, 2019</u>	<u>Issued/ Transferred</u>	<u>Retired/ Transferred</u>	<u>Balance June 30, 2020</u>	<u>Due Within One Year</u>
Business-Type Activities:					
<i>Revenue Bonds:</i>					
Mendota Joint Powers Financing Authority Wastewater Revenue Bonds, Series 2005, payable in annual principal reductions from \$30,000 to \$200,000, interest payable on January 1 and July 1; serial bonds with annual maturities on July 1 beginning in 2006, in amounts from \$30,000 to \$135,000, with interest rates from 3.00% to 4.75%; term bonds in the amount of \$620,000 at 5.10% maturing July 1, 2024, and in the amount of \$1,725,000 at 5.25% maturing July 1, 2035, with annual payments ranging from \$135,000 to \$200,000 beginning 2024. The bonds are secured by revenues received from ownership and operation of the Wastewater Enterprise Fund. There is a provision in the bonds whereby in an event of default the lender may accelerate the installment payments; however, there can be no assurance that there will be sufficient revenue to pay the accelerated amount.					
	\$ 2,610,000	\$ -	\$ (130,000)	\$ 2,480,000	\$ 135,000
Less: unamortized bond discount	<u>(74,893)</u>	<u>-</u>	<u>4,681</u>	<u>(70,212)</u>	<u>-</u>
Subtotal	2,535,107	-	(125,319)	2,409,788	135,000
<i>Notes from direct borrowings and direct placements:</i>					
USDA Water Improvement Loan, payable in annual principal reductions from \$22,000 to \$60,000, interest payable semi-annually at 4.50% per annum. The loan is secured by a pledge of net revenues.					
	489,000	-	(46,000)	443,000	48,000
Westamerica Bank Loan, payable in monthly installments of \$1,552, including interest at 5.50%. Instrument matures on July 20, 2020 and is secured by three work trucks acquired. There is a provision whereby if the City is unable to make payment then all principal and interest becomes immediately due and payable. Additionally, the lender may modify this loan without the consent or of notice to the City.					
	19,528	-	(17,983)	1,545	1,545
Westamerica Bank Loan, payable in monthly installments of \$610, including interest at 5.25%. Instrument matures on May 21, 2023 and is secured by administrative vehicle acquired. There is a provision whereby if the City is unable to make payment then all principal and interest becomes immediately due and payable. Additionally, the lender may modify this loan without the consent or of notice to the City.					
	25,822	-	(6,088)	19,734	6,425
Mendota Joint Powers Financing Authority Wastewater Certificates of Participation, Series 2010-1, payable in annual principal reductions from \$18,000 to \$110,000 beginning on July 1, 2010 through July 1, 2049, interest payable semi-annually on January 1 and July 1 at the stated interest rate of 4.00%. The loan is secured by a pledge of net revenues. There is a provision in the loan whereby in an event of default the lender may declare the entire unpaid principal and interest immediately due and payable.					
	<u>2,004,000</u>	<u>-</u>	<u>(34,000)</u>	<u>1,970,000</u>	<u>35,000</u>
<i>Total notes from direct borrowings and direct placements:</i>	<u>2,538,350</u>	<u>-</u>	<u>(104,071)</u>	<u>2,434,279</u>	<u>90,970</u>
Signature Bank capital lease obligation, payable in quarterly principal reductions from \$226 to \$120,577 beginning on May 28, 2020 through February 28, 2035, interest payable quarterly on February 28, May 28, August 28 and November 30 at a stated rate of 3.394%. Secured by the solar project acquired. There is a provision whereby if the City is unable to make payment then all principal and interest becomes immediately due and payable. There is also a provision in the lease whereby, in the event of default on other loans that are greater than or equal to \$500,000, the outstanding principal and interest may become immediately due and payable.					
	3,920,000	-	-	3,920,000	54,325
Compensated absences	<u>47,670</u>	<u>114,907</u>	<u>(103,610)</u>	<u>58,967</u>	<u>21,777</u>
Business-type activities long-term liabilities	<u>\$ 9,041,127</u>	<u>\$ 114,907</u>	<u>\$ (333,000)</u>	<u>\$ 8,823,034</u>	<u>\$ 302,072</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 6 – LONG-TERM LIABILITIES (Continued)

As of June 30, 2020, annual debt service requirements for governmental activities are as follows:

Westamerica Bank Loan (Land Acquisition)

<u>Year Ending June 30</u>	<u>Principal</u>	<u>Interest</u>	<u>Totals</u>
2021	<u>\$ 6,495</u>	<u>\$ 77</u>	<u>\$ 6,572</u>
Total	<u>\$ 6,495</u>	<u>\$ 77</u>	<u>\$ 6,572</u>

Successor Agency of the Mendota Redevelopment Agency Loan

<u>Year Ending June 30</u>	<u>Principal</u>	<u>Interest</u>	<u>Totals</u>
2021	<u>\$ 10,143</u>	<u>\$ 4,026</u>	<u>\$ 14,169</u>
2022	<u>10,143</u>	<u>3,684</u>	<u>13,827</u>
2023	<u>10,143</u>	<u>3,535</u>	<u>13,678</u>
2024	<u>220,173</u>	<u>5,004</u>	<u>225,177</u>
Total	<u>\$ 250,602</u>	<u>\$ 16,249</u>	<u>\$ 266,851</u>

Contractual Legal Settlement (Warkentine, et. al.)

<u>Year Ending June 30</u>	<u>Principal</u>	<u>Interest</u>	<u>Totals</u>
2021	<u>\$ 60,000</u>	<u>\$ -</u>	<u>\$ 60,000</u>
Total	<u>\$ 60,000</u>	<u>\$ -</u>	<u>\$ 60,000</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 6 – LONG-TERM LIABILITIES (Continued)

As of June 30, 2020, annual debt service requirements for business-type activities are as follows:

**Mendota Joint Powers Financing Authority
Wastewater Revenue Bonds, Series 2005**

Year Ending June 30	Principal	Interest	Totals
2021	\$ 135,000	\$ 123,044	\$ 258,044
2022	145,000	116,213	261,213
2023	150,000	108,838	258,838
2024	160,000	101,088	261,088
2025	165,000	92,963	257,963
2026-2030	665,000	361,916	1,026,916
2031-2035	860,000	166,603	1,026,603
2036	200,000	5,150	205,150
Subtotal	2,480,000	1,075,815	3,555,815
Less: unamortized discount	(70,212)	-	(70,212)
Total	<u>\$ 2,409,788</u>	<u>\$ 1,075,815</u>	<u>\$ 3,485,603</u>

USDA Water Improvement Loan

Year Ending June 30	Principal	Interest	Totals
2021	\$ 48,000	\$ 18,855	\$ 66,855
2022	50,000	16,650	66,650
2023	52,000	14,355	66,355
2024	54,000	11,970	65,970
2025	57,000	9,473	66,473
Thereafter	182,000	12,285	194,285
Total	<u>\$ 443,000</u>	<u>\$ 83,588</u>	<u>\$ 526,588</u>

Westamerica Bank Loan (Vehicles)

Year Ending June 30	Principal	Interest	Totals
2021	\$ 1,545	\$ 7	\$ 1,552
Total	<u>\$ 1,545</u>	<u>\$ 7</u>	<u>\$ 1,552</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 6 – LONG-TERM LIABILITIES (Continued)

Westamerica Jeep Cherokee			
<u>Year Ending June 30</u>	<u>Principal</u>	<u>Interest</u>	<u>Totals</u>
2021	\$ 6,425	\$ 895	\$ 7,320
2022	6,775	545	7,320
2023	<u>6,534</u>	<u>175</u>	<u>6,709</u>
Total	<u>\$ 19,734</u>	<u>\$ 1,615</u>	<u>\$ 21,349</u>

**Mendota Joint Powers Financing Authority Wastewater Certificates of
Participation, Series 2010-1**

<u>Year Ending June 30</u>	<u>Principal</u>	<u>Interest</u>	<u>Totals</u>
2021	\$ 35,000	\$ 78,310	\$ 113,310
2022	37,000	76,654	113,654
2023	38,000	75,154	113,154
2024	40,000	73,593	113,593
2025	41,000	72,173	113,173
2026-2030	231,000	333,562	564,562
2031-2035	282,000	282,432	564,432
2036-2040	342,000	220,156	562,156
2041-2045	417,000	144,518	561,518
2046-2050	<u>507,000</u>	<u>52,240</u>	<u>559,240</u>
Total	<u>\$ 1,970,000</u>	<u>\$ 1,408,792</u>	<u>\$ 3,378,792</u>

Signature Bank Capital Lease Obligation (Solar Project)

<u>Year Ending June 30</u>	<u>Principal</u>	<u>Interest</u>	<u>Totals</u>
2021	\$ 54,325	\$ 184,835	\$ 239,160
2022	119,326	129,750	249,076
2023	137,523	125,473	262,996
2024	156,993	120,562	277,555
2025	182,784	114,953	297,737
2026-2030	1,312,795	458,576	1,771,371
2031-2035	<u>1,956,254</u>	<u>175,634</u>	<u>2,131,888</u>
Total	<u>\$ 3,920,000</u>	<u>\$ 1,309,783</u>	<u>\$ 5,229,783</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 7 – RISK MANAGEMENT

The City is exposed to various risks of loss related to torts, theft, damage or destruction of assets, errors and omissions, injuries to employees, and natural disasters. During fiscal year 2012, the City obtained general liability coverage at a cost that is considered to be economically justifiable by joining together with other government entities in the State as a member of the Central San Joaquin Valley Risk Management Authority (CSJVRMA). RMA is a self-funded pool operating as a common risk management and insurance program. The City pays an annual premium to CSJVRMA for its above insurance coverage. The agreement for the formation of CSJVRMA provides that CSJVRMA will be self-sustaining through member premiums and will reinsure through commercial companies for claims in excess of acceptable risk levels; however, each category of coverage has its own level of reinsurance. The financial statements of CSJVRMA can be obtained at 1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833.

Current levels of coverage are \$10,000,000 liability, \$1,000,000 workers compensation, and applicable assessed value in property coverage. Losses in excess of \$10,000 are pooled with other members of the association.

NOTE 8 – DEFERRED OUTFLOWS/INFLOWS OF RESOURCES

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position or fund balance that applies to a future period(s) and thus, will not be recognized as an outflow of resources (expense/expenditure) until then. The City has pension related items that qualify to be reported as deferred outflows of resources. The pension related deferred outflows of resources are described in detail in Note 10.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position or fund balance that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. The City has numerous items, which arises only under a modified accrual basis of accounting that qualifies for reporting in this category. Accordingly, the items, unavailable revenue and deferred loans, are reported only in the governmental funds balance sheet. Deferred inflows of resources reported in the governmental funds for unavailable revenues are as follows:

	HOME Investment Partnership Program	Nonmajor Governmental Funds	Total
Unavailable revenues - loans	\$ 1,142,244	\$ 769,828	\$ 1,912,072
Total deferred inflows of resources	\$ 1,142,244	\$ 769,828	\$ 1,912,072

NOTE 9 – 401(K) PENSION PLAN

The City contributes to the City of Mendota 401(k) Profit Sharing Plan (Plan), for its full-time safety employees after 6 months of service with the City. The Plan is administered by the City.

Benefit terms, including contribution requirements, for the Plan are established and may be amended by the City Council. For each employee in the Plan, the City is required to contribute 5 percent of annual salary and may contribute additional matching contributions to an individual employee account. Employees are permitted to make contributions to the Plan, up to applicable Internal Revenue Code Limits. For the year ended June 30, 2020, employee contributions totaled \$87,353 and the City recognized pension expense of \$13,412, which comprise of contributions made by the City to the Plan.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 9 – 401(K) PENSION PLAN (Continued)

Employees are immediately vested in their own contributions and earnings on those contributions and become fully vested in City contributions and earnings after completing 3 years of creditable service with the City. Nonvested City contributions are forfeited upon termination of employment. Such forfeitures are used to cover a portion of the Plan's administrative expenses and contributions. For the year ended June 30, 2020, there were no forfeitures reported.

NOTE 10 – DEFINED BENEFIT PENSION PLAN

A. General Information about the Pension Plan

Plan Description – All qualified permanent and probationary employees are eligible to participate in the Public Agency Cost Sharing Multiple-Employer Plan (Plan) administered by the California Public Employees' Retirement System (CalPERS). The Plan consists of individual rate plans (benefit tiers) within a safety risk pool (police and fire) and a miscellaneous risk pool (all others.) Plan assets may be used to pay benefits for any employer rate plan of the safety and miscellaneous pools. Accordingly, rate plans within the safety or miscellaneous pools are not separate plans under GASB Statement No. 68. Individual employers may sponsor more than one rate plan in the miscellaneous or safety risk pools. The City sponsors one miscellaneous rate plan. Benefit provisions under the Plan are established by State statute and City resolution. CalPERS issues publicly available reports that include a full description of the pension plan regarding benefit provisions, assumptions and membership information that can be found on the CalPERS website.

Benefits Provided – CalPERS provides service retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. Benefits are based on years of credited service, equal to one year of full-time employment. Members with five years of total service are eligible to retire at age 50 with statutorily reduced benefits. All members are eligible for non-duty disability benefits after 10 years of service. The death benefit is one of the following: the Basic Death Benefit, the 1957 Survivor Benefit, or the Optional Settlement 2W Death Benefit. The cost of living adjustments for the Plan are applied as specified by the Public Employees' Retirement Law.

The rate plan provisions and benefits in effect at June 30, 2020 are summarized as follows:

	<u>Miscellaneous PEPRA</u>
Hire date	Prior to on or after January 1, 2013
Benefit formula	2% @ 62
Benefit vesting schedule	5 years service
Benefit payments	monthly for life
Retirement age	52 - 67
Monthly benefits, as a % of annual salary	1.0% to 2.5%
Required employee contribution rates	6.75%
Required employer contribution rates	6.985%

Beginning in fiscal year 2016, CalPERS collects employer contributions for the Plan as a percentage of payroll for the normal cost portion as noted in the rates above and as a dollar amount for contributions toward the unfunded liability and side fund, if applicable. The dollar amounts are billed on a monthly basis. The City's required contribution for the unfunded liability was \$308 for the fiscal year ended June 30, 2020.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 10 – DEFINED BENEFIT PENSION PLAN (Continued)

A. General Information about the Pension Plan (Continued)

Contributions –Section 20814(c) of the California Public Employees’ Retirement Law (PERL) requires that the employer rates for all public employers are determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. The total plan contributions are determined through CalPERS’ annual actuarial valuation process. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. The City is required to contribute the difference between the actuarially determined rate and the contribution rate of employees. Employer contribution rates may change if plan contracts are amended. Payments made by the employer to satisfy contribution requirements that are identified by the pension plan terms as plan member contribution requirements are classified as plan member contributions.

The City’s contributions to the plan that were recognized as a part of pension expense for the year ended June 30, 2020 were \$87,172.

B. Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions

As of June 30, 2020, the City reported a net pension liability for its proportionate share of the Plan of \$7,214.

The City’s net pension liability for the Plan is measured as the proportionate share of the net pension liability. The net pension liability of the Plan is measured as of June 30, 2019, and the total pension liability for the Plan used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2018, rolled forward to June 30, 2019, using standard update procedures. The City’s proportion of the net pension liability was based on a projection of the City’s long-term share of contributions to the pension plan relative to the projected contributions of all participating employers, actuarially determined. The City’s proportionate share of the net pension liability for the Plan as of June 30, 2018 and 2019 was as follows:

Proportion - June 30, 2018	0.0000%
Proportion - June 30, 2019	0.0001%
Change - Increase (Decrease)	0.0001%

For the year ended June 30, 2020, the City recognized pension expense of \$71,017. At June 30, 2020, the City reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
	<u> </u>	<u> </u>
Pension contributions subsequent to the measurement date	\$ 80,969	\$ -
Changes of assumptions	344	122
Differences between actual and expected experience	501	39
Net differences between projected and actual earnings on plan investments	-	126
Change in employer's proportion	10,057	2,529
Differences between the employer's actual contributions and the employer's proportionate share of contributions	<u>97,672</u>	<u>-</u>
Total	<u>\$ 189,543</u>	<u>\$ 2,816</u>

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 10 – DEFINED BENEFIT PENSION PLAN (Continued)

B. Pension Liabilities, Pension Expenses and Deferred Outflows/Inflows of Resources Related to Pensions (Continued)

\$80,969 reported as deferred outflows of resources related to contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended June 30, 2021. Other amounts reported as deferred outflow of resources and deferred inflows of resources related to pensions will be recognized as pension expense as follows:

Years Ending June 30	
2021	\$ 52,095
2022	35,699
2023	17,939
2024	25

C. Actuarial Assumptions

The total pension liabilities in the June 30, 2018 actuarial valuations were determined using the following actuarial assumptions:

Valuation Date	June 30, 2018
Measurement Date	June 30, 2019
Actuarial Cost Method	Entry- Age Normal Cost Method
Actuarial Assumptions:	
Discount Rate	7.15%
Inflation	2.50%
Payroll Growth	2.75%
Projected Salary Increase	Varies by Entry Age and Service
Investment Rate of Return	7.15% ⁽¹⁾
Mortality	Derived using CalPERS' Membership Data for all Funds ⁽²⁾

⁽¹⁾ Net of pension plan investment expenses, including inflation

⁽²⁾ The mortality table was developed based on CalPERS specific data. The table includes 15 years of mortality improvements using Society of Actuaries Scale 90% of scale MP 2016.

The underlying mortality assumptions and all other actuarial assumptions used in the June 30, 2017 valuation were based on the results of December 2017 actuarial experience study for the period 1997 to 2015. Further details of the Experiences Study can be found on the CalPERS website.

D. Discount Rate

The discount rate used to measure the total pension liability was 7.15%. The projection of cash flows used to determine the discount rate assumed that contributions from plan members will be made at the current member contribution rates and that contributions from employers will be made at statutorily required rates, actuarially determined. Based on those assumptions, the Plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 10 – DEFINED BENEFIT PENSION PLAN (Continued)

D. Discount Rate (Continued)

The long-term expected rate of return on pension plan investments was determined using a building-block method in which expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class.

In determining the long-term expected rate of return, CalPERS took into account both short-term and long-term market return expectations as well as the expected PERF cash flows. Using historical returns of all the funds' asset classes, expected compound (geometric) returns were calculated over the short-term (first 10 years) and the long-term (11+ years) using a building-block approach. Using the expected nominal returns for both short-term and long-term, the present value of benefits was calculated for each fund. The expected rate of return was set by calculating the single equivalent expected return that arrived at the same present value of benefits for cash flows as the one calculated using both short-term and long-term returns. The expected rate of return was then set equivalent to the single equivalent rate calculated above and adjusted to account for assumed administrative expenses.

The expected real rates of return by asset class are as follows:

Asset Class ^(a)	New Strategic Allocation	Real Return Years 1-10 ^(b)	Real Return Years 11+ ^(c)
Global Equity	50.0%	4.80%	5.98%
Fixed Income	28.0%	1.00%	2.62%
Inflation Assets	0.0%	0.77%	1.81%
Private Equity	8.0%	6.30%	7.23%
Real Assets	13.0%	3.75%	4.93%
Liquidity	1.0%	0.00%	-0.92%
Total	100.0%		

^(a) In the CalPERS CAFR, Fixed Income is included in Global Debt Securities; Liquidity is included in Short-term Investments; Inflation Assets are included in both Global Equity Securities and Global Debt Securities.

^(b) An expected inflation of 2.00% used for this period

^(c) An expected inflation of 2.92% used for this period

Sensitivity of the Proportionate Share of the Net Pension Liability to Changes in the Discount Rate – The following presents the City's proportionate share of the net pension liability (asset) for the Plan, calculated using the discount rate for the Plan, as well as what the City's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower or 1-percentage point higher than the current rate:

Discount Rate -1% 6.15%	Current Discount Rate 7.15%	Discount Rate +1% 8.15%
\$ 59,705	\$ 7,214	\$ (36,114)

E. Pension Plan Fiduciary Net Position

Detailed information about the Plan's fiduciary net position is available in the separately issued CalPERS financial reports.

F. Payable to the Pension Plan

The City did not have an outstanding amount of contributions to the pension plan required for the year ended June 30, 2020.

CITY OF MENDOTA

**NOTES TO THE BASIC FINANCIAL STATEMENTS
JUNE 30, 2020**

NOTE 11 – DEFICIT FUND BALANCES/NET POSITIONS

The following funds had deficit fund equity at June 30, 2020:

Major Funds:

HOME Investment Partnership Program Special Revenue Fund	\$	8,702
Sanitation Fund		29,745

Nonmajor Governmental Funds:

Aviation Assistance Special Revenue Fund		5,530
Streets Capital Projects Fund		25,790

NOTE 12 – CONTINGENCIES

A. Grants

The government participates in various federal grant programs, the principal of which are subject to program compliance audits pursuant to the Single Audit Act as amended. Accordingly, the government's compliance with applicable grant requirements will be established at a future date. The amount of expenditures which may be disallowed by the granting agencies cannot be determined at this time, although the government anticipates such amounts, if any, will be immaterial.

B. COVID-19

On March 11, 2020, the World Health Organization declared the outbreak of coronavirus (COVID-19) a pandemic. In response, the State of California has issued Stay At Home Orders which include the temporary closure of all businesses deemed to be nonessential. The most recent Regional Stay At Home Order, effective December 7, 2020 for Fresno County, requires individuals living in the San Joaquin Valley Region to stay at home, except as allowed, to maintain continuity of the federal critical infrastructure sectors. Accordingly, some functions of the City's operations have been limited to protect the health and safety of its employees. The financial impact that could occur as a result of the pandemic is unknown at this time.

THIS PAGE IS LEFT BLANK INTENTIONALLY.

REQUIRED SUPPLEMENTARY INFORMATION

THIS PAGE IS LEFT BLANK INTENTIONALLY

CITY OF MENDOTA

**BUDGETARY COMPARISON SCHEDULE
GENERAL FUND
FOR THE YEAR ENDED JUNE 30, 2020**

	Original Budget	Final Budget	Actual Amounts	Variance with Final Budget
REVENUES				
Taxes	\$ 1,909,660	\$ 1,909,660	\$ 2,437,146	\$ 527,486
Licenses and permits	177,000	177,000	214,890	37,890
Intergovernmental	10,500	10,500	58,937	48,437
Charges for services	400,082	400,082	469,738	69,656
Fines	73,000	73,000	108,228	35,228
Revenue from the use of money and property	92,613	92,613	97,277	4,664
Miscellaneous	<u>17,286</u>	<u>16,500</u>	<u>49,963</u>	<u>33,463</u>
 Total revenues	 <u>2,680,141</u>	 <u>2,679,355</u>	 <u>3,436,179</u>	 <u>756,824</u>
EXPENDITURES				
Current:				
General government	424,857	571,905	315,974	255,931
Public safety	1,333,357	1,487,449	1,692,331	(204,882)
Highways and streets	18,093	18,093	18,093	-
Public works	64,650	64,650	57,774	6,876
Building and planning	100,862	145,400	137,719	7,681
Parks and recreation	274,911	274,541	365,985	(91,444)
Capital outlay	7,900	1,378,848	750,998	627,850
Debt service:				
Principal	-	23,259	101,838	(78,579)
Interest	<u>14,300</u>	<u>6,741</u>	<u>8,294</u>	<u>(1,553)</u>
 Total expenditures	 <u>2,238,930</u>	 <u>3,970,886</u>	 <u>3,449,006</u>	 <u>521,880</u>
 Excess (deficiency) of revenues over (under) expenditures	 <u>441,211</u>	 <u>(1,291,531)</u>	 <u>(12,827)</u>	 <u>1,278,704</u>
OTHER FINANCING SOURCES (USES)				
Proceeds from sale of capital assets	-	-	22,371	22,371
Transfers in	-	1,268,651	704,587	(564,064)
Transfers out	<u>(14,300)</u>	<u>(6,741)</u>	<u>-</u>	<u>6,741</u>
 Total other financing sources (uses)	 <u>(14,300)</u>	 <u>1,261,910</u>	 <u>726,958</u>	 <u>(534,952)</u>
 Net change in fund balance	 426,911	 (29,621)	 714,131	 743,752
 Fund balance - beginning	 <u>1,569,895</u>	 <u>1,569,895</u>	 <u>1,569,895</u>	 <u>-</u>
 Fund balance - ending	 <u>\$ 1,996,806</u>	 <u>\$ 1,540,274</u>	 <u>\$ 2,284,026</u>	 <u>\$ 743,752</u>

CITY OF MENDOTA
BUDGETARY COMPARISON SCHEDULE
DEVELOPMENT FEES
SPECIAL REVENUE FUND
FOR THE YEAR ENDED JUNE 30, 2020

	Original Budget	Final Budget	Actual Amounts	Variance with Final Budget
REVENUES				
Licenses and permits	\$ 842,829	\$ -	\$ 948,320	\$ 948,320
Revenue from the use of money and property	-	-	1,731	1,731
Total revenues	<u>842,829</u>	<u>-</u>	<u>950,051</u>	<u>950,051</u>
EXPENDITURES				
Current:				
Public safety	39,944	39,944	35,279	4,665
Capital outlay	<u>1,604,271</u>	<u>292,941</u>	<u>437,052</u>	<u>(144,111)</u>
Total expenditures	<u>1,644,215</u>	<u>332,885</u>	<u>472,331</u>	<u>(139,446)</u>
Excess (deficiency) of revenues over (under) expenditures	<u>(801,386)</u>	<u>(332,885)</u>	<u>477,720</u>	<u>810,605</u>
OTHER FINANCING SOURCES (USES)				
Transfers out	-	-	<u>(704,587)</u>	<u>(704,587)</u>
Total other financing sources (uses)	<u>-</u>	<u>-</u>	<u>(704,587)</u>	<u>(704,587)</u>
Net change in fund balance	(801,386)	(332,885)	(226,867)	106,018
Fund balance - beginning	<u>493,091</u>	<u>493,091</u>	<u>493,091</u>	<u>-</u>
Fund balance - ending	<u>\$ (308,295)</u>	<u>\$ 160,206</u>	<u>\$ 266,224</u>	<u>\$ 106,018</u>

CITY OF MENDOTA

**BUDGETARY COMPARISON SCHEDULE
LOCAL TRANSPORTATION FEES
SPECIAL REVENUE FUND
FOR THE YEAR ENDED JUNE 30, 2020**

	<u>Original Budget</u>	<u>Final Budget</u>	<u>Actual Amounts</u>	<u>Variance with Final Budget</u>
REVENUES				
Taxes	\$ 395,875	\$ 428,082	\$ 527,591	\$ 99,509
Intergovernmental	-	450,000	241,262	(208,738)
Revenue from the use of money and property	<u>100</u>	<u>100</u>	<u>724</u>	<u>624</u>
Total revenues	<u>395,975</u>	<u>878,182</u>	<u>769,577</u>	<u>(108,605)</u>
EXPENDITURES				
Current:				
Highways and streets	234,568	228,326	190,325	38,001
Capital outlay	<u>161,407</u>	<u>649,856</u>	<u>262,214</u>	<u>387,642</u>
Total expenditures	<u>395,975</u>	<u>878,182</u>	<u>452,539</u>	<u>425,643</u>
Net change in fund balance	-	-	317,038	317,038
Fund balance - beginning	<u>499,817</u>	<u>499,817</u>	<u>499,817</u>	<u>-</u>
Fund balance - ending	<u>\$ 499,817</u>	<u>\$ 499,817</u>	<u>\$ 816,855</u>	<u>\$ 317,038</u>

CITY OF MENDOTA

**NOTES TO THE BUDGETARY COMPARISON SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2020**

BUDGETARY BASIS OF ACCOUNTING

The official budget was prepared for adoption for the General Fund and Special Revenue Fund. The following procedures are followed in establishing the budgetary data reflected in the general purpose financial statements:

1. Prior to the beginning of the fiscal year, the City prepares a budget for the next succeeding fiscal year. The operating budget includes proposed expenditures and the means of financing them.
2. A meeting of the City Council is then called for the purpose of adopting the proposed budget. At least ten days' public notice of the meeting must have been given.
3. Prior to the start of the fiscal year, the budget is legally enacted through passage of a resolution by the City Council.

Once a budget is approved, it can be amended only by approval of a 4/5^{ths} vote of the members of the City Council. As required by law, such amendments are made after fiscal year-end. All budget appropriations lapse at year-end.

A budget was not prepared for the HOME Investment Partnership Program fund for the year ended June 30, 2020. Accordingly, a budgetary comparison schedule is not presented.

EXCESS OF EXPENDITURES OVER APPROPRIATIONS

As of June 30, 2020, expenditures exceeded appropriations in individual funds as follows:

<u>Appropriations Category</u>	<u>Excess Expenditures</u>
General Fund:	
Public safety	\$ 204,882
Parks and recreation	91,444
Principal	78,579
Interest	1,553
Development Fee Fund:	
Capital outlay	144,111

CITY OF MENDOTA

**PROPORTIONATE SHARE OF NET PENSION LIABILITY (ASSET)
REQUIRED SUPPLEMENTARY INFORMATION
LAST 10 YEARS***

	<u>2018</u>	<u>2019</u>	<u>2020</u>
Proportion of the net pension liability (asset)	0.0000%	0.0000%	0.0001%
Proportionate share of the net pension liability (asset)	\$ -	\$ (3,773)	\$ 7,214
Covered payroll	\$ 902,792	\$ 1,141,007	\$ 1,274,069
Proportionate share of the net pension liability (asset) as percentage of covered payroll	0.00%	-0.33%	0.57%
Plan fiduciary net position as a percentage of the total pension liability (asset)	0.00%	102.66%	98.15%

NOTES TO SCHEDULE

Changes in Benefit Terms: None

Changes of Assumptions: None

*Schedule is intended to show information for ten years. Additional years will be displayed as they become available.

CITY OF MENDOTA

**SCHEDULE OF CONTRIBUTIONS
REQUIRED SUPPLEMENTARY INFORMATION
LAST 10 YEARS***

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Actuarially required contribution (actuarially determined)	\$ 59,178	\$ 74,542	\$ 87,172	\$ 80,969
Contributions in relation to the actuarially determined contributions	<u>59,178</u>	<u>74,542</u>	<u>87,172</u>	<u>80,969</u>
Contribution deficiency (excess)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Covered payroll	\$ 902,792	\$ 1,141,007	\$ 1,274,069	\$ 1,154,780
Contributions as a percentage of covered payroll	6.55%	6.53%	6.84%	7.01%

*Schedule is intended to show information for ten years. Additional years will be displayed as they become available.

SUPPLEMENTARY INFORMATION

THIS PAGE IS LEFT BLANK INTENTIONALLY.

CITY OF MENDOTA

**COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
JUNE 30, 2020**

	<u>Nonmajor Special Revenue</u>	<u>Nonmajor Capital Projects</u>	<u>Total</u>
ASSETS			
Cash and cash equivalents	\$ 2,091,103	\$ 1,043,548	\$ 3,134,651
Receivables	<u>1,110,262</u>	<u>306</u>	<u>1,110,568</u>
Total assets	<u>\$ 3,201,365</u>	<u>\$ 1,043,854</u>	<u>\$ 4,245,219</u>
LIABILITIES			
Accounts payable	\$ 28,181	\$ -	\$ 28,181
Due to other funds	<u>5,508</u>	<u>25,803</u>	<u>31,311</u>
Total liabilities	<u>33,689</u>	<u>25,803</u>	<u>59,492</u>
DEFERRED INFLOWS OF RESOURCES			
Unavailable revenue - loans	<u>769,828</u>	<u>-</u>	<u>769,828</u>
Total deferred inflows of resources	<u>769,828</u>	<u>-</u>	<u>769,828</u>
FUND BALANCES (DEFICIT)			
Restricted for:			
Redevelopment and housing	853,421	-	853,421
Public safety	199,599	957,654	1,157,253
Highways and streets	1,288,159	86,187	1,374,346
Parks and recreation	42,372	-	42,372
Assigned to:			
Public safety	19,827	-	19,827
Unassigned	<u>(5,530)</u>	<u>(25,790)</u>	<u>(31,320)</u>
Total fund balances (deficit)	<u>2,397,848</u>	<u>1,018,051</u>	<u>3,415,899</u>
Total liabilities, deferred inflows of resources, and fund balances (deficit)	<u>\$ 3,201,365</u>	<u>\$ 1,043,854</u>	<u>\$ 4,245,219</u>

CITY OF MENDOTA

**COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
NONMAJOR GOVERNMENTAL FUNDS
FOR THE YEAR ENDED JUNE 30, 2020**

	Nonmajor Special Revenue	Nonmajor Capital Projects	Total
REVENUES			
Taxes	\$ 783,254	\$ -	\$ 783,254
Intergovernmental	969,464	-	969,464
Loan repayments	144,598	-	144,598
Use of money and property	2,800	1,392	4,192
Miscellaneous	<u>43,872</u>	<u>-</u>	<u>43,872</u>
Total revenues	<u>1,943,988</u>	<u>1,392</u>	<u>1,945,380</u>
EXPENDITURES			
Current:			
Public safety	562,555	-	562,555
Municipal airport	7,989	-	7,989
Highways and streets	351,972	59,424	411,396
Parks and recreation	22,328	-	22,328
Redevelopment and housing	10,600	-	10,600
Capital outlay	<u>317,327</u>	<u>-</u>	<u>317,327</u>
Total expenditures	<u>1,272,771</u>	<u>59,424</u>	<u>1,332,195</u>
Net change in fund balances	671,217	(58,032)	613,185
Fund balances (deficit) - beginning	<u>1,726,631</u>	<u>1,076,083</u>	<u>2,802,714</u>
Fund balances (deficit) - ending	<u>\$ 2,397,848</u>	<u>\$ 1,018,051</u>	<u>\$ 3,415,899</u>

CITY OF MENDOTA

**COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
SPECIAL REVENUE FUNDS
JUNE 30, 2020**

	<u>Housing Income</u>	<u>Aviation Assistance</u>	<u>Police Grants</u>
ASSETS			
Cash and cash equivalents	\$ 469,012	\$ -	\$ 65,241
Receivables	<u>135</u>	<u>-</u>	<u>21</u>
Total assets	<u>\$ 469,147</u>	<u>\$ -</u>	<u>\$ 65,262</u>
LIABILITIES			
Accounts payable	\$ -	\$ 22	\$ -
Due to other funds	<u>-</u>	<u>5,508</u>	<u>-</u>
Total liabilities	<u>-</u>	<u>5,530</u>	<u>-</u>
DEFERRED INFLOWS OF RESOURCES			
Unavailable revenue - loans	<u>-</u>	<u>-</u>	<u>-</u>
Total deferred inflows of resources	<u>-</u>	<u>-</u>	<u>-</u>
FUND BALANCES (DEFICIT)			
Nonspendable:			
Restricted for:			
Redevelopment and housing	469,147	-	-
Public safety	-	-	45,435
Highways and streets	-	-	-
Parks and recreations	-	-	-
Assigned to:			
Public safety	-	-	19,827
Unassigned	<u>-</u>	<u>(5,530)</u>	<u>-</u>
Total fund balances (deficit)	<u>469,147</u>	<u>(5,530)</u>	<u>65,262</u>
Total liabilities, deferred inflows of resources, and fund balances (deficit)	<u>\$ 469,147</u>	<u>\$ -</u>	<u>\$ 65,262</u>

CITY OF MENDOTA

**COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
SPECIAL REVENUE FUNDS
JUNE 30, 2020
(Continued)**

	<u>Gas Tax</u>	<u>Measure C</u>	<u>CDBG Program</u>
ASSETS			
Cash and cash equivalents	\$ 723,284	\$ 257,050	\$ 384,173
Receivables	<u>205,044</u>	<u>129,805</u>	<u>769,929</u>
Total assets	<u>\$ 928,328</u>	<u>\$ 386,855</u>	<u>\$ 1,154,102</u>
LIABILITIES			
Accounts payable	\$ 18,650	\$ 8,374	\$ -
Due to other funds	<u>-</u>	<u>-</u>	<u>-</u>
Total liabilities	<u>18,650</u>	<u>8,374</u>	<u>-</u>
DEFERRED INFLOWS OF RESOURCES			
Unavailable revenue - loans	<u>-</u>	<u>-</u>	<u>769,828</u>
Total deferred inflows of resources	<u>-</u>	<u>-</u>	<u>769,828</u>
FUND BALANCES (DEFICIT)			
Nonspendable:			
Restricted for:			
Redevelopment and housing	-	-	384,274
Public safety	-	-	-
Highways and streets	909,678	378,481	-
Parks and recreations	-	-	-
Assigned to:			
Public safety	-	-	-
Unassigned	<u>-</u>	<u>-</u>	<u>-</u>
Total fund balances (deficit)	<u>909,678</u>	<u>378,481</u>	<u>384,274</u>
Total liabilities, deferred inflows of resources, and fund balances (deficit)	<u>\$ 928,328</u>	<u>\$ 386,855</u>	<u>\$ 1,154,102</u>

CITY OF MENDOTA

**COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
SPECIAL REVENUE FUNDS
JUNE 30, 2020
(Continued)**

	<u>Mendota CFD</u>	<u>Mendota Community Corporation</u>	<u>Total</u>
ASSETS			
Cash and cash equivalents	\$ 149,983	\$ 42,360	\$ 2,091,103
Receivables	<u>5,316</u>	<u>12</u>	<u>1,110,262</u>
Total assets	<u>\$ 155,299</u>	<u>\$ 42,372</u>	<u>\$ 3,201,365</u>
LIABILITIES			
Accounts payable	\$ 1,135	\$ -	\$ 28,181
Due to other funds	<u>-</u>	<u>-</u>	<u>5,508</u>
Total liabilities	<u>1,135</u>	<u>-</u>	<u>33,689</u>
DEFERRED INFLOWS OF RESOURCES			
Unavailable revenue - loans	<u>-</u>	<u>-</u>	<u>769,828</u>
Total deferred inflows of resources	<u>-</u>	<u>-</u>	<u>769,828</u>
FUND BALANCES (DEFICIT)			
Nonspendable:			
Restricted for:			
Redevelopment and housing	-	-	853,421
Public safety	154,164	-	199,599
Highways and streets	-	-	1,288,159
Parks and recreations	-	42,372	42,372
Assigned to:			
Public safety	-	-	19,827
Unassigned	<u>-</u>	<u>-</u>	<u>(5,530)</u>
Total fund balances (deficit)	<u>154,164</u>	<u>42,372</u>	<u>2,397,848</u>
Total liabilities, deferred inflows of resources, and fund balances (deficit)	<u>\$ 155,299</u>	<u>\$ 42,372</u>	<u>\$ 3,201,365</u>

CITY OF MENDOTA

**COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
NONMAJOR GOVERNMENTAL FUNDS
SPECIAL REVENUE FUNDS
FOR THE YEAR ENDED JUNE 30, 2020**

	<u>Housing Income</u>	<u>Aviation Assistance</u>	<u>Police Grants</u>
REVENUES			
Taxes	\$ -	\$ -	\$ -
Intergovernmental	-	10,000	155,948
Loan repayments	121,098	-	-
Use of money and property	710	-	84
Miscellaneous	-	-	-
	<u>-</u>	<u>-</u>	<u>-</u>
Total revenues	<u>121,808</u>	<u>10,000</u>	<u>156,032</u>
EXPENDITURES			
Current:			
Public safety	-	-	175,163
Municipal airport	-	7,989	-
Highways and streets	-	-	-
Parks and recreation	-	-	-
Redevelopment and housing	10,600	-	-
Capital outlay	-	-	-
	<u>-</u>	<u>-</u>	<u>-</u>
Total expenditures	<u>10,600</u>	<u>7,989</u>	<u>175,163</u>
Net change in fund balances	111,208	2,011	(19,131)
Fund balances (deficit) - beginning	<u>357,939</u>	<u>(7,541)</u>	<u>84,393</u>
Fund balances (deficit) - ending	<u>\$ 469,147</u>	<u>\$ (5,530)</u>	<u>\$ 65,262</u>

CITY OF MENDOTA

**COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
NONMAJOR GOVERNMENTAL FUNDS
SPECIAL REVENUE FUNDS
FOR THE YEAR ENDED JUNE 30, 2020
(Continued)**

	<u>Gas Tax</u>	<u>Measure C</u>	<u>CDBG Program</u>
REVENUES			
Taxes	\$ -	\$ 354,865	\$ -
Intergovernmental	693,374	110,142	-
Loan repayments	-	-	23,500
Use of money and property	1,026	369	478
Miscellaneous	<u>-</u>	<u>-</u>	<u>-</u>
Total revenues	<u>694,400</u>	<u>465,376</u>	<u>23,978</u>
EXPENDITURES			
Current:			
Public safety	-	-	-
Municipal airport	-	-	-
Highways and streets	116,049	235,923	-
Parks and recreation	-	-	-
Redevelopment and housing	-	-	-
Capital outlay	<u>187,566</u>	<u>129,761</u>	<u>-</u>
Total expenditures	<u>303,615</u>	<u>365,684</u>	<u>-</u>
Net change in fund balances	390,785	99,692	23,978
Fund balances (deficit) - beginning	<u>518,893</u>	<u>278,789</u>	<u>360,296</u>
Fund balances (deficit) - ending	<u>\$ 909,678</u>	<u>\$ 378,481</u>	<u>\$ 384,274</u>

CITY OF MENDOTA

**COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
NONMAJOR GOVERNMENTAL FUNDS
SPECIAL REVENUE FUNDS
FOR THE YEAR ENDED JUNE 30, 2020
(Continued)**

	<u>Mendota CFD</u>	<u>Mendota Community Corporation</u>	<u>Total</u>
REVENUES			
Taxes	\$ 428,389	\$ -	\$ 783,254
Intergovernmental	-	-	969,464
Loan repayments	-	-	144,598
Use of money and property	57	76	2,800
Miscellaneous	-	<u>43,872</u>	<u>43,872</u>
Total revenues	<u>428,446</u>	<u>43,948</u>	<u>1,943,988</u>
EXPENDITURES			
Current:			
Public safety	387,392	-	562,555
Municipal airport	-	-	7,989
Highways and streets	-	-	351,972
Parks and recreation	-	22,328	22,328
Redevelopment and housing	-	-	10,600
Capital outlay	-	-	<u>317,327</u>
Total expenditures	<u>387,392</u>	<u>22,328</u>	<u>1,272,771</u>
Net change in fund balances	41,054	21,620	671,217
Fund balances (deficit) - beginning	<u>113,110</u>	<u>20,752</u>	<u>1,726,631</u>
Fund balances (deficit) - ending	<u>\$ 154,164</u>	<u>\$ 42,372</u>	<u>\$ 2,397,848</u>

CITY OF MENDOTA
COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
CAPITAL PROJECTS FUNDS
JUNE 30, 2020

	CDBG - Sewer and Drainage Projects	Street Capital Projects	Police Building	Total
ASSETS				
Cash and cash equivalents	\$ 86,163	\$ -	\$ 957,385	\$ 1,043,548
Receivables	<u>24</u>	<u>13</u>	<u>269</u>	<u>306</u>
Total assets	<u>\$ 86,187</u>	<u>\$ 13</u>	<u>\$ 957,654</u>	<u>\$ 1,043,854</u>
LIABILITIES				
Due to other funds	<u>\$ -</u>	<u>\$ 25,803</u>	<u>\$ -</u>	<u>\$ 25,803</u>
Total liabilities	<u>-</u>	<u>25,803</u>	<u>-</u>	<u>25,803</u>
FUND BALANCES (DEFICITS)				
Restricted to:				
Public safety	-	-	957,654	957,654
Highways and streets	86,187	-	-	86,187
Unassigned	<u>-</u>	<u>(25,790)</u>	<u>-</u>	<u>(25,790)</u>
Total fund balances (deficit)	<u>86,187</u>	<u>(25,790)</u>	<u>957,654</u>	<u>1,018,051</u>
Total fund balances (deficit)	<u>\$ 86,187</u>	<u>\$ 13</u>	<u>\$ 957,654</u>	<u>\$ 1,043,854</u>

CITY OF MENDOTA

**COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
NONMAJOR GOVERNMENTAL FUNDS
CAPITAL PROJECTS FUNDS
FOR THE YEAR ENDED JUNE 30, 2020**

	<u>CDBG - Sewer and Drainage Projects</u>	<u>Street Capital Projects</u>	<u>Police Building</u>	<u>Total</u>
REVENUES				
Use of money and property	<u>\$ 112</u>	<u>\$ 45</u>	<u>\$ 1,235</u>	<u>\$ 1,392</u>
Total revenues	<u>112</u>	<u>45</u>	<u>1,235</u>	<u>1,392</u>
EXPENDITURES				
Current:				
Highways and streets	<u>-</u>	<u>59,424</u>	<u>-</u>	<u>59,424</u>
Total expenditures	<u>-</u>	<u>59,424</u>	<u>-</u>	<u>59,424</u>
Net change in fund balances	112	(59,379)	1,235	(58,032)
Fund balances (deficit)- beginning	<u>86,075</u>	<u>33,589</u>	<u>956,419</u>	<u>1,076,083</u>
Fund balances (deficit) - ending	<u>\$ 86,187</u>	<u>\$ (25,790)</u>	<u>\$ 957,654</u>	<u>\$ 1,018,051</u>

OTHER AUDITOR'S REPORT

THIS PAGE IS LEFT BLANK INTENTIONALLY.



INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER
FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN
ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

To the Honorable Mayor and City Council
City of Mendota, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, and each major fund of City of Mendota, California (the City), as of and for the year ended June 30, 2020, and the related notes to the financial statements, which collectively comprise the City's basic financial statements and have issued our report thereon dated January 19, 2021.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the City's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the City's financial statements will not be prevented or detected and corrected on a timely basis. *A significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that have not been identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. We did identify certain deficiencies in internal control, described in the accompanying schedule of findings and questioned costs as items 2020-001 and 2020-002 that we consider to be significant deficiencies.

570 N. Magnolia Avenue, Suite 100
Clovis, CA 93611

tel 559.299.9540
fax 559.299.2344

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the City's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

City of Mendota's Response to Findings

The City's response to the findings identified in our audit is described in the accompanying schedule of findings and questioned costs. The City's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Clovis, California
January 19, 2021

FINDINGS AND QUESTIONED COSTS

THIS PAGE IS LEFT BLANK INTENTIONALLY.

CITY OF MENDOTA

**SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE YEAR ENDED JUNE 30, 2020**

SECTION I – SUMMARY OF AUDITOR’S RESULTS

FINANCIAL STATEMENTS

Type of auditor's report issued:	<u>Unmodified</u>	
Internal control over financial reporting:		
Material weaknesses identified?	_____ Yes	<u> X </u> No
Significant deficiencies identified - not considered to be material weaknesses?	<u> X </u> Yes	_____ None reported
Noncompliance material to financial statements noted?	_____ Yes	<u> X </u> No

SECTION II – FINANCIAL STATEMENT FINDINGS

Finding 2020-001 –Bank Reconciliation (Significant Deficiency)

Condition: Bank reconciliations were not prepared and reviewed in a timely manner. Bank statements accumulated for several months before they were reconciled to the appropriate general ledger accounts.

Criteria: A strong system of internal control requires that bank reconciliations be properly prepared and reviewed in a timely manner. Additionally, without the presence of other mitigating controls, the bank reconciliations should be prepared and/or reviewed by someone without access to the City’s assets.

Cause: The Finance Department was short-staffed and, accordingly, unable to prioritize the preparation of the bank reconciliations. Additionally, in the absence of a Finance Department employee, the City did not develop controls allowing for a person without access to the City’s assets to prepare and/or review the bank reconciliations.

Effect: Without a timely preparation of the bank reconciliations and a review by someone without access to the City’s assets, errors or fraud may not be recognized and resolved in a timely manner.

Recommendation: We recommend bank reconciliations are prepared and reviewed monthly as quickly as possible, but no later than 30 days after month-end. Additionally, we recommend they are prepared and/or reviewed by someone without access to the City’s assets.

Client’s Response: It is the City’s understanding that the timeline in which bank reconciliations should be completed were not previously discussed with the Finance Department. Previously, the deadline for which bank reconciliations should be completed was not thirty (30) days after month-end. Due to the lack of information, staff (specifically the Finance Officer) was unable to ensure that the City prepared the bank reconciliations in a timely manner. Despite this fact, bank statements were being reviewed for returned checks, direct deposits received for the prison utility payment, and bond payment withdrawals. Furthermore, the quarterly reporting for the Federal and State taxes were completed in a timely manner since there is a specified deadline, as such, all reporting was completed. Moreover, should staff have been aware that there is a specified period in which bank reconciliations should be completed, the task would have been done in a timely manner.

It is also important to take into account that the Finance Department was short-staffed. Two full-time senior-ranking employees were on long-term leave during portions of the year, and one full-time employee was laid-off. As a result of these changes in personnel, the Finance Department was left with two (2) employees to complete all finance tasks for the City as well as other tasks as assigned, including processing building permits, utility payments, and bank deposits, apply for grants, post revenues, process a bi-weekly payroll, process business license payments, prepare and deliver the fiscal year budget for 2020-2021, and various other duties within the Finance Department. Additionally, the ongoing COVID-19 pandemic created additional tasks for the department aside from those conducted during normal operations and in numerous complications that created burdens for the department.

CITY OF MENDOTA

**SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE YEAR ENDED JUNE 30, 2020**

(Continued)

SECTION II – FINANCIAL STATEMENT FINDINGS (Continued)

Finding 2020-002 – Segregation of Duties over Payroll (Significant Deficiency)

Condition: Segregation of duties over payroll processing did not exist during the fiscal year.

Criteria: A strong system of internal control requires segregation of duties exist for all significant transaction cycles, including cash receipts, cash disbursements, and payroll.

Cause: The Finance Department was short-staffed and accordingly, the same employee was responsible for all functions of the payroll process, including updating pay rates and processing payroll without a subsequent review.

Effect: A lack of segregation of duties in any transaction class could result in a material error or fraud.

Recommendation: We recommend the City cross-train employees in a manner that allows for an adequate segregation of duties over all transaction classes when the Finance Department is short-staffed. This would include different employees authorize transactions, process transactions, have custody or access to the City's assets, and review transactions. When all of those activities cannot be adequately segregated, other mitigating controls should be designed and implemented to minimize the possibility of error or fraud occurring.

Client's Response: Prior to August 2019, payroll processing was completed by the Finance Officer or Finance Director. Due to the Finance Director's leave of absence that began in August 2019 and the lack of trained management employees, payroll processing was solely completed by the Finance Officer as it was impossible to allow for a segregation of duties. However, when Price, Paige & Company met with staff to discuss internal controls, this deficiency was discussed and the City immediately corrected the condition and assigned an additional management employee to be cross-trained and allow for a segregation of duties.

Despite the fact that this condition has resulted in a finding, it is important to note that this condition was only caused due to the Finance Director taking an unexpected long-term leave of absence and thus removing the secondary employee to allow for the segregation of duties. Given that the staffing within the Finance Department was not at full capacity, it was extremely difficult to ensure that the segregation of duties existed during the absence of the Finance Director. However, as noted earlier, once the City was informed that the condition could not continue as is during the absence of the Finance Director, it ensured that another employee was cross-trained to allow for an adequate segregation of duties over all transaction classes when the Finance Department is short-staffed.

There are other mechanisms in place to avoid fraud or error. The pay rates are submitted by a separate department and approved by the City Manager and Supervisor. Although input by the Finance Department, the pay rate is not generated by the Finance Department. Additionally, there are two signatures required for payroll checks.

CITY OF MENDOTA

**SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS
FOR THE YEAR ENDED JUNE 30, 2020**

FINANCIAL STATEMENT FINDINGS

None reported.

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: CELESTE CABRERA-GARCIA, CITY CLERK
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: APPOINTMENTS TO THE PLANNING AND RECREATION COMMISSIONS
DATE: JANUARY 26, 2021

ISSUE

Which Mendota residents shall the City Council appoint to the Planning and Recreation Commissions?

BACKGROUND

Three members of the Planning Commission will have their terms expire at the end of January, and the alternate planning commissioner seat has remained vacant since December 2020 as a result of a resignation. Pursuant to Mendota Municipal Code (“MMC”) section 2.36.020, the Mayor selects individuals to appoint to the Planning Commission and the Council approves them.

Furthermore, four members of the Recreation Commission will also have their terms expire at the end of January, and the Commission is also carrying one vacancy as a result of a resignation. Pursuant to MMC section 2.32.020, the City Council selects individuals to appoint to the Recreation Commission. Moreover, the Council previously delegated one seat of the Recreation Commission to be filled by a representative of the City Council, one seat to be filled by a representative of the Planning Commission, and one seat to be filled by a representative of the Mendota Unified School District (“MUSD”).

A notice (attached to this report) was posted on December 28, 2020 notifying the public of the vacancies, the term of the offices for appointment, the location of the application that is required to be filled out, and a deadline (which was Wednesday, January 20th) by which the application must be turned in to the office of the City Clerk.

ANALYSIS

The terms of Planning Commissioners Kevin Romero, Albert Escobedo, and Jonathan Leiva expire on January 31, 2021. Mr. Jonathan Leiva submitted an application by the deadline to be considered for re-appointment. Applications were also submitted by Libertad Lopez, Jessica Sanchez, and Joshua Perez for consideration of appointment to the Planning Commission.

For the Recreation Commission, the terms of Commissioners Jesus Mendoza, Paul Ochoa, Antonio Pizano, and Jessica Sanchez will expire on January 31, 2021. Mr. Pizano and Ms. Sanchez submitted applications to be considered for re-appointment. At its January 12, 2021 regular meeting, the City Council appointed Mayor Pro Tem Mendoza to continue serving as the

City Council representative on the Commission. In regard to the seat that is designated to be filled by a representative of MUSD, Superintendent Dr. Lopez has appointed Mr. Paul Ochoa to the position and his appointment requires the City Council's ratification. The seat of the Planning Commission representative is currently vacant and a member of the Planning Commission needs to be appointed to the position.

In summary, four individuals applied for the four available positions on the Planning Commission (three regular Commissioner positions and one alternate Commissioner positions), and two individuals applied for the two available non-designated seats on the Recreation Commission. Furthermore, Mayor Pro Tem Mendoza was previously appointed to fill the City Council representative seat, and the Council will need to ratify the appointment of Mr. Ochoa to MUSD representative seat and appoint a Planning Commissioner to fill the Planning Commission representative seat.

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the Council take two separate actions:

1. Mayor Castro appoints residents to the three regular Planning Commissioner positions and a resident to the one alternate Planning Commissioner position, with the approval of the City Council; and
2. City Council appoints residents to the two non-designated Recreation Commissioner positions, ratifies the appointment of Mr. Paul Ochoa to as the MUSD representative, and appoints a Planning Commissioner as the Planning Commission representative.

Attachment(s):

1. Notice of Commission Vacancy – Local Appointment List
2. Applications:
 - a. Planning Commission:
 - i. Joshua Perez
 - ii. Libertad Lopez
 - iii. Jessica Sanchez
 - iv. Jonathan Leiva
 - b. Recreation Commission:
 - i. Antonio Pizano
 - ii. Jessica Sanchez



CITY OF MENDOTA

"Cantaloupe Center Of The World"

CITY OF MENDOTA NOTICE OF COMMISSION VACANCY LOCAL APPOINTMENT LIST PUBLIC NOTICE

Maddy Act Compliance - California Government Code Sections 54970-54974

Notice is hereby given that the City of Mendota encourages residents to apply for positions on City commissions that will have vacancies in 2021.

The City publishes a list of expiring appointed terms for the coming year, names of incumbents and the dates of their appointments.

PLANNING COMMISSION

(Applications Due by 5 p.m. on Wednesday, January 20, 2021)

Commissioner Kevin Romero	Appointed: May 2019	Expires: January 31, 2021
Commissioner Albert Escobedo	Appointed: January 2017	Expires: January 31, 2021
Commissioner Jose Gutierrez	Appointed: September 2017	Expires: January 31, 2023
Commissioner Jonathan Leiva	Appointed: January 2017	Expires: January 31, 2021
Commissioner Juan Luna	Appointed: January 2019	Expires: January 31, 2023
Alternate Commissioner – VACANT		Expires: January 31, 2023

Qualifications

1. Applicants must be a Mendota resident or live within the boundaries of the Mendota Unified School District; and
2. Applicants shall not be a salaried employee of the City; and
3. Applicants must submit a completed **Application for Membership on a City of Mendota Board or Commission** to the City Clerk (*Applications are available at City Hall, 643 Quince Street, Mendota, CA 93640*).
4. Applicants will complete the term of the vacant seat on the Commission.

RECREATION COMMISSION
(Applications Due by 5 p.m. on Wednesday, January 20, 2021)

Commissioner – VACANT		Expires: January 31, 2023
Commissioner Jesus Mendoza*	Appointed: January 2020	Expires: January 31, 2021
Commissioner Paul Ochoa**	Appointed: January 2017	Expires: January 31, 2021
Commissioner Kevin Romero	Appointed: May 2019	Expires: January 31, 2023
Commissioner Josue Urias	Appointed: May 2019	Expires: January 31, 2023
Commissioner Antonio Pizano	Appointed: August 2020	Expires: January 31, 2021
Commissioner Jessica Sanchez	Appointed: August 2020	Expires: January 31, 2021

* Designated City Council Representative


**Designated Mendota Unified School District Representative

Qualifications

1. Applicants must be a Mendota resident; and
2. Applicants shall not be a salaried employee of the City; and
3. Applicants must submit a completed **Application for Membership on a City of Mendota Board or Commission** to the City Clerk (*Applications are available at City Hall, 643 Quince Street, Mendota, CA 93640*).
4. Applicants will complete the term of the vacant seat on the Commission.

Dated: December 28, 2020

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby declare that the foregoing Special Public Notice, was posted on the outside bulletin board located at City Hall, 643 Quince Street on Monday, December 28, 2020 at 10:00 a.m.



Celeste Cabrera-Garcia, City Clerk

Planning Commission Applications



CITY OF MENDOTA
643 QUINCE STREET
MENDOTA, CA 93640
(559) 655-3291

APPLICATION FOR MEMBERSHIP ON A CITY OF MENDOTA
BOARD, COMMISSION OR COMMITTEE

Name of Board or Committee: Planning Commission

Applicants' name: Joshua Fabian Perez

Address: [REDACTED]

Telephone number: [REDACTED]

Present occupation: Security At Mendot unified School District

Number of years as a Mendota resident: 39 years

Memberships:

Are you a member of any other community boards, commissions or committees? Yes No.

If yes please provide list: _____

At the initial formation of the committee you have the option of a 2 year or 4 year term, please select which you would like to serve. 2 years 4years
(Not Applicable for the Planning Commission. Commissioners serve 4 year terms).

Education:

Please state the highest year of school completed College.

Please state any special areas of study, work experience or special area of interest that may be of value to this committee:

My work experience in criminal justice security and education. Also been coaching wrestling and football for 15 years.

Please give a brief statement of your views related to the business of this committee and why you would like to be a member.

I will enjoy being a part of the
City of Mendota Planning Commission to
help my community in any way possible.
Also to help local companies of all
types to bring good jobs to our community

Signature of Applicant:  Date: 12-15-20

Accepted:

Signature of City Clerk:  Time: 4:14pm
Date: 12-15-20



CITY OF MENDOTA
643 QUINCE STREET
MENDOTA, CA 93640
(559) 655-3291

DEC 30 2020

APPLICATION FOR MEMBERSHIP ON A CITY OF MENDOTA
BOARD, COMMISSION OR COMMITTEE

Name of Board or Committee: Planning Commission

Applicants' name: Libertad Lopez

Address: [REDACTED]

Telephone number: [REDACTED]

Present occupation: Case manager

Number of years as a Mendota resident: 40

Memberships:

Are you a member of any other community boards, commissions or committees? Yes No.

If yes please provide list: _____

At the initial formation of the committee you have the option of a 2 year or 4 year term, please select which you would like to serve. 2 years 4years
(Not Applicable for the Planning Commission. Commissioners serve 4 year terms).

Education:

Please state the highest year of school completed Bachelors in social work.

Please state any special areas of study, work experience or special area of interest that may be of value to this committee:

- I am a board member for Emmanuel Outreach Center. Through this position I have learned to work with others in making decisions that could impact our Church.
- AS a case manager, I have worked with a diverse population, ensuring cts needs are met to the best of my ability. Which would be the same approach I would take with this position.

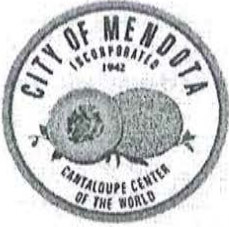
Please give a brief statement of your views related to the business of this committee and why you would like to be a member.

My heart is in the community of Mendota and would be honored to be part of the decision making of new developments coming in to town. I consider myself to be a team player with an open mind ready to serve along the other commissioners.

Signature of Applicant: Libertad Lopez Date: 12/30/20

Accepted:

Signature of City Clerk: [Signature] Time: 8:01am
Date: 1/13/21



CITY OF MENDOTA
643 QUINCE STREET
MENDOTA, CA 93640
(559) 655-3291



APPLICATION FOR MEMBERSHIP ON A CITY OF MENDOTA
COMMITTEE

Name of Board or Committee: Planning Commission

Applicants' name: Jessica Sanchez

Address: [REDACTED]

Telephone number: [REDACTED]

Present occupation: unit director

Number of years as a Mendota resident: 26

Memberships:

Are you a member of any other community boards, commissions or committees? Yes No.

If yes please provide list: recreation commission

At the initial formation of the committee you have the option of a 2 year or 4 year term, please select which you would like to serve. 2 years 4years

Education:

Please state the highest year of school completed B.A SOCIOLOGY.

Please state any special areas of study, work experience or special area of interest that may be of value to this committee:

I have experience in planning large and small scale events.
I do not have any experience when it comes to business or economics
However, I have an interest in learning more about planning commission
and how it functions.

Please give a brief statement of your views related to the business of this committee and why you would like to be a member.

Even though I am not entirely sure what planning commission does I am aware that they do have some influence and control over city business planning. I want to have a voice at these meetings and find ways to support and uplift local businesses.

Signature of Applicant: Junica [Signature] Date: 1/19/2021

Accepted:

Signature of City Clerk: [Signature] Time: 9:00am
Date: 1/20/21



CITY OF MENDOTA
643 QUINCE STREET
MENDOTA, CA 93640
(559) 655-3291

JAN 20 2021

APPLICATION FOR MEMBERSHIP ON A CITY OF MENDOTA
BOARD, COMMISSION OR COMMITTEE

Name of Board or Committee: Planning Commission

Applicants' name: Jonathan Leiva Castillo

Address: [REDACTED]

Telephone number: [REDACTED]

Present occupation: On-site Supervisor

Number of years as a Mendota resident: 30

Memberships:

Are you a member of any other community boards, commissions or committees? Yes No.

If yes please provide list: Planning Commission

At the initial formation of the committee you have the option of a 2 year or 4 year term, please select which you would like to serve. 2 years 4 years
(Not Applicable for the Planning Commission. Commissioners serve 4 year terms).

Education:

Please state the highest year of school completed 12.

Please state any special areas of study, work experience or special area of interest that may be of value to this committee:

Political Science Major - West Hills College

Planning Commissioner - 2016 - present

Please give a brief statement of your views related to the business of this committee and why you would like to be a member.

I would like to be considered to continue serving the public and city of Mendota on this commission. Mendota's phase of growth and prosperity continues and I would be privileged to be a part of the success in the city of Mendota.

Signature of Applicant: J. [Signature] Date: 1/20/2021

Accepted:

Signature of City Clerk: [Signature] Time: 8am
Date: 1/21/2021

Recreation Commission Applications



CITY OF MENDOTA
643 QUINCE STREET
MENDOTA, CA 93640
(559) 655-3291

JAN 19 2011

APPLICATION FOR MEMBERSHIP ON A CITY OF MENDOTA
COMMITTEE

Name of Board or Committee: Recreation Commission

Applicants' name: Antonio Pizano

Address: [REDACTED]

Telephone number: [REDACTED]

Present occupation: N/A

Number of years as a Mendota resident: 19

Memberships:

Are you a member of any other community boards, commissions or committees? Yes No.

If yes please provide list: Recreation Commission

At the initial formation of the committee you have the option of a 2 year or 4 year term, please select which you would like to serve. 2 years 4years

Education:

Please state the highest year of school completed University graduate

Please state any special areas of study, work experience or special area of interest that may be of value to this committee:

Since I was young, I have always been very interested in politics. This interest is what made me pursue a political science degree at Fresno State. While enrolled at Fresno State I participated in various state and local government classes, which I believe will help me contribute to the commission. While at Fresno State, I also enrolled in a political behavior class which is beneficial in order to have good relationships with every one involved. I believe my areas of study have prepared me to help and contribute in any way possible.

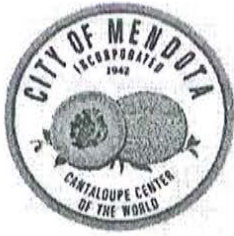
Please give a brief statement of your views related to the business of this committee and why you would like to be a member.

When I first applied to this commission my goal was to help Mendota progress and continue to grow. That goal has not changed and the desire to see our city succeed has only grown stronger. Now that I have become somewhat acclimated with the whole process, I believe we can continue to help the city move forward. The commission currently in place appears to be a very strong one, and I would like to keep working with everyone involved. I am extremely proud to call Mendota home, therefore I want to continue in this commission to continue helping in any way possible.

Signature of Applicant:  Date: January 19, 2021

Accepted:

Signature of City Clerk:  Time: 9:44am
Date: 1/20/21



CITY OF MENDOTA
643 QUINCE STREET
MENDOTA, CA 93640
(559) 655-3291



APPLICATION FOR MEMBERSHIP ON A CITY OF MENDOTA
COMMITTEE

Name of Board or Committee: Recreation Commission

Applicants' name: Jessica Sanchez

Address: [REDACTED]

Telephone number: [REDACTED]

Present occupation: unit director

Number of years as a Mendota resident: 26

Memberships:

Are you a member of any other community boards, commissions or committees? Yes No.

If yes please provide list: _____

At the initial formation of the committee you have the option of a 2 year or 4 year term, please select which you would like to serve. 2 years 4 years _____

Education:

Please state the highest year of school completed B.A Sociology

Please state any special areas of study, work experience or special area of interest that may be of value to this committee:

I've worked for multiple non-profits in the central valley and understand how to plan large/small scale events for the community. I also know how to gear and plan activities for different age groups and youth of different backgrounds.

Please give a brief statement of your views related to the business of this committee and why you would like to be a member.

I've enjoyed being a part of the recreation commission thus far. I appreciate having a deeper understanding of all the parts that keep our city functioning and governed. I want to continue to contribute to the recreation commission and really bring the community's needs to these meetings and address them. I also have my own community event ideas I would like to put out with the commission and find ways to involve the community in the process.

Signature of Applicant: Janica R Date: 11/19/2021

Accepted:

Signature of City Clerk: [Signature] Time: 9:50am
Date: 1/20/21

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: JEFFREY O'NEAL, AICP, CITY PLANNER
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: HOUSING ELEMENT OF THE GENERAL PLAN, 2018 & 2019 ANNUAL PROGRESS REPORTS
DATE: JANUARY 26, 2021

ISSUE

This is an informational item and no action is requested.

BACKGROUND

The Housing Element is an important State-mandated requirement of the General Plan. The Housing Element establishes comprehensive goals, policies, and programs to meet a jurisdiction's share of Regional Housing Needs Allocation (RHNA). The determination of regional housing need begins with the California Department of Housing and Community Development (HCD) and California Department of Finance (DOF), which first calculate statewide housing needs based upon population projections and regional population forecasts used in preparing regional transportation plans. The statewide need is then distributed to regional Councils of Government (COGs) throughout California, who work with cities and counties within their purview to assign each jurisdiction its share of the RHNA. The RHNA itself is divided into five income categories (Extremely Low, Very Low, Low, Moderate, and Above-Moderate) that encompass all levels of housing need. RHNA goals are measured by the number of housing units permitted by a local jurisdiction.

The City of Mendota is a member of the Fresno County Council of Governments (Fresno COG), which is the metropolitan planning organization (MPO) covering the 15 cities and the unincorporated areas of Fresno County. Fresno COG is responsible for distributing the RHNA to the local governments through an allocation methodology that is consistent with development and growth patterns. During the RHNA process, the City Council elected to collaborate with the cities of Clovis, Coalinga, Fowler, Huron, Kerman, Kingsburg, Parlier, Reedley, San Joaquin, Sanger, Selma and the unincorporated areas of Fresno County to prepare a Multi-Jurisdictional Housing Element (Fresno Multi-Jurisdictional 2015-2023 Housing Element (MJHE)). The cities of Firebaugh, Fresno, and Orange Cove prepared their own, standalone housing elements.

The City Council adopted the MJHE on March 22, 2016. HCD certified the MJHE on July 22, 2016. The Housing Element establishes a comprehensive policy framework to implement Mendota's residential strategies and outlines the City's plan for meeting community housing needs.

Mendota's quantified need for the current eight-year projection period from December 2015 through December 2023 is 554 housing units, equivalent to an annual production rate of 69-70

units. Contrary to previous housing element cycles, a large portion of Mendota's current RHNA goal (75%) is focused on the categories of Moderate Income (MI) and Above-Moderate Income (AMI) households, as defined by HCD. These categories serve those households with incomes between 80% and 120% of the area median income and incomes greater than 120% of the area median income, respectively. Housing for these households generally consists of single-family dwellings within conventional subdivisions.

In addition to establishing quantified housing needs for the planning period, the Housing Element also contains a number of programs that the City has agreed to implement in order to facilitate housing development, particularly for lower-income households, as that housing is typically more difficult to construct due to financial constraints.

ANALYSIS

Staff has prepared the 2018 and 2019 Annual Housing Element Progress Reports (attached) describing the city's progress towards meeting its Regional Housing Need Allocation (RHNA) and progress towards implementing the programs outlined in the MJHE. In 2018, 66 dwellings were constructed for MI households. In 2019, 55 dwellings were constructed for MI households. Many of the City's programs are in process or are ongoing. The City has been awarded an SB2 Housing Planning Grant to complete several others. These are the second and third annual reports since adoption of the MJHE; the 2020 report will be presented prior to the April 2021 deadline.

FISCAL IMPACT

There is no direct fiscal impact associated with acceptance of the APRs; however, failing to comply with the annual reporting can result in disqualification for certain housing-related funding opportunities.

RECOMMENDATION

No action is requested.

Attachment(s):

1. City of Mendota 2018 & 2019 Housing Element Annual Progress Reports

Please Start Here

General Information	
Jurisdiction Name	Mendota
Reporting Calendar Year	2018
Contact Information	
First Name	
Last Name	
Title	
Email	
Phone	
Mailing Address	
Street Address	
City	
Zipcode	

Submittal Instructions

Housing Element Annual Progress Reports (APRs) forms and tables must be submitted to HCD and the Governor's Office of Planning and Research (OPR) on or before April 1 of each year for the prior calendar year; submit separate reports directly to both HCD and OPR pursuant to Government Code section 65400. There are two options for submitting APRs:

1. Online Annual Progress Reporting System (Preferred) - This enters your information directly into HCD's database limiting the risk of errors. If you would like to use the online system, email APR@hcd.ca.gov and HCD will send you the login information for your jurisdiction. *Please note: Using the online system only provides the information to HCD. The APR must still be submitted to OPR. Their email address is opr.apr@opr.ca.gov.*

2. Email - If you prefer to submit via email, you can complete the excel Annual Progress Report forms and submit to HCD at APR@hcd.ca.gov and to OPR at opr.apr@opr.ca.gov. Please send the Excel workbook, not a scanned or PDF copy of the tables.

v 3_6_19

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation

(CCR Title 25 §6202)

Note: * Optional field
 Cells in grey contain auto-calculation formulas

Jurisdiction: **Minnesota**
 Reporting Year: **2018 (Jan. 1 - Dec. 31)**

Table A

Housing Development Applications Submitted

Project Identifier				Unit Types		Date Application Submitted	Proposed Units - Affordability by Household Incomes							Total Approved Units by Project	Total Disapproved Units by Project	Streamlining	Notes		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17			
Prior APN*	Current APN	Street Address	Project Name*	Local Jurisdiction Tracking ID*	Unit Category (GFA, SFD, 2 to 4.5-ADU, MH)	Tenure: R=Rentor O=Owner	Date Application Submitted	Very Low-Income Deed Restricted	Very Low-Income Non Deed Restricted	Low-Income Deed Restricted	Low-Income Non Deed Restricted	Moderate-Income Deed Restricted	Moderate-Income Non Deed Restricted	Above-Moderate-Income	Total PROPOSED Units by Project	Total APPROVED Units by project	Total DISAPPROVED Units by Project (Auto-calculated Can Be Overwritten)	Was APPLICATION SUBMITTED Pursuant to GC 65913.4(b)? (SB 35 Streamlining)	Notes*
Summary Row: Start Data Entry Below																			
		54 SEGOVIA ST		20180018	SFD	O									1	1			No
		46 SEGOVIA ST		20180019	SFD	O									1	1			No
		32 DIAZ ST		20180022	SFD	O									1	1			No
		402 GONZALEZ ST		20180023	SFD	O									1	1			No
		490 GONZALEZ ST		20180024	SFD	O									1	1			No
		478 GONZALEZ ST		20180025	SFD	O									1	1			No
		420 GONZALEZ ST		20180035	SFD	O									1	1			No
		45 DIAZ ST		20180042	SFD	O									1	1			No
		37 DIAZ ST		20180048	SFD	O									1	1			No
		500 GONZALEZ ST		20180049	SFD	O									1	1			No
		59 SEGOVIA ST		20180050	SFD	O									1	1			No
		35 SEGOVIA ST		20180051	SFD	O									1	1			No
		510 GONZALEZ ST		20180052	SFD	O									1	1			No
		520 GONZALEZ ST		20180053	SFD	O									1	1			No
		53 QUIROGA CT		20180054	SFD	O									1	1			No
		70 QUIROGA CT		20180055	SFD	O									1	1			No
		430 GONZALEZ ST		20180056	SFD	O									1	1			No
		534 GONZALEZ ST		20180070	SFD	O									1	1			No
		56 DIAZ ST		20180071	SFD	O									1	1			No
		550 GONZALEZ ST		20180072	SFD	O									1	1			No
		48 DIAZ ST		20180073	SFD	O									1	1			No
		51 SEGOVIA ST		20180075	SFD	O									1	1			No
		30 CASTRO ST		20180085	SFD	O									1	1			No
		53 DIAZ ST		20180096	SFD	O									1	1			No
		556 GONZALEZ ST		20180098	SFD	O									1	1			No
		70 SEGOVIA ST		20180099	SFD	O									1	1			No
		55 VERA CIR		20180107	SFD	O									1	1			No
		62 VERA CIR		20180108	SFD	O									1	1			No
		63 VERA CIR		20180109	SFD	O									1	1			No
		230 GONZALEZ ST		20180110	SFD	O									1	1			No
		60 VERA CIR		20180112	SFD	O									1	1			No
		51 VERA CIR		20180113	SFD	O									1	1			No
		49 VERA CIR		20180114	SFD	O									1	1			No
		59 VERA CIR		20180115	SFD	O									1	1			No
		270 GONZALEZ ST		20180116	SFD	O									1	1			No
		38 GURROLA ST		20180117	SFD	O									1	1			No

**Table A
Housing Development Applications Submitted**

Project Identifier				Unit Types		Date Application Submitted	Proposed Units - Affordability by Household Incomes							Total Approved Units by Project	Total Disapproved Units by Project	Streamlining	Notes		
1				2	3	4	5							6	7	8	9	10	
Prior APN*	Current APN	Street Address	Project Name*	Local Jurisdiction Tracking ID*	Unit Category (SFA, SFD, 2 to 4 S+ ADU/MR)	Tenure R=Rentor O=Owner	Date Application Submitted	Very Low-Income Deed Restricted	Very Low-Income Non Deed Restricted	Low-Income Deed Restricted	Low-Income Non Deed Restricted	Moderate-Income Deed Restricted	Moderate-Income Non Deed Restricted	Above Moderate-Income	Total PROPOSED Units by Project	Total APPROVED Units by project	Total DISAPPROVED Units by Project (Auto-calculated Can Be Overwritten)	Was APPLICATION SUBMITTED Pursuant to GC 65913.4(b)? (SB 35 Streamlining)	Notes*
Summary Row: Start Data Entry Below																			
		30 GURROLA ST		20180118	SFD	O								64	64	64			
		61 VERA CIR		20180119	SFD	O								1	1	1		No	
		240 GONZALEZ ST		20180120	SFD	O								1	1	1		No	
		250 GONZALEZ ST		20180121	SFD	O								1	1	1		No	
		53 VERA CIR		20180122	SFD	O								1	1	1		No	
		450 GONZALEZ ST		20180123	SFD	O								1	1	1		No	
		731 Juanita St		20180130	SFD	O								1	1	1		No	
		62 GURROLA ST		20180133	SFD	O								1	1	1		No	
		46 GURROLA ST		20180136	SFD	O								1	1	1		No	
		70 GURROLA ST		20180140	SFD	O								1	1	1		No	
		220 GONZALEZ ST		20180144	SFD	O								1	1	1		No	
		58 VERA CIR		20180145	SFD	O								1	1	1		No	
		280 GONZALEZ ST		20180146	SFD	O								1	1	1		No	
		54 GURROLA ST		20180147	SFD	O								1	1	1		No	
		300 GONZALEZ ST		20180149	SFD	O								1	1	1		No	
		280 GONZALEZ ST		20180150	SFD	O								1	1	1		No	
		280 GONZALEZ ST		20180151	SFD	O								1	1	1		No	
		41 VERA CIR		20180159	SFD	O								1	1	1		No	
		310 GONZALEZ ST		20180162	SFD	O								1	1	1		No	
		20180168		20180168	SFD	O								1	1	1		No	
		340 GONZALEZ ST		20180169	SFD	O								1	1	1		No	
		37 VERA CIR		20180171	SFD	O								1	1	1		No	
		320 GONZALEZ ST		20180179	SFD	O								1	1	1		No	
		43 VERA CIR		20180180	SFD	O								1	1	1		No	
		47 VERA CIRC		20180183	SFD	O								1	1	1		No	
		330 GONZALEZ ST		20180185	SFD	O								1	1	1		No	
		40 VERA CIR		20180196	SFD	O								1	1	1		No	
		38 VERA CIR		20180202	SFD	O								1	1	1		No	
		42 VERA CIR		20180209	SFD	O								1	1	1		No	
		57 VERA CIR		20180210	SFD	O								1	1	1		No	

Jurisdiction	Mendota
Reporting Year	2018 (Jan. 1 - Dec. 31)

					Annual Building Ac	
Project Identifier					Unit Types	
1					2	3
Prior APN*	Current APN	Street Address	Project Name*	Local Jurisdiction Tracking ID*	Unit Category (SFA, SFD, 2 to 4, 5+, ADU, NPH)	Tenure R=Renter O=Owner
y Row. Start Data Entry Below						
		54 SEGOVIA ST		20180018		
		46 SEGOVIA ST		20180019		
		32 DIAZ ST		20180022		
		402 GONZALEZ ST		20180023		
		490 GONZALEZ ST		20180024		
		478 GONZALEZ ST		20180025		
		420 GONZALEZ ST		20180035		
		45 DIAZ ST		20180042		
		37 DIAZ ST		20180048		
		500 GONZALEZ ST		20180049		
		59 SEGOVIA ST		20180050		
		35 SEGOVIA ST		20180051		
		510 GONZALEZ ST		20180052		
		520 GONZALEZ ST		20180053		
		53 QUIROGA CT		20180054		
		70 QUIROGA CT		20180055		
		430 GONZALEZ ST		20180056		
		534 GONZALEZ ST		20180070		
		56 DIAZ ST		20180071		
		550 GONZALEZ ST		20180072		
		48 DIAZ ST		20180073		
		51 SEGOVIA ST		20180075		
		30 CASTRO ST		20180085		
		53 DIAZ ST		20180096		
		558 GONZALEZ ST		20180098		
		70 SEGOVIA ST		20180099		
		55 VERA CIR		20180107		
		62 VERA CIR		20180108		
		63 VERA CIR		20180109		
		230 GONZALEZ ST		20180110		
		60 VERA CIR		20180112		
		51 VERA CIR		20180113		
		49 VERA CIR		20180114		
		59 VERA CIR		20180115		
		270 GONZALEZ ST		20180116		
		38 GURROLA ST		20180117		O
		30 GURROLA ST		20180118		O
		61 VERA CIR		20180119		O
		240 GONZALEZ ST		20180120		O
		250 GONZALEZ ST		20180121		O
		53 VERA CIR		20180122		O
		450 GONZALEZ ST		20180123		O
		731 Juanita St		20180130		O
		62 GURROLA ST		20180133		O
		46 GURROLA ST		20180136		O
		70 GURROLA ST		20180140		O
		220 GONZALEZ ST		20180144		O
		58 VERA CIR		20180145		O
		280 GONZALEZ ST		20180146		O
		54 GURROLA ST		20180147		O
		300 GONZALEZ ST		20180149		O
		280 GONZALEZ ST		20180150		O
		290 GONZALEZ ST		20180151		O
		41 VERA CIR		20180159		O
		310 GONZALEZ ST		20180162		O
		20180168		20180168		O
		340 GONZALEZ ST		20180169		O
		37 VERA CIR		20180171		O
		320 GONZALEZ ST		20180179		O
		43 VERA CIR		20180180		O
		47 VERA CIR		20180183		O
		330 GONZALEZ ST		20180185		O
		40 VERA CIR		20180196		O
		38 VERA CIR		20180202		O
		42 VERA CIR		20180209		O
		57 VERA CIR		20180210		O

Affordability by Household Incomes - Building Permits								
7							8	9
Very Low-Income Deed Restricted	Very Low-Income Non Deed Restricted	Low-Income Deed Restricted	Low-Income Non Deed Restricted	Moderate-Income Deed Restricted	Moderate-Income Non Deed Restricted	Above Moderate-Income	Building Permits Date Issued	# of Units Issued Building Permits
					66			66
					1		1/30/2018	1
					1		1/30/2018	1
					1		2/9/2018	1
					1		2/9/2018	1
					1		2/9/2018	1
					1		2/9/2018	1
					1		2/28/2018	1
					1		3/9/2018	1
					1		3/20/2018	1
					1		3/20/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		3/21/2018	1
					1		4/11/2018	1
					1		4/11/2018	1
					1		4/11/2018	1
					1		4/12/2018	1
					1		4/27/2018	1
					1		5/17/2018	1
					1		5/22/2018	1
					1		5/22/2018	1
					1		5/22/2018	1
					1		5/22/2018	1
					1		6/13/2018	1
					1		6/13/2018	1
					1		6/14/2018	1
					1		6/14/2018	1
					1		6/14/2018	1
					1		6/14/2018	1
					1		6/14/2018	1
					1		6/14/2018	1
					1		6/14/2018	1
					1		6/14/2018	1
					1		6/18/2018	1
					1		6/18/2018	1
					1		6/18/2018	1
					1		6/18/2018	1
					1		6/18/2018	1
					1		7/11/2018	1
					1		7/17/2018	1
					1		7/23/2018	1
					1		8/2/2018	1
					1		8/13/2018	1
					1		8/13/2018	1
					1		8/13/2018	1
					1		8/13/2018	1
					1		8/23/2018	1
					1		8/23/2018	1
					1		8/30/2018	1
					1		9/11/2018	1
					1		9/18/2018	1
					1		9/20/2018	1
					1		9/21/2018	1
					1		10/1/2018	1
					1		10/9/2018	1
					1		10/9/2018	1
					1		10/11/2018	1
					1		10/16/2018	1
					1		11/13/2018	1
					1		11/29/2018	1
					1		12/10/2018	1
					1		12/12/2018	1

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Mendota	
Reporting Year	2018	(Jan. 1 - Dec. 31)

This table is auto-populated once you enter your jurisdiction name and current year data. Past year information comes from previous APRs. Please contact HCD if your data is different than the material supplied here

Table B
Regional Housing Needs Allocation Progress
Permitted Units Issued by Affordability

Income Level		1 RHNA Allocation by Income Level	2									3 Total Units to Date (all years)	4 Total Remaining RHNA by Income Level
			2015	2016	2017	2018	2019	2020	2021	2022	2023		
Very Low	Deed Restricted	80											80
	Non-Deed Restricted												
Low	Deed Restricted	56											56
	Non-Deed Restricted												
Moderate	Deed Restricted	77											
Above Moderate	Non-Deed Restricted				56	66						122	
Total RHNA		554			5							5	336
Total Units					61	66						127	472

Note: units serving extremely low-income households are included in the very low-income permitted units totals
Cells in grey contain auto-calculation formulas

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Mendota	
Reporting Year	2018	(Jan. 1 - Dec. 31)

Table D

Program Implementation Status pursuant to GC Section 65583

Housing Programs Progress Report

Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.

1	2	3	4
Name of Program	Objective	Timeframe in H.E	Status of Program Implementation
Program 1: Regional Collaboration on Housing Opportunities	To ensure that regional housing needs are met collaboratively within Fresno County	Ongoing	The City of Mendota continues to participate in the Countywide Housing Element Technical Committee, which collaborates on implementation including infrastructure challenges, homelessness, and fair housing. The City works with the County of Fresno to acquire funding for programs and infrastructure that benefits underprivileged households. Using funding from HCD's SB2 program, the City will update its website and physical counter area to provide information about regional collaborative efforts.
Program 2: Review Annexation Standards in Memorandum of Understanding	To remove barriers in the development of affordable housing	Ongoing	The City has not had the opportunity or need to annex additional lands to provide adequate housing sites
Program 3: Provision of Adequate Sites	Provide for a variety of housing types and ensure that adequate sites are available to meet RHN	Annually	Using funding from HCD's SB2 program, the City will create its inventory of available land and will update and enhance its website to reflect that information. The Fresno Council of Governments (COG) recently released an RFP for RHNA coordination services. The City will participate in all RHNA collaboration activities.
Program 4: Monitoring of Residential Capacity (No Net Loss)	Develop and implement a formal evaluation procedure pursuant to Government Code Section 65863 by 2016.	By 2020	Using funding from HCD's SB2 program, the City will establish a formal process for evaluating its remaining capacity. The City has submitted its 2017 APR and is working on completing its 2018, 2019, and 2020 APRs. No shortfall has occurred in meeting RHNA.
Program 5: Water and Wastewater Service	To remove obstacles from the development of affordable housing	Ongoing	The City has adopted water and wastewater master plans, and will be using AB 101 LEAP funding to perform a citywide assessment of infrastructure deficiencies in 2020/2021. This will allow the City to focus future requests for infrastructure-related funding. The City has not secured funding for a new location for a fourth municipal well, but has performed repairs and upgrades to Well No. 5 so that it can be used as an emergency/backup well.
Program 6: Affordable Housing Incentives	To provide incentives for the development of affordable housing	Ongoing	No new proposals for housing development were submitted in 2019. The City will develop a list of affordable housing developers and contact them annually to explore opportunities. Using funding from HCD's SB2 program, the City will update its density bonus ordinance to account for recent statutory changes.

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Mendota	
Reporting Year	2018	(Jan. 1 - Dec. 31)

Table D

Program Implementation Status pursuant to GC Section 65583

Housing Programs Progress Report

Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.

1	2	3	4
Name of Program	Objective	Timeframe in H.E	Status of Program Implementation
Program 7: Farmworker Housing	To support and encourage the development of housing specifically aimed at farmworkers	Ongoing	The City will continue to work with the Fresno Housing Authority to seek grants for farmworker housing.
Program 8: Preserving Assisted Housing	Annually monitor the status of assisted housing stock that may be at risk of converting to market rate.	Immediately upon notification of intent to terminate affordability restrictions for existing affordable units	No such notices were issued.
Program 9: Encourage and Facilitate Accessory Units (Second Units)	To facilitate construction of affordable housing units	By 2018	The City is undertaking a fee study in 2021 and will examine reduced fees for accessory dwellings. Using funding from HCD's SB2 program, the City will update its zoning ordinance to account for recent statutory changes and will update its website and physical counter area to provide this information.
Program 10: Zoning Code Amendments	To amend the Zoning Code to address a variety of housing options, including special needs groups	Within one year of housing element adoption, so by 2017	Using funding from HCD's SB2 program, the City will prepare a substantial update to its zoning ordinance to account for all necessary changes in State law as well as updates needed provisions for General Plan consistency.
Program 11: Lot Consolidation and Lot Splits	To provide appropriately-sized parcels for development of a variety of housing types.	Ongoing	No development proposals were submitted in 2019.
Program 12: Monitoring of Planning and Development Fees	To ensure fees do not unduly constrain housing development	Ongoing	The City is undertaking a fee study in 2021 and will examine how fees are applied to affordable housing projects.
Program 13: Fresno County Housing Assistance Rehabilitation Program (HARP)	Promote available housing rehabilitation resources on City website and public counters.	Ongoing	Using funding from HCD's SB2 program, the City will update its website and physical counter space to provide this information. No opportunity to refer households to HARP has arisen.
Program 14: Fresno Conty Rental Rehabilitation Program (RRP)	Promote available housing rehabilitation resources on City website and public counters.	Ongoing	Using funding from HCD's SB2 program, the City will update its website and physical counter space to provide this information. No opportunity to refer households to the RRP has arisen.
Program 15: Code Enforcement	Use code enforcement and abatement processes to bring substandard units and properties into compliance.	Ongoing	Ongoing

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Jurisdiction	Mendota
Reporting Period	2018 (Jan. 1 - Dec. 31)

Note: + Optional field
 Cells in grey contain auto-calculation formulas

Table E									
Commercial Development Bonus Approved pursuant to GC Section 65915.7									
Project Identifier				Units Constructed as Part of Agreement				Description of Commercial Development Bonus	Commercial Development Bonus Date Approved
1				2				3	4
APN	Street Address	Project Name*	Local Jurisdiction Tracking ID*	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Description of Commercial Development Bonus	Commercial Development Bonus Date Approved
Summary Row: Start Data Entry Below									

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Jurisdiction	Mendota	
Reporting Period	2018	(Jan. 1 - Dec. 31)

Note: + Optional field
 Cells in grey contain auto-calculation formulas

Table F									
Units Rehabilitated, Preserved and Acquired for Alternative Adequate Sites pursuant to Government Code section 65583.1(c)(2)									
<p>This table is optional. Jurisdictions may list (for informational purposes only) units that do not count toward RHNA, but were substantially rehabilitated, acquired or preserved. To enter units in this table as progress toward RHNA, please contact HCD at APR@hcd.ca.gov. HCD will provide a password to unlock the grey fields. Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in Government Code section 65583.1(c)(2).</p>									
Activity Type	Units that Do Not Count Towards RHNA* Listed for Informational Purposes Only				Units that Count Towards RHNA* Note - Because the statutory requirements severely limit what can be counted, please contact HCD to receive the password that will enable you to populate these fields.				The description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1*
	Extremely Low-Income*	Very Low-Income*	Low-Income*	TOTAL UNITS*	Extremely Low-Income*	Very Low-Income*	Low-Income*	TOTAL UNITS*	
Rehabilitation Activity									
Preservation of Units At-Risk									
Acquisition of Units									
Total Units by Income									

Jurisdiction	Mendota	
Reporting Year	2018	(Jan. 1 - Dec. 31)

Entitled Units Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	0
Above Moderate		0
Total Units		0

Note: units serving extremely low-income households are included in the very low-income permitted units totals

Submitted Applications Summary	
Total Housing Applications Submitted:	66
Number of Proposed Units in All Applications Received:	66
Total Housing Units Approved:	66
Total Housing Units Disapproved:	0

Use of SB 35 Streamlining Provisions	
Number of Applications for Streamlining	0
Number of Streamlining Applications Approved	0
Total Developments Approved with Streamlining	0
Total Units Constructed with Streamlining	0

Units Constructed - SB 35 Streamlining Permits			
Income	Rental	Ownership	Total
Very Low	0	0	0
Low	0	0	0
Moderate	0	0	0
Above Moderate	0	0	0
Total	0	0	0

Cells in grey contain auto-calculation formulas

Please Start Here

General Information	
Jurisdiction Name	Mendota
Reporting Calendar Year	2019
Contact Information	
First Name	Cristian
Last Name	Gonzalez
Title	City Manager
Email	cristian@cityofmendota.com
Phone	5596653291
Mailing Address	
Street Address	643 Quince St
City	Mendota
Zipcode	93640

Optional: Click here to import last year's data. This is best used when the workbook is new and empty. You will be prompted to pick an old workbook to import from. Project and program data will be copied exactly how it was entered in last year's form and must be updated.

v 2_27_20

Jurisdiction	Mendota	
Reporting Year	2019	(Jan. 1 - Dec. 31)

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

This table is auto-populated once you enter your jurisdiction name and current year data. Past year information comes from previous APRs.
 Please contact HCD if your data is different than the material supplied here

Table B													
Regional Housing Needs Allocation Progress													
Permitted Units Issued by Affordability													
		1	2								3	4	
Income Level		RHNA Allocation by Income Level	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	80											
	Non-Deed Restricted												80
Low	Deed Restricted	56											
	Non-Deed Restricted												56
Moderate	Deed Restricted	77											
Above Moderate	Non-Deed Restricted					53						53	24
Total RHNA		554											
Total Units							53					53	501

Note: units serving extremely low-income households are included in the very low-income permitted units totals
 Cells in grey contain auto-calculation formulas

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction		Mendota	
Reporting Year		2019 (Jan. 1 - Dec. 31)	
Table D			
Program Implementation Status pursuant to GC Section 65583			
Housing Programs Progress Report			
Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.			
1	2	3	4
Name of Program	Objective	Timeframe in H.E	Status of Program Implementation
Program 1: Regional Collaboration on Housing Opportunities	To ensure that regional housing needs are met collaboratively within Fresno County	Ongoing	The City of Mendota continues to participate in the Countywide Housing Element Technical Committee, which collaborates on implementation including infrastructure challenges, homelessness, and fair housing. The City works with the County of Fresno to acquire funding for programs and infrastructure that benefits underprivileged households. Using funding from HCD's SB2 program, the City will update its website and physical counter area to provide information about regional collaborative efforts.
Program 2: Review Annexation Standards in Memorandum of Understanding	To remove barriers in the development of affordable housing	Ongoing	The City has not had the opportunity or need to annex additional lands to provide adequate housing sites
Program 3: Provision of Adequate Sites	Provide for a variety of housing types and ensure that adequate sites are available to meet RHN	Annually	Using funding from HCD's SB2 program, the City will create its inventory of available land and will update and enhance its website to reflect that information. The Fresno Council of Governments (COG) recently released an RFP for RHNA coordination services. The City will participate in all RHNA collaboration activities.
Program 4: Monitoring of Residential Capacity (No Net Loss)	Develop and implement a formal evaluation procedure pursuant to Government Code Section 65863 by 2016.	By 2020	Using funding from HCD's SB2 program, the City will establish a formal process for evaluating its remaining capacity. The City has submitted its 2017 APR and it working on completing its 2018, 2019, and 2020 APRs. No shortfall has occurred in meeting RHNA.
Program 5: Water and Wastewater Service	To remove obstacles from the development of affordable housing	Ongoing	The City has adopted water and wastewater master plans, and will be using AB 101 LEAP funding to perform a citywide assessment of infrastructure deficiencies in 2020/2021. This will allow the City to focus future requests for infrastructure-related funding. The City has not secured funding for a new location for a fourth municipal well, but has performed repairs and upgrades to Well No. 5 so that it can be used as an emergency/backup well.
Program 6: Affordable Housing Incentives	To provide incentives for the development of affordable housing	Ongoing	No new proposals for housing development were submitted in 2019. The City will develop a list of affordable housing developers and contact them annually to explore opportunities. Using funding from HCD's SB2 program, the City will update its density bonus ordinance to account for recent statutory changes.
Program 7: Farmworker Housing	To support and encourage the development of housing specifically aimed at farmworkers	Ongoing	The City will continue to work with the Fresno Housing Authority to seek grants for farmworker housing.
Program 8: Preserving Assisted Housing	Annually monitor the status of assisted housing stock that may be at risk of converting to market rate.	Immediately upon notification of intent to terminate affordability restrictions for existing affordable units	No such notices were issued.
Program 9: Encourage and Facilitate Accessory Units (Second Units)	To facilitate construction of affordable housing units	By 2018	The City is undertaking a fee study in 2021 and will examine reduced fees for accessory dwellings. Using funding from HCD's SB2 program, the City will update its zoning ordinance to account for recent statutory changes and will update its website and physical counter area to provide this information.
Program 10: Zoning Code Amendments	To amend the Zoning Code to address a variety of housing options, including special needs groups	Within one year of housing element adoption, so by 2017	Using funding from HCD's SB2 program, the City will prepare a substantial update to its zoning ordinance to account for all necessary changes in State law as well as updates needed provisions for General Plan consistency.
Program 11: Lot Consolidation and Lot Splits	To provide appropriately-sized parcels for development of a variety of housing types.	Ongoing	No development proposals were submitted in 2019.
Program 12: Monitoring of Planning and Development Fees	To ensure fees do not unduly constrain housing development	Ongoing	The City is undertaking a fee study in 2021 and will examine how fees are applied to affordable housing projects.
Program 13: Fresno County Housing Assistance Rehabilitation Program (HARP)	Promote available housing rehabilitation resources on City website and public counters.	Ongoing	Using funding from HCD's SB2 program, the City will update its website and physical counter space to provide this information. No opportunity to refer households to HARP has arisen.
Program 14: Fresno County Rental Rehabilitation Program (RRP)	Promote available housing rehabilitation resources on City website and public counters.	Ongoing	Using funding from HCD's SB2 program, the City will update its website and physical counter space to provide this information. No opportunity to refer households to the RRP has arisen.
Program 15: Code Enforcement	Use code enforcement and abatement processes to bring substandard units and properties into compliance.	Ongoing	Ongoing
Program 16: Fresno County Homebuyer Assistance Program (HAP)	To pursue and disseminate available resources to the public	Ongoing	Using funding from HCD's SB2 program, the City will update its website and physical counter space to provide this information. No opportunity to refer households to HAP has arisen.
Program 17: First-Time Homebuyer Resources	To pursue and disseminate available resources to the public	Ongoing	Using funding from HCD's SB2 program, the City will update its website and physical counter area to provide this information. The City will continue to monitor resources such as HCD, HUD, and SGC for funding opportunities.
Program 18: Energy Conservation	To promote energy conservation in housing rehabilitation.	Ongoing	The City continues to support PG&E programs that provide energy efficiency rebates and implements the Building codes that support and encourage alternative energy.

**ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation**

(CCR Title 25 §6202)

Jurisdiction	Mendota
Reporting Year	2019 (Jan. 1 - Dec. 31)

Table D

Program Implementation Status pursuant to GC Section 65583

Housing Programs Progress Report			
Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.			
1	2	3	4
Name of Program	Objective	Timeframe in H.E	Status of Program Implementation
19: Housing Choice Vouchers	To disseminate information, refer interested households to the Housing Authority, and encourage landlords to participate.	Ongoing	Using funding from HCD's SB2 program, the City will update its website and physical counter area to provide this information. The City
Program 20: Fair Housing	Participate in the Fresno Urban County's efforts in updating the Analysis of Impediments to Fair Housing Choice required by the CDBG program.	Ongoing	The City will continually update its website and work with the Fair Housing Council of the Central Valley and the Fresno Housing Authority to provide education to lenders, real estate professionals, and the community at large to promote fair housing services available in the region.

Jurisdiction	Mendota	
Reporting Period	2019	(Jan. 1 - Dec. 31)

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Note: "+" indicates an optional field
Cells in grey contain auto-calculation formulas

Table E									
Commercial Development Bonus Approved pursuant to GC Section 65915.7									
Project Identifier				Units Constructed as Part of Agreement				Description of Commercial Development Bonus	Commercial Development Bonus Date Approved
1				2				3	4
APN	Street Address	Project Name*	Local Jurisdiction Tracking ID*	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Description of Commercial Development Bonus	Commercial Development Bonus Date Approved
Summary Row: Start Data Entry Below									

Jurisdiction	Mendota	
Reporting Period	2019	(Jan. 1 - Dec. 31)

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Note: "+" indicates an optional field
 Cells in grey contain auto-calculation formulas

Table F
Units Rehabilitated, Preserved and Acquired for Alternative Adequate Sites pursuant to Government Code section 65583.1(c)(2)

This table is optional. Jurisdictions may list (for informational purposes only) units that do not count toward RHNA, but were substantially rehabilitated, acquired or preserved. To enter units in this table as progress toward RHNA, please contact HCD at APR@hcd.ca.gov. HCD will provide a password to unlock the grey fields. Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in Government Code section 65583.1(c)(2).

Activity Type	Units that Do Not Count Towards RHNA ⁺ Listed for Informational Purposes Only				Units that Count Towards RHNA ⁺ Note - Because the statutory requirements severely limit what can be counted, please contact HCD to receive the password that will enable you to populate these fields.				The description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1 ⁺
	Extremely Low-Income ⁺	Very Low-Income ⁺	Low-Income ⁺	TOTAL UNITS ⁺	Extremely Low-Income ⁺	Very Low-Income ⁺	Low-Income ⁺	TOTAL UNITS ⁺	
Rehabilitation Activity									
Preservation of Units At-Risk									
Acquisition of Units									
Total Units by Income									

Jurisdiction	Mendota	
Reporting Year	2019	(Jan. 1 - Dec. 31)

Building Permits Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	53
Above Moderate		0
Total Units		53

Note: Units serving extremely low-income households are included in the very low-income permitted units totals

Housing Applications Summary	
Total Housing Applications Submitted:	0
Number of Proposed Units in All Applications Received:	0
Total Housing Units Approved:	0
Total Housing Units Disapproved:	0

Use of SB 35 Streamlining Provisions	
Number of Applications for Streamlining	0
Number of Streamlining Applications Approved	0
Total Developments Approved with Streamlining	0
Total Units Constructed with Streamlining	0

Units Constructed - SB 35 Streamlining Permits			
Income	Rental	Ownership	Total
Very Low	0	0	0
Low	0	0	0
Moderate	0	0	0
Above Moderate	0	0	0
Total	0	0	0

Cells in grey contain auto-calculation formulas

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA RATIFYING
THE FIRST AND SECOND AMENDMENTS
TO THE PURCHASE AND SALE
AGREEMENT WITH VALLEY AGRICULTURAL
HOLDINGS, LLC, FOR THE PURCHASE
OF A 59-ACRE PARCEL LOCATED IN THE
COMMERCIAL CANNABIS OVERLAY
DISTRICT**

RESOLUTION NO. 21-10

WHEREAS, on November 9, 2018, the City of Mendota (“City”) issued a Request for Proposals (“RFP”) for the purchase and development of 59-acre parcel, A.P.N. 013-030-68ST (“Property”) located within the City’s Commercial Cannabis Overlay District; and

WHEREAS, at a regular meeting of the Mendota City Council on February 12, 2019, after considering several proposals received in response to the RFP, the Council selected the Axiom Group, also known as Valley Agricultural Holdings, LLC (“Valley Ag”), to exclusively negotiate with the City for the purchase of the Property; and

WHEREAS, on June 25, 2019, the Council approved execution of an Agreement for Preparation of an Environmental Document and Related City Services with Valley Ag, by which Valley Ag received the exclusive right to negotiate with the City for Property’s purchase in exchange for its agreement to reimburse the City costs incurred in connection with its preparation, assessment, and approval of a complete draft and final environmental document, and the performance of any other work required or requested in connection with the environmental document or Axiom’s development project; and

WHEREAS, City staff and Valley Ag reached agreement on the terms of a Purchase and Sale Agreement for the City’s sale of the Property to Valley Ag, and the City Council approved this Purchase and Sale Agreement at its regular public meeting on October 22, 2019, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference; and

WHEREAS, as part of this October 22, 2019, approval, the City Council authorized and directed the City Manager to execute the Purchase and Sale Agreement subject to such minor revisions and clarifications as may be deemed appropriate by the City Manager in his discretion; and

WHEREAS, since that time, City staff and Valley Ag have been in continued negotiations concerning the logistics of Valley Ag's proposed purchase and development of the Property; and

WHEREAS, as part of these ongoing negotiations, the City Manager executed two (2) amendments to the Purchase and Sale Agreement to facilitate the protracted timeline of Valley Ag's proposed purchase and development of the Property; and

WHEREAS, the first amendment to the Purchase and Sale Agreement, executed by the City Manager on December 18, 2019, provided an additional thirty-day (30-day) contingency period wherein Valley Ag was able to address outstanding concerns related to securing roadway access, securing sufficient water supplies, and determining the chemical makeup of the Property's soil, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference; and

WHEREAS, the second amendment to the Purchase and Sale Agreement, executed by the City Manager on January 29, 2020, further extended the contingency period wherein Valley Ag was able to address outstanding concerns related to securing roadway access, securing sufficient water supplies, and determining the chemical makeup of the Property's soil to February 28, 2020, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference; and

WHEREAS, the City's sale of the Property to Valley Ag will result in a significant financial benefit to the City by disposing of surplus real property that can be more productively used by a private party.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota that:

1. The recitals above are true and correct and are incorporated herein by this reference.
2. The City Council hereby ratifies the first and second amendments to the Purchase and Sale Agreement as necessary and proper amendments thereto.
3. The City Council hereby finds and determines that its decision to ratify the first and second amendments the Purchase and Sale Agreement is not subject to environmental review under the Public Resources Code, § 21000 *et seq.*, the California Environmental Quality Act ("CEQA") because its action does not constitute an "approval" of a "project" within the meaning of CEQA. (See Pub. Res. Code § 21065; CEQA Guidelines § 15004(b)(4); *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of University of California* (1993) 6 Cal.4th 1112.) Furthermore, in light of the Purchase and Sale Agreement's terms and closing conditions, any potential environmental impacts remain wholly speculative at this time. (See CEQA

Guidelines § 15064(d)(3).) Moreover, any activities resulting from amendment or approval of the Purchase and Sale Agreement will be subject to environmental review in accordance with CEQA prior to the execution of any development agreement and prior to the issuance of any required entitlement. Additionally, even if the City's approval of the Purchase and Sale Agreement were subject to CEQA, it would be categorically exempt pursuant to § 15312 of the CEQA Guidelines because the activity at issue "consists of [the] sale[] of surplus government property" and is not "land located in an area of statewide, regional, or areawide concern."

4. The City Clerk is hereby authorized and directed to file a Notice of Determination in accordance with CEQA.

Rolando Castro, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26th day of January, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit A

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Joint Escrow Instructions (this "**Agreement**"), dated as of October 22, 2019 (the "**Effective Date**"), is by and between Valley Agricultural Holdings, LLC, a California limited liability company (the "**Buyer**"), and The City of Mendota, a Municipal Corporation (the "**Seller**"), and constitutes an agreement for the purchase and sale of real property and joint escrow instructions directed to Orange Coast Title Company (as "**Escrow Holder**") to establish an escrow (the "**Escrow**") to accommodate the transaction contemplated hereby. The Buyer and Seller shall collectively be referred to as the "**Parties**" and individually as the "**Party**".

RECITALS:

A. Seller is the fee owner of approximately 59 acres of certain unimproved real property located in the City of Mendota ("**City**"), Fresno County (the "**County**"), California, and as depicted on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Land**"). Prior to the Close of Escrow, as defined in Section 4.b below, a legal description of the Land will be attached as **Exhibit "C"** to this Agreement and initialed by the Parties constituting their approval and acceptance of same. The Land shall be subdivided into two parcels, one consisting of 35 acres and one of 24 acres, and the legal description for the two parcels will be attached as **Exhibit "B"** to this Agreement.

B. For purposes of this Agreement, the term "**Property**" shall consist of a fee interest in the Land depicted on **Exhibit "A"** and described on **Exhibit "C"** attached hereto, and all of Seller's right, title and interest, if any, in and to (i) any rights and appurtenances pertaining to the and including all privileges, easements, rights of way, and any mineral and water rights pertaining to the Land, (ii) all improvements thereon, (iii) any and all warranties and guaranties of contractors relating to work performed on the Land, (iv) any and all licenses, permits and approvals issued by governmental authorities relating to the use, maintenance, occupancy or operation of the Land, and (v) all development rights and entitlements applicable to the Land, including all rights to reimbursements or credits from any governmental or quasi-governmental agency related to the ownership and development of the Land.

C. As a condition to the sale of the Property and the Close of Escrow, as defined in Section 4.b below, Seller requires that Buyer develop plans and specifications for the Property's development that are satisfactory to Seller and that Buyer and Seller enter into an agreement for such development, as more particularly described in Section 4.f of this Agreement.

D. Buyer wishes to purchase the Property from Seller, and Seller wishes to sell the Property to Buyer, under the terms and conditions provided for herein.

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **Purchase and Sale.** Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and conditions hereinafter set forth.

2. **Purchase Price.** The "**Purchase Price**" for the Property shall be One Million (\$1,00,000.00 USD), payable all in cash at the Close of Escrow as described in Section 4.b below.

3. **Payment of Purchase Price.**

a. Not later than 5:00 PM (Pacific Time) on the date which is three (3) business days after the Effective Date, Buyer shall deposit into the Escrow: (A) the amount of One Hundred Thousand Dollars (\$100,000.00 USD) by confirmed wire transfer of immediately available federal funds (the "**Deposit**"). Upon the expiration of the Contingency Period the Deposit shall be fully credited to the Purchase Price, except upon a termination of this Agreement following a default by Seller or the failure of Seller to deliver insurable title in accordance with the terms of this Agreement.

b. Contemporaneously with the execution and delivery of this Agreement to Escrow Holder, Buyer has paid to Seller as further consideration for this Agreement, in cash, the sum of One Hundred Dollars (\$100.00 USD) (the "**Independent Consideration**"), in addition to the Deposit and the Purchase Price and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Seller and is non-refundable under any circumstances.

c. In the event of a termination of this Agreement by Seller due to a default by Buyer with respect to Buyer's obligations under this Agreement, the Deposit shall constitute the liquidated damages of Seller pursuant to Section 16.b below.

d. The balance of the Purchase Price, together with Buyer's share of costs to be paid and pro-rations to be made pursuant to Section 13 and Section 14 of this Agreement, shall be deposited by Buyer into the Escrow by confirmed wire transfer of immediately available federal funds, no later than 5:00 P.M. on the last business day before the Close of Escrow and, once the Grant Deed has been recorded and Seller's costs and pro-rations hereunder have been deducted, the remainder shall be delivered to Seller by Escrow Holder at the Close of Escrow.

3.1. **Access Rights.** By entering into this Agreement Seller acknowledges and agrees that it will be necessary for it to provide to Buyer, through land dedications and/or access easements, certain City-controlled properties adjacent to the Property for Buyer's use for vehicular and pedestrian access and utility services to and from the Property (the "**Access Rights**"). Accordingly, Seller shall cooperate and coordinate with Buyer in good faith to facilitate such land dedications and grants of easement, to be determined at Seller's sole and absolute discretion, prior to the Close of Escrow, as necessary and required, to ensure Buyer is granted reasonable Access Rights to the Property. Buyer and Seller further agree that the Purchase Price, as defined in Section 2, will not increase as a result of any City land dedication(s) or grants of easement providing Buyer said access rights.

3.2. Water Availability. By entering into this Agreement Seller acknowledges and agrees that Buyer's access to a continuous water source is instrumental in the development of the proposed project, with said project to be more fully described in the Development Agreement discussed in Section 4.f below, and, as such, sufficient water availability is a material term in Buyer's purchasing the Property and closing the Escrow. To the extent not prohibited by law or contract, Seller agrees to fully cooperate with Buyer to assist in Buyer's securing any and all necessary water rights, including, but not limited to (i) subsurface water rights existing below the Property, and (2) if required, assisting Buyer in obtaining access to a continuous off-Property water source within Seller's jurisdiction and control.

4. Opening and Close of Escrow.

a. For the purposes of this Agreement, the "***Opening of Escrow***" shall mean that date which is one (1) business day after Escrow Holder has received fully executed counterparts of this Agreement from both Buyer and Seller. Immediately upon the Opening of Escrow, Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable and customary supplemental instructions that may reasonably be requested by Escrow Holder or that may be necessary or convenient to consummate the transaction contemplated hereby; provided, however, that such supplemental instructions shall be consistent with and shall not supersede this Agreement and in all cases this Agreement shall control.

b. For purposes of this Agreement, the "***Close of Escrow***" shall mean the date on which two (2) grant deeds conveying the title to the Property to Buyer, substantially in the form attached hereto as Exhibit "B" (the "***Grant Deed(s)***"), are concurrently recorded in the Official Records of the County. For clarity, one Grant Deed shall reflect Seller's conveyance of approximately 35 acres of the Property to Seller, and one Grant Deed shall reflect Seller's conveyance of approximately 24 acres of the Property to Buyer. The Grant Deeds shall also provide that the transfer tax shall not be of record. As discussed in Section 4.c below, in no event shall Close of Escrow occur prior to the Development Entitlements becoming Effective (the "***Entitlement Date***"). For purposes of this Agreement, Development Entitlements shall be deemed to have become "***Effective***" thirty (30) calendar days after the date that a Notice of Determination ("***NOD***") has been filed and posted by the City following a certification from the City's Planning Commission and/or the City Council that the California Environmental Quality Act ("***CEQA***"), and any and all related City discretionary approvals, have been obtained from the City in connection with the City's consideration of Buyer's application(s) for the Development Entitlements; provided, however, if there is an appeal or legal challenge to the City's approval of the Development Entitlements prior to the expiration of said thirty (30) day appeal period, the Development Entitlements shall become Effective on the date that such appeal or legal challenge is favorably concluded without material adverse impact on the Development Entitlements. Buyer shall provide to Seller any

notice of legal challenge or appeal of the Development Entitlements or CEQA document certification, promptly following Buyer's receipt thereof.

c. By entering into this Agreement, Seller understands and acknowledges that Buyer intends to diligently seek from the City any and all approvals and development entitlements the City requires for the purpose of constructing and operating a facility for cannabis cultivation and related uses, including the issuance of a Conditional Use Permit (the "**Development Entitlements**"). Development entitlements and/or development standards required by the City that are not contemplated in the Conditional Use Permit shall, to the extent practicable, be consistent with the County of Fresno's development standards for "Exclusive Agricultural" uses as set forth in the Fresno County Ordinance Code - Division 6, Zoning Ordinance. Accordingly, the Close of Escrow shall occur no more than three (3) business days after the Entitlement Date, except with the mutual written agreement of the Parties (the "**Closing Date**").

d. By entering into this agreement, Buyer acknowledges and agrees that Seller will exercise its independent judgment to determine whether granting the Development Entitlements is in the best interests of the City of Mendota and that Seller shall be under no obligation whatsoever to grant the Development Entitlements to Buyer. Seller will conduct environmental review of the relevant activity or activities in accordance with the requirements of CEQA prior to granting any approval associated with the Development Entitlements. Consequently, Buyer acknowledges and agrees that, in accordance with Seller's obligations under CEQA and its duty to the citizens of the City of Mendota, Seller may decide not to approve some or all of the Development Entitlements, or may approve some or all of the Development Entitlements subject to conditions. The Parties expressly intend that nothing in this Agreement shall be interpreted as a commitment by Seller to grant the Development Entitlements to Buyer prior to Seller's completion of appropriate environmental review in accordance with CEQA, or as an abrogation of the City's obligation to exercise its independent judgement in deciding whether to grant any development entitlement or whether to impose conditions on any development entitlement.

e. Seller Cooperation. By entering into this agreement Seller acknowledges that Close of Escrow shall only occur after the Development Entitlements are Effective, as discussed on Section 4.c above. To facilitate the Close of Escrow in an expeditious and timely manner, Seller agrees, in its capacity as a public municipality and subject to all applicable laws and the time-frames generally established in the Seller's land use entitlement processes and procedures, to fully and diligently cooperate with Buyer in the efficient processing of development applications and final approval(s) of all Development Entitlements reasonably sought by Buyer. However, nothing herein shall be construed as a warranty by Seller that the Development Entitlements will be issued to Buyer.

f. Development Agreement. By entering into this Agreement, and as a condition to the Close of Escrow, Buyer and Seller shall negotiate and execute a mutually acceptable development agreement (the "**Development Agreement**") that shall provide, among other things: (a) a description of the proposed project to be developed upon the

Property, (b) specific requirements for the development of the proposed project and its intended use, and (c) certain revenue and fee provisions potentially requested by the City, as applicable and as negotiated by Buyer and Seller (the "**Fees**"), with a portion of the Fees being paid by Buyer to Seller within thirty (30) business days after Close of Escrow. The Parties will, commencing upon the Effective Date of this Agreement, attempt in good faith to negotiate a mutually agreeable form of the Development Agreement, with the intention that the same will be formally approved by the Seller's City Council on or before December 20, 2019.

5. **Buyer's Contingencies.** For the benefit of Buyer, Buyer's obligation to consummate the transaction contemplated in this Agreement shall be expressly subject to and contingent upon Buyer's written approval or written waiver of each of the following contingencies ("**Contingencies**") on or before the dates set forth below, **time being of the essence:**

a. **Title Matters.**

i. Within five (5) business days of the Effective Date, the Escrow Holder shall deliver to the Buyer an updated preliminary title report for the Property, together with copies of all written instruments creating the exceptions specified therein, and plat maps plotting all easements specified therein (collectively, the "**Title Report**"). Within twenty (20) business days of Buyer's receipt of the Title Report, Buyer shall notify Seller in writing ("**Buyer's Objection Notice**") of any objections Buyer may have to the title exceptions contained in the Title Report. Buyer's failure to provide Seller with a Buyer's Objection Notice within said period shall constitute Buyer's approval of all exceptions to title shown on the Title Report. Seller shall have a period of ten (10) business days after receipt of Buyer's Objection Notice in which to deliver written notice to Buyer ("**Seller's Notice**") of Seller's election to either (i) agree to remove or cure the objected to items prior to the Close of Escrow, or (ii) decline to remove or cure any such title exceptions. Seller's failure to deliver Seller's Notice within such period shall constitute Seller's election to decline to remove or cure any such title exceptions. If Seller notifies Buyer of its election not to remove and cure the objected to items or is deemed to so elect, Buyer shall have the right, by written notice delivered to Seller after Buyer's receipt of Seller's Notice or deemed election, to either (a) terminate this Agreement, or (b) agree to accept the Property subject to the objected to items, in which event Buyer shall take title at the Close of Escrow subject to such objected to items without any adjustment to or credit against the Purchase Price; with said election to occur within twenty (20) days of the Buyer's receipt of Seller's written notice of its election not to remove and cure the objected items. Notwithstanding the foregoing, in no instance shall any deeds of trust, mortgages, or monetary encumbrances against the Property constitute an approved title exception, and the Buyer shall have been deemed to have disapproved any such encumbrance, with such encumbrances to be paid off and removed from any policy of title insurance at the Close of Escrow.

Upon the issuance of any amendment or supplement to the Title Report which adds additional exceptions, or adds any new requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) business days following Buyer's receipt of the instrument(s) creating such additional exceptions, and further provided that the Buyer may only disapprove of, and may only elect to terminate this Agreement based on, any new exception that would reasonably be expected to add a material cost to or have a material adverse effect on Buyer's development or use of the Property.

ii. In the event Buyer requests any endorsements to the Title Policy (as hereinafter defined in Section 9) in its Buyer's Title Notice or a Buyer's Title Notice Supplement ("**Buyer Requested Title Endorsements**"), Buyer shall be solely responsible for ordering the same directly from the Title Company and shall be responsible for all action and additional premiums and costs which may be required as a condition to the issuance of such endorsements (except for a mechanics lien endorsement which shall be paid for by Seller). Buyer Requested Title Endorsements shall not be or be deemed to be a condition to closing the transactions contemplated hereunder. Seller shall execute an affidavit and/or certified resolutions on the Title Company's standard form so that the Title Company can delete or modify the standard printed exceptions as to the Seller's constituent documents, parties in possession, unrecorded liens and similar matters.

b. Due Diligence Review. Buyer shall have sixty (60) days from the Effective Date of this Agreement (the "**Contingency Period**") to examine, inspect and investigate the Property and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer. In the event, prior to the end of the Contingency Period, Buyer provides Seller written notice disapproving the condition of the Property (in Buyer's sole discretion and without any restrictions thereon), Buyer shall be deemed to have disapproved the Property, in which event the Deposit will be immediately returned to Buyer and the termination provisions of Section 12 below shall apply. Prior to the expiration of the Contingency Period, Buyer and Seller agree that Buyer's access requirements, as discussed in Section 3.1 above and related to the Access Rights, shall have been determined by Seller and accepted in writing by Buyer.

c. Post Contingency Period Property Disapproval. Buyer shall retain the right, by providing written notice to Seller, to disapprove the Property and have the Deposit immediately returned to Buyer if, after expiration of the Contingency Period but prior to the Close of Escrow, one or more of the following circumstances occur: (1) Buyer determines there is insufficient water available to service the project for its intended use, as discussed in Section 3.2 above, with said project to be more fully described in the Development Agreement, as discussed in Section 4.f above, (2) all Development Entitlements, as more fully described in Section 4.c above, have not been obtained by Buyer on or before the Closing Date, and (3) Seller is unable or unwilling to

grant the Access Rights, as necessary and required for use of the Property, as more fully discussed in Section 3.1 above.

d. Within five (5) days of the Opening of Escrow, Seller shall provide to Buyer the documents, instruments and agreements, in Seller's possession or control material, if any, relating to the condition, use or development of the Property (the "**Property Information Materials**"), including, but not limited to, any geo-technical reports, engineering reports, surveys, phase I environmental site assessments, phase II environmental investigations, traffic studies, drainage studies, and copies of permits and authorizations (and mitigation measures and conditions thereto) obtained by Seller from local, state and federal agencies having jurisdiction over the Property. Seller shall be solely responsible for the costs of preparing copies of such documents, studies, reports and schedules. Buyer shall be solely responsible for any costs incurred in connection with its review and/or investigation of the Property and the Property Information Materials. Notwithstanding the foregoing, Seller has made, and during the term of this Agreement, will continue to make, available to Buyer for inspection and copying (at Buyer's cost), any and all known information in Seller's possession or reasonably available to Seller regarding a change in the physical condition of the Property.

e. Buyer's comprehensive due diligence investigation of the Property may include, but shall not be limited to, the following matters respecting the Property:

i. The availability and adequacy of all utilities to the Property, including, but not limited to, power, water, gas, telephone, cable and sewer.

ii. The condition of the soils and the geologic, environmental and engineering conditions of the Property, based on any and all soils, engineering, environmental or geologic tests, reports and studies which Buyer desires to perform, which reports, tests and studies shall be performed at Buyer's sole cost and expense in compliance with the provisions of Section 18 below.

iii. The existence of mineral rights connected to the property and, if existing, the transferability of the same to Buyer.

iv. The existence of, and if existing the extent of, subsurface water located beneath the Property and the feasibility of Buyer's future use of subsurface water in connection with Buyer's intended use of the Property; or in the event subsurface water is not available, Buyer's ability to obtain water from City-controlled properties or facilities.

v. The contents of a California Natural Hazards Disclosure Statement. Seller hereby authorizes Escrow Holder, at Seller's cost, promptly following the Opening of Escrow, to procure and deliver to Buyer and Seller, for the benefit of Buyer and Seller, a Natural Hazards Disclosure Statement covering the Property. Seller shall have no responsibility for the completeness or accuracy of the Natural Hazards Disclosure Statement.

f. The deadlines specified in this Section 5, subdivisions (a), (b), (c), and (d) may be modified pursuant to the written agreement of the Parties.

6. "AS-IS" SALE.

a. Buyer, having had the opportunity to undertake full testing or review of the Property during the Contingency Period, expressly assumes the risk that the Property may contain or have defects or conditions that might prevent the intended use of the Property or cause unexpected expense in connection with preparing the Property for the intended use. This Agreement contains all of the terms and conditions agreed upon, it being understood that there are no outside representations or oral agreements. Buyer acknowledges that, except as expressly contained in this Agreement, (a) neither Seller nor anyone acting for or on behalf of Seller has made any representation, statement, warranty, or promise to Buyer concerning the physical aspects and condition of the Property, any dimensions or specifications of any of the Property, the feasibility, desirability, or convertibility of the Property into any particular use, or the projected income or expenses for the Property; (b) in entering into this Agreement, Buyer has not relied on any representation, statement, or warranty of Seller (except those expressly contained herein) or on the documentation provided by Seller to Buyer under this Agreement, or anyone acting for or on behalf of Seller, all of which are to be independently verified by Buyer; (c) Buyer is purchasing the Property based solely upon Buyer's own inspection and examination thereof; (d) that Buyer is purchasing the Property in its then "AS IS" physical condition and its then "AS IS" state without any representation, statement, or warranty of Seller (except those expressly contained herein); and (e) Buyer does hereby waive, and Seller does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Property, including, by way of description, but not limitation, those of fitness for a particular purpose, merchantability, tenantability, habitability, and use, except for the representations and warranties of Seller set forth herein.

b. Buyer acknowledges that certain of the Property Information Materials may have been prepared by parties other than Seller. Buyer accepts the fact that Seller is making no representation or warranty whatsoever, express or implied, as to the completeness, content or accuracy of the Property Information Materials, except as may otherwise be provided in Section 7 below of this Agreement. Except as may otherwise be provided in Section 7, Buyer specifically releases Seller from all claims, whether known or unknown, which are or may be asserted against or incurred by Buyer by reason of the information contained in, or that should have been contained in, the Property Information Materials or in the Recitals to this Agreement.

7. Seller's Representations, Warranties and Covenants.

Seller hereby represents and warrants to Buyer, which representations and warranties shall be true and correct as of the Effective Date and as of the date of the Close of Escrow, and, subject to Section 34 hereof, shall survive the Close of Escrow.

For purposes of this Section 7, "Seller's knowledge" shall refer to the actual, personal knowledge of Cristian Gonzalez, without any duty of inquiry or investigation. Seller represents and warrants that Cristian Gonzalez is the person affiliated with Seller most knowledgeable about the Property. In the event a representation or warranty of Seller as stated above is true as of the Effective Date, but due to the occurrence of a change in circumstances (which change does not arise due to Seller's breach hereunder) of which Seller actually becomes aware between the Effective Date and the Close of Escrow, cannot be stated truthfully by Seller in all material respects upon the Close of Escrow, Seller shall not be in breach of this Agreement by reason thereof, provided Seller promptly after learning of the same and prior to the Close of Escrow, notifies Buyer in writing of such change in circumstances; in such event, Buyer shall have the right by written notice to Seller and Escrow Holder within five (5) business days of learning of such changed circumstance, either (a) to waive such changed circumstances and proceed to the Close of Escrow with Seller's relevant representation or warranty deemed qualified to exclude the changed circumstances, or (b) to deem such change in circumstances a failure of a condition precedent to Buyer's obligation to purchase the Property and terminate this Agreement, in which event the Deposit shall be immediately returned to Buyer and the termination provisions of Section 12 below shall apply.

a. To Seller's knowledge, Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

b. To Seller's knowledge, and except for this Agreement, Seller is not a Party to any currently enforceable agreement or option for the transfer, sale or purchase of all or any portion of the Property and has not granted any other party any right or option to use, occupy or lease all or any portion of the Property.

c. To Seller's knowledge, Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations thereunder (collectively, the "**Code**").

d. To Seller's knowledge, there are no legal, administrative, regulatory or other actions, suits or similar proceedings pending and served, or threatened in writing against Seller or the Property which, if adversely determined, would materially and adversely affect the value of the Property or adversely affect Seller's ability to consummate the transactions contemplated hereby.

e. To Seller's knowledge, Seller has not (1) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (2) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (3) made an assignment for the benefit of creditors.

f. To Seller's knowledge, Seller has not received any written notice from any applicable governmental authority respecting any violation of any applicable governmental law, ordinance, rule or regulation applicable to Seller, the Property, or any part thereof, by reason of a violation of any applicable federal, state, county or municipal law, code, rule, or regulation, that (1) has not been either cured or removed (or shall be cured or removed prior to the Closing) or otherwise disclosed to Buyer, and (2) materially and adversely affects the value of the Property.

g. To Seller's knowledge, Seller has never used, generated, processed, stored, disposed of, released or discharged any Hazardous Substances on, under or about the Property, that would be a material impediment to the development of the Property.

h. To Seller's knowledge, the Property Information Materials are true and correct in all material respects as of the date of such document; provided, however, that Seller makes no representation or warranty and shall have no liability or responsibility for any analysis or conclusion set forth in any third party reports which are included in the Property Information Materials. To Seller's knowledge, and without limiting the foregoing, all copies of Property Information Materials provided to Buyer are accurate and complete copies.

Seller hereby covenants with Buyer, which covenants subject to Section 34 hereof, shall survive the Close of Escrow, as follows:

a. During the period between the Opening of Escrow and the Close of Escrow or termination of this Agreement, Seller shall not, without the prior written consent of Buyer, enter into any contract with respect to the Property that will impede or otherwise interfere with Seller's sale of the Property to Buyer which will survive the Close of Escrow.

b. On or before the Close of Escrow, Seller shall terminate, at its sole cost, any contracts to which it is a party that may interfere with Buyer's intended use of the Property, as that use shall be described in the Development Agreement discussed in Section 4.f above, unless Buyer has expressly agreed to assume such contracts in its sole discretion.

c. At all times prior to the Close of Escrow, Seller shall maintain the Property substantially in its current condition.

d. Any backup offers for purchase of the Property obtained by and that are acceptable to Seller shall be expressly subordinate to Buyer's rights under this Agreement.

e. Prior to the Close of Escrow, Seller shall obtain all such written consents and approvals as may be necessary or required, if any, to permit Seller to perform its obligations under this Agreement.

f. Seller shall notify Buyer promptly upon receipt by Seller prior to Closing of written notice of the institution or pendency of any action, suit, or proceeding against or affecting the Property, or relating to or arising out of the ownership of such Property.

8. Buyer's Representations, Warranties and Covenants.

a. Buyer hereby represents and warrants to Seller, which representations and warranties shall be true and correct as of the Effective Date of this Agreement and as of the date of the Close of Escrow, and, subject to Section 34 hereof, shall survive the Close of Escrow, as follows:

i. Buyer has the legal power, right and authority to enter into this Agreement and the instruments to be executed by Buyer pursuant to this Agreement and to consummate the transactions contemplated hereby. No consent of any third party is required in order for Buyer to perform its obligations hereunder.

ii. Buyer has obtained all government approvals, permits, licenses, and entitlements required by any law or regulation for Buyer's operation of a commercial cannabis business.

iii. All requisite action has been taken by Buyer in connection with Buyer's execution of this Agreement and the instruments to be executed by Buyer pursuant to this Agreement and the consummation of the transactions contemplated hereby.

iv. The individuals executing this Agreement and the instruments to be executed by Buyer pursuant to this Agreement on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions of this Agreement and such instruments.

v. Neither the execution and delivery of this Agreement and the documents referenced herein, nor the undertaking of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party.

vi. Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due or (vi) made an offer of settlement, extension or composition to its creditors generally.

9. **Title Insurance.** It shall be a condition to the Close of Escrow for Buyer's benefit that the Title Company shall have unconditionally committed to issue to Buyer an CLTA standard coverage owner's policy of title insurance (the "***Title Policy***") in the amount of the Purchase Price, showing fee simple title to the Property to be vested in Buyer free and clear of all liens and encumbrances other than the approved exceptions and containing the Requesting Endorsements. Seller shall pay the premium for the issuance of the standard Title Policy. Buyer, at Buyer's sole option and cost, so long as the Close of Escrow is not thereby delayed, may elect to obtain an ALTA standard or extended coverage title policy (the "***ALTA Policy***"). Seller shall pay for the cost of the Title Policy and the cost of any curative endorsements Seller has agreed in writing to provide and the costs of a mechanics' lien endorsement, and Buyer shall pay any additional cost for the ALTA Policy, and the cost of any Buyer Requested Title Endorsements not covered by Seller.

10. **Conditions to Close of Escrow.**

a. Buyer's obligation to purchase the Property and close the Escrow is subject to and conditioned upon the satisfaction of the following conditions, on or before the Close of Escrow, as indicated below:

i. Seller shall have timely delivered to Escrow Holder the items described in Section 11.a below, together with any and all written third party consents thereto, where indicated, in the Exhibits attached hereto.

ii. The representations and warranties of Seller shall be true and correct on the Closing Date, and Seller shall not be (or deemed to be) in material breach of any representation or warranty given by Seller under Section 7 above.

iii. Seller shall not otherwise be in material default in the performance of any of its obligations under this Agreement.

iv. Unless waived by Buyer pursuant to the express provisions of this Agreement, the Development Entitlements shall have become Effective.

v. The Title Company has irrevocably committed to issue the Title Policy.

b. Seller's obligation to sell the Property and close the Escrow is subject to and conditioned upon the satisfaction of the following conditions on or before the Close of Escrow:

i. The representations and warranties of Buyer shall be true and correct on the Closing Date, and Buyer shall not be in material breach of any representation or warranty given by Buyer under Section 8.a above.

ii. Buyer shall have timely executed and delivered to Escrow Holder the items described in Section 11.b below.

iii. Buyer shall have deposited into the Escrow all funds required to pay the Purchase Price and Buyer's share of pro-rations and closing costs.

iv. Buyer and Seller shall have executed a mutually acceptable Development Agreement, as discussed in Section 4.f above.

v. Buyer shall not otherwise be in material default in the performance of any of its obligations under this Agreement.

11. Deliveries to Escrow Holder.

a. Seller shall deliver or cause to be delivered to Escrow Holder by 5:00 P.M. on the last business day before the date of the Close of Escrow the following instruments and documents:

i. The Grant Deeds, in recordable form, duly executed and acknowledged by Seller.

ii. Counterpart originals of the Development Agreement as required by Section 4.f

iii. All original (or copies thereof in the event Seller does not possess originals) licenses and permits with respect to the Property and in the possession or control of the Seller or any of its representatives.

iv. Any other instruments and documents which Seller is obligated to execute and deliver into the Escrow under this Agreement.

b. Buyer shall deliver or cause to be delivered to Escrow Holder by 5:00 P.M. on the last business day before the Close of Escrow the following:

i. All sums that Buyer is required to deliver to Escrow Holder pursuant to Section 3.d to close the Escrow.

ii. Counterpart originals of the Development Agreement as required by Section 4.f.

iii. Evidence reasonably satisfactory to Seller that the person executing any documents at the Closing on behalf of Buyer has full right, power, and authority to do so.

iv. Any other instruments and documents which Buyer is obligated to execute and deliver into the Escrow under this Agreement.

12. Termination. Whenever (i) a party has the right to terminate this Agreement pursuant to an express provision of this Agreement, and notifies the other party of its election to terminate the Agreement, or (ii) this Agreement automatically terminates pursuant to an express provision of this Agreement, then:

a. This Agreement, the Escrow, and the rights and obligations of Buyer and Seller under this Agreement shall terminate except as otherwise expressly provided in this Agreement.

b. If neither Buyer nor Seller is in breach of this Agreement, each party shall be responsible to pay one-half of any cancellation charges payable to Escrow Holder and the Title Company.

c. Escrow Holder shall promptly return to Seller and Buyer all documents deposited by them into the Escrow, respectively.

d. Buyer and/or Buyer's Representatives (as such term is defined in Section 18 below) shall upon demand deliver to Seller all originals and copies of the Property Information Materials and all third party reports and studies obtained by Buyer and/or Buyer's Representatives (without warranty as to accuracy or completeness and subject to the rights of third party consultants preparing such reports).

e. If the Agreement is terminated for any reason other than a default by Buyer described in Section 16.b below, and Buyer is entitled to a return of its deposit under this Agreement, Escrow Holder shall immediately release the Deposit to Buyer (less one-half of any escrow cancellation charges, if applicable), and Seller shall immediately return to Buyer, any portion of the Deposit received by Seller. If Buyer is not entitled to the return of the Deposit, then Escrow Holder shall release the Deposit (or portion thereof then held by Escrow Holder) to Seller.

13. Costs and Expenses. The premium for the Title Policy shall be paid in accordance with the provisions of Section 9 above. The escrow fees of Escrow Holder shall be shared equally by Seller and Buyer. Seller shall pay all documentary transfer taxes payable with the recordation of the Grant Deed. Buyer and Seller shall each pay their own legal and professional fees and fees of other consultants incurred in connection with this transaction. All other costs and expenses shall be allocated between Buyer and Seller in the manner customary in the County, except the costs of performing the obligations of each party to this Agreement, which costs shall be borne solely by the party incurring such costs. The provisions of this Section 13 shall survive the Close of Escrow or a termination of this Agreement.

14. Pro-rations and Credits. The following items shall be prorated between Buyer and Seller as of the Close of Escrow based on the actual number of days in the calendar month in which the Close of Escrow occurs: General and special real property taxes and assessments with respect to the Property based upon the latest available tax information such that Seller shall be responsible for all such taxes and assessments levied against the Property to and including the

day prior to the Close of Escrow and Buyer shall be responsible for all such taxes and assessments levied against the Property from and after the date of the Close of Escrow.

15. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

a. Escrow Holder shall cause the Grant Deeds to be recorded in the Official Records of the County, together with any other documents that the parties hereto may mutually direct.

b. Escrow Holder shall hold and/or disburse all funds deposited with Escrow Holder by Buyer as follows:

i. Deduct all items chargeable to the account of Seller pursuant hereto;

ii. Subject to Section 15.c below, disburse to Seller the Purchase Price, less items deducted pursuant to Section 5.b.i above and less the Deposit released to Seller; and

iii. Deduct (and disburse) all items chargeable to the account of Buyer pursuant hereto and refund to Buyer any excess funds deposited by Buyer.

c. Escrow Holder shall direct the Title Company to issue the Title Policy (or, if applicable, the ALTA Policy) to Buyer.

d. Escrow Holder shall deliver to Buyer and Seller, originals of the executed counterparts of the documents and instruments deposited by the parties pursuant to Section 11 above, and copies of all recorded documents.

e. Escrow Holder shall deliver to Seller duplicate originals or copies (as the case may be) of all documents delivered to Buyer.

f. Escrow Holder shall provide Buyer and Seller with a closing statement.

16. Default.

a. SELLER'S DEFAULT. IF THE TRANSACTION CONTEMPLATED HEREUNDER SHALL FAIL TO CLOSE SOLELY BY REASON OF SELLER'S DEFAULT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT (AS DISTINGUISHED FROM THE FAILURE OF A CONDITION TO CLOSING), AND SUCH DEFAULT IS NOT CURED WITHIN TEN (10) DAYS AFTER RECEIPT BY SELLER OF WRITTEN NOTICE THEREOF FROM BUYER, THEN BUYER SHALL HAVE AS ITS EXCLUSIVE REMEDIES THE RIGHT TO EITHER (i) TERMINATE THIS AGREEMENT (IN WHICH EVENT THE DEPOSIT SHALL IMMEDIATELY BE RETURNED TO BUYER), THE TERMINATION

PROVISIONS OF SECTION 12 SHALL APPLY, AND BUYER SHALL BE DEEMED TO HAVE WAIVED ANY RIGHT OR CLAIM TO DAMAGES FOR SELLER'S BREACH, OR (ii) SPECIFICALLY ENFORCE THIS AGREEMENT (BUT NO OTHER ACTION, FOR DAMAGES OR OTHERWISE, SHALL BE PERMITTED); PROVIDED THAT ANY ACTION BY BUYER FOR SPECIFIC PERFORMANCE MUST BE COMMENCED, IF AT ALL, WITHIN NINETY (90) DAYS OF SELLER'S DEFAULT, THE FAILURE OF WHICH SHALL CONSTITUTE A WAIVER BY BUYER OF SUCH RIGHT AND REMEDY. IF BUYER SHALL NOT HAVE COMMENCED AN ACTION FOR SPECIFIC PERFORMANCE WITHIN THE AFOREMENTIONED TIME PERIOD OR SO NOTIFIED SELLER OF ITS ELECTION TO TERMINATE THIS AGREEMENT, BUYER'S SOLE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT IN ACCORDANCE WITH CLAUSE (i) ABOVE.

b. BUYER'S DEFAULT. IN THE EVENT THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT DOES NOT CLOSE DUE TO THE DEFAULT OF BUYER THAT IS NOT CURED WITHIN TEN (10) DAYS AFTER RECEIPT OF WRITTEN NOTICE FROM SELLER SPECIFYING SUCH DEFAULT, THEN SELLER'S RETENTION OF THE DEPOSIT SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, FOR SUCH DEFAULT, SUBJECT TO THE PROVISIONS OF THIS AGREEMENT THAT EXPRESSLY SURVIVE A TERMINATION OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO LIMIT SELLER'S RIGHTS OR DAMAGES UNDER ANY INDEMNITIES GIVEN BY BUYER TO SELLER UNDER THIS AGREEMENT. SELLER AND BUYER HAVE DISCUSSED THE POSSIBLE CONSEQUENCES TO SELLER IN THE EVENT THAT THE ESCROW FAILS TO CLOSE AS A RESULT OF BUYER'S DEFAULT. SELLER AND BUYER HAVE DETERMINED AND HEREBY AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES TO SELLER OCCURRING IN THE EVENT OF SUCH A BUYER DEFAULT UNDER THIS AGREEMENT. THE PARTIES, HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL COMPENSATORY DAMAGES SELLER WOULD SUFFER IN THE EVENT OF BUYER'S DEFAULT IN ITS OBLIGATION TO ACQUIRE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, HEREBY AGREE THAT A REASONABLE ESTIMATE OF SUCH DAMAGES IS AN AMOUNT EQUAL TO THE DEPOSIT, AND IN THE EVENT THIS TRANSACTION FAILS TO CLOSE DUE TO BUYER'S DEFAULT UNDER THIS AGREEMENT, SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE DEPOSIT AS FULLY AGREED LIQUIDATED DAMAGES. SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO

CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON ANY SUCH BREACH OR DEFAULT BY BUYER HEREUNDER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT AS EXPRESSLY PROVIDED ABOVE. THE PARTIES AGREE THAT, UNDER THE CIRCUMSTANCES OF THIS TRANSACTION AND THE MARKETPLACE AT THE TIME HEREOF, THIS LIQUIDATED DAMAGES PROVISION IS REASONABLE AND IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 1671.

CS
SELLER'S INITIALS

[Signature]
BUYER'S INITIALS

17. **Entry Insurance Requirements.** The following shall constitute the "***Required Insurance Coverage***" of a party under the stated circumstance:

a. Prior to the entry on the Property during the term of this Agreement by Buyer or any of Buyer's Representatives' employees, contractors or agents, Buyer shall have obtained and make available at Seller's request certificate or certificates showing that (i) Buyer has in force a policy of comprehensive public liability insurance with liability coverage of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage, automobile liability coverage including owned and hired vehicles with a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage, and an excess umbrella liability policy of bodily injury and property damage in the amount of Five Million and No/100 Dollars (\$5,000,000.00), insuring Seller as an additional insured.

b. The foregoing insurance coverage shall be on an "occurrence form" and otherwise in such forms and with an insurance company reasonably acceptable to Seller, and each insurance policy may be cancelled only after at least thirty (30) days' prior written notice has been given by the insurer to each additional insured thereunder.

18. **Right of Entry.**

a. Buyer and Buyer's agents, representatives, consultants, contractors, subcontractors, lenders and investors (collectively, "***Buyer's Representatives***") shall have the right to enter upon the Property at all reasonable times during the term of this Agreement, in order to conduct such investigations, tests and studies as Buyer shall reasonably deem necessary (the "***Investigations***"), so long as such activities do not unreasonably damage the Property. Prior to Buyer's first entry onto the Property, Buyer shall deliver to Seller a certificate or certificates evidencing that the Required Insurance Coverage specified in Section 17 above has been obtained and is in effect. Buyer shall keep the Property free and clear of any mechanic's liens or materialmen's liens arising out of any such activities (and at Buyer's sole expense, Buyer shall immediately

discharge of record or bond around any such liens or encumbrances that are so filed or recorded, including, without limitation, liens for services, labor or materials furnished in connection with the activities of Buyer or Buyer's Representatives on the Property). Further, Buyer shall indemnify and hold Seller and Seller's Related Parties harmless from and against any and all claims, demands, causes of action, losses, damages, costs, liabilities and/or expenses (including, without limitation, attorneys' fees and disbursements) caused by Buyer or Buyer's Representatives in connection with any Investigations or other activities of Buyer or Buyer's Representatives taken with respect to the Property and/or any liens or encumbrances filed or recorded against the Property as a result thereof; provided, however, that notwithstanding the foregoing, in no event shall Buyer be responsible for any environmental conditions or latent defects existing on the Property and discovered by (but not caused or exacerbated by an act or knowing omission of) Buyer during the course of Buyer's investigation of the Property, or any acts or omissions of Seller or Seller's Related Parties. The foregoing obligation shall survive the Close of Escrow or termination of this Agreement.

b. During the term of this Agreement, Buyer shall:

i. Conduct any further Investigations of the Property deemed desirable by Buyer, however, such further Investigations shall not provide Buyer the right to terminate this Agreement unless a discovery made during such further Investigations constitutes a failure of a condition precedent to Close of Escrow as specified in Section 10.a of this Agreement.

ii. Fully comply with all laws applicable to the Investigations and all other activities undertaken in connection therewith.

iii. Notify and permit Seller to have a representative present during all Investigations undertaken hereunder.

iv. Take all actions and implement all protections reasonably necessary to ensure that the Investigations and the equipment, materials, and substances generated, used or brought onto the Property in connection with the Investigations pose no threat to the safety or health of persons or the environment and cause no damage to the Property or other property of Seller or other persons.

The foregoing obligations shall survive the Close of Escrow or a termination of this Agreement.

c. Without limiting the foregoing, in no event shall Buyer, without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed, make any intrusive physical testing (environmental, geo-technical or otherwise) at the Property. Seller hereby consents to Buyer performing a Phase I Environmental Site Assessment, a Phase II Environmental Site Assessment if necessary and required, geotechnical borings, and soils sampling at the Property.

19. **Condemnation or Casualty Prior to Closing.** Seller shall promptly notify Buyer of any pending or threatened condemnation affecting the Property commenced prior to the Close of Escrow or any casualty affecting the Property prior to the Close of Escrow. If any such condemnation or casualty relates to or may result in the loss of any portion of the Property or access to the Property or would otherwise impact the Development Entitlements or if any casualty would increase the costs of the Buyer's development of the Property, at Buyer's election, either (i) this Agreement shall continue in effect, without delay or abatement of the Purchase Price, and, in the event Buyer purchases the Property under the terms of this Agreement, Buyer shall be entitled to any compensation, awards or other payments or relief resulting from such condemnation proceeding or insurance proceeds ("**Casualty Payments**") to the extent applicable to the Property; provided, however, that in the event such Casualty Payments are paid prior to the Close of Escrow, the Casualty Payments shall be payable to Seller with a credit towards the purchase price in the amount of the Casualty Payment provided to Buyer at the Close of Escrow, or (ii) Buyer may terminate this Agreement within ten (10) days after Buyer's receipt of notice of such condemnation or casualty, in which event the Deposit shall be immediately returned to Buyer and the termination provisions of Section 12 above shall apply. Buyer's failure to provide such notification shall be deemed Buyer's election to terminate pursuant to clause (ii) above. In the event of a condemnation or casualty prior to the Close of Escrow potentially resulting in the loss of any portion of the Property or damage thereto, if Buyer elects to continue with the purchase of the Property as described in clause (i) above Buyer shall be deemed to have made an acceptance and/or assumption of any and all obligations arising from that condemnation or casualty. The provisions of this Section shall survive the Close of Escrow.

20. **Brokers.** Both Parties represent that no broker is involved in this Agreement. In the event of any other claim for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement or the purchase and sale of the Property, then Buyer shall indemnify, save harmless and defend Seller from and against any such claim based upon the alleged statement, representation or agreement by Buyer, and Seller shall indemnify, save harmless and defend Buyer from and against any such claim based upon any alleged statement, representation or agreement by Seller. The provisions of this Section shall survive the Close of Escrow and any termination of this Agreement.

21. **Assignment.** Buyer may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Seller, which consent, except as provided below, may be withheld by Seller in its sole and absolute discretion, and which may be conditioned upon such terms and conditions as Seller may require, in its sole and absolute discretion. Notwithstanding and without limiting the foregoing, no consent given by Seller to any transfer or assignment of Buyer's rights or obligations hereunder shall be deemed to constitute a consent to any other transfer or assignment of Buyer's rights or obligations hereunder and no transfer or assignment in violation of the provisions hereof shall be valid or enforceable. Subject to the foregoing, this Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

22. **Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by electronic mail, registered or

certified mail, postage prepaid, return receipt requested, delivered or sent by telecopy or reputable overnight courier (such as Federal Express) and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, four (4) business days after the date of posting by the United States post office, (iii) if given by telecopy, when sent on the following business day if sent on a non-business day, or (iv) if sent by reputable overnight courier (such as Federal Express), one (1) business day after deposit with the overnight delivery service. Any notice, request, demand, direction or other communication sent by telecopy must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. The addresses of Buyer and Seller are as follows:

Buyer: The Axiom Group
 1201 K street
 Suite 920
 Sacramento, CA 95814
 Attn: Dustin Moore
 dustin@axiomadvisors.com

 Valley Agricultural Holdings, LLC.
 2151 E. Convention Center Way
 Suite 222
 Ontario, CA 91764
 Attn: Daniel Pocius
 dpocius@frontier-enterprises.com

Seller: City of Mendota
 643 Quince Street
 Mendota, CA 93640
 Attn: Cristian Gonzalez
 Telephone: 559/655-4298
 E-Mail: Cristian@cityofmendota.com

and to: Wagner Jones Helsley PC
 265 East River Park Circle, Ste. 310
 Attn: John P. Kinsey, Esq.
 Telephone: 559/233-4800
 Facsimile: 559/233-9330

Refusal to accept delivery shall be deemed receipt.

23. Required Actions of Buyer and Seller. Buyer and Seller shall execute all instruments and documents and take all other actions that may be reasonably required in order to consummate the purchase and sale herein contemplated, and shall use commercially reasonable efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

24. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25. **Waivers.** No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified in this Agreement for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

26. **Professional Fees.** In the event of the bringing of any action or suit by either party against the other by reason of any breach of any of the covenants, representations or warranties of the other party under this Agreement, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including, without limitation, actual attorneys' fees, accounting and engineering fees, and other professional fees resulting therefrom.

27. **Entire Agreement; Amendment.** This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, or supplemented, nor may any obligation hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

28. **Time Frames.** Unless otherwise indicated with respect to a requirement, all time frames for performance of an act required or permitted by this Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of three hundred sixty-five (365) days, unless otherwise specified.

29. **Time of the Essence.** Time is of the essence with respect to each and every provision of this Agreement. Whenever any action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the next succeeding business day. As used herein, the term "business day" shall mean any day, other than a Saturday or Sunday, on which commercial banks in the State of California are not required or authorized to be closed for business.

30. **Construction of Agreement.** Headings at the beginning of each section and subsection of this Agreement are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to sections and subsections are to sections and subsections in this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

31. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any other person other than the parties hereto and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third parties any right of subrogation or action over or against any party to this Agreement. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

32. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

33. **Effectiveness.** In no event shall any draft of this Agreement create any obligation or liability, it being understood that this Agreement shall be effective and binding only when a counterpart hereof has been executed and delivered by each party hereto. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby. The preparation and/or circulation of a draft of this Agreement is not intended by either of the parties to constitute a binding agreement between them for the purchase or sale of the Property. The final form of this Agreement may or may not contain terms stated in any drafts of this Agreement, and/or may contain different terms and conditions not yet identified or discussed. Neither party may rely on any drafts of this Agreement as binding on either party in any way. The parties expressly agree that neither party is bound to engage in negotiations, or, once engaged, to continue such negotiations, each party reserving the right to terminate negotiations at any time and for any reason. Efforts by either party to perform due diligence, arrange or obtain financing, or carry out other acts in contemplation of the possible purchase and sale of the Property shall not be deemed evidence of any intent by either party to be bound by any letter of interest or similar document, or unexecuted and undelivered drafts of this Agreement. The performance by either party before the mutual execution and delivery of the final, mutually agreed upon form of this Agreement of any of the rights or obligations that may be included in drafts of this Agreement shall not be considered evidence of subsequent intent by either party to be bound by any letter of interest or drafts of this Agreement. In the event Buyer or Seller alleges that any unexecuted draft of this Agreement constitutes a binding agreement for the purchase or sale of the Property, or grants an interest in or claim to the

Property, the alleging party shall be liable for the legal fees, costs and damages incurred as a result thereof.

34. Survival of Obligations. All of Buyer's and Seller's covenants, representations and warranties in Sections 7, 8, 13, 14, 19 and 20 of this Agreement shall survive the Close of Escrow for a period of one (1) year. Sections 22, 24, 34, 35, 36, 37, 38, and 39 shall survive this Agreement's termination for any reason. All other obligations of Seller or Buyer not expressly stated to survive the Close of Escrow or not stated in the exhibit documents to be delivered upon the Close of Escrow shall be deemed discharged upon the Close of Escrow and the recordation of the Grant Deed.

35. Limitation of Liability. Except to the extent of distributions of the Deposit or the Purchase Price to such persons, no, officer, employee or agent of Seller or any Seller Related Parties shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Buyer and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Seller's interest in the Property, for the payment of any claim or for any performance, and Buyer, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability. No shareholder, officer, employee or agent of Buyer shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. This Section 34 shall survive the Close of Escrow or a termination of this Agreement.

36. Waiver of Trial By Jury. TO THE EXTENT PERMITTED BY LAW SELLER AND BUYER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR FOR THE ENFORCEMENT OF ANY REMEDY IN CONNECTION HEREWITH.

37. Choice of Venue. EACH PARTY HERETO HEREBY AGREES THAT ALL ACTIONS TO ENFORCE THE TERMS AND PROVISIONS OF THIS AGREEMENT SHALL BE BROUGHT AND MAINTAINED ONLY IN A STATE OR FEDERAL COURT LOCATED IN FRESNO COUNTY, CALIFORNIA, AND EACH PARTY HERETO HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT AND HEREBY AGREES THAT SERVICE OF PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO THE OTHER PARTY AT THE ADDRESSES SET FORTH IN SECTION 22 ABOVE. EACH PARTY HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO MAKE ANY OBJECTIONS BASED ON JURISDICTION OR VENUE TO ANY ACTION

BROUGHT TO ENFORCE THIS AGREEMENT IN ANY SUCH COURT IN ACCORDANCE WITH THE ABOVE PROVISIONS.

38. Governing Law. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

39. Indemnification.

a. To the fullest extent permitted by applicable law, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature ("Losses") that may be asserted by any person or entity, to the extent arising out of that Party's performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Agreement, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination or expiration of this Agreement.

b. Each indemnification under this Agreement and/or under any agreement or document executed and delivered pursuant to this Agreement shall survive the Close of Escrow and shall be subject to the following provisions: (a) the indemnitee shall notify the indemnitor of any such claim against the indemnitee within twenty (20) days after it has notice of such claim, but failure to notify the indemnitor shall in no case prejudice the rights of the indemnitee under this Agreement unless the indemnitor shall be prejudiced by such failure and then only to the extent of such prejudice; (b) without the prior written consent of the indemnitee, the indemnitor shall not enter into any settlement which (i) requires an admission of guilt, the payment of any funds or the performance of any obligation by the indemnitee, and (ii) does not include a full release of indemnitee; and (c) should the indemnitor fail to discharge or undertake to defend the indemnitee against such liability within twenty (20) days after the indemnitee gives the indemnitor written notice of the same, then the indemnitee may, upon fifteen (15) days' notice to the indemnitor, in good faith settle such liability, and the indemnitor's liability to the indemnitee shall be conclusively established by such settlement, the amount of such liability to include both the settlement consideration and the reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by the indemnitee in effecting such settlement. The indemnification obligations under this Agreement shall survive the Close of Escrow or a termination of this Agreement.

40. Amendments. The City Manager of Seller is authorized to sign on his or her own authority amendments to this Agreement which are of routine or technical nature, including extensions of time deadlines either requested by Buyer or occasioned by changes in City employees determined by the City Manager to be critical to the processing of the development contemplated by the Parties, except that the cumulative total of time extensions granted by the

City Manager may not exceed one (1) year ("**Minor Amendments**"). Amendments not constituting Minor Amendments shall require approval of the City Council. The City Manager shall, after consultation with the City Attorney, have sole discretion to determine whether or not an amendment to this Agreement constitutes a Minor Amendment.

41. **Independent Legal Advice.** Each Party represents and warrants the following: that it has carefully read this Agreement, and in signing this Agreement and agreeing to be bound by the same, it has received independent legal advice from legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and it has freely signed this Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its officers, agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. This Agreement shall be interpreted as though prepared jointly and severally by both of the Parties.


42. **No Recordation.** This Agreement shall not be recorded with the County of Fresno.

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the date first above written.

SELLER:

By: _____


BUYER:

By: _____

Richard Munkvold

CONSENT OF ESCROW HOLDER

ESCROW HOLDER APPROVES THE ESCROW PROVISIONS AND SPECIFIC INSTRUCTIONS TO ESCROW HOLDER SET FORTH IN THE FOREGOING AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ORANGE COAST TITLE COMPANY

By: _____
_____, Escrow Officer

Date: _____, 2019

EXHIBIT "A"

LEGAL DEPICTION

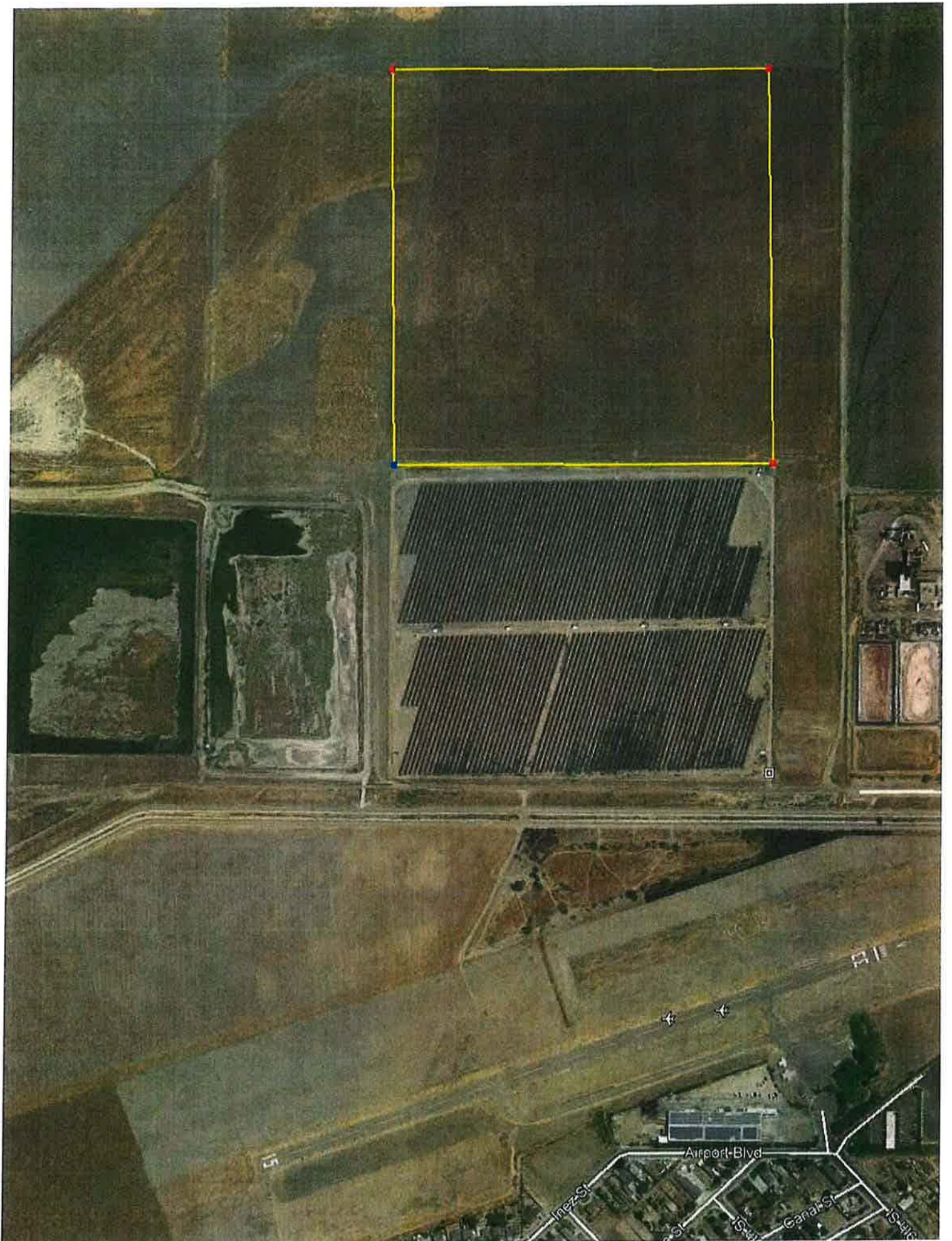


EXHIBIT "B"

GRANT DEEDS

[To be provided and initialed by the parties prior to the close of escrow]

EXHIBIT "C"

LEGAL DESCRIPTION

[To be provided and initialed by the parties prior to the close of escrow]

Exhibit B

VALLEY AGRICULTURAL HOLDINGS, LLC

December 18, 2019

Via Electronic Mail

Nicolas R. Cardella, Esq.
WANGER JONES HELSLEY PC
265 E. River Park Circle, Suite 310
Fresno, California 93720

Re: Request for Extension of Contingency Period.

Pursuant to Section 5.f and Section 40 of that certain *Purchase and Sale Agreement and Joint Escrow Instructions* (the "*Agreement*") entered into by and between Valley Agricultural Holdings, LLC, a California limited liability company (the "*Buyer*"), and the City of Mendota, a Municipal Corporation (the "*Seller*"), by this letter Buyer requests that Seller grant a minor amendment to the Agreement providing an extension of 30 days for Buyer, pursuant to Section 5.b of the Agreement, to "examine, inspect and, investigate the Property" and provide Seller notice of its approval or disapproval of the same (the "*Contingency Period Extension*").¹ The requested extension will extend the Contingency Period through **January 29, 2020**.

There are several significant issues still needing to be resolved by the parties such that Buyer is fully confident that the Property will be conducive for its intended agricultural use. These issues include, but may not be limited to, (1) Seller's ability to obtain and/or grant Buyer roadway access to the Property, (2) the availability of a sufficient and reliable water source necessary for crop growing activities, and (3) whether the chemical makeup of the Property's soil is viable for the growing of cannabis, specifically as related to chromium and toxaphene levels in the soil.

Please note that Buyer is diligently working to clear due diligence on this transaction, and also looks forward to continuing to work with the City regarding the purchase of the Property.

As always, please contact me at (909) 354-8019 to discuss the above.

Regards,



Richard Munkvold
CFO

Cc: Cristian Gonzalez, City Manager
Dustin Moore, Axiom
Steven B. Imhoof, Esq., Valley Agricultural Holdings

¹ The current Contingency Period expires on December 30, 2019.

**FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND
JOINT ESCROW INSTRUCTIONS**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "*First Amendment*") is dated as of December ²⁰, 2019, by and among *Valley Agricultural Holdings, LLC*, a California limited liability company ("*Buyer*"), and *The City of Mendota*, a Municipal Corporation (the "*Seller*"), and amends that certain *Purchase and Sale Agreement and Joint Escrow Instructions* dated as of October 22, 2019 (the "*Original Agreement*"). Capitalized terms used herein shall have the meanings given them in the Original Agreement unless otherwise defined herein. To the extent of any inconsistencies between the terms set forth in the Original Agreement, as previously amended, and this First Amendment, the terms stated in this First Amendment shall control.

RECITALS:

A. Pursuant to the Section 5.b of the Original Agreement, Buyer's Contingency Period to examine, inspect and investigate the Property expires on December 30, 2019.

B. Seller has agreed to extend Buyer's Contingency Period until January 29, 2020, which, based on Buyer's further investigations of the Property, Buyer shall deliver to Seller a property approval or disapproval notice on or prior to that date.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the parties hereby agree to amend the Original Agreement on the following terms and conditions:

1. **Contingency Period.** Section 5.b of the Original Agreement is amended to reflect that the Contingency Period shall expire on January 29, 2020.

2. **Ratification of Original Agreement; Counterparts; Facsimile Signatures.** Except as modified by this First Amendment, all of the terms and provisions of the Original Agreement shall remain in full force and effect. In the event of any inconsistency between the provisions of the Original Agreement and this First Amendment, the provisions of this First Amendment shall govern and control. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile or .pdf signature shall be deemed an original signature.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date set forth above.

SELLER:

The City of Mendota, a Municipal Corporation

By: 
Cristian Gonzalez
Title: City Manager

BUYER:

**Valley Agricultural Holdings, LLC,
a California limited liability company**


By: 
Name: Richard Munkvold
Title: Chief Financial Officer

Exhibit C

**SECOND AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND
JOINT ESCROW INSTRUCTIONS**

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "*Second Amendment*") is dated as of January 21, 2020, by and among *Valley Agricultural Holdings, LLC*, a California limited liability company ("*Buyer*"), and *The City of Mendota*, a Municipal Corporation (the "*Seller*"), and further amends that certain *Purchase and Sale Agreement and Joint Escrow Instructions* dated as of October 22, 2019 (the "*Original Agreement*"), as amended by that certain *First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions* dated December 20, 2019 (the "*First Amendment*"). Capitalized terms used herein shall have the meanings given them in the Original Agreement unless otherwise defined herein. To the extent of any inconsistencies between the terms set forth in the Original Agreement, as previously amended, and this Second Amendment, the terms stated in this Second Amendment shall control.

RECITALS:

A. Pursuant to the Section 5.b of the Original Agreement, as amended by the First Amendment, Buyer's Contingency Period to examine, inspect and investigate the Property expires on January 29, 2020.

B. Seller has agreed to extend Buyer's Contingency Period until February 28, 2020, which, based on Buyer's further investigations of the Property, Buyer shall deliver to Seller a Property approval or disapproval notice on or prior to that date.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the parties hereby agree to amend the Original Agreement on the following terms and conditions:

1. **Contingency Period.** Section 5.b of the Original Agreement, as amended by the First Amendment, is amended to reflect that the Contingency Period shall expire on February 28, 2020.
2. **Ratification of Original Agreement; Counterparts; Facsimile Signatures.** Except as modified by this Second Amendment, all of the terms and provisions of the Original Agreement shall remain in full force and effect. In the event of any inconsistency between the provisions of the Original Agreement and this Second Amendment, the provisions of this Second Amendment shall govern and control. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile or .pdf signature shall be deemed an original signature.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date set forth above.

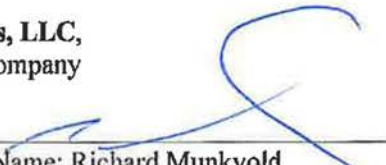
SELLER:

The City of Mendota, a Municipal Corporation

By: 
Cristian Gonzalez
Title: City Manager

BUYER:

**Valley Agricultural Holdings, LLC,
a California limited liability company**

By: 
Name: Richard Munkvold
Title: Chief Financial Officer

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPROVING
THE THIRD AMENDMENT TO THE
PURCHASE AND SALE AGREEMENT
WITH VALLEY AGRICULTURAL
HOLDINGS, LLC, FOR THE PURCHASE
OF A 59-ACRE PARCEL LOCATED IN THE
COMMERCIAL CANNABIS OVERLAY
DISTRICT**

RESOLUTION NO. 21-11

WHEREAS, on November 9, 2018, the City of Mendota (“City”) issued a Request for Proposals (“RFP”) for the purchase and development of 59-acre parcel, A.P.N. 013-030-68ST (“Property”) located within the City’s Commercial Cannabis Overlay District; and

WHEREAS, at a regular meeting of the Mendota City Council on February 12, 2019, after considering several proposals received in response to the RFP, the Council selected the Axiom Group, also known as Valley Agricultural Holdings, LLC (“Valley Ag”), to exclusively negotiate with the City for the purchase of the Property; and

WHEREAS, on June 25, 2019, the Council approved execution of an Agreement for Preparation of an Environmental Document and Related City Services with Valley Ag, by which Valley Ag received the exclusive right to negotiate with the City for Property’s purchase in exchange for its agreement to reimburse the City costs incurred in connection with its preparation, assessment, and approval of a complete draft and final environmental document, and the performance of any other work required or requested in connection with the environmental document or Axiom’s development project; and

WHEREAS, City staff and Valley Ag reached agreement on the terms of a Purchase and Sale Agreement for the City’s sale of the Property to Valley Ag, and the City Council approved this Purchase and Sale Agreement at its regular public meeting on October 22, 2019, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference; and

WHEREAS, as part of this October 22, 2019, approval, the City Council authorized and directed the City Manager to execute the Purchase and Sale Agreement subject to such minor revisions and clarifications as may be deemed appropriate by the City Manager in his discretion; and

WHEREAS, since that time, City staff and Valley Ag have been in continued negotiations concerning the logistics of Valley Ag's proposed purchase and development of the Property; and

WHEREAS, as part of these ongoing negotiations, the City Manager executed two (2) amendments to the Purchase and Sale Agreement to facilitate the protracted timeline of Valley Ag's proposed purchase and development of the Property; and

WHEREAS, the first amendment to the Purchase and Sale Agreement, executed by the City Manager on December 18, 2019, provided an additional thirty-day (30-day) contingency period wherein Valley Ag was able to address outstanding concerns related to securing roadway access, securing sufficient water supplies, and determining the chemical makeup of the Property's soil, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference; and

WHEREAS, the second amendment to the Purchase and Sale Agreement, executed by the City Manager on January 29, 2020, further extended the contingency period wherein Valley Ag was able to address outstanding concerns related to securing roadway access, securing sufficient water supplies, and determining the chemical makeup of the Property's soil to February 28, 2020, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference; and

WHEREAS, as part of these ongoing negotiations, Valley Ag has informed City staff that it would be in its members' best interests to cause Valley Ag to assign the right to purchase the Site pursuant to the Purchase and Sale Agreement to two (2) single-purpose entities it established: (1) Odyssey Agricultural Holdings, LLC, a California limited liability company ("Odyssey"); and (2) Boca del Rio Holdings, LLC ("Boca"), a California Limited Liability Company. A copy of the proposed third amendment to the Purchase and Sale Agreement permitting these assignments is attached hereto as Exhibit "D" and incorporated herein by this reference; and

WHEREAS, the City's sale of the Property to Valley Ag, Odyssey, and/or Boca will result in a significant financial benefit to the City by disposing of surplus real property that can be more productively used by a private party.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota that:

1. The recitals above are true and correct and are incorporated herein by this reference.
2. The City Council hereby authorizes and directs the City Manager to execute the Third Amendment to the Purchase and Sale Agreement in substantially the form attached hereto as Exhibit "D," subject to such minor revisions and clarifications as may be deemed appropriate by the City Manager in his discretion.

3. The City Council hereby finds and determines that its decision to approve the third amendment to the Purchase and Sale Agreement is not subject to environmental review under the Public Resources Code, § 21000 *et seq.*, the California Environmental Quality Act (“CEQA”) because its action does not constitute an “approval” of a “project” within the meaning of CEQA. (See Pub. Res. Code § 21065; CEQA Guidelines § 15004(b)(4); *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of University of California* (1993) 6 Cal.4th 1112.) Furthermore, in light of the Purchase and Sale Agreement’s terms and closing conditions, any potential environmental impacts remain wholly speculative at this time. (See CEQA Guidelines § 15064(d)(3).) Moreover, any activities resulting from amendment or approval of the Purchase and Sale Agreement will be subject to environmental review in accordance with CEQA prior to the execution of any development agreement and prior to the issuance of any required entitlement. Additionally, even if the City’s approval of the Purchase and Sale Agreement were subject to CEQA, it would be categorically exempt pursuant to § 15312 of the CEQA Guidelines because the activity at issue “consists of [the] sale[] of surplus government property” and is not “land located in an area of statewide, regional, or areawide concern.”
4. The City Clerk is hereby authorized and directed to file a Notice of Determination in accordance with CEQA.

Rolando Castro, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26th day of January, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit A

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Joint Escrow Instructions (this "**Agreement**"), dated as of October 22, 2019 (the "**Effective Date**"), is by and between Valley Agricultural Holdings, LLC, a California limited liability company (the "**Buyer**"), and The City of Mendota, a Municipal Corporation (the "**Seller**"), and constitutes an agreement for the purchase and sale of real property and joint escrow instructions directed to Orange Coast Title Company (as "**Escrow Holder**") to establish an escrow (the "**Escrow**") to accommodate the transaction contemplated hereby. The Buyer and Seller shall collectively be referred to as the "**Parties**" and individually as the "**Party**".

RECITALS:

A. Seller is the fee owner of approximately 59 acres of certain unimproved real property located in the City of Mendota ("**City**"), Fresno County (the "**County**"), California, and as depicted on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Land**"). Prior to the Close of Escrow, as defined in Section 4.b below, a legal description of the Land will be attached as **Exhibit "C"** to this Agreement and initialed by the Parties constituting their approval and acceptance of same. The Land shall be subdivided into two parcels, one consisting of 35 acres and one of 24 acres, and the legal description for the two parcels will be attached as **Exhibit "B"** to this Agreement.

B. For purposes of this Agreement, the term "**Property**" shall consist of a fee interest in the Land depicted on **Exhibit "A"** and described on **Exhibit "C"** attached hereto, and all of Seller's right, title and interest, if any, in and to (i) any rights and appurtenances pertaining to the and including all privileges, easements, rights of way, and any mineral and water rights pertaining to the Land, (ii) all improvements thereon, (iii) any and all warranties and guaranties of contractors relating to work performed on the Land, (iv) any and all licenses, permits and approvals issued by governmental authorities relating to the use, maintenance, occupancy or operation of the Land, and (v) all development rights and entitlements applicable to the Land, including all rights to reimbursements or credits from any governmental or quasi-governmental agency related to the ownership and development of the Land.

C. As a condition to the sale of the Property and the Close of Escrow, as defined in Section 4.b below, Seller requires that Buyer develop plans and specifications for the Property's development that are satisfactory to Seller and that Buyer and Seller enter into an agreement for such development, as more particularly described in Section 4.f of this Agreement.

D. Buyer wishes to purchase the Property from Seller, and Seller wishes to sell the Property to Buyer, under the terms and conditions provided for herein.

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **Purchase and Sale.** Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and conditions hereinafter set forth.

2. **Purchase Price.** The "***Purchase Price***" for the Property shall be One Million (\$1,00,000.00 USD), payable all in cash at the Close of Escrow as described in Section 4.b below.

3. **Payment of Purchase Price.**

a. Not later than 5:00 PM (Pacific Time) on the date which is three (3) business days after the Effective Date, Buyer shall deposit into the Escrow: (A) the amount of One Hundred Thousand Dollars (\$100,000.00 USD) by confirmed wire transfer of immediately available federal funds (the "***Deposit***"). Upon the expiration of the Contingency Period the Deposit shall be fully credited to the Purchase Price, except upon a termination of this Agreement following a default by Seller or the failure of Seller to deliver insurable title in accordance with the terms of this Agreement.

b. Contemporaneously with the execution and delivery of this Agreement to Escrow Holder, Buyer has paid to Seller as further consideration for this Agreement, in cash, the sum of One Hundred Dollars (\$100.00 USD) (the "***Independent Consideration***"), in addition to the Deposit and the Purchase Price and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Seller and is non-refundable under any circumstances.

c. In the event of a termination of this Agreement by Seller due to a default by Buyer with respect to Buyer's obligations under this Agreement, the Deposit shall constitute the liquidated damages of Seller pursuant to Section 16.b below.

d. The balance of the Purchase Price, together with Buyer's share of costs to be paid and pro-rations to be made pursuant to Section 13 and Section 14 of this Agreement, shall be deposited by Buyer into the Escrow by confirmed wire transfer of immediately available federal funds, no later than 5:00 P.M. on the last business day before the Close of Escrow and, once the Grant Deed has been recorded and Seller's costs and pro-rations hereunder have been deducted, the remainder shall be delivered to Seller by Escrow Holder at the Close of Escrow.

3.1. **Access Rights.** By entering into this Agreement Seller acknowledges and agrees that it will be necessary for it to provide to Buyer, through land dedications and/or access easements, certain City-controlled properties adjacent to the Property for Buyer's use for vehicular and pedestrian access and utility services to and from the Property (the "***Access Rights***"). Accordingly, Seller shall cooperate and coordinate with Buyer in good faith to facilitate such land dedications and grants of easement, to be determined at Seller's sole and absolute discretion, prior to the Close of Escrow, as necessary and required, to ensure Buyer is granted reasonable Access Rights to the Property. Buyer and Seller further agree that the Purchase Price, as defined in Section 2, will not increase as a result of any City land dedication(s) or grants of easement providing Buyer said access rights.

3.2. Water Availability. By entering into this Agreement Seller acknowledges and agrees that Buyer's access to a continuous water source is instrumental in the development of the proposed project, with said project to be more fully described in the Development Agreement discussed in Section 4.f below, and, as such, sufficient water availability is a material term in Buyer's purchasing the Property and closing the Escrow. To the extent not prohibited by law or contract, Seller agrees to fully cooperate with Buyer to assist in Buyer's securing any and all necessary water rights, including, but not limited to (i) subsurface water rights existing below the Property, and (2) if required, assisting Buyer in obtaining access to a continuous off-Property water source within Seller's jurisdiction and control.

4. Opening and Close of Escrow.

a. For the purposes of this Agreement, the "***Opening of Escrow***" shall mean that date which is one (1) business day after Escrow Holder has received fully executed counterparts of this Agreement from both Buyer and Seller. Immediately upon the Opening of Escrow, Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable and customary supplemental instructions that may reasonably be requested by Escrow Holder or that may be necessary or convenient to consummate the transaction contemplated hereby; provided, however, that such supplemental instructions shall be consistent with and shall not supersede this Agreement and in all cases this Agreement shall control.

b. For purposes of this Agreement, the "***Close of Escrow***" shall mean the date on which two (2) grant deeds conveying the title to the Property to Buyer, substantially in the form attached hereto as Exhibit "B" (the "***Grant Deed(s)***"), are concurrently recorded in the Official Records of the County. For clarity, one Grant Deed shall reflect Seller's conveyance of approximately 35 acres of the Property to Seller, and one Grant Deed shall reflect Seller's conveyance of approximately 24 acres of the Property to Buyer. The Grant Deeds shall also provide that the transfer tax shall not be of record. As discussed in Section 4.c below, in no event shall Close of Escrow occur prior to the Development Entitlements becoming Effective (the "***Entitlement Date***"). For purposes of this Agreement, Development Entitlements shall be deemed to have become "***Effective***" thirty (30) calendar days after the date that a Notice of Determination ("***NOD***") has been filed and posted by the City following a certification from the City's Planning Commission and/or the City Council that the California Environmental Quality Act ("***CEQA***"), and any and all related City discretionary approvals, have been obtained from the City in connection with the City's consideration of Buyer's application(s) for the Development Entitlements; provided, however, if there is an appeal or legal challenge to the City's approval of the Development Entitlements prior to the expiration of said thirty (30) day appeal period, the Development Entitlements shall become Effective on the date that such appeal or legal challenge is favorably concluded without material adverse impact on the Development Entitlements. Buyer shall provide to Seller any

notice of legal challenge or appeal of the Development Entitlements or CEQA document certification, promptly following Buyer's receipt thereof.

c. By entering into this Agreement, Seller understands and acknowledges that Buyer intends to diligently seek from the City any and all approvals and development entitlements the City requires for the purpose of constructing and operating a facility for cannabis cultivation and related uses, including the issuance of a Conditional Use Permit (the "**Development Entitlements**"). Development entitlements and/or development standards required by the City that are not contemplated in the Conditional Use Permit shall, to the extent practicable, be consistent with the County of Fresno's development standards for "Exclusive Agricultural" uses as set forth in the Fresno County Ordinance Code - Division 6, Zoning Ordinance. Accordingly, the Close of Escrow shall occur no more than three (3) business days after the Entitlement Date, except with the mutual written agreement of the Parties (the "**Closing Date**").

d. By entering into this agreement, Buyer acknowledges and agrees that Seller will exercise its independent judgment to determine whether granting the Development Entitlements is in the best interests of the City of Mendota and that Seller shall be under no obligation whatsoever to grant the Development Entitlements to Buyer. Seller will conduct environmental review of the relevant activity or activities in accordance with the requirements of CEQA prior to granting any approval associated with the Development Entitlements. Consequently, Buyer acknowledges and agrees that, in accordance with Seller's obligations under CEQA and its duty to the citizens of the City of Mendota, Seller may decide not to approve some or all of the Development Entitlements, or may approve some or all of the Development Entitlements subject to conditions. The Parties expressly intend that nothing in this Agreement shall be interpreted as a commitment by Seller to grant the Development Entitlements to Buyer prior to Seller's completion of appropriate environmental review in accordance with CEQA, or as an abrogation of the City's obligation to exercise its independent judgement in deciding whether to grant any development entitlement or whether to impose conditions on any development entitlement.

e. Seller Cooperation. By entering into this agreement Seller acknowledges that Close of Escrow shall only occur after the Development Entitlements are Effective, as discussed on Section 4.c above. To facilitate the Close of Escrow in an expeditious and timely manner, Seller agrees, in its capacity as a public municipality and subject to all applicable laws and the time-frames generally established in the Seller's land use entitlement processes and procedures, to fully and diligently cooperate with Buyer in the efficient processing of development applications and final approval(s) of all Development Entitlements reasonably sought by Buyer. However, nothing herein shall be construed as a warranty by Seller that the Development Entitlements will be issued to Buyer.

f. Development Agreement. By entering into this Agreement, and as a condition to the Close of Escrow, Buyer and Seller shall negotiate and execute a mutually acceptable development agreement (the "**Development Agreement**") that shall provide, among other things: (a) a description of the proposed project to be developed upon the

Property, (b) specific requirements for the development of the proposed project and its intended use, and (c) certain revenue and fee provisions potentially requested by the City, as applicable and as negotiated by Buyer and Seller (the "**Fees**"), with a portion of the Fees being paid by Buyer to Seller within thirty (30) business days after Close of Escrow. The Parties will, commencing upon the Effective Date of this Agreement, attempt in good faith to negotiate a mutually agreeable form of the Development Agreement, with the intention that the same will be formally approved by the Seller's City Council on or before December 20, 2019.

5. **Buyer's Contingencies.** For the benefit of Buyer, Buyer's obligation to consummate the transaction contemplated in this Agreement shall be expressly subject to and contingent upon Buyer's written approval or written waiver of each of the following contingencies ("**Contingencies**") on or before the dates set forth below, **time being of the essence:**

a. **Title Matters.**

i. Within five (5) business days of the Effective Date, the Escrow Holder shall deliver to the Buyer an updated preliminary title report for the Property, together with copies of all written instruments creating the exceptions specified therein, and plat maps plotting all easements specified therein (collectively, the "**Title Report**"). Within twenty (20) business days of Buyer's receipt of the Title Report, Buyer shall notify Seller in writing ("**Buyer's Objection Notice**") of any objections Buyer may have to the title exceptions contained in the Title Report. Buyer's failure to provide Seller with a Buyer's Objection Notice within said period shall constitute Buyer's approval of all exceptions to title shown on the Title Report. Seller shall have a period of ten (10) business days after receipt of Buyer's Objection Notice in which to deliver written notice to Buyer ("**Seller's Notice**") of Seller's election to either (i) agree to remove or cure the objected to items prior to the Close of Escrow, or (ii) decline to remove or cure any such title exceptions. Seller's failure to deliver Seller's Notice within such period shall constitute Seller's election to decline to remove or cure any such title exceptions. If Seller notifies Buyer of its election not to remove and cure the objected to items or is deemed to so elect, Buyer shall have the right, by written notice delivered to Seller after Buyer's receipt of Seller's Notice or deemed election, to either (a) terminate this Agreement, or (b) agree to accept the Property subject to the objected to items, in which event Buyer shall take title at the Close of Escrow subject to such objected to items without any adjustment to or credit against the Purchase Price; with said election to occur within twenty (20) days of the Buyer's receipt of Seller's written notice of its election not to remove and cure the objected items. Notwithstanding the foregoing, in no instance shall any deeds of trust, mortgages, or monetary encumbrances against the Property constitute an approved title exception, and the Buyer shall have been deemed to have disapproved any such encumbrance, with such encumbrances to be paid off and removed from any policy of title insurance at the Close of Escrow.

Upon the issuance of any amendment or supplement to the Title Report which adds additional exceptions, or adds any new requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) business days following Buyer's receipt of the instrument(s) creating such additional exceptions, and further provided that the Buyer may only disapprove of, and may only elect to terminate this Agreement based on, any new exception that would reasonably be expected to add a material cost to or have a material adverse effect on Buyer's development or use of the Property.

ii. In the event Buyer requests any endorsements to the Title Policy (as hereinafter defined in Section 9) in its Buyer's Title Notice or a Buyer's Title Notice Supplement ("**Buyer Requested Title Endorsements**"), Buyer shall be solely responsible for ordering the same directly from the Title Company and shall be responsible for all action and additional premiums and costs which may be required as a condition to the issuance of such endorsements (except for a mechanics lien endorsement which shall be paid for by Seller). Buyer Requested Title Endorsements shall not be or be deemed to be a condition to closing the transactions contemplated hereunder. Seller shall execute an affidavit and/or certified resolutions on the Title Company's standard form so that the Title Company can delete or modify the standard printed exceptions as to the Seller's constituent documents, parties in possession, unrecorded liens and similar matters.

b. Due Diligence Review. Buyer shall have sixty (60) days from the Effective Date of this Agreement (the "**Contingency Period**") to examine, inspect and investigate the Property and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer. In the event, prior to the end of the Contingency Period, Buyer provides Seller written notice disapproving the condition of the Property (in Buyer's sole discretion and without any restrictions thereon), Buyer shall be deemed to have disapproved the Property, in which event the Deposit will be immediately returned to Buyer and the termination provisions of Section 12 below shall apply. Prior to the expiration of the Contingency Period, Buyer and Seller agree that Buyer's access requirements, as discussed in Section 3.1 above and related to the Access Rights, shall have been determined by Seller and accepted in writing by Buyer.

c. Post Contingency Period Property Disapproval. Buyer shall retain the right, by providing written notice to Seller, to disapprove the Property and have the Deposit immediately returned to Buyer if, after expiration of the Contingency Period but prior to the Close of Escrow, one or more of the following circumstances occur: (1) Buyer determines there is insufficient water available to service the project for its intended use, as discussed in Section 3.2 above, with said project to be more fully described in the Development Agreement, as discussed in Section 4.f above, (2) all Development Entitlements, as more fully described in Section 4.c above, have not been obtained by Buyer on or before the Closing Date, and (3) Seller is unable or unwilling to

grant the Access Rights, as necessary and required for use of the Property, as more fully discussed in Section 3.1 above.

d. Within five (5) days of the Opening of Escrow, Seller shall provide to Buyer the documents, instruments and agreements, in Seller's possession or control material, if any, relating to the condition, use or development of the Property (the "**Property Information Materials**"), including, but not limited to, any geo-technical reports, engineering reports, surveys, phase I environmental site assessments, phase II environmental investigations, traffic studies, drainage studies, and copies of permits and authorizations (and mitigation measures and conditions thereto) obtained by Seller from local, state and federal agencies having jurisdiction over the Property. Seller shall be solely responsible for the costs of preparing copies of such documents, studies, reports and schedules. Buyer shall be solely responsible for any costs incurred in connection with its review and/or investigation of the Property and the Property Information Materials. Notwithstanding the foregoing, Seller has made, and during the term of this Agreement, will continue to make, available to Buyer for inspection and copying (at Buyer's cost), any and all known information in Seller's possession or reasonably available to Seller regarding a change in the physical condition of the Property.

e. Buyer's comprehensive due diligence investigation of the Property may include, but shall not be limited to, the following matters respecting the Property:

i. The availability and adequacy of all utilities to the Property, including, but not limited to, power, water, gas, telephone, cable and sewer.

ii. The condition of the soils and the geologic, environmental and engineering conditions of the Property, based on any and all soils, engineering, environmental or geologic tests, reports and studies which Buyer desires to perform, which reports, tests and studies shall be performed at Buyer's sole cost and expense in compliance with the provisions of Section 18 below.

iii. The existence of mineral rights connected to the property and, if existing, the transferability of the same to Buyer.

iv. The existence of, and if existing the extent of, subsurface water located beneath the Property and the feasibility of Buyer's future use of subsurface water in connection with Buyer's intended use of the Property; or in the event subsurface water is not available, Buyer's ability to obtain water from City-controlled properties or facilities.

v. The contents of a California Natural Hazards Disclosure Statement. Seller hereby authorizes Escrow Holder, at Seller's cost, promptly following the Opening of Escrow, to procure and deliver to Buyer and Seller, for the benefit of Buyer and Seller, a Natural Hazards Disclosure Statement covering the Property. Seller shall have no responsibility for the completeness or accuracy of the Natural Hazards Disclosure Statement.

f. The deadlines specified in this Section 5, subdivisions (a), (b), (c), and (d) may be modified pursuant to the written agreement of the Parties.

6. "AS-IS" SALE.

a. Buyer, having had the opportunity to undertake full testing or review of the Property during the Contingency Period, expressly assumes the risk that the Property may contain or have defects or conditions that might prevent the intended use of the Property or cause unexpected expense in connection with preparing the Property for the intended use. This Agreement contains all of the terms and conditions agreed upon, it being understood that there are no outside representations or oral agreements. Buyer acknowledges that, except as expressly contained in this Agreement, (a) neither Seller nor anyone acting for or on behalf of Seller has made any representation, statement, warranty, or promise to Buyer concerning the physical aspects and condition of the Property, any dimensions or specifications of any of the Property, the feasibility, desirability, or convertibility of the Property into any particular use, or the projected income or expenses for the Property; (b) in entering into this Agreement, Buyer has not relied on any representation, statement, or warranty of Seller (except those expressly contained herein) or on the documentation provided by Seller to Buyer under this Agreement, or anyone acting for or on behalf of Seller, all of which are to be independently verified by Buyer; (c) Buyer is purchasing the Property based solely upon Buyer's own inspection and examination thereof; (d) that Buyer is purchasing the Property in its then "AS IS" physical condition and its then "AS IS" state without any representation, statement, or warranty of Seller (except those expressly contained herein); and (e) Buyer does hereby waive, and Seller does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Property, including, by way of description, but not limitation, those of fitness for a particular purpose, merchantability, tenantability, habitability, and use, except for the representations and warranties of Seller set forth herein.

b. Buyer acknowledges that certain of the Property Information Materials may have been prepared by parties other than Seller. Buyer accepts the fact that Seller is making no representation or warranty whatsoever, express or implied, as to the completeness, content or accuracy of the Property Information Materials, except as may otherwise be provided in Section 7 below of this Agreement. Except as may otherwise be provided in Section 7, Buyer specifically releases Seller from all claims, whether known or unknown, which are or may be asserted against or incurred by Buyer by reason of the information contained in, or that should have been contained in, the Property Information Materials or in the Recitals to this Agreement.

7. Seller's Representations, Warranties and Covenants.

Seller hereby represents and warrants to Buyer, which representations and warranties shall be true and correct as of the Effective Date and as of the date of the Close of Escrow, and, subject to Section 34 hereof, shall survive the Close of Escrow.

For purposes of this Section 7, "Seller's knowledge" shall refer to the actual, personal knowledge of Cristian Gonzalez, without any duty of inquiry or investigation. Seller represents and warrants that Cristian Gonzalez is the person affiliated with Seller most knowledgeable about the Property. In the event a representation or warranty of Seller as stated above is true as of the Effective Date, but due to the occurrence of a change in circumstances (which change does not arise due to Seller's breach hereunder) of which Seller actually becomes aware between the Effective Date and the Close of Escrow, cannot be stated truthfully by Seller in all material respects upon the Close of Escrow, Seller shall not be in breach of this Agreement by reason thereof, provided Seller promptly after learning of the same and prior to the Close of Escrow, notifies Buyer in writing of such change in circumstances; in such event, Buyer shall have the right by written notice to Seller and Escrow Holder within five (5) business days of learning of such changed circumstance, either (a) to waive such changed circumstances and proceed to the Close of Escrow with Seller's relevant representation or warranty deemed qualified to exclude the changed circumstances, or (b) to deem such change in circumstances a failure of a condition precedent to Buyer's obligation to purchase the Property and terminate this Agreement, in which event the Deposit shall be immediately returned to Buyer and the termination provisions of Section 12 below shall apply.

a. To Seller's knowledge, Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

b. To Seller's knowledge, and except for this Agreement, Seller is not a Party to any currently enforceable agreement or option for the transfer, sale or purchase of all or any portion of the Property and has not granted any other party any right or option to use, occupy or lease all or any portion of the Property.

c. To Seller's knowledge, Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations thereunder (collectively, the "**Code**").

d. To Seller's knowledge, there are no legal, administrative, regulatory or other actions, suits or similar proceedings pending and served, or threatened in writing against Seller or the Property which, if adversely determined, would materially and adversely affect the value of the Property or adversely affect Seller's ability to consummate the transactions contemplated hereby.

e. To Seller's knowledge, Seller has not (1) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (2) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (3) made an assignment for the benefit of creditors.

f. To Seller's knowledge, Seller has not received any written notice from any applicable governmental authority respecting any violation of any applicable governmental law, ordinance, rule or regulation applicable to Seller, the Property, or any part thereof, by reason of a violation of any applicable federal, state, county or municipal law, code, rule, or regulation, that (1) has not been either cured or removed (or shall be cured or removed prior to the Closing) or otherwise disclosed to Buyer, and (2) materially and adversely affects the value of the Property.

g. To Seller's knowledge, Seller has never used, generated, processed, stored, disposed of, released or discharged any Hazardous Substances on, under or about the Property, that would be a material impediment to the development of the Property.

h. To Seller's knowledge, the Property Information Materials are true and correct in all material respects as of the date of such document; provided, however, that Seller makes no representation or warranty and shall have no liability or responsibility for any analysis or conclusion set forth in any third party reports which are included in the Property Information Materials. To Seller's knowledge, and without limiting the foregoing, all copies of Property Information Materials provided to Buyer are accurate and complete copies.

Seller hereby covenants with Buyer, which covenants subject to Section 34 hereof, shall survive the Close of Escrow, as follows:

a. During the period between the Opening of Escrow and the Close of Escrow or termination of this Agreement, Seller shall not, without the prior written consent of Buyer, enter into any contract with respect to the Property that will impede or otherwise interfere with Seller's sale of the Property to Buyer which will survive the Close of Escrow.

b. On or before the Close of Escrow, Seller shall terminate, at its sole cost, any contracts to which it is a party that may interfere with Buyer's intended use of the Property, as that use shall be described in the Development Agreement discussed in Section 4.f above, unless Buyer has expressly agreed to assume such contracts in its sole discretion.

c. At all times prior to the Close of Escrow, Seller shall maintain the Property substantially in its current condition.

d. Any backup offers for purchase of the Property obtained by and that are acceptable to Seller shall be expressly subordinate to Buyer's rights under this Agreement.

e. Prior to the Close of Escrow, Seller shall obtain all such written consents and approvals as may be necessary or required, if any, to permit Seller to perform its obligations under this Agreement.

f. Seller shall notify Buyer promptly upon receipt by Seller prior to Closing of written notice of the institution or pendency of any action, suit, or proceeding against or affecting the Property, or relating to or arising out of the ownership of such Property.

8. Buyer's Representations, Warranties and Covenants.

a. Buyer hereby represents and warrants to Seller, which representations and warranties shall be true and correct as of the Effective Date of this Agreement and as of the date of the Close of Escrow, and, subject to Section 34 hereof, shall survive the Close of Escrow, as follows:

i. Buyer has the legal power, right and authority to enter into this Agreement and the instruments to be executed by Buyer pursuant to this Agreement and to consummate the transactions contemplated hereby. No consent of any third party is required in order for Buyer to perform its obligations hereunder.

ii. Buyer has obtained all government approvals, permits, licenses, and entitlements required by any law or regulation for Buyer's operation of a commercial cannabis business.

iii. All requisite action has been taken by Buyer in connection with Buyer's execution of this Agreement and the instruments to be executed by Buyer pursuant to this Agreement and the consummation of the transactions contemplated hereby.

iv. The individuals executing this Agreement and the instruments to be executed by Buyer pursuant to this Agreement on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions of this Agreement and such instruments.

v. Neither the execution and delivery of this Agreement and the documents referenced herein, nor the undertaking of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party.

vi. Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due or (vi) made an offer of settlement, extension or composition to its creditors generally.

9. **Title Insurance.** It shall be a condition to the Close of Escrow for Buyer's benefit that the Title Company shall have unconditionally committed to issue to Buyer an CLTA standard coverage owner's policy of title insurance (the "***Title Policy***") in the amount of the Purchase Price, showing fee simple title to the Property to be vested in Buyer free and clear of all liens and encumbrances other than the approved exceptions and containing the Requesting Endorsements. Seller shall pay the premium for the issuance of the standard Title Policy. Buyer, at Buyer's sole option and cost, so long as the Close of Escrow is not thereby delayed, may elect to obtain an ALTA standard or extended coverage title policy (the "***ALTA Policy***"). Seller shall pay for the cost of the Title Policy and the cost of any curative endorsements Seller has agreed in writing to provide and the costs of a mechanics' lien endorsement, and Buyer shall pay any additional cost for the ALTA Policy, and the cost of any Buyer Requested Title Endorsements not covered by Seller.

10. **Conditions to Close of Escrow.**

a. Buyer's obligation to purchase the Property and close the Escrow is subject to and conditioned upon the satisfaction of the following conditions, on or before the Close of Escrow, as indicated below:

i. Seller shall have timely delivered to Escrow Holder the items described in Section 11.a below, together with any and all written third party consents thereto, where indicated, in the Exhibits attached hereto.

ii. The representations and warranties of Seller shall be true and correct on the Closing Date, and Seller shall not be (or deemed to be) in material breach of any representation or warranty given by Seller under Section 7 above.

iii. Seller shall not otherwise be in material default in the performance of any of its obligations under this Agreement.

iv. Unless waived by Buyer pursuant to the express provisions of this Agreement, the Development Entitlements shall have become Effective.

v. The Title Company has irrevocably committed to issue the Title Policy.

b. Seller's obligation to sell the Property and close the Escrow is subject to and conditioned upon the satisfaction of the following conditions on or before the Close of Escrow:

i. The representations and warranties of Buyer shall be true and correct on the Closing Date, and Buyer shall not be in material breach of any representation or warranty given by Buyer under Section 8.a above.

ii. Buyer shall have timely executed and delivered to Escrow Holder the items described in Section 11.b below.

iii. Buyer shall have deposited into the Escrow all funds required to pay the Purchase Price and Buyer's share of pro-rations and closing costs.

iv. Buyer and Seller shall have executed a mutually acceptable Development Agreement, as discussed in Section 4.f above.

v. Buyer shall not otherwise be in material default in the performance of any of its obligations under this Agreement.

11. Deliveries to Escrow Holder.

a. Seller shall deliver or cause to be delivered to Escrow Holder by 5:00 P.M. on the last business day before the date of the Close of Escrow the following instruments and documents:

i. The Grant Deeds, in recordable form, duly executed and acknowledged by Seller.

ii. Counterpart originals of the Development Agreement as required by Section 4.f

iii. All original (or copies thereof in the event Seller does not possess originals) licenses and permits with respect to the Property and in the possession or control of the Seller or any of its representatives.

iv. Any other instruments and documents which Seller is obligated to execute and deliver into the Escrow under this Agreement.

b. Buyer shall deliver or cause to be delivered to Escrow Holder by 5:00 P.M. on the last business day before the Close of Escrow the following:

i. All sums that Buyer is required to deliver to Escrow Holder pursuant to Section 3.d to close the Escrow.

ii. Counterpart originals of the Development Agreement as required by Section 4.f.

iii. Evidence reasonably satisfactory to Seller that the person executing any documents at the Closing on behalf of Buyer has full right, power, and authority to do so.

iv. Any other instruments and documents which Buyer is obligated to execute and deliver into the Escrow under this Agreement.

12. Termination. Whenever (i) a party has the right to terminate this Agreement pursuant to an express provision of this Agreement, and notifies the other party of its election to terminate the Agreement, or (ii) this Agreement automatically terminates pursuant to an express provision of this Agreement, then:

a. This Agreement, the Escrow, and the rights and obligations of Buyer and Seller under this Agreement shall terminate except as otherwise expressly provided in this Agreement.

b. If neither Buyer nor Seller is in breach of this Agreement, each party shall be responsible to pay one-half of any cancellation charges payable to Escrow Holder and the Title Company.

c. Escrow Holder shall promptly return to Seller and Buyer all documents deposited by them into the Escrow, respectively.

d. Buyer and/or Buyer's Representatives (as such term is defined in Section 18 below) shall upon demand deliver to Seller all originals and copies of the Property Information Materials and all third party reports and studies obtained by Buyer and/or Buyer's Representatives (without warranty as to accuracy or completeness and subject to the rights of third party consultants preparing such reports).

e. If the Agreement is terminated for any reason other than a default by Buyer described in Section 16.b below, and Buyer is entitled to a return of its deposit under this Agreement, Escrow Holder shall immediately release the Deposit to Buyer (less one-half of any escrow cancellation charges, if applicable), and Seller shall immediately return to Buyer, any portion of the Deposit received by Seller. If Buyer is not entitled to the return of the Deposit, then Escrow Holder shall release the Deposit (or portion thereof then held by Escrow Holder) to Seller.

13. Costs and Expenses. The premium for the Title Policy shall be paid in accordance with the provisions of Section 9 above. The escrow fees of Escrow Holder shall be shared equally by Seller and Buyer. Seller shall pay all documentary transfer taxes payable with the recordation of the Grant Deed. Buyer and Seller shall each pay their own legal and professional fees and fees of other consultants incurred in connection with this transaction. All other costs and expenses shall be allocated between Buyer and Seller in the manner customary in the County, except the costs of performing the obligations of each party to this Agreement, which costs shall be borne solely by the party incurring such costs. The provisions of this Section 13 shall survive the Close of Escrow or a termination of this Agreement.

14. Pro-rations and Credits. The following items shall be prorated between Buyer and Seller as of the Close of Escrow based on the actual number of days in the calendar month in which the Close of Escrow occurs: General and special real property taxes and assessments with respect to the Property based upon the latest available tax information such that Seller shall be responsible for all such taxes and assessments levied against the Property to and including the

day prior to the Close of Escrow and Buyer shall be responsible for all such taxes and assessments levied against the Property from and after the date of the Close of Escrow.

15. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

a. Escrow Holder shall cause the Grant Deeds to be recorded in the Official Records of the County, together with any other documents that the parties hereto may mutually direct.

b. Escrow Holder shall hold and/or disburse all funds deposited with Escrow Holder by Buyer as follows:

i. Deduct all items chargeable to the account of Seller pursuant hereto;

ii. Subject to Section 15.c below, disburse to Seller the Purchase Price, less items deducted pursuant to Section 5.b.i above and less the Deposit released to Seller; and

iii. Deduct (and disburse) all items chargeable to the account of Buyer pursuant hereto and refund to Buyer any excess funds deposited by Buyer.

c. Escrow Holder shall direct the Title Company to issue the Title Policy (or, if applicable, the ALTA Policy) to Buyer.

d. Escrow Holder shall deliver to Buyer and Seller, originals of the executed counterparts of the documents and instruments deposited by the parties pursuant to Section 11 above, and copies of all recorded documents.

e. Escrow Holder shall deliver to Seller duplicate originals or copies (as the case may be) of all documents delivered to Buyer.

f. Escrow Holder shall provide Buyer and Seller with a closing statement.

16. Default.

a. SELLER'S DEFAULT. IF THE TRANSACTION CONTEMPLATED HEREUNDER SHALL FAIL TO CLOSE SOLELY BY REASON OF SELLER'S DEFAULT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT (AS DISTINGUISHED FROM THE FAILURE OF A CONDITION TO CLOSING), AND SUCH DEFAULT IS NOT CURED WITHIN TEN (10) DAYS AFTER RECEIPT BY SELLER OF WRITTEN NOTICE THEREOF FROM BUYER, THEN BUYER SHALL HAVE AS ITS EXCLUSIVE REMEDIES THE RIGHT TO EITHER (i) TERMINATE THIS AGREEMENT (IN WHICH EVENT THE DEPOSIT SHALL IMMEDIATELY BE RETURNED TO BUYER), THE TERMINATION

PROVISIONS OF SECTION 12 SHALL APPLY, AND BUYER SHALL BE DEEMED TO HAVE WAIVED ANY RIGHT OR CLAIM TO DAMAGES FOR SELLER'S BREACH, OR (ii) SPECIFICALLY ENFORCE THIS AGREEMENT (BUT NO OTHER ACTION, FOR DAMAGES OR OTHERWISE, SHALL BE PERMITTED); PROVIDED THAT ANY ACTION BY BUYER FOR SPECIFIC PERFORMANCE MUST BE COMMENCED, IF AT ALL, WITHIN NINETY (90) DAYS OF SELLER'S DEFAULT, THE FAILURE OF WHICH SHALL CONSTITUTE A WAIVER BY BUYER OF SUCH RIGHT AND REMEDY. IF BUYER SHALL NOT HAVE COMMENCED AN ACTION FOR SPECIFIC PERFORMANCE WITHIN THE AFOREMENTIONED TIME PERIOD OR SO NOTIFIED SELLER OF ITS ELECTION TO TERMINATE THIS AGREEMENT, BUYER'S SOLE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT IN ACCORDANCE WITH CLAUSE (i) ABOVE.

b. BUYER'S DEFAULT. IN THE EVENT THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT DOES NOT CLOSE DUE TO THE DEFAULT OF BUYER THAT IS NOT CURED WITHIN TEN (10) DAYS AFTER RECEIPT OF WRITTEN NOTICE FROM SELLER SPECIFYING SUCH DEFAULT, THEN SELLER'S RETENTION OF THE DEPOSIT SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, FOR SUCH DEFAULT, SUBJECT TO THE PROVISIONS OF THIS AGREEMENT THAT EXPRESSLY SURVIVE A TERMINATION OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO LIMIT SELLER'S RIGHTS OR DAMAGES UNDER ANY INDEMNITIES GIVEN BY BUYER TO SELLER UNDER THIS AGREEMENT. SELLER AND BUYER HAVE DISCUSSED THE POSSIBLE CONSEQUENCES TO SELLER IN THE EVENT THAT THE ESCROW FAILS TO CLOSE AS A RESULT OF BUYER'S DEFAULT. SELLER AND BUYER HAVE DETERMINED AND HEREBY AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES TO SELLER OCCURRING IN THE EVENT OF SUCH A BUYER DEFAULT UNDER THIS AGREEMENT. THE PARTIES, HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL COMPENSATORY DAMAGES SELLER WOULD SUFFER IN THE EVENT OF BUYER'S DEFAULT IN ITS OBLIGATION TO ACQUIRE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, HEREBY AGREE THAT A REASONABLE ESTIMATE OF SUCH DAMAGES IS AN AMOUNT EQUAL TO THE DEPOSIT, AND IN THE EVENT THIS TRANSACTION FAILS TO CLOSE DUE TO BUYER'S DEFAULT UNDER THIS AGREEMENT, SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE DEPOSIT AS FULLY AGREED LIQUIDATED DAMAGES. SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO

CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON ANY SUCH BREACH OR DEFAULT BY BUYER HEREUNDER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT AS EXPRESSLY PROVIDED ABOVE. THE PARTIES AGREE THAT, UNDER THE CIRCUMSTANCES OF THIS TRANSACTION AND THE MARKETPLACE AT THE TIME HEREOF, THIS LIQUIDATED DAMAGES PROVISION IS REASONABLE AND IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 1671.

CS
SELLER'S INITIALS

[Signature]
BUYER'S INITIALS

17. **Entry Insurance Requirements.** The following shall constitute the "***Required Insurance Coverage***" of a party under the stated circumstance:

a. Prior to the entry on the Property during the term of this Agreement by Buyer or any of Buyer's Representatives' employees, contractors or agents, Buyer shall have obtained and make available at Seller's request certificate or certificates showing that (i) Buyer has in force a policy of comprehensive public liability insurance with liability coverage of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage, automobile liability coverage including owned and hired vehicles with a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage, and an excess umbrella liability policy of bodily injury and property damage in the amount of Five Million and No/100 Dollars (\$5,000,000.00), insuring Seller as an additional insured.

b. The foregoing insurance coverage shall be on an "occurrence form" and otherwise in such forms and with an insurance company reasonably acceptable to Seller, and each insurance policy may be cancelled only after at least thirty (30) days' prior written notice has been given by the insurer to each additional insured thereunder.

18. **Right of Entry.**

a. Buyer and Buyer's agents, representatives, consultants, contractors, subcontractors, lenders and investors (collectively, "***Buyer's Representatives***") shall have the right to enter upon the Property at all reasonable times during the term of this Agreement, in order to conduct such investigations, tests and studies as Buyer shall reasonably deem necessary (the "***Investigations***"), so long as such activities do not unreasonably damage the Property. Prior to Buyer's first entry onto the Property, Buyer shall deliver to Seller a certificate or certificates evidencing that the Required Insurance Coverage specified in Section 17 above has been obtained and is in effect. Buyer shall keep the Property free and clear of any mechanic's liens or materialmen's liens arising out of any such activities (and at Buyer's sole expense, Buyer shall immediately

discharge of record or bond around any such liens or encumbrances that are so filed or recorded, including, without limitation, liens for services, labor or materials furnished in connection with the activities of Buyer or Buyer's Representatives on the Property). Further, Buyer shall indemnify and hold Seller and Seller's Related Parties harmless from and against any and all claims, demands, causes of action, losses, damages, costs, liabilities and/or expenses (including, without limitation, attorneys' fees and disbursements) caused by Buyer or Buyer's Representatives in connection with any Investigations or other activities of Buyer or Buyer's Representatives taken with respect to the Property and/or any liens or encumbrances filed or recorded against the Property as a result thereof; provided, however, that notwithstanding the foregoing, in no event shall Buyer be responsible for any environmental conditions or latent defects existing on the Property and discovered by (but not caused or exacerbated by an act or knowing omission of) Buyer during the course of Buyer's investigation of the Property, or any acts or omissions of Seller or Seller's Related Parties. The foregoing obligation shall survive the Close of Escrow or termination of this Agreement.

b. During the term of this Agreement, Buyer shall:

i. Conduct any further Investigations of the Property deemed desirable by Buyer, however, such further Investigations shall not provide Buyer the right to terminate this Agreement unless a discovery made during such further Investigations constitutes a failure of a condition precedent to Close of Escrow as specified in Section 10.a of this Agreement.

ii. Fully comply with all laws applicable to the Investigations and all other activities undertaken in connection therewith.

iii. Notify and permit Seller to have a representative present during all Investigations undertaken hereunder.

iv. Take all actions and implement all protections reasonably necessary to ensure that the Investigations and the equipment, materials, and substances generated, used or brought onto the Property in connection with the Investigations pose no threat to the safety or health of persons or the environment and cause no damage to the Property or other property of Seller or other persons.

The foregoing obligations shall survive the Close of Escrow or a termination of this Agreement.

c. Without limiting the foregoing, in no event shall Buyer, without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed, make any intrusive physical testing (environmental, geo-technical or otherwise) at the Property. Seller hereby consents to Buyer performing a Phase I Environmental Site Assessment, a Phase II Environmental Site Assessment if necessary and required, geotechnical borings, and soils sampling at the Property.

19. **Condemnation or Casualty Prior to Closing.** Seller shall promptly notify Buyer of any pending or threatened condemnation affecting the Property commenced prior to the Close of Escrow or any casualty affecting the Property prior to the Close of Escrow. If any such condemnation or casualty relates to or may result in the loss of any portion of the Property or access to the Property or would otherwise impact the Development Entitlements or if any casualty would increase the costs of the Buyer's development of the Property, at Buyer's election, either (i) this Agreement shall continue in effect, without delay or abatement of the Purchase Price, and, in the event Buyer purchases the Property under the terms of this Agreement, Buyer shall be entitled to any compensation, awards or other payments or relief resulting from such condemnation proceeding or insurance proceeds ("**Casualty Payments**") to the extent applicable to the Property; provided, however, that in the event such Casualty Payments are paid prior to the Close of Escrow, the Casualty Payments shall be payable to Seller with a credit towards the purchase price in the amount of the Casualty Payment provided to Buyer at the Close of Escrow, or (ii) Buyer may terminate this Agreement within ten (10) days after Buyer's receipt of notice of such condemnation or casualty, in which event the Deposit shall be immediately returned to Buyer and the termination provisions of Section 12 above shall apply. Buyer's failure to provide such notification shall be deemed Buyer's election to terminate pursuant to clause (ii) above. In the event of a condemnation or casualty prior to the Close of Escrow potentially resulting in the loss of any portion of the Property or damage thereto, if Buyer elects to continue with the purchase of the Property as described in clause (i) above Buyer shall be deemed to have made an acceptance and/or assumption of any and all obligations arising from that condemnation or casualty. The provisions of this Section shall survive the Close of Escrow.

20. **Brokers.** Both Parties represent that no broker is involved in this Agreement. In the event of any other claim for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement or the purchase and sale of the Property, then Buyer shall indemnify, save harmless and defend Seller from and against any such claim based upon the alleged statement, representation or agreement by Buyer, and Seller shall indemnify, save harmless and defend Buyer from and against any such claim based upon any alleged statement, representation or agreement by Seller. The provisions of this Section shall survive the Close of Escrow and any termination of this Agreement.

21. **Assignment.** Buyer may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Seller, which consent, except as provided below, may be withheld by Seller in its sole and absolute discretion, and which may be conditioned upon such terms and conditions as Seller may require, in its sole and absolute discretion. Notwithstanding and without limiting the foregoing, no consent given by Seller to any transfer or assignment of Buyer's rights or obligations hereunder shall be deemed to constitute a consent to any other transfer or assignment of Buyer's rights or obligations hereunder and no transfer or assignment in violation of the provisions hereof shall be valid or enforceable. Subject to the foregoing, this Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

22. **Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by electronic mail, registered or

certified mail, postage prepaid, return receipt requested, delivered or sent by telecopy or reputable overnight courier (such as Federal Express) and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, four (4) business days after the date of posting by the United States post office, (iii) if given by telecopy, when sent or the following business day if sent on a non-business day, or (iv) if sent by reputable overnight courier (such as Federal Express), one (1) business day after deposit with the overnight delivery service. Any notice, request, demand, direction or other communication sent by telecopy must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. The addresses of Buyer and Seller are as follows:

Buyer: The Axiom Group
1201 K street
Suite 920
Sacramento, CA 95814
Attn: Dustin Moore
dustin@axiomadvisors.com

Valley Agricultural Holdings, LLC.
2151 E. Convention Center Way
Suite 222
Ontario, CA 91764
Attn: Daniel Pocius
dpocius@frontier-enterprises.com

Seller: City of Mendota
643 Quince Street
Mendota, CA 93640
Attn: Cristian Gonzalez
Telephone: 559/655-4298
E-Mail: Cristian@cityofmendota.com

and to: Wagner Jones Helsley PC
265 East River Park Circle, Ste. 310
Attn: John P. Kinsey, Esq.
Telephone: 559/233-4800
Facsimile: 559/233-9330

Refusal to accept delivery shall be deemed receipt.

23. Required Actions of Buyer and Seller. Buyer and Seller shall execute all instruments and documents and take all other actions that may be reasonably required in order to consummate the purchase and sale herein contemplated, and shall use commercially reasonable efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

24. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25. **Waivers.** No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified in this Agreement for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

26. **Professional Fees.** In the event of the bringing of any action or suit by either party against the other by reason of any breach of any of the covenants, representations or warranties of the other party under this Agreement, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including, without limitation, actual attorneys' fees, accounting and engineering fees, and other professional fees resulting therefrom.

27. **Entire Agreement; Amendment.** This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, or supplemented, nor may any obligation hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

28. **Time Frames.** Unless otherwise indicated with respect to a requirement, all time frames for performance of an act required or permitted by this Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of three hundred sixty-five (365) days, unless otherwise specified.

29. **Time of the Essence.** Time is of the essence with respect to each and every provision of this Agreement. Whenever any action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the next succeeding business day. As used herein, the term "business day" shall mean any day, other than a Saturday or Sunday, on which commercial banks in the State of California are not required or authorized to be closed for business.

30. **Construction of Agreement.** Headings at the beginning of each section and subsection of this Agreement are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to sections and subsections are to sections and subsections in this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

31. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any other person other than the parties hereto and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third parties any right of subrogation or action over or against any party to this Agreement. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

32. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

33. **Effectiveness.** In no event shall any draft of this Agreement create any obligation or liability, it being understood that this Agreement shall be effective and binding only when a counterpart hereof has been executed and delivered by each party hereto. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby. The preparation and/or circulation of a draft of this Agreement is not intended by either of the parties to constitute a binding agreement between them for the purchase or sale of the Property. The final form of this Agreement may or may not contain terms stated in any drafts of this Agreement, and/or may contain different terms and conditions not yet identified or discussed. Neither party may rely on any drafts of this Agreement as binding on either party in any way. The parties expressly agree that neither party is bound to engage in negotiations, or, once engaged, to continue such negotiations, each party reserving the right to terminate negotiations at any time and for any reason. Efforts by either party to perform due diligence, arrange or obtain financing, or carry out other acts in contemplation of the possible purchase and sale of the Property shall not be deemed evidence of any intent by either party to be bound by any letter of interest or similar document, or unexecuted and undelivered drafts of this Agreement. The performance by either party before the mutual execution and delivery of the final, mutually agreed upon form of this Agreement of any of the rights or obligations that may be included in drafts of this Agreement shall not be considered evidence of subsequent intent by either party to be bound by any letter of interest or drafts of this Agreement. In the event Buyer or Seller alleges that any unexecuted draft of this Agreement constitutes a binding agreement for the purchase or sale of the Property, or grants an interest in or claim to the

Property, the alleging party shall be liable for the legal fees, costs and damages incurred as a result thereof.

34. Survival of Obligations. All of Buyer's and Seller's covenants, representations and warranties in Sections 7, 8, 13, 14, 19 and 20 of this Agreement shall survive the Close of Escrow for a period of one (1) year. Sections 22, 24, 34, 35, 36, 37, 38, and 39 shall survive this Agreement's termination for any reason. All other obligations of Seller or Buyer not expressly stated to survive the Close of Escrow or not stated in the exhibit documents to be delivered upon the Close of Escrow shall be deemed discharged upon the Close of Escrow and the recordation of the Grant Deed.

35. Limitation of Liability. Except to the extent of distributions of the Deposit or the Purchase Price to such persons, no, officer, employee or agent of Seller or any Seller Related Parties shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Buyer and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Seller's interest in the Property, for the payment of any claim or for any performance, and Buyer, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability. No shareholder, officer, employee or agent of Buyer shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. This Section 34 shall survive the Close of Escrow or a termination of this Agreement.

36. Waiver of Trial By Jury. TO THE EXTENT PERMITTED BY LAW SELLER AND BUYER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR FOR THE ENFORCEMENT OF ANY REMEDY IN CONNECTION HEREWITH.

37. Choice of Venue. EACH PARTY HERETO HEREBY AGREES THAT ALL ACTIONS TO ENFORCE THE TERMS AND PROVISIONS OF THIS AGREEMENT SHALL BE BROUGHT AND MAINTAINED ONLY IN A STATE OR FEDERAL COURT LOCATED IN FRESNO COUNTY, CALIFORNIA, AND EACH PARTY HERETO HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT AND HEREBY AGREES THAT SERVICE OF PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO THE OTHER PARTY AT THE ADDRESSES SET FORTH IN SECTION 22 ABOVE. EACH PARTY HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO MAKE ANY OBJECTIONS BASED ON JURISDICTION OR VENUE TO ANY ACTION

BROUGHT TO ENFORCE THIS AGREEMENT IN ANY SUCH COURT IN ACCORDANCE WITH THE ABOVE PROVISIONS.

38. Governing Law. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

39. Indemnification.

a. To the fullest extent permitted by applicable law, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature ("Losses") that may be asserted by any person or entity, to the extent arising out of that Party's performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Agreement, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination or expiration of this Agreement.

b. Each indemnification under this Agreement and/or under any agreement or document executed and delivered pursuant to this Agreement shall survive the Close of Escrow and shall be subject to the following provisions: (a) the indemnitee shall notify the indemnitor of any such claim against the indemnitee within twenty (20) days after it has notice of such claim, but failure to notify the indemnitor shall in no case prejudice the rights of the indemnitee under this Agreement unless the indemnitor shall be prejudiced by such failure and then only to the extent of such prejudice; (b) without the prior written consent of the indemnitee, the indemnitor shall not enter into any settlement which (i) requires an admission of guilt, the payment of any funds or the performance of any obligation by the indemnitee, and (ii) does not include a full release of indemnitee; and (c) should the indemnitor fail to discharge or undertake to defend the indemnitee against such liability within twenty (20) days after the indemnitee gives the indemnitor written notice of the same, then the indemnitee may, upon fifteen (15) days' notice to the indemnitor, in good faith settle such liability, and the indemnitor's liability to the indemnitee shall be conclusively established by such settlement, the amount of such liability to include both the settlement consideration and the reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by the indemnitee in effecting such settlement. The indemnification obligations under this Agreement shall survive the Close of Escrow or a termination of this Agreement.

40. Amendments. The City Manager of Seller is authorized to sign on his or her own authority amendments to this Agreement which are of routine or technical nature, including extensions of time deadlines either requested by Buyer or occasioned by changes in City employees determined by the City Manager to be critical to the processing of the development contemplated by the Parties, except that the cumulative total of time extensions granted by the

City Manager may not exceed one (1) year ("**Minor Amendments**"). Amendments not constituting Minor Amendments shall require approval of the City Council. The City Manager shall, after consultation with the City Attorney, have sole discretion to determine whether or not an amendment to this Agreement constitutes a Minor Amendment.

41. Independent Legal Advice. Each Party represents and warrants the following: that it has carefully read this Agreement, and in signing this Agreement and agreeing to be bound by the same, it has received independent legal advice from legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and it has freely signed this Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its officers, agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. This Agreement shall be interpreted as though prepared jointly and severally by both of the Parties.


42. No Recordation. This Agreement shall not be recorded with the County of Fresno.

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the date first above written.

SELLER:

By: _____


BUYER:

By: _____

Richard Munkvold

CONSENT OF ESCROW HOLDER

ESCROW HOLDER APPROVES THE ESCROW PROVISIONS AND SPECIFIC INSTRUCTIONS TO ESCROW HOLDER SET FORTH IN THE FOREGOING AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ORANGE COAST TITLE COMPANY

By: _____
_____, Escrow Officer

Date: _____, 2019

EXHIBIT "A"

LEGAL DEPICTION

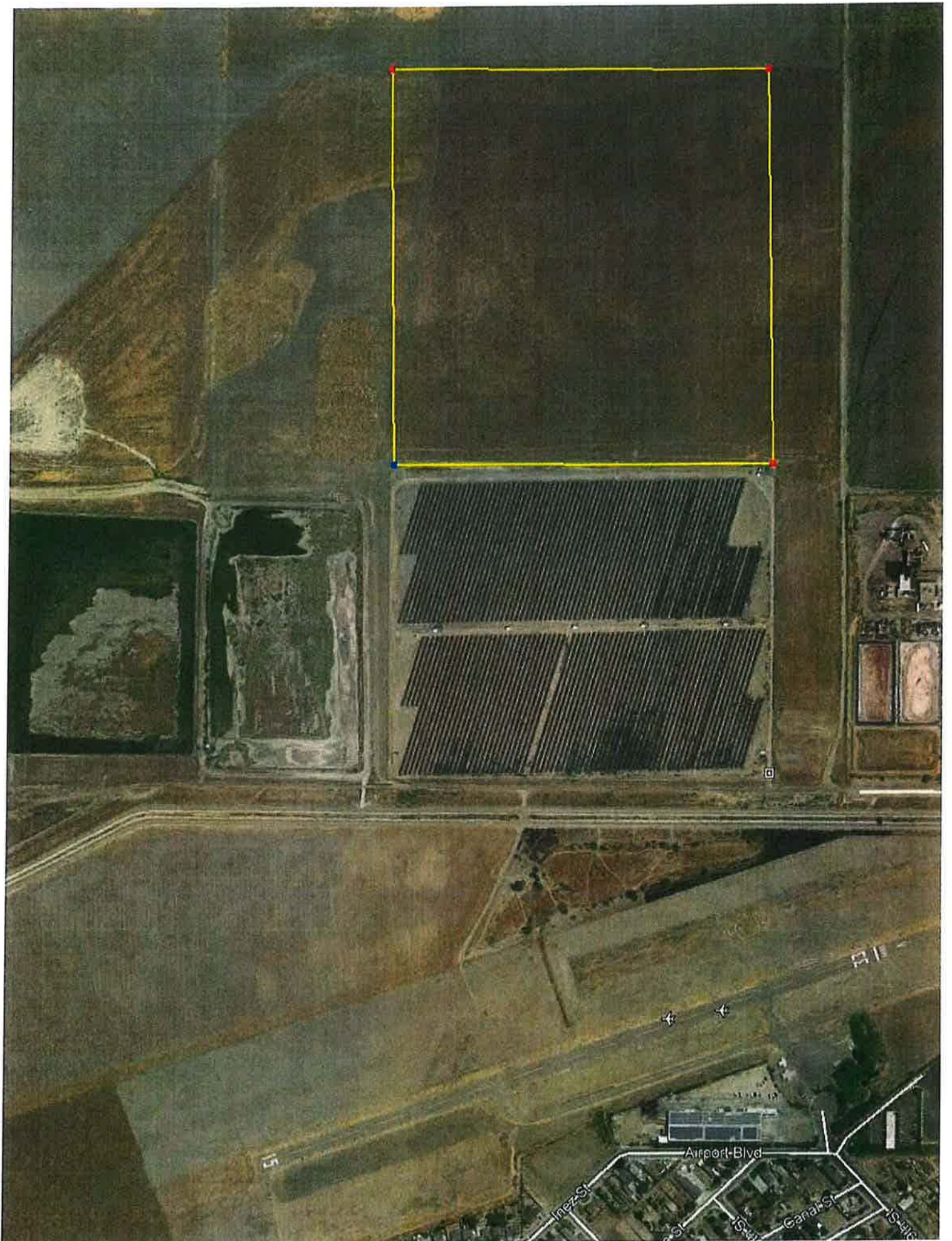


EXHIBIT "B"

GRANT DEEDS

[To be provided and initialed by the parties prior to the close of escrow]

EXHIBIT "C"

LEGAL DESCRIPTION

[To be provided and initialed by the parties prior to the close of escrow]

Exhibit B

VALLEY AGRICULTURAL HOLDINGS, LLC

December 18, 2019

Via Electronic Mail

Nicolas R. Cardella, Esq.
WANGER JONES HELSLEY PC
265 E. River Park Circle, Suite 310
Fresno, California 93720

Re: Request for Extension of Contingency Period.

Pursuant to Section 5.f and Section 40 of that certain *Purchase and Sale Agreement and Joint Escrow Instructions* (the "*Agreement*") entered into by and between Valley Agricultural Holdings, LLC, a California limited liability company (the "*Buyer*"), and the City of Mendota, a Municipal Corporation (the "*Seller*"), by this letter Buyer requests that Seller grant a minor amendment to the Agreement providing an extension of 30 days for Buyer, pursuant to Section 5.b of the Agreement, to "examine, inspect and, investigate the Property" and provide Seller notice of its approval or disapproval of the same (the "*Contingency Period Extension*").¹ The requested extension will extend the Contingency Period through *January 29, 2020*.

There are several significant issues still needing to be resolved by the parties such that Buyer is fully confident that the Property will be conducive for its intended agricultural use. These issues include, but may not be limited to, (1) Seller's ability to obtain and/or grant Buyer roadway access to the Property, (2) the availability of a sufficient and reliable water source necessary for crop growing activities, and (3) whether the chemical makeup of the Property's soil is viable for the growing of cannabis, specifically as related to chromium and toxaphene levels in the soil.

Please note that Buyer is diligently working to clear due diligence on this transaction, and also looks forward to continuing to work with the City regarding the purchase of the Property.

As always, please contact me at (909) 354-8019 to discuss the above.

Regards,



Richard Munkvold
CFO

Cc: Cristian Gonzalez, City Manager
Dustin Moore, Axiom
Steven B. Imhoof, Esq., Valley Agricultural Holdings

¹ The current Contingency Period expires on December 30, 2019.

**FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND
JOINT ESCROW INSTRUCTIONS**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "*First Amendment*") is dated as of December ²⁰, 2019, by and among *Valley Agricultural Holdings, LLC*, a California limited liability company ("*Buyer*"), and *The City of Mendota*, a Municipal Corporation (the "*Seller*"), and amends that certain *Purchase and Sale Agreement and Joint Escrow Instructions* dated as of October 22, 2019 (the "*Original Agreement*"). Capitalized terms used herein shall have the meanings given them in the Original Agreement unless otherwise defined herein. To the extent of any inconsistencies between the terms set forth in the Original Agreement, as previously amended, and this First Amendment, the terms stated in this First Amendment shall control.

RECITALS:

A. Pursuant to the Section 5.b of the Original Agreement, Buyer's Contingency Period to examine, inspect and investigate the Property expires on December 30, 2019.

B. Seller has agreed to extend Buyer's Contingency Period until January 29, 2020, which, based on Buyer's further investigations of the Property, Buyer shall deliver to Seller a property approval or disapproval notice on or prior to that date.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the parties hereby agree to amend the Original Agreement on the following terms and conditions:

1. **Contingency Period.** Section 5.b of the Original Agreement is amended to reflect that the Contingency Period shall expire on January 29, 2020.

2. **Ratification of Original Agreement; Counterparts; Facsimile Signatures.** Except as modified by this First Amendment, all of the terms and provisions of the Original Agreement shall remain in full force and effect. In the event of any inconsistency between the provisions of the Original Agreement and this First Amendment, the provisions of this First Amendment shall govern and control. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile or .pdf signature shall be deemed an original signature.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date set forth above.

SELLER:

The City of Mendota, a Municipal Corporation

By: 
Cristian Gonzalez
Title: City Manager

BUYER:

**Valley Agricultural Holdings, LLC,
a California limited liability company**


By: 
Name: Richard Munkvold
Title: Chief Financial Officer

Exhibit C

**SECOND AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND
JOINT ESCROW INSTRUCTIONS**

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "*Second Amendment*") is dated as of January 21, 2020, by and among *Valley Agricultural Holdings, LLC*, a California limited liability company ("*Buyer*"), and *The City of Mendota*, a Municipal Corporation (the "*Seller*"), and further amends that certain *Purchase and Sale Agreement and Joint Escrow Instructions* dated as of October 22, 2019 (the "*Original Agreement*"), as amended by that certain *First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions* dated December 20, 2019 (the "*First Amendment*"). Capitalized terms used herein shall have the meanings given them in the Original Agreement unless otherwise defined herein. To the extent of any inconsistencies between the terms set forth in the Original Agreement, as previously amended, and this Second Amendment, the terms stated in this Second Amendment shall control.

RECITALS:

A. Pursuant to the Section 5.b of the Original Agreement, as amended by the First Amendment, Buyer's Contingency Period to examine, inspect and investigate the Property expires on January 29, 2020.

B. Seller has agreed to extend Buyer's Contingency Period until February 28, 2020, which, based on Buyer's further investigations of the Property, Buyer shall deliver to Seller a Property approval or disapproval notice on or prior to that date.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the parties hereby agree to amend the Original Agreement on the following terms and conditions:

1. **Contingency Period.** Section 5.b of the Original Agreement, as amended by the First Amendment, is amended to reflect that the Contingency Period shall expire on February 28, 2020.
2. **Ratification of Original Agreement; Counterparts; Facsimile Signatures.** Except as modified by this Second Amendment, all of the terms and provisions of the Original Agreement shall remain in full force and effect. In the event of any inconsistency between the provisions of the Original Agreement and this Second Amendment, the provisions of this Second Amendment shall govern and control. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile or .pdf signature shall be deemed an original signature.

[signatures on following page]


IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date set forth above.

SELLER: **The City of Mendota, a Municipal Corporation**

By: 

Cristian Gonzalez
Title: City Manager

BUYER: **Valley Agricultural Holdings, LLC,**
a California limited liability company

By: 

Name: Richard Munkvold
Title: Chief Financial Officer

Exhibit D

**THIRD AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND
JOINT ESCROW INSTRUCTIONS**

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the “Third Amendment”) is dated as of January 26, 2021, by and among Valley Agricultural Holdings, LLC, a California limited liability company (“Buyer”), the City of Mendota, a California municipal corporation (the “Seller”), Odyssey Agricultural Holdings LLC, a California limited liability company (“Odyssey”), and Boca del Rio Holdings LLC, a California limited liability company (“Boca”), and further amends that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated October 22, 2019 (the “Original Agreement”), as amended by that certain First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated December 20, 2019 (the “First Amendment”) and that certain Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions, dated January 29, 2020 (the “Second Amendment”). Capitalized terms used herein shall have the meanings given them in the Original Agreement unless otherwise defined herein. To the extent of any inconsistencies between the terms set forth in the Original Agreement, as previously amended, and this Third Amendment, the terms stated in this Third Amendment shall control.

RECITALS

A. Pursuant to the Section 21 of the Original Agreement, Buyer may not assign its rights under the Original Agreement, as amended, without the prior written consent of Seller. Seller has agreed to allow Buyer to assign its rights as provided herein to assignees Odyssey, and Boca.

B. Section 4.b of the Original Agreement, as amended, incorrectly provided: “one Grant Deed shall reflect Seller’s conveyance of approximately 35 acres of the Property to Seller, and one Grant Deed shall reflect Seller’s conveyance of approximately 24 acres of the Property to Buyer.” (Italics emphasis added.) Buyer and Seller intend this Third Amendment to correct this inaccuracy and convey to Buyer’s assignees, in two separate grant deeds as follows: (i) 35 acres of the Property further described on Exhibit A attached hereto (the “O Property”) to be vested in Odyssey; and (ii) 24 acres of the Property further described on Exhibit B attached hereto (the “B Property”) to be vested in Boca.

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

AGREEMENT

1. **Amendment to Opening and Close of Escrow.** Section 4.b of the Original Agreement, as amended, as follows:

b. For purposes of this Agreement, the “Close of Escrow” shall mean the date on which two (2) grant deeds (the “Grant Deeds”) conveying the title of: (i) the O Property to Odyssey; and (ii) the B Property to Boca. The Grant Deeds shall be substantially in the form attached hereto as Exhibit C and shall be recorded in the Official Records of the County concurrently with their delivery. In accordance with the terms of the Grant Deeds, the transfer tax shall not be of record. As discussed in Section 4.c below, in no event shall Close of Escrow occur prior to the Development Entitlements becoming Effective (the “Entitlement Date”). For purposes of this Agreement, Development Entitlements shall be deemed to have become “Effective” thirty (30) calendar days after the date that a Notice of Determination (“NOD”) has been filed and posted by the City following a certification from the City’s Planning Commission and/or the City Council that the California Environmental Quality Act (“CEQA”), and any and all related City discretionary approvals, have been obtained from the City in connection with the City’s consideration of Buyer’s application(s) for the Development Entitlements; provided, however, if there is an appeal or legal

challenge to the City's approval of the Development Entitlements prior to the expiration of said thirty (30) day appeal period, the Development Entitlements shall become Effective on the date that such appeal or legal challenge is favorably concluded without material adverse impact on the Development Entitlements. Buyer shall provide to Seller any notice of legal challenge or appeal of the Development Entitlements or CEQA document certification, promptly following Buyer's receipt thereof.

2. **Buyer's Assignment of Purchase and Sale Agreement.**

a. Assignment. Buyer hereby transfers, sets over, assigns, and conveys unto Odyssey (with respect to the O Property) and Boca (with respect to the B Property), all of Buyer's rights, privileges, duties, and obligations in, to, and under the Original Agreement, as amended, together with all Buyer's rights, title, and interest in and to the Property described in the Original Agreement, as amended, including, without limitation, all earnest money deposits paid pursuant thereto, and all rights, power and privileges conferred by the Original Agreement, as amended, upon Buyer, as purchaser therein, and Buyer hereby authorizes Odyssey (with respect to the O Property) and Boca (with respect to the B Property) to exercise said rights, powers and privileges in as full a manner as Buyer is authorized to exercise the same (the "*Assignment*").

b. Indemnity by Buyer. Buyer shall indemnify and hold Odyssey and Boca harmless from any claim, liability, cost or expense (including without limitation reasonable attorneys' fees and costs) arising out of: (i) any obligation or liability of the Buyer under the Original Agreement, as amended, which was to be performed or which became due during the period in which Buyer was the purchaser under the Original Agreement, as amended; and (ii) any obligation or liability of Buyer under the Original Agreement, as amended, arising after the date hereof relating to acts or omissions occurring prior to the date hereof during the period Buyer was the purchaser under the Original Agreement, as amended.

c. Consent. Seller hereby consents to the Assignment.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the date set forth above.

“SELLER”
CITY OF MENDOTA,
a California municipal corporation

By: _____
Cristian Gonzales,
City Manager

“BUYER”
VALLEY AGRICULTURAL HOLDINGS LLC,
a California limited liability company

By: _____
Dustin Moore, Managing Member
on behalf of The Axiom Group LLC

By: _____
Aaron Mamann, Managing Member
on behalf of Odyssey Insights, Inc.

“ODYSSEY”
ODYSSEY AGRICULTURAL HOLDINGS LLC,
a California limited liability company

By: _____
Aaron Mamann, Managing Member
on behalf of Odyssey Insights, Inc.

“BOCA”
BOCA DEL RIO HOLDINGS LLC,
a California limited liability company

By: _____
Name:
Title:

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: JEFFREY O'NEAL, AICP, CITY PLANNER
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: APPLICATION NO. 20-23, THE VALLEY AGRICULTURAL HOLDINGS, LLC COMMERCIAL CANNABIS PROJECT
DATE: JANUARY 26, 2021

ISSUE

In the matter of Application No. 20-23, the Valley Agricultural Holdings, LLC Commercial Cannabis Project, shall the City Council waive the second readings of and adopt Ordinances No. 21-02 and 21-03?

BACKGROUND

At a regular meeting on January 12, 2021 the City Council conducted a public hearing and took four actions related to Application No. 20-23, the Valley Agricultural Holdings, LLC Commercial Cannabis Project:

1. Adopted Resolution No. 21-01, adopting a mitigated negative declaration and mitigation monitoring and reporting program and determining that, with mitigation incorporated, the project will not result in a significant effect on the environment.
2. Adopted Resolution No. 21-02, amending the General Plan Land Use designation of APN 013-030-68ST from Public/Quasi-Public Facilities to Light Industrial.
3. Introduced and waived the first reading of Ordinance No. 21-02, which would amend the zone district of APN 013-030-68ST from P-F/CO (Public Facilities/Commercial Cannabis Overlay District) to M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District).
4. Introduced and waived the first reading of Ordinance No. 21-03, which would enter the City into a development agreement with Valley Agricultural Holdings, LLC.

ANALYSIS

Staff's analysis of the project remains unchanged from its original presentation and discussion on January 12, 2021. To finalize the rezoning and development agreement components of the project, a second action is required for each: the second reading and adoption. If adopted, the ordinances would take effect 30 days later.

ENVIRONMENTAL

Via adoption of Resolution No. 20-01, the City Council has determined that with mitigation, Application No. 20-23 will not have a significant effect on the environment. A notice of

determination was filed with the State Clearinghouse on January 15, 2021. Nothing further is required.

PUBLIC NOTICE

No public notice is required for this second reading of the ordinances.

FISCAL IMPACT

Review and processing of the planning applications, engineering plans, and building plans are paid for by the applicant.

RECOMMENDATION

Staff recommends that the City Council:

1. Waives the second reading of and adopts Ordinance No. 21-02, which would amend the zone district of APN 013-030-68ST from P-F/CO (Public Facilities/Commercial Cannabis Overlay District) to M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District).
2. Waives the second reading of and adopts Ordinance No. 21-03, which would enter the City into a development agreement with Valley Agricultural Holdings, LLC.

Attachment(s):

1. Ordinance No. 21-02
2. Ordinance No. 21-03

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MENDOTA AMENDING
THE OFFICIAL ZONING MAP OF THE CITY
OF MENDOTA IN THE MATTER OF APPLICATION
NO. 20-23, THE VALLEY AGRICULTURAL
HOLDINGS, LLC, COMMERCIAL CANNABIS
PROJECT (APN 013-030-68ST)**

ORDINANCE NO. 21-02

WHEREAS, on October 13, 2020 the City of Mendota received Application No. 20-23, submitted by Valley Agricultural Holdings, LLC and proposing the construction and operation of commercial cannabis facilities on approximately 59 acres of Fresno Co. APN 013-030-68ST, said APN currently owned in fee by the City of Mendota; and

WHEREAS, the project site is designated Public/Quasi-Public Facilities by the City of Mendota General Plan Update 2005–2025 (General Plan) and is zoned P-F/CO (Public Facilities/Commercial Cannabis Overlay District); and

WHEREAS, General Plan Policy LU-13.1 states that the Public/Quasi-Public Facilities land use designation is intended for land owned by public or institutional agencies and is to be used for educational, governmental, and public safety purposes; and

WHEREAS, in consideration of the proposed activity’s incompatibility with the underlying General Plan Land Use designation, Application No. 20-23 proposes to amend the Land Use designation of the project site to Light Industrial and amend the zoning to M-1/CO (Light Manufacturing/ Commercial Cannabis Overlay District), which combination of land use designation and zoning would accommodate the proposed Project; and

WHEREAS, via Resolution No. 21-02, the City Council has amended the Land Use Element of the General Plan to reflect APN 013-030-68ST as Public/Quasi-Public Facilities; and

WHEREAS, pursuant to Government Code section 65854, the Planning Commission shall conduct at least one public hearing on a proposal to amend the zoning ordinance before forwarding a recommendation to the City Council; and

WHEREAS, at a special meeting on December 29, 2020 the Planning Commission conducted a duly-noticed public hearing and adopted Resolution No. PC 20-08 by a vote of 5-0, recommending that the City Council approves the proposed amendment to the zoning map; and

WHEREAS, pursuant to Government Code section 65856, upon receipt of a recommendation from the Planning Commission regarding a change of zone, the City Council shall conduct a public hearing; and

WHEREAS, on or before January 1, 2021 a notice of public hearing before the City Council was published in *The Business Journal*, similar notices were individually mailed to property owners within 300 feet of the project site, and a copy of the notice was posted in the Mendota City Hall bulletin window; and

WHEREAS, at a regular meeting on January 12, 2021 the City Council did conduct a public hearing at which it considered testimony regarding the project, including the recommendation of the Planning Commission; and

WHEREAS, approval of the project consists of a “lease, permit, license, certificate, or other entitlement for use” and involves an amendment to zoning that may have a reasonably foreseeable indirect effect on the environment, and is therefore a “project” pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code Section 21000, *et seq.* and the CEQA Guidelines, California Code of Regulations Title 14, Chapter 3, Section 15000, *et seq.*; and

WHEREAS, as the agency primarily responsible for carrying out or approving said project, the City of Mendota assumes the role of lead agency pursuant to CEQA; and

WHEREAS, the City Council has adopted Resolution No. 21-01 determining that, with mitigation incorporated, the activities proposed within Application No. 20-23 will not have a significant effect on the environment and, consistent with CEQA and the CEQA Guidelines, has adopted a mitigated negative declaration and mitigation monitoring & reporting program.

NOW, THEREFORE, the City Council of the City of Mendota hereby ordains as follows:

SECTION 1. The Recitals set forth above are incorporated herein and by this reference made an operative part hereof.

SECTION 2. The zone district of APN 013-030-68ST is hereby amended from P-F/CO (Public Facilities/Commercial Cannabis Overlay District) to M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District) as illustrated in Exhibit “A” hereto.

SECTION 3. Severability. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, as if such invalid portion thereof had been deleted.

SECTION 6. This ordinance shall take effect thirty (30) days after its passage.

SECTION 7. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

* * * * *

The foregoing ordinance was introduced on the 12th day of January 2021 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 26th day of January 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Rolando Castro, Mayor

ATTEST:

Celeste Cabrera-Garcia, City Clerk

APPROVED AS TO FORM:

John Kinsey, City Attorney

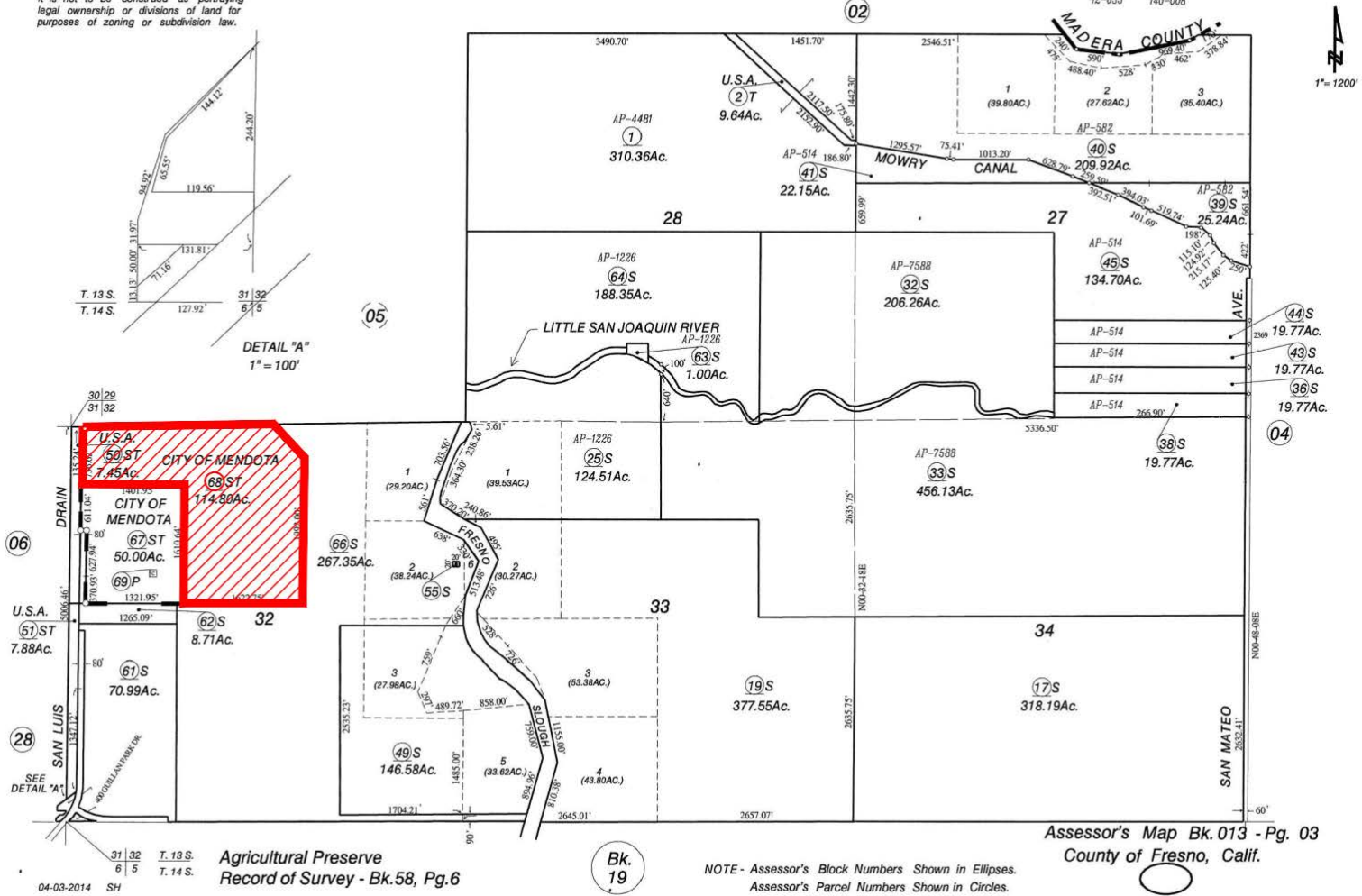
EXHIBIT "A" TO ORDINANCE NO. 21-02
REZONE

--- NOTE ---
This map is for Assessment purposes only.
It is not to be construed as portraying
legal ownership or divisions of land for
purposes of zoning or subdivision law.

SUBDIVIDED POR. TWP. 13 S., R15 E. M.D.B. & M.

Tax Rate Area
12-008 140-005
12-035 140-008

013-03



Ordinance No. 21-02
Exhibit "A"



Zoning - P-F/CO (Public Facilities/Commercial Cannabis Overlay District)
to M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District)

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE COUNCIL
OF THE CITY OF MENDOTA APPROVING
A DEVELOPMENT AGREEMENTS BY AND
BETWEEN THE CITY OF MENDOTA AND
VALLEY AGRICULTURAL HOLDINGS, LLC,
IN THE MATTER OF APPLICATION NO. 20-23,
THE VALLEY AGRICULTURAL HOLDINGS,
LLC COMMERCIAL CANNABIS PROJECT
(PORTION OF APN 013-030-68ST)**

ORDINANCE NO. 21-03

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers; and

WHEREAS, on November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act (“AUMA”), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult- Use Cannabis Regulation and Safety Act (“MAUCRSA”), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 et seq. (the “Development Agreement Statute”) which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, on September 12, 2017, the City Council of Mendota (“City Council”) adopted Ordinance No. 17-13 establishing zoning limitations and requirements for all

cannabis businesses, including the proposed cannabis facility to be located on a portion of APN 0136-030-68ST.

WHEREAS, since September 12, 2017, the City Council of the City of Mendota has adopted additional regulations for administration of commercial cannabis operations, which regulations are codified in Chapters 8.37 and 17.99 of the Mendota Municipal Code; and

WHEREAS, the City of Mendota (“City”) has received an application from Valley Agricultural Holdings, LLC (“Developer”), to develop a cannabis business for the cultivation, manufacturing, and distribution of cannabis and cannabis products (“the Project”); and

WHEREAS, the City and Developer seek to enter into Development Agreement Nos. 2021-01 and 2021-02 (the “Development Agreements”) to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City and Developer; and

WHEREAS, pursuant to Government Code section 65867.5, the City Council finds that the provisions of the Development Agreements are consistent with the City’s general plan and any applicable specific plan; and

WHEREAS, prior to this approval, the City’s planning commission has found that the proposed development plan meets all the requirements under Mendota Municipal Code section 17.84.050; and

WHEREAS, the proposed Development Agreements will have a positive impact on the City by generating significant revenues that would support transportation, parks and recreation, law enforcement, and fire protection in the City.

WHEREAS, approval of the project consists of a “lease, permit, license, certificate, or other entitlement for use” and involves an amendment to the General Plan that may have a reasonably foreseeable indirect effect on the environment, and is therefore a “project” pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code Section 21000, *et seq.* and the CEQA Guidelines, California Code of Regulations Title 14, Chapter 3, Section 15000, *et seq.*; and

WHEREAS, as the agency primarily responsible for carrying out or approving said project, the City of Mendota assumes the role of lead agency pursuant to CEQA; and

WHEREAS, the City Council has adopted Resolution No. 21-01 determining that, with mitigation incorporated, the activities proposed within the Project will not have a significant effect on the environment and, consistent with the CEQA and the CEQA

Guidelines, has adopted a mitigated negative declaration and mitigation monitoring & reporting program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Based upon the findings, as referenced in the recitals above, the Development Agreements attached hereto as Exhibits 1 and 2 and incorporated herein by reference by and between the City of Mendota, and Valley Agricultural Holdings, LLC, is hereby approved.

SECTION 2. Each and every term and condition of the Development Agreements approved in Section 1 of this Ordinance shall be and is made a part of the Mendota Municipal Code and any appendices thereto. The City Council of the City of Mendota finds that public necessity, public convenience, and general welfare require that any provision of the Mendota Municipal Code or appendices there inconsistent with the provisions of these Development Agreements, to the extent of such inconsistencies and no further, be repealed or modified to make fully effective the provisions of the Development Agreements.

SECTION 3. Any provision of the Mendota Municipal Code or appendices thereto, inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, are hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Mendota hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

* * * * *

The foregoing ordinance was introduced on the 12th day of January 2021 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 26th day of January 2021 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Rolando Castro, Mayor

ATTEST:

Celeste Cabrera-Garcia, City Clerk

APPROVED AS TO FORM:

John Kinsey, City Attorney

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:**

City of Mendota
643 Quince Street
Mendota, California 93640
Attn: Cristian Gonzalez

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2021, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), **ODYSSEY AGRICULTURAL DEVELOPMENT, LLC**, a California limited liability company ("Developer"), **ODYSSEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("OAH"), and **VALLEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("VA"). City, Developer, OAH, or VA may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.

C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

D. Government Code section 65865 requires an applicant for a development agreement to hold a legal or equitable interest in the real property that is the subject of the development agreement. On or about October 22, 2019 the City and VA entered into that certain Purchase and Sale Agreement to purchase that certain real property located approximately one-quarter mile east of W. Belmont Avenue, and approximately one-half mile north of Guillan Park Drive, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-030-68ST (the "Site"), as more particularly described in the legal descriptions attached hereto as **Exhibit A** and depicted on the Site Map attached hereto as **Exhibit B**.

E. The members of VA determined that it would be in their respective best interests to cause VA to assign the right to purchase the Site under the Purchase and Sale Agreement to two single-purpose entities: (1) OAH; and (2) **BOCA DEL RIO HOLDINGS, LLC** ("BDR"). On January 26, 2021, the City Council of the City of Mendota approved a third amendment to the Purchase and Sale Agreement, permitting VA to assign its right to purchase the Property to BDR and OAH. VA has assigned its interest in approximately thirty-five (35) acres of the Property to OAH.

F. Prior to close of escrow on Developer's purchase of the Property, Developer shall submit an application to the City to subdivide the Property into two (2) separate legal parcels, with the first parcel being sixty percent (60%) of the Property, or approximately thirty-five (35) acres (to be operated by Developer, OAH, and/or VA), and the second parcel being forty percent (40%) of the Property, or approximately twenty-four (24) acres (to be operated by **BOCA DEL RIO AGRICULTURE, LLC**, a California limited liability company; BDR; and/or VA).

G. Developer, OAH, and/or VA proposes to improve, develop, and use the Property as a guard-gated and secure Cannabis Facility for cultivation, manufacturing, and distribution of Cannabis and Cannabis Products, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 of this Agreement, as they may be amended from time to time, and the Municipal Code of the City of Mendota as it existed on the Effective Date (the "Project"). Developer, OAH, and/or VA intend to develop the Project in two distinct phases, specifically: (1) the first phase of the Project will consist of land development and the construction of "Outdoor and Mixed Light Cultivation" structures as defined in Section 1.4 of this agreement, located in various areas throughout the Site ("Phase I"), and (2) the second phase of the Project may consist of the construction of a "headhouse" used for the processing of harvested cannabis, administrative offices, employee breakroom(s), restrooms, and other ancillary Project needs ("Phase 2").

H. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

I. On September 12, 2017, the City Council of Mendota ("City Council") adopted Ordinance No. 17-13, creating the Commercial Cannabis Overlay District and establishing zoning limitations and requirements for all cannabis businesses located therein, including the proposed

cannabis facility to be located at the Site.

J. On June 11, 2019, the City Council adopted Ordinance No. 19-06, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

K. Prior to the City's adoption of Ordinance No. 19-06, VA submitted a request to the City for consideration of a development agreement for the Project pursuant to the requirements of Chapter 17.99 of the Mendota Municipal Code.

L. On September 8, 2020, the City Council adopted Ordinance No. 20-16, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

M. Government Code § 65867 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

N. On December 29, 2021, after a duly noticed and held meeting in accordance with Government Code § 65867, the City's Planning Commission voted to recommend approval of VA's application for a development agreement for the Project.

O. On January 12, 2021, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. 21-XX, an Ordinance to Approve a Development Agreement by and Between the City of Mendota and Valley Agricultural Holdings, LLC.

P. Pursuant to Government Code section 65867.5, on January 26, 2021, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 21-XX.

Q. This Agreement is entered into pursuant to the Development Agreement Statute and the Mendota Municipal Code.

R. City, Developer, OAH, and VA desire to enter into this Agreement to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City, Developer, OAH, and VA .

S. The Parties intend through this Agreement to allow Developer, OAH, and/or VA to develop and manage the Project in accordance with the terms of this Agreement.

T. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are

hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City’s General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

Section 1.3. Exhibits. The following “Exhibits” are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description (Entire Site)
Exhibit B	Site Map (Entire Site)
Exhibit C	Legal Description (Developer/OAH/VA Parcel)
Exhibit D	Site Map (Developer/OAH/VA Parcel)
Exhibit E	Notice of Non-performance Late Fee
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) “Additional Insureds” has the meaning set forth in Section 6.1.
- (b) “Additional License” means a state license to operate a cannabis business pursuant to the California Cannabis Laws that is not an Authorized License.
- (c) “Adult-Use Cannabis” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.
- (d) “Agreement” means this Development Agreement, inclusive of all Exhibits attached hereto.
- (e) “Application” means the application for a development agreement submitted by

Developer to the City.

- (f) “Assignment and Assumption Agreement” has the meaning set forth in Section 10.1.
- (g) “AUMA” means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.
- (h) “Authorized License” has the meaning set forth in Section 2.3.
- (i) “Bureau” means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.
- (j) “California Building Standards Codes” means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Mendota Municipal Code.
- (k) “California Cannabis Laws” includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable state laws that may be enacted or approved.
- (l) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term “marijuana” may be used interchangeably.
- (m) “Cannabis Business” means a cannabis business operating pursuant to an Authorized License.
- (n) “Cannabis Product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- (o) “CEQA” means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.
- (p) “City” means the City of Mendota, a municipal corporation having general police

powers.

- (q) “City Council” means the City of Mendota City Council.
- (r) “City Manager” means the City Manager of the City of Mendota, or his or her designee.
- (s) “Charged Party” has the meaning set forth in Section 8.1.
- (t) “Charging Party” has the meaning set forth in Section 8.1.
- (u) “Commercial Cannabis Activity” means to cultivate, manufacture, distribute, or test a cannabis product provided for by Division 10 (commencing with Section 26000) of the Business and Professions Code.
- (v) “Conditional Use Permit” means a conditional use permit for the Project issued by the City pursuant to Mendota Municipal Code Chapter 17.08.050.
- (w) “Contribution Payment” has the meaning set forth in Section 4.2.
- (x) “CUA” means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.
- (y) “Developer” means Odyssey Agricultural Development LLC and its assignees or successors as allowed herein. Developer also has the meaning set forth in Section 6.1.
- (z) “Developed Portions of the Property” means the designated structure or structures and land specified in the development agreement application that is owned, leased, or otherwise held under the control of Developer, OAH, and/or VA.
- (aa) “Development Agreement Statute” has the meaning set forth in Recital H.
- (bb) “Exhibits” has the meaning set forth in Section 1.3.
- (cc) “Gross Receipts” shall mean total revenue received or receivable by the Developer, OAH, and/or VA from any Commercial Cannabis Activity on the Property or from operation of the Project on the Property, including: all sales; the total amount of compensation received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "Gross Receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (1) Cash discounts allowed and taken on Commercial Cannabis Activity sale;

- (2) Any tax required by law to be included in or added to the purchase price of Commercial Cannabis Activity and collected from the consumer or purchaser;
- (3) Such part of the sale price of property returned by purchasers in any Commercial Cannabis Activity upon rescission of a contract of sale as is refunded either in cash or by credit; and
- (4) Receipts of refundable deposits in any Commercial Cannabis Activity, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payments required under Section 17.99.070(A) of the Mendota Municipal Code, all sales related to Commercial Cannabis Activity or any other cannabis and cannabis products at the Property or through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(dd) “Indoor Cultivation” means a Type 1A, Type 2A, Type 3A, and Type 5A license classifications, as set forth in Business and Professions code sections 26061(a)(2), 26061(a)(6), 26061(a)(9), and 26061(b)(2).

(ee) “Major Amendment” means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(ff) “Marijuana” has the same meaning as cannabis and those terms may be used interchangeably.

(gg) “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*

(hh) “MCRSA” has the meaning set forth in Recital A.

(ii) “Ministerial Fee” or “Ministerial Fees” have the meanings set forth in Section 4.1.

(jj) “Minor Amendment” means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement (e.g., change of notice address) and any amendment described as minor herein.

(kk) “Mixed-Light Cultivation” means a Type 1B, Type 2B, Type 3B, and Type 5B license classifications, as set forth in Business and Professions code sections 26061(a)(3), 26061(a)(7), 26061(a)(10), and 26061(b)(3).

(ll) “Mortgage” has the meaning set forth in Article 7.

(mm) “Non-Performance Late Fee” has the meaning set forth in Section 4.3.

(nn) “Notice of Non-Performance Late Fee” has the meaning set forth in Section 4.3.

- (oo) “Notice of Termination” has the meaning set forth in Section 9.1.
- (pp) “Processing Costs” has the meaning set forth in Section 1.11.
- (qq) “Project” has the meaning set forth in Recital G.
- (rr) “Project Litigation” has the meaning set forth in Section 10.6.
- (ss) “Public Benefit Fee” has the meaning set forth in Section 4.2.
- (tt) “Outdoor Cultivation” means Type 1, Type 2, Type 3, and Type 5 license classifications, as set forth in Business and Professions code sections 26061(a)(1), 26061 (a)(5), 26061 (a)(8), and 26061(b)(1)
- (uu) “Site” has the meaning set forth in Recital D.
- (vv) “State Cannabis Manufacturing Regulations” means the regulations related to cannabis manufacturing issued by a State Licensing Authority in accordance with Chapter 13 (commencing with Section 26130) of Division 10 of the Business and Professions Code, which may be amended from time to time.
- (ww) “State Licensing Authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.
- (xx) “State Taxing Authority” has the meaning set forth in Section 4.2.
- (yy) “Subsequent City Approvals” has the meaning set forth in Section 3.1.
- (zz) “Term” has the meaning described in Section 1.7.

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent, partner, or joint venturer of Developer, OAH, VA , or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective and title to the Site is vested in the Developer (the “Effective Date”).

Section 1.7. Term. The “Term” of this Agreement is twenty (20) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer, OAH, and/or VA to cease all Commercial Cannabis Activity, upon which Developer, OAH, and/or VA shall immediately comply, only if City is specifically required to comply with

federal or state law and such federal or state law requires cessation of Cannabis Cultivation Activities. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for an equivalent period of time (the “Tolling Period”). Developer, OAH, and/or VA shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer, OAH, and/or VA shall resume paying any applicable fees after the Tolling Period ends. City and Developer, OAH, and/or VA shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) **Developer/OAH/VA Tolling or Termination.** Developer, OAH, and/or VA shall not temporarily halt or suspend this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(c) **Developer/OAH/VA Termination.** Developer, OAH, and/or VA may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer, OAH, and/or VA are required, directed, or believes, in their sole and absolute discretion, they must temporarily halt or terminate Commercial Cannabis Activity. In such an event, Developer’s, OAH’s, and/or VA’s obligations under this Agreement shall terminate. Any resumption of Commercial Cannabis Activity shall be subject to approval by the City Manager.

Section 1.8. Priority of Enactment. In the event of conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (c) Conditional Use Permit, and (d) Subsequent City Approvals, as defined in Section 3.1 of this Agreement.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited fifteen thousand dollars (\$15,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation, processing and annual review of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, “Processing Costs”). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) **Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, City shall provide notice to Developer, OAH, and/or VA and Developer, OAH, and/or VA shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may immediately terminate this Agreement and all entitlements associated with the project.

(b) **Accounting.** Developer may request, and City shall issue within two (2) weeks, an accounting and written acknowledgement of Processing Costs paid to City.

**ARTICLE 2
DEVELOPMENT OF PROPERTY**

Section 2.1. Vested Right of Developer/OAH/VA. During the Term, in developing the Site consistent with the Project described herein, Developer, OAH, and VA are assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer, OAH, and VA and may not be modified or terminated by City except as set forth in this Agreement or with Developer, OAH, and/or VA written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer, OAH, and/or VA shall have the vested right to develop and use the Project consistent with this Agreement, the existing City regulations and codes, the Conditional Use Permit, and Subsequent City Approvals. Developer, OAH, and VA hereby acknowledge and agree that a condition of approval for the Conditional Use Permit will be that this Agreement remain in full force and effect for the duration of the Term and that any assignment or transfer of Developer’s, OAH’s, and/or VA’s interests under this Agreement may be made only with the City’s consent in accordance with Section 10.1 herein.

Section 2.3. Permitted Uses and Development Standards. Developer, OAH, and/or VA shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types (the “Authorized License”):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A/5A
Mixed Light Cultivation	1B/2B/3B/5B
Outdoor Cultivation	1/2/3/5
Cultivation Nursery	4
Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Transportation	12
Cultivation Processor	C-P

Developer, OAH, and/or VA or their tenants or assignees shall be permitted to use the Site consistent

with the Authorized License for the Term of this Agreement and during the time Developer, OAH, and/or VA, or their tenants or assignees, are applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer, OAH, and/or VA, or their tenants or assignees, are required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, OAH, and/or VA, or their tenants or assignees, Developer, OAH, and/or VA, or their tenants or assignees, shall immediately cease Commercial Cannabis Activity on the Site. Developer and/or OAH, or their tenants or assignees, shall also, within ten (10) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer, OAH, and/or VA, or their tenants or assignees, shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer, OAH, and/or VA may request to add one or more of the license types then authorized by the California Cannabis Laws to the Authorized License. If City Council allows any Additional Licenses, City Council shall make a finding of whether Developer's, OAH's, and/or VA's, or their tenants' or assignees', Additional Authorized Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer, OAH, and/or VA shall be required to compensate City for all additional impacts on City infrastructure or services associated with any Additional Licenses and the Public Benefit Fee amount shall be revised accordingly. This process shall be a Major Amendment to this Agreement.

Section 2.5. Development Permit. By entering into this Agreement, City understands and acknowledges that prior to Developer, OAH, and/or VA commencing any development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site, Developer, OAH, and/or VA are required to obtain from the City a Conditional Use Permit and any applicable Subsequent City Approvals. Developer, OAH, and/or VA shall be required to comply with all provisions of the Mendota Municipal Code and any other City rules and administrative guidelines associated with implementation of the Commercial Cannabis Overlay District. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Mendota Municipal Code or issue rules or administrative guidelines associated with implementation of the Commercial Cannabis Overlay District or Developer's, OAH's, and VA's obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer, OAH, and/or VA to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. Any entitlements and/or development standards required by the City that are not contemplated in the Conditional Use Permit shall, to the extent practicable, be consistent with the County of Fresno's development standards for "Exclusive Agricultural" uses as set forth in the Fresno County Ordinance Code - Division 6, Zoning Ordinance. The exercise of this discretion is not prohibited by this Agreement, but the exercise of

that discretion must be reasonable and consistent with this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

Section 2.7. No Commitment to Project Approval. Developer, OAH, and VA understand and acknowledge that City shall be under no obligation whatsoever to approve or to issue to Developer, OAH, or VA any development entitlement, including, but not limited to, a Conditional Use Permit or any applicable Subsequent City Approvals, related to Developer's, OAH's, and/or VA's development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site. City will conduct environmental review of the relevant activity or activities in accordance with the requirements of CEQA prior to granting any approval associated with the Development Entitlements. Developer, OAH, and VA acknowledge and agree that, in accordance with Seller's obligations under CEQA, City may, after conducting appropriate environmental review, decide not to approve some or all of the required development entitlements, or may approve some or all of the development entitlements subject to conditions. The Parties expressly intend that nothing in this Agreement shall be interpreted as a commitment by City to grant any development entitlements to Developer, OAH, or VA prior to City's completion of appropriate environmental review in accordance with CEQA, or as an abrogation of the City's obligation to exercise its independent judgement in deciding whether to grant any development entitlement or whether to impose conditions on any development entitlement.

Section 2.8. Initiatives and Referenda. If any City ordinance, rule, or regulation, or addition to the Mendota Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer, OAH, and VA in this Agreement, such Mendota Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer, OAH, and/or VA and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.9. Regulation by Other Government Entities. Developer, OAH, and VA acknowledge that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer, OAH, and VA or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.10. Developer's Right to Rebuild. Developer, OAH, and/or VA may renovate portions of the Site or the OAH Parcel any time within the Term of this Agreement consistent with the Mendota Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.11. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring

from time to time to the California Building Standards Codes.

Section 2.12. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Mendota Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Commercial Cannabis Overlay District. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City, Developer, OAH, and/or VA shall provide the other Parties with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Mendota Municipal Code or this Agreement. Promptly thereafter, City, Developer, OAH, and/or VA shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City, Developer, OAH, and/or VA will attempt to preserve the terms of this Agreement and the rights of Developer, OAH, and VA derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer, OAH, and/or VA for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's, OAH's, or VA's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.13. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency so as to not have a material adverse impact on the Project, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City has the authority to permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely review, pursuant to the terms of this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and applicable law, any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. Subsequent City Approvals include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer, OAH,

and/or VA with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any applicable law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer/OAH/VA. Consistent with the terms set forth herein, City agrees to cooperate with Developer, OAH, and/or VA, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder, or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4 PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer, OAH, and/or VA shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer, OAH, and VA that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Developer, OAH, and VA (the "Public Benefit Fee"). Developer, OAH, and VA acknowledge that the Public Benefit Fees provided for herein are greater than the annual fee provided for in Mendota Municipal Code section 17.99.070 and, despite this fact, voluntarily agree to pay the fees contemplated herein, acknowledging that the private benefits conferred are of equal or greater consideration to the fees, and waives any right to challenge said fees as a violation of any law. In consideration of the foregoing, Developer, OAH, and/or VA shall remit to City:

(1) A one-time Public Contribution Payment in the amount of ONE HUNDRED AND TWENTY THOUSAND DOLLARS (\$120,000) (the "Contribution Payment") within thirty (30) days of Developer, OAH, and/or VA closing escrow on that certain Purchase and Sale Agreement and Joint Escrow Instructions entered into by and between Developer, OAH, VA, and City on or

about October 22, 2019, and thereby, Developer, OAH, and/or VA obtaining fee title interest to the Property. City acknowledges that Developer's, OAH's, and/or VA's obligation to remit the Contribution Payment to the City, or any portion thereof, is strictly conditioned on (a) the Agreement having obtained final City approval, (b) Developer having obtained the Conditional Use Permit as discussed in Section 2.5 above, (c) Developer having obtained any and all "Subsequent Entitlements, Approvals, and Permits" as discussed in Section 2.6 above, and (d) Developer having obtained any and all "Subsequent City Approvals" as discussed in Section 3.1 above.

(2) As described in Section 17.99.070 of the Mendota Municipal Code, an annual "Public Benefit Fee" in the greatest amount of the following, as applicable:

(i) FIVE DOLLARS (\$5.00) per square foot for so long as the Developed Portions of the Property are less than two hundred thousand (200,000) square feet; or

(ii) FOUR DOLLARS (\$4.00) per square foot for so long as the Developed Portions of the Property are between two hundred thousand (200,000) square feet and four hundred ninety-nine, nine hundred ninety-nine thousand (499,999) square feet; or

(iii) For so long as the Developed Portions of the Property are five hundred thousand (500,000) square feet or greater, the greater amount of the following:

(a) SIX HUNDRED THOUSAND DOLLARS (\$600,000); or

(b) Four percent (4%) of the Project's annual Gross Receipts, as defined in Section 1.4.

To the extent that Section 4.2(a)(2) is applicable for the calculation of the Public Benefit Fee, said fee will be adjusted pursuant to the Consumer Price Index for the Fresno/Clovis metropolitan area (All Urban Consumers) published by the United States Department of Labor, Bureau of Labor and Statistics ("Index"). The adjustment shall be made based on the first Index published in the year for which the Public Benefit Fee is paid and shall be subject to a maximum increase of 2% in any given year.

(3) The annual Public Benefit Fee described in Section 4.2, above, shall be paid in quarterly installments on the first (1st) business day of every third (3rd) month ("Quarterly Payment").

(b) Developer, OAH, and/or VA shall remit the Contribution Payment and the Public Benefit Fee as applicable, to City as described in subdivisions (a.1), (a.2), and (a.3) of this Section. Failure to remit the Contribution Payment and Public Benefit Fee, as applicable, is a material breach of this Agreement and shall be sufficient grounds for revocation of all entitlements associated with the Project. For purposes of clarity and avoidance of doubt, the Parties agree and acknowledge that Developer's, OAH's, and/or VA's obligation to commence making the Public Benefit Fee payment to the City shall commence on the first day of Project operation when the first crop is planted and not prior to that date.

Section 4.3. Reporting. Developer, OAH, and/or VA shall provide City with copies of any reports

provided to a State Licensing Authority or a State Taxing Authority within forty-five (45) calendar days of that submission. Failure or refusal of Developer, OAH, and/or VA to (a) provide any such report to City, State Licensing Authority, or the State Taxing Authority within the time required by that entity, or (b) pay the Public Benefit Amount or amount due to a State Licensing Authority or State Taxing Authority when the same are due and payable, shall constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit and all entitlements associated with the Project.

Section 4.4. Records. Subsequent tenants or assignees shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the State Retail Cannabis Regulations. All records required by this Article 4 shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee. Upon request, Developer, OAH, and/or VA shall make all records relating to this Article 4 available to City within three (3) calendar days.

Section 4.5. Late Fee. Developer, OAH, and VA acknowledge that, to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Liquidated damages and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer, OAH, or VA fail to make any payment when due as required by this Agreement, including the Public Benefit Amount, City may impose a "Non-Performance Late Fee." A Non-Performance Late Fee of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer, OAH, and/or VA a "Notice of Non-Performance Late Fee," attached hereto as **Exhibit C**. Payment of the Non-Performance Late Fee shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee. The Parties hereto acknowledge and agree that the sums payable under this Section 4.5 shall constitute liquidated damages and not penalties and are in addition to all other rights of the City, including the right to call a default. The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the amounts specified herein bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure by Developer, OAH, or VA to remit payment as required by this Agreement, (iii) one of the reasons for the Parties' agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Parties are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

Section 4.6. Interest on Unpaid Non-Performance Late Fee. If Developer, OAH, and/or VA fail to pay the Non-Performance Late Fee after City has delivered the Notice of Non-Performance Late Fee, then, in addition to the principal amount of the Non-Performance Late Fee, Developer, OAH, and/or VA shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Late Fee, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee.

Section 4.7. Exempt from City Tax. For the Term of this Agreement, Developer, OAH, and VA shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the

foregoing, Developer, OAH, and/or VA and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Fresno, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event that the City applies a new tax on commercial cannabis businesses during the term of this Agreement, the City shall refund or credit the amount owed by Developer, OAH, and/or VA pursuant to the Public Benefit Fee by an equal amount to any new tax on commercial cannabis businesses.

Section 4.8. Employing City Residents. Developer, OAH, and/or VA agree to use their best efforts to promote the hiring and employment of local City residents to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, OAH, and/or VA agree to include in any lease, license, or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to hire and employ local City residents for its business.

Section 4.9. Contracting with Local Businesses. Developer, OAH, and VA agree to use their best efforts to promote the contracting of local businesses to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, OAH, and/or VA agree to include in any lease, license or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to contract with local City businesses for its business.

Section 4.10. Manner of Payment. All payments required to be made to City pursuant to this Agreement shall be paid by Developer, OAH, and/or VA via check, ACH payment, or wire transfer through a bank licensed and in good standing with all appropriate regulatory bodies. No payment required pursuant to this Agreement may be made in cash. Developer, OAH, and VA understand and agree that any failure to comply with this Section 4.10 shall constitute a material breach of this Agreement.

Section 4.11. Development Incentive. To provide an incentive for Developer's development of the Property and construction of the Project, and to facilitate Developer's prompt performance of its obligations under this Agreement in a manner that will maximize the financial benefit to City over the Term of this Agreement, City shall, within the first year of the Project's operation, recognize a \$50,000 credit in Developer's favor to be applied to any liability of Developer to the City. The liability or liabilities to which the credit is applied shall be determined by the City Manager in consultation with Developer.

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

Section 5.1. City Use of Public Benefit Fee. City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods, for the general welfare of the residents of Mendota, and the existing level of service of City infrastructure and services to accommodate for the Project.

**ARTICLE 6
INSURANCE AND INDEMNITY**

Section 6.1. Insurance. Developer, OAH, and/or VA shall require all persons doing work on the Project, including their contractors and subcontractors (collectively, “Developer” for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) **General Liability Insurance.** Developer, OAH, and/or VA shall maintain commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as “Additional Insureds” by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) **Automotive Liability Insurance.** Developer, OAH, and/or VA shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) **Workers’ Compensation Insurance.** Developer, OAH, and/or VA shall take out and maintain during the Term of this Agreement, workers’ compensation insurance for all of Developer’s, OAH’s, and/or VA’s employees employed at or on the Project, and in the case any of the work is subcontracted, Developer, OAH, and/or VA shall require any general contractor or subcontractor similarly to provide workers’ compensation insurance for such contractor’s or subcontractor’s employees, unless such employees are covered by the protection afforded by Developer, OAH, and/or VA . In case any class of employee engaged in work on the Project is not protected under any workers’ compensation law, Developer, OAH, and/or VA shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of

employees not otherwise protected. Developer, OAH, and VA hereby indemnify City for any damage resulting from failure of Developer, OAH, and/or VA, their agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

Section 6.2. Other Insurance Requirements. Developer, OAH, and VA shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

(c) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(e) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer, OAH, and/or VA shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals.

Upon receiving notice of a claim, action, or proceeding, Developer, OAH, and/or VA shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter. The City's remedies are limited to that portion of the Project that is in breach of this Section 6.3.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify City shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit or entitlements associated with the Project. Developer's, OAH's, and/or VA's failure to

indemnify City shall be a waiver by Developer, OAH, and/or VA of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's, OAH's, and/or VA's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's, OAH's, and/or VA's failure to indemnify City.

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer, OAH, and/or VA and, therefore, Developer, OAH, and VA hereby waive all claims for damages against City for breach of this Agreement. Developer, OAH, and VA further acknowledge that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer, OAH, and VA therefore waive all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer, OAH, and/or VA are opposed. Developer, OAH, and VA further acknowledge that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer, OAH, and VA waive all claims for damages against City in this regard.

ARTICLE 7 MORTGAGEE PROTECTION

Section 7.1. Supremacy Over Liens. This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall be deemed in default and terminate as to an interest in the Site or Project upon the foreclosure or transfer of that interest, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing, which such authorization shall not be unreasonably withheld or conditioned.

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than thirty (30) calendar days' written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal

proceedings for the breach of this Agreement.

(b) After expiration of the thirty (30) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within thirty (30) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit or other entitlement related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 or the comparable provisions of the Mendota Municipal Code within thirty (30) calendar days from the expiration of the thirty (30) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer, OAH, and/or VA are in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer, OAH, and/or VA until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer, OAH, and/or VA are in default, Developer, OAH, and/or VA shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer, OAH, and/or VA with notice and opportunity to cure as provided for in paragraph (a) through (e) above, except that the time periods in paragraphs (a), (b), (c), and (e) shall be ninety (90) days.

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, OAH, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section

65865.1. City shall deposit in the mail or fax to Developer, OAH, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer, OAH, and/or VA shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, OAH, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

Section 8.3. Estoppel Certificates. City shall, with at least twenty (20) calendar days' prior written notice, execute, acknowledge, and deliver to Developer, OAH, VA, Developer's, and/or OAH's lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(a) At Developer's, OAH's, and/or VA's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's, OAH's, and/or VA's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer, OAH, and/or VA shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer, OAH, and/or VA.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City, Developer, OAH, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to Section 8.1(c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by either Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as **Exhibit D**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer/OAH/VA Obligations. Termination of this Agreement shall eliminate any further obligation of Developer, OAH, and/or VA to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer, OAH, and/or VA to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.9, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10 OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. The rights granted to Developer, OAH, and/or VA under this Agreement are personal to Developer, OAH, and/or VA and Developer, OAH, and VA shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager.

(a) The City Manager's consent shall not be unreasonably withheld or conditioned; however, Developer, OAH, and VA hereby acknowledge and agree that in no event shall it be unreasonable for the City Manager to withhold or condition consent if the proposed assignee or transferee cannot:

(i) Demonstrate financial resources in the form of a financial statement, balance sheet, or tax returns that attest to the assignee or transferee's financial health and ability to finance and operate the proposed business for a minimum of twelve (12) months; and

(ii) Demonstrate technical expertise through utilization of a substantial portion of the Project's existing management team or through a detailed description of the transferee's experience in operating the same or similar type of project.

(b) Upon City's receipt of written notice that Developer, OAH, and/or VA propose to assign or transfer any of its rights or interests under this Agreement, the City Manager shall, within thirty (30) days of receiving all requested information regarding the proposal from Developer, OAH, and/or VA, notify Developer, OAH, and/or VA in writing whether the City intends to withhold or condition its consent pursuant to this Section 10.1 and the reasons therefor.

(c) If the City Manager notifies Developer, OAH, and/or VA that the City intends to withhold consent pursuant to this Section 10.1, the Parties shall meet and confer in good faith to determine whether, in lieu of withholding consent, the City's concerns can be adequately addressed by imposing appropriate conditions on the City's consent.

(d) If the Parties are unable to reach agreement regarding the proposed assignment or transfer, Developer, OAH, and/or VA may, within ten (10) days after meeting and conferring pursuant to subdivision (c) above, appeal the City Manager's decision to the City Council. In such event, the City Council shall finally determine, in its sole and absolute discretion, whether the withholding or conditioning of consent to the proposed assignment or transfer is reasonable.

(e) Any assignment or transfer in violation of this Section 10.1 will be automatically void and will be considered an immediate, material breach of this Agreement such that City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City, Developer, OAH, and VA shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit E**. Nothing in this Section 10.1 applies to Developer's, OAH's, and/or VA's capitalization or ownership provisions.

Section 10.2. Covenants Running with the Land. For so long as this Agreement is in full force and effect, all of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer, OAH, and VA .

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer, OAH, and/or VA must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which

such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Mendota
643 Quince Street
Mendota, CA 93640
Attention: Cristian Gonzalez, City Manager

And to: Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno, California 93720
Attention: John P. Kinsey, Esq.

If to Developer: Odyssey Agricultural Development LLC
2222 E. Olympic Blvd.
Los Angeles, CA 90021
Attention: Legal Department

And to: Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

If to OAH: Odyssey Agricultural Holdings LLC
2222 E. Olympic Blvd.
Los Angeles, CA 90021
Attention: Legal Department

And to: Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

If to VA: Valley Agricultural Holdings LLC
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention: Richard Munkvold

And to: Valley Agricultural Holdings, LLC
2151 E. Convention Center Way, Suite 114
Ontario, CA 91764
Attention: Steven B. Imhoof, Esq.

Section 10.4. Governing Law and Binding Arbitration. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State

of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Fresno, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings of the Judicial Arbitration and Mediation Services. Judgment on the arbitration award may be entered in any court having jurisdiction thereof.

Section 10.5. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City, Developer, OAH, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer, OAH, and VA agree that Developer, OAH, and VA may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer, OAH, and/or VA in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer, OAH, and/or VA for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer, OAH, and/or VA will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer, OAH, and/or VA shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer, OAH, and/or VA will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person

acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City, Developer, OAH, and VA agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City, Developer, OAH, and VA shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer, OAH, or VA operate the Project in violation of the Agreement, or any applicable regulations issued pursuant to the California Cannabis Laws, as may be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Fresno.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) **Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) **Number and Gender.** In this Agreement, the neutral gender includes the feminine and masculine, and the singular includes the plural, and the word “person” includes corporations,

partnerships, firms, or associations, wherever the context requires.

(g) Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.

(h) Term Includes Extensions. All references to the Term of this Agreement shall include any extensions of such Term.

(i) Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) Other Documents. The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) Time is of the Essence. Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) Document Preparation. This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) Attorney’s Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney’s fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) Calculation of Time Periods. All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

(q) Confidentiality. Both Parties agree to maintain the confidentiality of the other

Party's "Confidential Information" under this Agreement and shall not disclose such information to third parties. "Confidential Information" shall include, but not be limited to, business plans, trade secrets, and industry knowledge. Confidential Information shall not apply to information that: (i) is in the public domain at the time of disclosures or (ii) is required to be disclosed pursuant to a court order, governmental authority, or existing state law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer, Odyssey, and City as of the Effective Date of the Agreement, as defined above.

“CITY”

Date: January _____, 2021

CITY OF MENDOTA,
a California Municipal Corporation

By: Cristian Gonzalez
Its: City Manager

Attest:

City Clerk

Date: January _____, 2021

Approved to as Form:

John P. Kinsey
City Attorney

“DEVELOPER”

Date: January _____, 2021

ODYSSEY AGRICULTURAL
DEVELOPMENT, LLC,
a California limited liability company

By:
Its:

“OAH”

Date: January _____, 2021

ODYSSEY AGRICULTURAL HOLDINGS,
LLC,
a California limited liability company

By:
Its:

“VA”

Date: January _____, 2021

VALLEY AGRICULTURAL HOLDINGS,
LLC, a California limited liability company

By:
Its:

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:**

City of Mendota
643 Quince Street
Mendota, California 93640
Attn: Cristian Gonzalez

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2021, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), **BOCA DEL RIO AGRICULTURE, LLC**, a California limited liability company ("Developer"), **BOCA DEL RIO HOLDINGS, LLC**, a California limited liability company ("BDR"), and **VALLEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("VA"). City, Developer, BDR, or VA may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.

C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

D. Government Code section 65865 requires an applicant for a development agreement to hold a legal or equitable interest in the real property that is the subject of the development agreement. On or about October 22, 2019 the City and VA entered into that certain Purchase and Sale Agreement to purchase that certain real property located approximately one-quarter mile east of W. Belmont Avenue, and approximately one-half mile north of Guillan Park Drive, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-030-68ST (the "Site"), as more particularly described in the legal descriptions attached hereto as **Exhibit A** and depicted on the Site Map attached hereto as **Exhibit B**.

E. The members of VA determined that it would be in their respective best interests to cause VA to assign the right to purchase the Site under the Purchase and Sale Agreement to two single-purpose entities: (1) BDR; and (2) **ODYSSEY AGRICULTURAL HOLDINGS, LLC** ("OAH"). On January 26, 2021, the City Council of the City of Mendota approved a third amendment to the Purchase and Sale Agreement, permitting VA to assign its right to purchase the Property to BDR and OAH. VA has assigned its interest in approximately twenty-four (24) acres of the Property to BDR.

F. Prior to close of escrow on Developer's purchase of the Property, Developer shall submit an application to the City to subdivide the Property into two (2) separate legal parcels, with the first parcel being sixty percent (60%) of the Property, or approximately thirty-five (35) acres (to be operated by **ODYSSEY AGRICULTURAL DEVELOPMENT, LLC**, a California Limited Liability Company; OAH; and/or VA), and the second parcel being forty percent (40%) of the Property, or approximately twenty-four (24) acres (to be operated by Developer, BDR, and/or VA).

G. Developer, BDR, and/or VA propose to improve, develop, and use the Property as a guard-gated and secure Cannabis Facility for cultivation, manufacturing, and distribution of Cannabis and Cannabis Products, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 of this Agreement, as they may be amended from time to time, and the Municipal Code of the City of Mendota as it existed on the Effective Date (the "Project"). Developer, BDR, and/or VA intends to develop the Project in two distinct phases, specifically: (1) the first phase of the Project will consist of land development and the construction of "Outdoor and Mixed Light Cultivation" structures as defined in Section 1.4 of this agreement, located in various areas throughout the Site ("Phase I"), and (2) the second phase of the Project may consist of the construction of a "headhouse" used for the processing of harvested cannabis, administrative offices, employee breakroom(s), restrooms, and other ancillary Project needs ("Phase 2").

H. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

I. On September 12, 2017, the City Council of Mendota ("City Council") adopted Ordinance No. 17-13, creating the Commercial Cannabis Overlay District and establishing zoning limitations and requirements for all cannabis businesses located therein, including the proposed

cannabis facility to be located at the Site.

J. On June 11, 2019, the City Council adopted Ordinance No. 19-06, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

K. Prior to the City's adoption of Ordinance No. 19-06, VA submitted a request to the City for consideration of a development agreement for the Project pursuant to the requirements of Chapter 17.99 of the Mendota Municipal Code.

L. On September 8, 2020, the City Council adopted Ordinance No. 20-16, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

M. Government Code § 65867 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

N. On December 29, 2021, after a duly noticed and held meeting in accordance with Government Code § 65867, the City's Planning Commission voted to recommend approval of VA's application for a development agreement for the Project.

O. On January 12, 2021, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. 21-03, an Ordinance to Approve a Development Agreement by and Between the City of Mendota and VA.

P. Pursuant to Government Code section 65867.5, on January 26, 2021, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 21-XX.

Q. This Agreement is entered into pursuant to the Development Agreement Statute and the Mendota Municipal Code.

R. City, Developer, BDR, and VA desire to enter into this Agreement to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City, Developer, and BDR.

S. The Parties intend through this Agreement to allow Developer, BDR, and/or VA to develop and manage the Project in accordance with the terms of this Agreement.

T. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are

hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City’s General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

Section 1.3. Exhibits. The following “Exhibits” are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description (Entire Site)
Exhibit B	Site Map (Entire Site)
Exhibit C	Legal Description (Developer/BDR/VA Parcel)
Exhibit D	Site Map (Developer/BDR/VA Parcel)
Exhibit E	Notice of Non-performance Late Fee
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) “Additional Insureds” has the meaning set forth in Section 6.1.
- (b) “Additional License” means a state license to operate a cannabis business pursuant to the California Cannabis Laws that is not an Authorized License.
- (c) “Adult-Use Cannabis” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.
- (d) “Agreement” means this Development Agreement, inclusive of all Exhibits attached hereto.
- (e) “Application” means the application for a development agreement submitted by

Developer to the City.

- (f) “Assignment and Assumption Agreement” has the meaning set forth in Section 10.1.
- (g) “AUMA” means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.
- (h) “Authorized License” has the meaning set forth in Section 2.3.
- (i) “Bureau” means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.
- (j) “California Building Standards Codes” means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Mendota Municipal Code.
- (k) “California Cannabis Laws” includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable state laws that may be enacted or approved.
- (l) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term “marijuana” may be used interchangeably.
- (m) “Cannabis Business” means a cannabis business operating pursuant to an Authorized License.
- (n) “Cannabis Product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- (o) “CEQA” means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.
- (p) “City” means the City of Mendota, a municipal corporation having general police

powers.

- (q) “City Council” means the City of Mendota City Council.
- (r) “City Manager” means the City Manager of the City of Mendota, or his or her designee.
- (s) “Charged Party” has the meaning set forth in Section 8.1.
- (t) “Charging Party” has the meaning set forth in Section 8.1.
- (u) “Commercial Cannabis Activity” means to cultivate, manufacture, distribute, or test a cannabis product provided for by Division 10 (commencing with Section 26000) of the Business and Professions Code.
- (v) “Conditional Use Permit” means a conditional use permit for the Project issued by the City pursuant to Mendota Municipal Code Chapter 17.08.050.
- (w) “Contribution Payment” has the meaning set forth in Section 4.2.
- (x) “CUA” means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.
- (y) “Developer” means BOCA DEL RIO AGRICULTURE LLC, and its assignees or successors as allowed herein. Developer also has the meaning set forth in Section 6.1.
- (z) “Developed Portions of the Property” means the designated structure or structures and land specified in the development agreement application that is owned, leased, or otherwise held under the control of Developer, BDR, and/or VA.
- (aa) “Development Agreement Statute” has the meaning set forth in Recital H.
- (bb) “Exhibits” has the meaning set forth in Section 1.3.
- (cc) “Gross Receipts” shall mean total revenue received or receivable by the Developer, BDR, and/or VA from any Commercial Cannabis Activity on the Property or from operation of the Project on the Property, including: all sales; the total amount of compensation received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "Gross Receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (1) Cash discounts allowed and taken on Commercial Cannabis Activity sale;

- (2) Any tax required by law to be included in or added to the purchase price of Commercial Cannabis Activity and collected from the consumer or purchaser;
- (3) Such part of the sale price of property returned by purchasers in any Commercial Cannabis Activity upon rescission of a contract of sale as is refunded either in cash or by credit; and
- (4) Receipts of refundable deposits in any Commercial Cannabis Activity, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payments required under Section 17.99.070(A) of the Mendota Municipal Code, all sales related to Commercial Cannabis Activity or any other cannabis and cannabis products at the Property or through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(dd) “Indoor Cultivation” means a Type 1A, Type 2A, Type 3A, and Type 5A license classifications, as set forth in Business and Professions code sections 26061(a)(2), 26061(a)(6), 26061(a)(9), and 26061(b)(2).

(ee) “Major Amendment” means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(ff) “Marijuana” has the same meaning as cannabis and those terms may be used interchangeably.

(gg) “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*

(hh) “MCRSA” has the meaning set forth in Recital A.

(ii) “Ministerial Fee” or “Ministerial Fees” have the meanings set forth in Section 4.1.

(jj) “Minor Amendment” means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement (e.g., change of notice address) and any amendment described as minor herein.

(kk) “Mixed-Light Cultivation” means a Type 1B, Type 2B, Type 3B, and Type 5B license classifications, as set forth in Business and Professions code sections 26061(a)(3), 26061(a)(7), 26061(a)(10), and 26061(b)(3).

(ll) “Mortgage” has the meaning set forth in Article 7.

(mm) “Non-Performance Late Fee” has the meaning set forth in Section 4.3.

(nn) “Notice of Non-Performance Late Fee” has the meaning set forth in Section 4.3.

- (oo) “Notice of Termination” has the meaning set forth in Section 9.1.
- (pp) “Processing Costs” has the meaning set forth in Section 1.11.
- (qq) “Project” has the meaning set forth in Recital G.
- (rr) “Project Litigation” has the meaning set forth in Section 10.6.
- (ss) “Public Benefit Fee” has the meaning set forth in Section 4.2.
- (tt) “Outdoor Cultivation” means Type 1, Type 2, Type 3, and Type 5 license classifications, as set forth in Business and Professions code sections 26061(a)(1), 26061 (a)(5), 26061 (a)(8), and 26061(b)(1)
- (uu) “Site” has the meaning set forth in Recital D.
- (vv) “State Cannabis Manufacturing Regulations” means the regulations related to cannabis manufacturing issued by a State Licensing Authority in accordance with Chapter 13 (commencing with Section 26130) of Division 10 of the Business and Professions Code, which may be amended from time to time.
- (ww) “State Licensing Authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.
- (xx) “State Taxing Authority” has the meaning set forth in Section 4.2.
- (yy) “Subsequent City Approvals” has the meaning set forth in Section 3.1.
- (zz) “Term” has the meaning described in Section 1.7.

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent, partner, or joint venturer of Developer, BDR, VA, or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective and title to the Site is vested in the Developer (the “Effective Date”).

Section 1.7. Term. The “Term” of this Agreement is twenty (20) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer, BDR, and/or VA to cease all Commercial Cannabis Activity, upon which Developer, BDR, and VA shall immediately comply, only if City is specifically required to comply with federal

or state law and such federal or state law requires cessation of Cannabis Cultivation Activities. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for an equivalent period of time (the “Tolling Period”). Developer, BDR, and/or VA shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer, BDR, and/or VA shall resume paying any applicable fees after the Tolling Period ends. City and Developer, BDR, and/or VA shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) **Developer/BDR/VA Tolling or Termination.** Developer, BDR, and VA shall not temporarily halt or suspend this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(c) **Developer/BDR/VA Termination.** Developer, BDR, and/or VA may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer, BDR, and/or VA are required, directed, or believes, in their sole and absolute discretion, they must temporarily halt or terminate Commercial Cannabis Activity. In such an event, Developer’s, BDR’s, and/or VA’s obligations under this Agreement shall terminate. Any resumption of Commercial Cannabis Activity shall be subject to approval by the City Manager.

Section 1.8. Priority of Enactment. In the event of conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (c) Conditional Use Permit, and (d) Subsequent City Approvals, as defined in Section 3.1 of this Agreement.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited fifteen thousand dollars (\$15,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation, processing and annual review of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, “Processing Costs”). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) **Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, City shall provide notice to Developer, BDR, and/or VA and Developer, BDR, and/or VA shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may immediately terminate this Agreement and all entitlements associated with the project.

(b) **Accounting.** Developer may request, and City shall issue within two (2) weeks, an accounting and written acknowledgement of Processing Costs paid to City.

**ARTICLE 2
DEVELOPMENT OF PROPERTY**

Section 2.1. Vested Right of Developer/BDR/VA. During the Term, in developing the Site consistent with the Project described herein, Developer, BDR, and/or VA are assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer, BDR, and/or VA and may not be modified or terminated by City except as set forth in this Agreement or with Developer, BDR, and VA’s written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer, BDR, and/or VA shall have the vested right to develop and use the Project consistent with this Agreement, the existing City regulations and codes, the Conditional Use Permit, and Subsequent City Approvals. Developer, BDR, and VA hereby acknowledge and agree that a condition of approval for the Conditional Use Permit will be that this Agreement remain in full force and effect for the duration of the Term and that any assignment or transfer of Developer’s, BDR’s, and/or VA’s interests under this Agreement may be made only with the City’s consent in accordance with Section 10.1 herein.

Section 2.3. Permitted Uses and Development Standards. Developer, BDR, and/or VA shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types (the “Authorized License”):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A/5A
Mixed Light Cultivation	1B/2B/3B/5B
Outdoor Cultivation	1/2/3/5
Cultivation Nursery	4
Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Transportation	12
Cultivation Processor	C-P

Developer, BDR, and/or VA or their tenants or assignees shall be permitted to use the Site consistent

with the Authorized License for the Term of this Agreement and during the time Developer, BDR, and/or VA, or their tenants or assignees, are applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer, BDR, and/or VA, or their tenants or assignees, are required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer and/or BDR, or their tenants or assignees, Developer, BDR, and/or VA, or their tenants or assignees, shall immediately cease Commercial Cannabis Activity on the Site. Developer, BDR, and/or VA, or their tenants or assignees, shall also, within ten (10) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer, BDR, and/or VA, or their tenants or assignees, shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer, BDR, and/or VA may request to add one or more of the license types then authorized by the California Cannabis Laws to the Authorized License. If City Council allows any Additional Licenses, City Council shall make a finding of whether Developer's, BDR's, and/or VA's, or their tenants' or assignees', Additional Authorized Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer, BDR, and/or VA shall be required to compensate City for all additional impacts on City infrastructure or services associated with any Additional Licenses and the Public Benefit Fee amount shall be revised accordingly. This process shall be a Major Amendment to this Agreement.

Section 2.5. Development Permit. By entering into this Agreement, City understands and acknowledges that prior to Developer, BDR, and/or VA commencing any development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site, Developer, BDR, and/or VA are required to obtain from the City a Conditional Use Permit and any applicable Subsequent City Approvals. Developer and/or BDR shall be required to comply with all provisions of the Mendota Municipal Code and any other City rules and administrative guidelines associated with implementation of the Commercial Cannabis Overlay District. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Mendota Municipal Code or issue rules or administrative guidelines associated with implementation of the Commercial Cannabis Overlay District or Developer's, BDR's, and VA's obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer, BDR, and/or VA to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. Any entitlements and/or development standards required by the City that are not contemplated in the Conditional Use Permit shall, to the extent practicable, be consistent with the County of Fresno's development standards for "Exclusive Agricultural" uses as set forth in the Fresno County Ordinance Code - Division 6, Zoning Ordinance. The exercise of this discretion is not prohibited by this Agreement, but the exercise of

that discretion must be reasonable and consistent with this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

Section 2.7. No Commitment to Project Approval. Developer, BDR, and VA understand and acknowledge that City shall be under no obligation whatsoever to approve or to issue to Developer, BDR, or VA any development entitlement, including, but not limited to, a Conditional Use Permit or any applicable Subsequent City Approvals, related to Developer's, BDR's, and/or VA's development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site. City will conduct environmental review of the relevant activity or activities in accordance with the requirements of CEQA prior to granting any approval associated with the Development Entitlements. Developer, BDR, and VA acknowledge and agree that, in accordance with Seller's obligations under CEQA, City may, after conducting appropriate environmental review, decide not to approve some or all of the required development entitlements, or may approve some or all of the development entitlements subject to conditions. The Parties expressly intend that nothing in this Agreement shall be interpreted as a commitment by City to grant any development entitlements to Developer, BDR, or VA prior to City's completion of appropriate environmental review in accordance with CEQA, or as an abrogation of the City's obligation to exercise its independent judgement in deciding whether to grant any development entitlement or whether to impose conditions on any development entitlement.

Section 2.8. Initiatives and Referenda. If any City ordinance, rule, or regulation, or addition to the Mendota Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer, BDR, and VA in this Agreement, such Mendota Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer, BDR, and/or VA and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.9. Regulation by Other Government Entities. Developer, BDR, and VA acknowledge that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer, BDR, and/or VA or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.10. Developer's Right to Rebuild. Developer, BDR, and/or VA may renovate portions of the Site or the BDR Parcel any time within the Term of this Agreement consistent with the Mendota Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.11. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring

from time to time to the California Building Standards Codes.

Section 2.12. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Mendota Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Commercial Cannabis Overlay District. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City, Developer, BDR, and/or VA shall provide the other Parties with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Mendota Municipal Code or this Agreement. Promptly thereafter, City, Developer, BDR, and/or VA shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City, Developer, BDR, and/or VA will attempt to preserve the terms of this Agreement and the rights of Developer, BDR, and VA derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer, BDR, and/or VA for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's, BDR's, and/or VA's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.13. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency so as to not have a material adverse impact on the Project, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City has the authority to permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely review, pursuant to the terms of this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and applicable law, any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. Subsequent City Approvals include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer, BDR,

and/or VA with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any applicable law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer/BDR/VA. Consistent with the terms set forth herein, City agrees to cooperate with Developer, BDR, and/or VA, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City’s authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City’s discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder, or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4 PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer, OAH, and/or VA shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a “Ministerial Fee” and collectively, the “Ministerial Fees”).

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer, BDR, and VA that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Developer, BDR, and VA (the “Public Benefit Fee”). Developer, BDR, and VA acknowledge that the Public Benefit Fees provided for herein are greater than the annual fee provided for in Mendota Municipal Code section 17.99.070 and, despite this fact, voluntarily agree to pay the fees contemplated herein, acknowledging that the private benefits conferred are of equal or greater consideration to the fees, and waives any right to challenge said fees as a violation of any law. In consideration of the foregoing, Developer, BDR, and/or VA shall remit to City:

(1) A one-time Public Contribution Payment in the amount of ONE HUNDRED AND TWENTY THOUSAND DOLLARS (\$80,000) (the “Contribution Payment”) within thirty (30) days of Developer, BDR, and/or VA closing escrow on that certain Purchase and Sale Agreement and Joint Escrow Instructions entered into by and between Developer and City on or about October 22,

2019, and thereby, Developer, BDR, and/or VA obtaining fee title interest to the Property. City acknowledges that Developer's, BDR's, and/or VA's obligation to remit the Contribution Payment to the City, or any portion thereof, is strictly conditioned on (a) the Agreement having obtained final City approval, (b) Developer having obtained the Conditional Use Permit as discussed in Section 2.5 above, (c) Developer having obtained any and all "Subsequent Entitlements, Approvals, and Permits" as discussed in Section 2.6 above, and (d) Developer having obtained any and all "Subsequent City Approvals" as discussed in Section 3.1 above.

(2) As described in Section 17.99.070 of the Mendota Municipal Code, an annual "Public Benefit Fee" in the greatest amount of the following, as applicable:

(i) FIVE DOLLARS (\$5.00) per square foot for so long as the Developed Portions of the Property are less than two hundred thousand (200,000) square feet; or

(ii) FOUR DOLLARS (\$4.00) per square foot for so long as the Developed Portions of the Property are between two hundred thousand (200,000) square feet and four hundred ninety-nine, nine hundred ninety-nine thousand (499,999) square feet; or

(iii) For so long as the Developed Portions of the Property are five hundred thousand (500,000) square feet or greater, the greater amount of the following:

(a) FOUR HUNDRED THOUSAND DOLLARS (\$400,000); or

(b) Four percent (4%) of the Project's annual Gross Receipts, as defined in Section 1.4.

To the extent that Section 4.2(a)(2) is applicable for the calculation of the Public Benefit Fee, said fee will be adjusted pursuant to the Consumer Price Index for the Fresno/Clovis metropolitan area (All Urban Consumers) published by the United States Department of Labor, Bureau of Labor and Statistics ("Index"). The adjustment shall be made based on the first Index published in the year for which the Public Benefit Fee is paid and shall be subject to a maximum increase of 2% in any given year.

(3) The annual Public Benefit Fee described in Section 4.2, above, shall be paid in quarterly installments on the first (1st) business day of every third (3rd) month ("Quarterly Payment").

(b) Developer, BDR, and/or VA shall remit the Contribution Payment and the Public Benefit Fee as applicable, to City as described in subdivisions (a.1), (a.2), and (a.3) of this Section. Failure to remit the Contribution Payment and Public Benefit Fee, as applicable, is a material breach of this Agreement and shall be sufficient grounds for revocation of all entitlements associated with the Project. For purposes of clarity and avoidance of doubt, the Parties agree and acknowledge that Developer's, BDR, and/or VA's obligation to commence making the Public Benefit Fee payment to the City shall commence on the first day of Project operation when the first crop is planted and not prior to that date.

Section 4.3. Reporting. Developer, BDR, and VA shall provide City with copies of any reports

provided to a State Licensing Authority or a State Taxing Authority within forty-five (45) calendar days of that submission. Failure or refusal of Developer, BDR, and/or VA to (a) provide any such report to City, State Licensing Authority, or the State Taxing Authority within the time required by that entity, or (b) pay the Public Benefit Amount or amount due to a State Licensing Authority or State Taxing Authority when the same are due and payable, shall constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit and all entitlements associated with the Project.

Section 4.4. Records. Subsequent tenants or assignees shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the State Retail Cannabis Regulations. All records required by this Article 4 shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee. Upon request, Developer, BDR, and/or VA shall make all records relating to this Article 4 available to City within three (3) calendar days.

Section 4.5. Late Fee. Developer, BDR, and VA acknowledge that, to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Liquidated damages and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer, BDR, or VA fail to make any payment when due as required by this Agreement, including the Public Benefit Amount, City may impose a "Non-Performance Late Fee." A Non-Performance Late Fee of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer, BDR, and/or VA a "Notice of Non-Performance Late Fee," attached hereto as **Exhibit C**. Payment of the Non-Performance Late Fee shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee. The Parties hereto acknowledge and agree that the sums payable under this Section 4.5 shall constitute liquidated damages and not penalties and are in addition to all other rights of the City, including the right to call a default. The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the amounts specified herein bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure by Developer, BDR, or VA to remit payment as required by this Agreement, (iii) one of the reasons for the Parties' agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Parties are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

Section 4.6. Interest on Unpaid Non-Performance Late Fee. If Developer, BDR, and/or VA fail to pay the Non-Performance Late Fee after City has delivered the Notice of Non-Performance Late Fee, then, in addition to the principal amount of the Non-Performance Late Fee, Developer, BDR, and/or VA shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Late Fee, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee.

Section 4.7. Exempt from City Tax. For the Term of this Agreement, Developer, BDR, and VA shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the

foregoing, Developer, BDR, and/or VA and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Fresno, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event that the City applies a new tax on commercial cannabis businesses during the term of this Agreement, the City shall refund or credit the amount owed by Developer, BDR, and/or VA pursuant to the Public Benefit Fee by an equal amount to any new tax on commercial cannabis businesses.

Section 4.8. Employing City Residents. Developer, BDR, and/or VA agree to use their best efforts to promote the hiring and employment of local City residents to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, BDR, and/or VA agree to include in any lease, license, or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to hire and employ local City residents for its business.

Section 4.9. Contracting with Local Businesses. Developer, BDR, and VA agree to use their best efforts to promote the contracting of local businesses to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, BDR, and/or VA agree to include in any lease, license or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to contract with local City businesses for its business.

Section 4.10. Manner of Payment. All payments required to be made to City pursuant to this Agreement shall be paid by Developer, BDR, and/or VA via check, ACH payment, or wire transfer through a bank licensed and in good standing with all appropriate regulatory bodies. No payment required pursuant to this Agreement may be made in cash. Developer, BDR, and VA understand and agree that any failure to comply with this Section 4.10 shall constitute a material breach of this Agreement.

Section 4.11. Development Incentive. To provide an incentive for Developer's development of the Property and construction of the Project, and to facilitate Developer's prompt performance of its obligations under this Agreement in a manner that will maximize the financial benefit to City over the Term of this Agreement, City shall, within the first year of the Project's operation, recognize a \$50,000 credit in Developer's favor to be applied to any liability of Developer to the City. The liability or liabilities to which the credit is applied shall be determined by the City Manager in consultation with Developer.

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

Section 5.1. City Use of Public Benefit Fee. City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods, for the general welfare of the residents of Mendota, and the existing level of service of City infrastructure and services to accommodate for the Project.

**ARTICLE 6
INSURANCE AND INDEMNITY**

Section 6.1. Insurance. Developer, BDR, and/or VA shall require all persons doing work on the Project, including their contractors and subcontractors (collectively, “Developer” for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) **General Liability Insurance.** Developer, BDR, and/or VA shall maintain commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as “Additional Insureds” by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) **Automotive Liability Insurance.** Developer, BDR, and/or VA shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) **Workers’ Compensation Insurance.** Developer, BDR, and/or VA shall take out and maintain during the Term of this Agreement, workers’ compensation insurance for all of Developer’s, BDR’s, and/or VA’s employees employed at or on the Project, and in the case any of the work is subcontracted, Developer, BDR, and/or VA shall require any general contractor or subcontractor similarly to provide workers’ compensation insurance for such contractor’s or subcontractor’s employees, unless such employees are covered by the protection afforded by Developer, BDR, and/or VA. In case any class of employee engaged in work on the Project is not protected under any workers’ compensation law, Developer, BDR, and/or VA shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of

employees not otherwise protected. Developer, BDR, and VA hereby indemnify City for any damage resulting from failure of Developer, BDR, and/or VA, their agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

Section 6.2. Other Insurance Requirements. Developer, BDR, and VA shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

(c) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(e) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer, BDR, and/or VA shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals.

Upon receiving notice of a claim, action, or proceeding, Developer, BDR, and/or VA shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter. The City's remedies are limited to that portion of the Project that is in breach of this Section 6.3.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify City shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit or entitlements associated with the Project. Developer's, BDR's, and/or VA's failure to

indemnify City shall be a waiver by Developer, BDR, and/or VA of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's, BDR's, and/or VA's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's, BDR's, and/or VA's failure to indemnify City.

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer, BDR, and/or VA and, therefore, Developer, BDR, and VA hereby waive all claims for damages against City for breach of this Agreement. Developer, BDR, and VA further acknowledge that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer, BDR, and VA therefore waive all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer and/or BDR are opposed. Developer, BDR, and VA further acknowledge that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer, BDR, and VA waive all claims for damages against City in this regard.

ARTICLE 7 MORTGAGEE PROTECTION

Section 7.1. Supremacy Over Liens. This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall be deemed in default and terminate as to an interest in the Site or Project upon the foreclosure or transfer of that interest, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing, which such authorization shall not be unreasonably withheld or conditioned.

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than thirty (30) calendar days' written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal

proceedings for the breach of this Agreement.

(b) After expiration of the thirty (30) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within thirty (30) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit or other entitlement related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 or the comparable provisions of the Mendota Municipal Code within thirty (30) calendar days from the expiration of the thirty (30) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer, BDR, and/or VA are in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer, BDR, and/or VA until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer, BDR, and/or VA are in default, Developer, BDR, and/or VA shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer, BDR, and/or VA with notice and opportunity to cure as provided for in paragraph (a) through (e) above, except that the time periods in paragraphs (a), (b), (c), and (e) shall be ninety (90) days.

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, BDR, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section

65865.1. City shall deposit in the mail or fax to Developer, BDR, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer and/or BDR shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, BDR, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

Section 8.3. Estoppel Certificates. City shall, with at least twenty (20) calendar days' prior written notice, execute, acknowledge, and deliver to Developer, BDR, VA, Developer's, and/or BDR's lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(a) At Developer's, BDR's, and/or VA's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's, BDR's, and/or VA's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer, BDR, and/or VA shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer, BDR, and/or VA.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City, Developer, BDR, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to Section 8.1(c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by any Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as **Exhibit D**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer/BDR/VA Obligations. Termination of this Agreement shall eliminate any further obligation of Developer, BDR, and/or VA to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer, BDR, and/or VA to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.9, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10 OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. The rights granted to Developer, BDR, and/or VA under this Agreement are personal to Developer, BDR, and/or VA and Developer, BDR, and VA shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager.

(a) The City Manager's consent shall not be unreasonably withheld or conditioned; however, Developer, BDR, and VA hereby acknowledge and agree that in no event shall it be unreasonable for the City Manager to withhold or condition consent if the proposed assignee or transferee cannot:

(i) Demonstrate financial resources in the form of a financial statement, balance sheet, or tax returns that attest to the assignee or transferee's financial health and ability to finance and operate the proposed business for a minimum of twelve (12) months; and

(ii) Demonstrate technical expertise through utilization of a substantial portion of the Project's existing management team or through a detailed description of the transferee's experience in operating the same or similar type of project.

(b) Upon City's receipt of written notice that Developer, BDR, and/or VA propose to assign or transfer any of its rights or interests under this Agreement, the City Manager shall, within thirty (30) days of receiving all requested information regarding the proposal from Developer, BDR, and/or VA, notify Developer, BDR, and/or VA in writing whether the City intends to withhold or condition its consent pursuant to this Section 10.1 and the reasons therefor.

(c) If the City Manager notifies Developer, BDR, and/or VA that the City intends to withhold consent pursuant to this Section 10.1, the Parties shall meet and confer in good faith to determine whether, in lieu of withholding consent, the City's concerns can be adequately addressed by imposing appropriate conditions on the City's consent.

(d) If the Parties are unable to reach agreement regarding the proposed assignment or transfer, Developer, BDR, and/or VA may, within ten (10) days after meeting and conferring pursuant to subdivision (c) above, appeal the City Manager's decision to the City Council. In such event, the City Council shall finally determine, in its sole and absolute discretion, whether the withholding or conditioning of consent to the proposed assignment or transfer is reasonable.

(e) Any assignment or transfer in violation of this Section 10.1 will be automatically void and will be considered an immediate, material breach of this Agreement such that City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City, Developer, BDR, and VA shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit E**. Nothing in this Section 10.1 applies to the Developer's, BDR's, or VA's capitalization or ownership provisions.

Section 10.2. Covenants Running with the Land. For so long as this Agreement is in full force and effect, all of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer, BDR, and VA .

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer, BDR, and/or VA must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which

such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Mendota
643 Quince Street
Mendota, CA 93640
Attention: Cristian Gonzalez, City Manager

And to: Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno, California 93720
Attention: John P. Kinsey, Esq.

If to Developer: BOCA DEL RIO AGRICULTURE LLC,
1201 K Street, Suite 920
Sacramento, CA 95814
Attention: Legal Department

And to: Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

If to BDR: BOCA DEL RIO HOLDINGS LLC,
1201 K Street, Suite 920
Sacramento, CA 95814
Attention: Legal Department

And to: Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

If to VA: Valley Agricultural Holdings LLC
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention: Richard Munkvold

And to: Valley Agricultural Holdings, LLC
2151 E. Convention Center Way, Suite 114
Ontario, CA 91764
Attention: Steven B. Imhoof, Esq.

Section 10.4. Governing Law and Binding Arbitration. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State

of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Fresno, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings of the Judicial Arbitration and Mediation Services. Judgment on the arbitration award may be entered in any court having jurisdiction thereof.

Section 10.5. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City, Developer, BDR, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer, BDR, and VA agree that Developer, BDR, and VA may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer, BDR, and/or VA in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer, BDR, and/or VA for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer, BDR, and/or VA will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer, BDR, and/or VA shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer, BDR, and/or VA will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person

acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City, Developer, BDR, and VA agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City, Developer, BDR, and VA shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer, BDR, or VA operate the Project in violation of the Agreement, or any applicable regulations issued pursuant to the California Cannabis Laws, as may be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Fresno.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) **Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) **Number and Gender.** In this Agreement, the neutral gender includes the feminine and masculine, and the singular includes the plural, and the word “person” includes corporations,

partnerships, firms, or associations, wherever the context requires.

(g) Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.

(h) Term Includes Extensions. All references to the Term of this Agreement shall include any extensions of such Term.

(i) Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) Other Documents. The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) Time is of the Essence. Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) Document Preparation. This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) Attorney’s Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney’s fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) Calculation of Time Periods. All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

(q) Confidentiality. Both Parties agree to maintain the confidentiality of the other

Party's "Confidential Information" under this Agreement and shall not disclose such information to third parties. "Confidential Information" shall include, but not be limited to, business plans, trade secrets, and industry knowledge. Confidential Information shall not apply to information that: (i) is in the public domain at the time of disclosures or (ii) is required to be disclosed pursuant to a court order, governmental authority, or existing state law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer, Odyssey, and City as of the Effective Date of the Agreement, as defined above.

“CITY”

Date: January _____, 2021

CITY OF MENDOTA,
a California Municipal Corporation

By: Cristian Gonzalez
Its: City Manager

Attest:

City Clerk

Date: January _____, 2021

Approved to as Form:

John P. Kinsey
City Attorney

“DEVELOPER”

Date: January _____, 2021

BOCA DEL RIO AGRICULTURE, LLC,
a California limited liability company

By:
Its:

“BDR”

Date: January _____, 2021

BOCA DEL RIO HOLDINGS, LLC,
a California limited liability company

By:
Its:

“VA”

Date: January _____, 2021

VALLEY AGRICULTURAL HOLDINGS,
LLC, a California limited liability company

By:
Its:

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

(Seal)

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: JEFFREY O'NEAL, AICP, CITY PLANNER
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: APPLICATION NO. 20-24, THE LEFT MENDOTA 1, LLC COMMERCIAL CANNABIS PROJECT
DATE: JANUARY 26, 2021

ISSUE

In the matter of Application No. 20-24, the Left Mendota I, LLC Commercial Cannabis Project, shall the City Council waive the second reading of and adopt Ordinance No. 21-04?

BACKGROUND

At a regular meeting on January 12, 2021 the City Council conducted a public hearing and introduced and waived the first reading of Ordinance No. 21-04, which would enter the City into a development agreement with Left Mendota I, LLC.

ANALYSIS

Staff's analysis of the project remains unchanged from its original presentation and discussion on January 12, 2021. To finalize the development agreement, a second action is required: the second reading and adoption. If adopted, the ordinance would take effect 30 days later.

ENVIRONMENTAL

The City Council has determined that the proposed activities constitute an incremental increase to activities already occurring on the site and that CEQA Guidelines Section 15061(b)(3) applies. Under this "common sense" rule, if it can be shown with certainty that the project does not have the potential to have a significant effect on the environment, it is not subject to further environmental review. A notice of exemption will be filed with the State Clearinghouse.

PUBLIC NOTICE

No public notice is required for this second reading of the ordinances.

FISCAL IMPACT

Review and processing of the planning applications, engineering plans, and building plans are paid for by the applicant.

RECOMMENDATION

Staff recommends that the City Council waives the second reading of and adopts Ordinance No. 21-04, which would enter the City into a development agreement with Left Mendota I, LLC.

Attachment(s): Ordinance No. 21-04

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE COUNCIL
OF THE CITY OF MENDOTA APPROVING
AMENDMENTS TO DEVELOPMENT
AGREEMENT NO. 2018-01 IN THE MATTER
OF APPLICATION NO. 20-24, THE LEFT
MENDOTA 1, LLC COMMERCIAL CANNABIS
PROJECT (APNs 013-280-15 & 22S)**

ORDINANCE NO. 21-04

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers; and

WHEREAS, on November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act (“AUMA”), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult- Use Cannabis Regulation and Safety Act (“MAUCRSA”), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq.* (the “Development Agreement Statute”) which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, on September 12, 2017, the City Council of Mendota (“City Council”) adopted Ordinance No. 17-13 establishing zoning limitations and requirements for all cannabis businesses, including the proposed cannabis facility to be located on APNs 013-280-15 and 22S.

WHEREAS, since September 12, 2017, the City Council of the City of Mendota has adopted additional regulations for administration of commercial cannabis operations, which regulations are codified in Chapters 8.37 and 17.99 of the Mendota Municipal Code; and

WHEREAS, on or about March 13, 2018 the City and Marie Street Development, LLC entered into Development Agreement No. 2018-01 (the “Development Agreement”) to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City and Developer; and

WHEREAS, the Development Agreement authorized development of a cannabis business for the cultivation, manufacturing, distribution, and testing of cannabis and cannabis products (“the Project”) and provided for certain financial considerations; and

WHEREAS, the City of Mendota (“City”) has received an application from Left Mendota 1, LLC (“Developer”) to augment the Project via the addition of approximately 2.0 acres of greenhouses and to include delivery services for cannabis and cannabis products (hereinafter “the Project”); and

WHEREAS, the City and Developer seek to amend the Development Agreement to accommodate the proposed changes to the facility, the operations, and the financial considerations; and

WHEREAS, pursuant to Government Code section 65867.5, the City Council finds that the provisions of the Development Agreement are consistent with the City’s general plan and any applicable specific plan; and

WHEREAS, prior to this approval, the City’s planning commission has found that the proposed development plan meets all the requirements under Mendota Municipal Code section 17.84.050; and

WHEREAS, the proposed Development Agreement will have a positive impact on the City by generating significant revenues that would support transportation, parks and recreation, law enforcement, and fire protection in the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Based upon the findings, as referenced in the recitals above, the Development Agreement attached hereto as Exhibit 1 and incorporated herein by reference by and between the City of Mendota, and Left Mendota 1, LLC, is hereby approved.

SECTION 2. Each and every term and condition of the Development Agreement approved in Section 1 of this Ordinance shall be and is made a part of the Mendota Municipal Code and any appendices thereto. The City Council of the City of Mendota finds that public necessity, public convenience, and general welfare require that any provision of the Mendota Municipal Code or appendices there inconsistent with the provisions of this Development Agreement, to the extent of such inconsistencies and no further, be repealed or modified to make fully effective the provisions of the Development Agreement.

SECTION 3. Any provision of the Mendota Municipal Code or appendices thereto, inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, are hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Mendota hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 5. This approval is exempt from the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, *et seq.*, as the approvals at issue simply contemplate an incremental modification to an existing operation at an existing facility and a land use authorized under the Mendota Municipal Code and, as a result, there is no possibility the activity in question may have a significant effect on the environment, (CEQA Guidelines section 15061(b)(3)).

SECTION 6. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

* * * * *

The foregoing ordinance was introduced on the 12th day of January 2021 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 26th day of January 2021 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Rolando Castro, Mayor

ATTEST:

Celeste Cabrera-Garcia, City Clerk

APPROVED AS TO FORM:

John Kinsey, City Attorney

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:**

City of Mendota
643 Quine Street
Mendota, CA 93640
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on this _____, day of _____, 2020, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), and **LEFT MENDOTA I, LLC**, a Delaware limited liability company ("Developer"). City or Developer may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.

C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

D. Developer proposes to improve, develop, and use real property for the operation of Cannabis Businesses that engage in cultivation, manufacturing, distribution, delivery or testing

of Cannabis and Cannabis Products, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 of this Agreement, as they may be amended from time to time, and the Municipal Code of the City of Mendota as it existed on the Effective Date (the "Project"). The Project includes approximately 100,000 square feet of buildings for Commercial Cannabis Activity.

E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 et seq. (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

F. Developer has submitted a request to the City for consideration of a development agreement.

G. Government Code section 65865 requires an applicant for a development agreement to hold a legal or equitable interest in the real property that is the subject of the development agreement. Developer is the fee simple owner or has an equitable interest in the real property located at 1269 Marie Street, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-280-15 (the "Site"), more particularly described in the legal description attached hereto as Exhibit A and the Site Map attached hereto as Exhibit B.

H. On September 12, 2017, the City Council of Mendota ("City Council") adopted Ordinance No. 17-13 establishing zoning limitations and requirements for all cannabis businesses, including the proposed cannabis facility to be located at the Site.

I. Government Code section 65867.5 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

J. On February 27, 2018, the City Council, in a duly noticed and conducted public hearing, and conducted the first reading of proposed Ordinance No. 18-02.

K. Pursuant to Government Code section 65867.5, on March 13, 2018, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 18-02.

K. This Agreement is entered into pursuant to the Development Agreement Statute and the Mendota Municipal Code.

L. City and Developer desire to enter into this Agreement to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City and Developer.

M. The Parties intend through this Agreement to allow Developer to develop and manage the Project in accordance with the terms of this Agreement.

N. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City's General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles I through 10 of this Agreement, the provisions of Articles I through 10 shall prevail.

Section 1.3. Exhibits. The following "Exhibits" are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description
Exhibit B	Site Map
Exhibit C	Notice of Non-performance Penalty
Exhibit D	Notice of Termination
Exhibit E	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

(a) "Additional Insureds" has the meaning set forth in Section 6.1.

(b) "Additional License" means a state license to operate a cannabis business pursuant to the California Cannabis Laws that is not an Authorized License.

(c) "Adult-Use Cannabis" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.

(d) "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.

(e) "Application" means the application for a development agreement submitted by Developer to the City.

(f) "Assignment and Assumption Agreement" has the meaning set forth in Section 10.1.

(g) "AUMA" means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.

(h) "Authorized License" has the meaning set forth in Section 2.3.

(i) "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(j) "California Building Standards Codes" means the California Building Code, as amended from time to time, in Part 2, Volumes I and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Mendota Municipal Code.

(k) "California Cannabis Laws" includes AUMA, MAUCRSA and its implementing regulations, CUA, the Medical Marijuana Program Act of 2004, and any other applicable state laws that may be enacted or approved.

(l) "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term "marijuana" may be used interchangeably.

(m) "Cannabis Business" means a cannabis business operating pursuant to an Authorized License.

(n) "Cannabis Product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated

cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

(o) "CEQA" means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.

(p) "City" means the City of Mendota, a municipal corporation having general police powers.

(q) "City Council" means the City of Mendota City Council.

(r) "City Manager" means the City Manager of the City of Mendota, or his or her designee.

(s) "Charged Party" has the meaning set forth in Section 8.1.

(t) "Charging Party" has the meaning set forth in Section 8.1.

(u) "Commercial Cannabis Activity" means to cultivate, manufacture, distribute, process, store, package, label, transport, deliver or test cannabis or cannabis products as provided for by Division 10 (commencing with Section 26000) of the Business and Professions Code.

(v) "Conditional Use Permit" means a conditional use permit for the Project issued by the City pursuant to Mendota Municipal Code Chapter 17.08.050.

(w) "CUA" means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.

(x) "Developer" means LEFT MENDOTA I, LLC, and as further set forth in Section 6.1.

(y) "Development Agreement Statute" has the meaning set forth in Recital E.

(z) "Exhibits" has the meaning set forth in Section 1.3.

(aa) "Major Amendment" means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(bb) "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

(cc) "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 et seq. and its implementing regulations.

(dd) "MCRSA" has the meaning set forth in Recital A.

(ee) "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.

(ff) "Minor Amendment" means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement (e.g., change of notice address) and any amendment described as minor herein.

(gg) "Mortgage" has the meaning set forth in Article 7.

(hh) "Non-Performance Penalty" has the meaning set forth in Section 4.3

(ii) "Notice of Non-Performance Penalty" has the meaning set forth in Section 4.3.

(jj) "Notice of Termination" has the meaning set forth in Section 9.1.

(kk) "Processing Costs" has the meaning set forth in Section 1.11.

(ll) "Project" has the meaning set forth in Recital D

(mm) "Project Litigation" has the meaning set forth in Section 10.7.

(nn) "Public Benefit Fees" has the meaning set forth in Section 4.2.

(oo) "Public Benefit Amount" has the meaning set forth in Section 4.2.

(pp) "Site" has the meaning set forth in Recital G.

(qq) "State Cannabis Manufacturing Regulations" means the regulations related to cannabis manufacturing issued by a State Licensing Authority in accordance with Chapter 13 (commencing with Section 26130) of Division 10 of the Business and Professions Code, which may be amended from time to time.

(rr) "State Licensing Authority" means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.

(ss) "State Taxing Authority" has the meaning set forth in Section 4.2.

(tt) "Subsequent City Approvals" has the meaning set forth in Section 3.1.

(uu) "Term" has the meaning described in Section 1.7.

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent, partner, or joint venturer of Developer or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective and title to the Site is vested in the Developer (the "Effective Date").

Section 1.7. Term. The "Term" of this Agreement is thirty (30) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply, if City is specifically required to comply with federal or state law and such federal or state law requires cessation of Commercial Cannabis Activities. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for an equivalent period of time (the "Tolling Period"). Developer shall not accrue or be liable to City for any Ministerial Fees, Public Benefit Amount, or any other fees contemplated under this Agreement during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) **Developer Tolling or Termination.** Developer may not temporarily halt or suspend this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(c) **Developer Termination.** Developer may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer is required, directed, or believes, in its sole and absolute discretion, it must terminate Commercial Cannabis Activity. In such an event, Developer obligations under this Agreement shall terminate. Any resumption of Commercial Cannabis Activity shall be subject to approval by the City Manager. Notwithstanding anything to the contrary herein, temporary termination of Commercial Cannabis Activities to make renovations, repairs, or comply with any applicable laws shall not be considered termination of Commercial Cannabis Activities.

Section 1.8. Priority of Enactment. In the event of conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (d) Conditional Use Permit, and (e) Subsequent City Approvals, as defined in Section 3.1 of this Agreement.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited Seven Thousand Five Hundred Dollars (\$7,500) with City to pay for the Application, all actual,

reasonable fees and expenses incurred by City that are related to the preparation, processing and annual review of this Agreement, including recording fees, publishing fees, staff time, consultant and reasonable attorney fees and costs (collectively, "Processing Costs"). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) **Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, City shall provide notice to Developer, and Developer shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may immediately terminate this Agreement.

(b) **Accounting.** Developer may request, and City shall issue within a reasonable time, an accounting and written acknowledgement of Processing Costs paid to City.

ARTICLE 2

DEVELOPMENT OF PROPERTY

Section 2.1. Vested Right of Developer. During the Term, in developing the Site consistent with the Project described herein, Developer is assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer and may not be modified or terminated by City except as set forth in this Agreement or with Developer's written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer shall have the vested right to develop and use the Project consistent with this Agreement, the existing City regulations and codes, the Conditional Use Permit, and Subsequent City Approvals.

Section 2.3. Permitted Uses and Development Standards. Developer shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types and uses associated with said license types (the "Authorized License"):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A/5A
Cultivation Mixed Light	1B/2B/3B/5B
Cultivation	Processor
Cultivation Nursery	4
Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Non-storefront Retailer	9

Developer or its tenants or assignees shall be permitted to use the Site consistent with the Authorized License types for the Term of this Agreement and during the time Developer or its tenants or assignees is applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer or each of its tenants or assignees is required to apply for and obtain an Authorized License from the applicable State Licensing Authority. If the State Licensing Authority does not grant the Authorized License to Developer or its tenants or assignees, Developer or the tenant or assignee that was denied a license shall immediately cease Commercial Cannabis Activity on the Site. Developer or its tenants or assignees shall also, within ten (10) calendar days of receiving notice from the State Licensing Authority relating to a denial or rejection of a license, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State Licensing Authority, Developer or its tenants or assignees shall immediately cease operations. In this situation, this Agreement shall terminate immediately. For the purposes of clarification, a denial or rejection of Developer's tenants or assignee's Authorized License shall not result in the termination of this agreement provided (x) other Authorized Licenses have been issued to Developer, its tenants or assignees; or (y) Developer or its tenants or assignees are in the process of applying for an Authorized License. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer may request to add to the Authorized License one or more of the license types then authorized by the California Cannabis Laws. If City Council allows any additional Authorized Licenses (“**Additional Licenses**”), City Council shall make a finding of whether Developer's or its tenants' or assignees' Additional Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer shall be required to compensate City for all additional impacts on City infrastructure or services associated with any Additional Licenses and the Public Benefit Amount shall be revised as mutually agreed by the Parties. This process shall be a Major Amendment to this Agreement.

Section 2.5. Development Permit. Prior to commencing operation of any Commercial Cannabis Activity on the Site, Developer shall obtain a Conditional Use Permit and any applicable Subsequent City Approvals. Developer shall be required to comply with all provisions of the Mendota Municipal Code and any other City rules and administrative guidelines associated with implementation of the Commercial Cannabis Overlay District. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Mendota Municipal Code or issue rules or administrative guidelines associated with implementation of the Commercial Cannabis Overlay District or Developer's obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. The exercise of this discretion is not prohibited by this Agreement, but the exercise of that discretion must be reasonable and consistent

with this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

Section 2.7. Initiatives and Referenda. If any City ordinance, rule or regulation, or addition to the Mendota Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer in this Agreement, such Mendota Municipal Code changes shall not be applied to the Site or Project and this Agreement shall remain in full force and effect; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.8. Regulation by Other Government Entities. Developer acknowledges that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.9. Developer's Right to Rebuild. Developer may renovate portions of the Site any time within the Term of this Agreement consistent with the Mendota Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.10. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time to the California Building Standards Codes.

Section 2.11. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Mendota Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Commercial Cannabis Overlay District. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon 'discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Mendota Municipal Code or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of

this Agreement and the rights of Developer derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.12. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City shall permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely grant, pursuant to the terms of this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. The Subsequent City Approvals shall include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any applicable state law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process and approve, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer. Consistent with the terms set forth herein, City agrees to cooperate with Developer, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be

consistent with the terms of this Agreement and not prevent, hinder or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4

PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefit upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Developer (the "Public Benefit Fees"). Developer acknowledges that the Public Benefit Fees provided for herein are greater than the annual fee provided for in Mendota Municipal Code section 17.99.070 and, despite this fact, voluntarily agrees to pay the fees acknowledging that the private benefits conferred are of equal or greater consideration to the fees, and waives any right to challenge said fees as a violation of any law. In consideration of the foregoing, Developer shall remit to City the following payments (collectively referred to as the "Public Benefit Amounts"):

(i) An annual payment of Eighty-Five Thousand Dollars (\$85,000) for each Non-Storefront Retailer Authorized License actively operating on the Site ("Non-Storefront Payment"), that shall be paid on the last business day of each year; and

(ii) An annual payment of Two Hundred and Ten Thousand Dollars (\$210,000) paid in equal payments of Fifty-Two Thousand Five Hundred Dollars (\$52,500) on the First (1st) business day of every Third (3rd) month ("Quarterly Payment"); and

(iii) \$8.00 per square foot (the "Square Foot Charge") of the existing buildings on the premises allocated for Authorized Licenses, which are occupied by tenants and such tenants are actually engaging in indoor cultivation, manufacturing, or distribution of cannabis or cannabis products *less* any Quarterly Payments that have been tendered to the City during the applicable period. The Square Foot Charge shall be paid to the City on the First (1st) Business Day of every 6th month throughout the Term. For purposes of clarification, the Square Foot Charge shall only become due as to that portion of the Site where the Developer or its tenants or assignees are actively engaging in Commercial Cannabis Activities, and with respect to indoor cultivation, the actual canopy space where indoor cultivation occurs. In the event the Developer or its tenants or assignees are not actively engaging in Commercial Cannabis Activities on the Site, the City shall only receive the Quarterly Payment. In the event the Developer or any of its tenants or assignees

are actively engaging in Commercial Cannabis Activities on the Site, the Square Foot Charge shall be reduced by any Quarterly Payments already paid to the City; and

(iv) Fifty cents (\$0.50) per square foot of the canopy space in any structure used for mixed light cultivation type of Authorized Licenses, which are occupied by tenants and such tenants are actually engaging in mixed-light cultivation of cannabis (“Greenhouse Payment”). The Greenhouse Payment shall be paid to the City on the First (1st) Business Day of every 3rd month of the Term. For the purposes of this Section, the Greenhouse Payment shall mean the actual amount of canopy (measured by the aggregate area of vegetative growth of live cannabis plants on the premises).

(b) Developer shall remit the Non-Storefront Payment, Quarterly Payment, Square Foot Charge and Greenhouse Payment, as applicable, to City on as described in subdivision (a) of this section. Failure to remit the Quarterly Payment, Non-Storefront Payment, and Square Foot Charge, and Greenhouse Payment as applicable, is a material breach of this Agreement.

(c) The Square Foot Charge referred to in n subdivision (a) of this section shall be subject to a five percent (5%) increase at the commencement of the tenth (10th) year of the term (“First Adjustment Date”), the twentieth (20th) year of the Term (“Second Adjustment Date”), and the thirtieth (30th) year of the Term (the "Third Adjustment Date"). The Parties hereby agree that there shall be no further increases to the Square Foot Charge after the Third Adjustment Date for the remainder of the Term.

(d) Notification. At least thirty (30) days before the adjustment of the Square Foot Charge as provided in subdivision (c) of Section 4.2 of this Agreement, City shall notify Developer in writing of the amount of the new Square Foot Charge in effect until the next adjustment date. The City’s failure to provide Developer with advance notice of an increased Square Foot Charge prior to an adjustment date shall not be deemed a waiver of the City’s right and entitlement to receive said increased Square Foot Charge owed by Developer in any way.

Section 4.3. Reporting. Developer shall provide City with copies of Authorized Licenses issued by a State Licensing Authority to Developer and its tenants within forty-five (45) calendar days of issuance of such license to a tenant and each annual renewal thereafter (“**State Licenses**”). Developer shall also provide City with a list of tenants that have received a rent credit for employing at least fifty percent (50%) of City residents in accordance with Section 4.8 of this Agreement within thirty (30) calendar days of each anniversary of the Effective Date of this Agreement (“**Local Workforce Report**”). Failure or refusal of Developer to pay the Public Benefit Amount shall constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit. Notwithstanding anything to the contrary herein, failure to provide copies of State Licenses or Local Workforce Report within the applicable time period shall not amount to a material default of this Agreement and shall not constitute grounds for the revocation or suspension of the Conditional Use Permit.

Section 4.4. Records. Subsequent tenants or assignees shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code. All records required by this Article 4 shall be maintained and made available for City's examination and duplication (physical or electronic) upon the City

Manager's request at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee. Upon request, Developer shall make all records relating to this Article 4 available to City within three (3) business days.

Section 4.5. Penalty. Developer acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Penalty and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer fails to make any payment when due as required by this Agreement, including the Public Benefit Amount, and fails to cure such failure within the allotted Cure Period, Extended Cure Period, or any extension thereof mutually agreed upon by the Parties in writing, the City may impose a "Non-Performance Penalty." A Non-Performance Penalty of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer a "Notice of Non-Performance Penalty," attached hereto as Exhibit C. Payment of the Non-Performance Penalty shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

Section 4.6. Interest on Unpaid Non-Performance Penalty. If Developer fails to pay the Non-Performance Penalty after City has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-Performance Penalty, Developer shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

Section 4.7. Exempt from City Tax. For the Term of this Agreement, Developer shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the foregoing, Developer and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Fresno, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event that the City applies a new tax on commercial cannabis businesses, the City shall refund or credit the amount owed as Public Benefit Amount by an equal amount up to the amount of Public Benefit Amount owed to the Developer and any assuming owner proportional to the percentage ownership share of the gross land area of the Site. For the purposes of clarification, other than the Public Benefit Amount, the Processing Fees, and any other fees contemplated pursuant to this Agreement, Developer shall be exempt from any and all City taxes and fees relating to commercial cannabis activity and commercial cannabis businesses passed following the execution of this Agreement.

Section 4.8. Employing City Residents. Developer agrees to use its best efforts to promote the hiring and employment of local City residents to construct, if necessary, operate the business(es) within the Project, and provide maintenance and security services to the Project, provided Developer has control over such hiring and employment. As part of such efforts, Developer agrees to include in any lease, license or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to hire and employ local City residents for its business. Developer further agrees to provide a four percent (4%) base rent credit to any tenant whose workforce consists of at least fifty percent (50%) of local City residents at the end of each fiscal year for the period the tenant's workforce meets the criteria set forth herein.

Section 4.9. Manner of Payment. All payments required to be made to City pursuant to this Agreement shall be paid by Developer via check, ACH payment, or wire transfer through a bank licensed and in good standing with all appropriate regulatory bodies. No payment required pursuant to this Agreement may be made in cash. Developer understands and agrees that any failure to comply with this Section 4.9 shall constitute a material breach of this Agreement.

Section 4.10. Charitable Donation. Upon the full execution of this Agreement, Developer shall make a one-time donation in the amount of Ten Thousand Dollars (\$10,000) to a charity or program focused on drug education or rehabilitation as selected by the City.

Section 4.11. Site Beautification. Upon the full execution of this Agreement, Developer shall spend up to Ten Thousand Dollars (\$10,000) to clean up the vacant land portions of the Site and building facades. Developer agrees to use its best efforts to promote the hiring and employment of local City residents to complete this work.

ARTICLE 5

PUBLIC FACILITIES, SERVICES, AND UTILITIES

City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods, for the general welfare of the residents of Mendota, and the existing level of service of City infrastructure and services to accommodate for the Project.

ARTICLE 6

INSURANCE AND INDEMNITY

Section 6.1. Insurance. Developer shall require all persons doing work on the Project, including its contractors and subcontractors (collectively, "Developer" for purposes of this Article 6 only), to obtain and maintain insurance of the -types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) **General Liability Insurance.** Developer shall maintain commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as "Additional Insureds" by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) **Automotive Liability Insurance.** Developer shall maintain business, automobile liability insurance or equivalent form with a limit of not less than One Million Dollars

(\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) **Workers' Compensation Insurance.** Developer shall take out and maintain during the Term of this Agreement, workers' compensation insurance for all of Developer's employees employed at or on the Project, and in the case any of the work is subcontracted, Developer shall require any general contractor or subcontractor similarly to provide workers' compensation insurance for such contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer. In case any class of employee engaged in work on the Project is not protected under any workers' compensation law, Developer shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer hereby indemnifies City for any damage resulting from failure of Developer, its agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

Section 6.2. Other Insurance Requirements. Developer shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City. Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

(b) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(c) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(d) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability

arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals.

Upon receiving notice of a claim, action, or proceeding, Developer shall assume the defense of the claim, action, or proceeding and the payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action prior to Developer's assumption of such defense. In the event City elects to contract with outside counsel, to provide for such a defense, City shall meet and confer with Developer regarding the selection of counsel, and Developer shall pay all costs related to retention of such counsel. City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, approving counsel to defend City and settlement or other disposition of the matter, provided the City shall not reject any reasonable good faith settlement. If City does reject a reasonable, good faith settlement that is acceptable to Developer, Developer may enter into a settlement of the action, as it relates to Developer, and City shall thereafter defend such action (including appeals) at its own cost and be solely responsible for any judgment rendered in connection with such action. This Section 6.3 applies exclusively to settlements pertaining to monetary damages or damages which are remedial by the payment of monetary compensation. The City's remedies are limited to that portion of the Project that is in breach of this Section 6.3.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement and upon receiving proper notice, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit. Developer's failure to indemnify City shall be a waiver by Developer of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's right to file a claim, action or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's failure to indemnify City.

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer and, therefore, Developer hereby waives all claims for damages against City for breach of this Agreement. Developer further acknowledges that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer is opposed. Developer further acknowledges that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against City in this regard. Notwithstanding the foregoing, nothing in this Section 6.5 shall amount to a waiver of Developer's right to exercise any of the administrative remedies available to Developer under applicable law and pursue any and all

equitable remedies against the City in the event of the City's breach of this Agreement, including without limitation exercising its right to appeal, filing a Writ of Mandamus, or seeking specific performance.

ARTICLE 7

MORTGAGEE PROTECTION

This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall immediately be deemed in default and immediately terminate upon the foreclosure or transfer of any interest in the Site or Project, provided such foreclosure or the transfer of interest results in the change of Developer, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing, which authorization shall not be unreasonably withheld.

ARTICLE 8

DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Subject to Section 8.1(g), any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than thirty (30) calendar days written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured ("Cure Period"). During any such Cure Period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal proceedings for the breach of this Agreement.

(b) After expiration of the t Cure Period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within thirty (30) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 or the comparable provisions of the Mendota Municipal Code within thirty (30) calendar days from the expiration of the Cure Period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional thirty (30) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in sixty (60) calendar days or within such longer period specified in the notice, or the defaulting Party is not diligently pursuing a cure, or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer is in material default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer is in default, the Developer shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer with notice and opportunity to cure as provided for in paragraph (a) through (e) above, except that the time periods in paragraphs (a), (b), (c) and (e) shall be ninety (90) days ("Extended Cure Period").

Section 8.2. Annual Review. City shall, every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or email to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such annual review. Developer shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the Developer's receipt of the written decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

Section 8.3. Estoppel Certificates. City shall, with at least twenty (20) calendar days prior written notice, execute, acknowledge, and deliver to Developer, Developer' lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(a) At Developer's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's performance of the Agreement or

violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City or Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to section 8.1 (c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by either Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City including in the event of a pandemic, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as Exhibit D, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer' Obligations. Termination of this Agreement shall eliminate any further obligation of Developer to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.8, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10

OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. Developer shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager, such consent shall not be unreasonably withheld or conditioned. Any assignment or transfer prohibited by this Agreement will be considered an immediate breach of this Agreement and City may elect to immediately terminate this Agreement as it applies to the assumed property. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City and Developer shall execute an "Assignment and Assumption Agreement" in the form attached hereto as Exhibit E. Nothing in this Section 10.1 applies to the Developer's capitalization or ownership provisions.

Section 10.2. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer.

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile or email (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile or email transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile or email after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other

address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Mendota
643 Quince Street
Mendota, CA 93640
Attention: City Manager

And to: Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno, California 93720
Attention: John P. Kinsey, Esq.

If to Developer: Left Mendota I, LLC
1315 N North Branch St, Suite D
Chicago, IL 60642
Attention: Chris Lefkovitz

And to: Katchko Vitiello & Karikomi, PC
11835 W Olympic Blvd 860E
Los Angeles, California 90064
Attention: Yelena Katchko, Esq.

Section 10.4. Governing Law and Binding Arbitration. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Fresno, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings (“Rules”) of the Judicial Arbitration and Mediation Services (“JAMS”). If the Parties cannot agree on an arbitrator within 30 days of the first notice by either Party of the need for arbitration, the arbitrator shall be chosen in accordance with the then current Rules of JAMS. The arbitrator shall apply California substantive law and shall have the power to enforce the rights, remedies, duties, liabilities and obligations of discovery by the imposition of the same terms, conditions and penalties as can be imposed in like circumstances in a civil action by a court of competent jurisdiction of the State of California. The arbitrator shall have the power to grant all legal and equitable remedies provided by California law and award compensatory damages provided by California law, except that punitive damages shall not be awarded. The arbitration award shall be final and binding upon the Parties and may be enforced through an action thereon brought in the Superior Court for the State of California in Los Angeles County.

Section 10.5. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If -any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City and Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer agrees that Developer may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the

adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer operate the Project in violation of the Agreement, or any applicable regulations issued pursuant to the California Cannabis Laws, as may be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Fresno.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) **Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) **Number and Gender.** In this Agreement, the neutral gender includes the feminine and masculine, and the singular includes the plural, and the word "person" includes corporations, partnerships, firms, or associations, wherever the context requires.

(g) **Mandatory and Permissive.** "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

(h) **Term Includes Extensions.** All references to the Term of this Agreement shall include any extensions of such Term.

(i) **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) **Other Documents.** The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) **Time is of the Essence.** Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) **Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) **Document Preparation.** This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) **Advice of Legal Counsel.** Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) **Attorney's Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) **Calculation of Time Periods.** Unless expressly stated otherwise, all time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

(q) **Confidentiality.** Both Parties agree to maintain the confidentiality of the other Party's "Confidential Information" under this Agreement and shall not disclose such information to third parties. "Confidential Information" shall include, but not be limited to, business plans, trade secrets, and industry knowledge. Confidential Information shall not apply to information that: (i) is in the public domain at the time of disclosures or (ii) is required to be disclosed pursuant to a court order, governmental authority, or existing state law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the Effective Date of the Agreement, as defined above.

“CITY”

“DEVELOPER”

Date: _____, 2020

Date: _____, 2020

CITY OF MENDOTA, CA
a California Municipal Corporation

LEFT MENDOTA I, LLC, a Delaware
Limited Liability Company

By: Cristian Gonzalez
Its: City Manager

By:
Its:

Attest:

Celeste Cabrera-Garcia
City Clerk

Approved to as Form:

John P. Kinsey
City Attorney

EXHIBIT A

Legal Description of the Land

The land referred to below is situated in the County of Fresno, State of California, and is described as follows:

Parcel 1:

That portion of the Southeast quarter of Section 31, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, in the City of Mendota, County of Fresno, State of California, according to the Official Plat thereof, described as follows:

Beginning at a point on the East line of said Section 31, which bears North 0° 44' East, a distance of 646.62 feet from the Southeast corner of said Section; thence continuing along the Easterly line of said Section, North 0° 44' East, a distance of 973.11 feet; thence South 46° 44' West, a distance of 1249.23 feet to a point on the Northeasterly right of way line of Southern Pacific Railroad; thence South 43° 16' East, a distance of 700 feet along said Northeasterly right of way line; thence North 46° 44' East a distance of 573.25 feet to the Point of Beginning.

Excepting therefrom the Southwesterly 80 feet thereof as granted to the City of Mendota in Deed recorded May 3, 1973 in Book 6159, at Page 983, Instrument No. 41480, Fresno County Records.

APN: 013-280-15

Parcel 2:

That portion of the South half of the South half of the South half of Section 31, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, in the City of Mendota, County of Fresno, State of California, according to the Official Plat thereof, described as follows:

Beginning at the intersection of the South line of said Section 31, with the Westerly right of way line of the Southern Pacific Railroad Company's Right of Way; thence North 43° 16' West, 49.42 feet; thence North 49° 26 1/2' West, 446.10 feet; thence South 46° 44' West 202 feet; thence South 43° 16' East, 258.78 feet to a point on the South line of said Section 31; thence along the South line of said Section, North 89° 57' East to the point of beginning.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances as heretofore reserved of record.

APN: 013-162-14S

Parcel 3:

A Tract of Land in Section 31, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, in the City of Mendota, County of Fresno, State of California, according to the Official Plat thereof, described as follows:

Beginning at a point in the Easterly boundary of said Section 31, distant therealong North 01° 30' 19" East 534.96 feet from the Southeast corner of said Section 31; thence leaving said Easterly boundary South 23° 45' 57" West 101.78 feet; thence South 45° 54' 32" West 335.44 feet; thence South 00° 05' 34" West 10.60

feet to a point in the Southwesterly boundary of that certain 2.53 acre Tract of Land described as Tract Three of Parcel F-26, F-27 and F-28 in that certain Declaration of Taking recorded on October 17, 1968, in Book 5626 Page 838 of Official Records; thence along said boundary North 42° 29' 41" West 138.48 feet; thence leaving said Southwesterly boundary along the Northwesterly boundary of said 2.53 acre Tract described in said Declaration of Taking, North 47° 30' 19" East 513.25 feet to a point in the Easterly boundary of said Section 31; thence leaving said Northwesterly boundary along the Easterly boundary of said Section 31, also being the Easterly boundary of said 2.53 acre Tract described in said Declaration of Taking South 01° 30' 19" West 111.71 feet to the Point of Beginning.

Excepting therefrom all oil, gas and other hydrocarbon substances in and under said land and the right to remove the same provided that all digging, drilling or other extractive operations are conducted in such manner as not to interfere with the use of the land by, or any of the facilities of the United States as may be conclusively determined by it acting through the Secretary of the Interior or his duly authorized representative.

APN: 013-280-22S

Parcel 4:

A Tract of Land in the Southeast quarter of the Southeast quarter of Section 31, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, in the City of Mendota, County of Fresno, State of California, as per Plat thereof, described as follows:

Beginning at Point "A" of Tract 2 described in Court Order recorded October 17, 1968 as Instrument No. 74385 in Book 5626 Page(s) 838, of Official Records, said Point "A" also being a point on the North boundary of Parcel 5 in the Deed from O. F. Matheson, et al, recorded January 6, 1960 in Book 4322 Page(s) 602; thence running along said North boundary South 89° 16' 41" East 50.00 feet; thence leaving said North boundary South 46° 06' 38" West 70.22 feet to a point in the West boundary of said Tract 2, said point being distant North 83° 24' 33" West 128.40 feet from the Southeast corner of said Section 31; thence along said West boundary North 1° 29' 56" East 50.00 feet to the Point of Beginning.

Also excepting therefrom an undivided one-half of all oil, gas, hydrocarbons and other minerals in and under said land as granted to Paul Matheson, et ux, by Deed recorded June 6, 1969 in Book 5693 Page 721 of Official Records;

Also excepting therefrom an undivided one-fourth interest in and to all oil, gas, asphaltum and other hydrocarbons and minerals in or under said land, together with the right, privilege, and easement to enter into and upon said property or any part thereof, in such manner and with such machinery, engines, tools, rigs, materials and supplies as may be property, necessary and usual and therein or thereon to explore, dig, mine and drill for the said reserved substances, and to erect buildings, barracks, tanks and other structures, usual, proper or necessary to extract, sever and remove all or any of the reserved portion of said substances from said land as reserved in the Deed recorded December 8, 1973, as Document No. 111142, in Book 6249 Page 144 of Official Records.

APN: 013-280-19

Parcel 5:

A Tract of Land in the Southeast quarter of the Southeast quarter of Section 31, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, in the City of Mendota, County of Fresno, State of California, as per Plat thereof, described as follows:

Beginning at Point "B" of Tract 3 described in Court Order recorded October 17, 1968 as Instrument No. 74385 in Book 5626 Page(s) 838, said Point "B" being a point in the South boundary of the land described in the Deed to Paul Matheson, et al, recorded September 8, 1964 in Book 5062 Page(s) 193 of Official Records; thence leaving said Southerly boundary and running along the Easterly boundary of said Tract 3 the following 2 courses: North 1° 29' 56" East 31.97 feet; thence North 18° 06' 05" East 293.7 feet; thence leaving said Easterly boundary South 89° 16' 41" East 119.54 feet to a point in the East line of said Section 31; thence running along said East line South 1° 30' 19" West 60.00 feet to a point in said South boundary, said point being distant along said East line North 1° 30' 19" East 63.13 feet from the Southeasterly corner of said Section 31; thence leaving said East line and running along said South boundary North 89° 16' 41" West 127.92 feet to the Point of Beginning.

Excepting therefrom any portion of said land lying Southeasterly of the right of way line of the Southern Pacific Railroad Company.

Also excepting an undivided one-half of all oil, gas, hydrocarbons and other minerals in and under said land as granted to Paul Matheson, et ux, by Deed recorded June 6, 1969 in Book 5693 Page 721, Official Records.

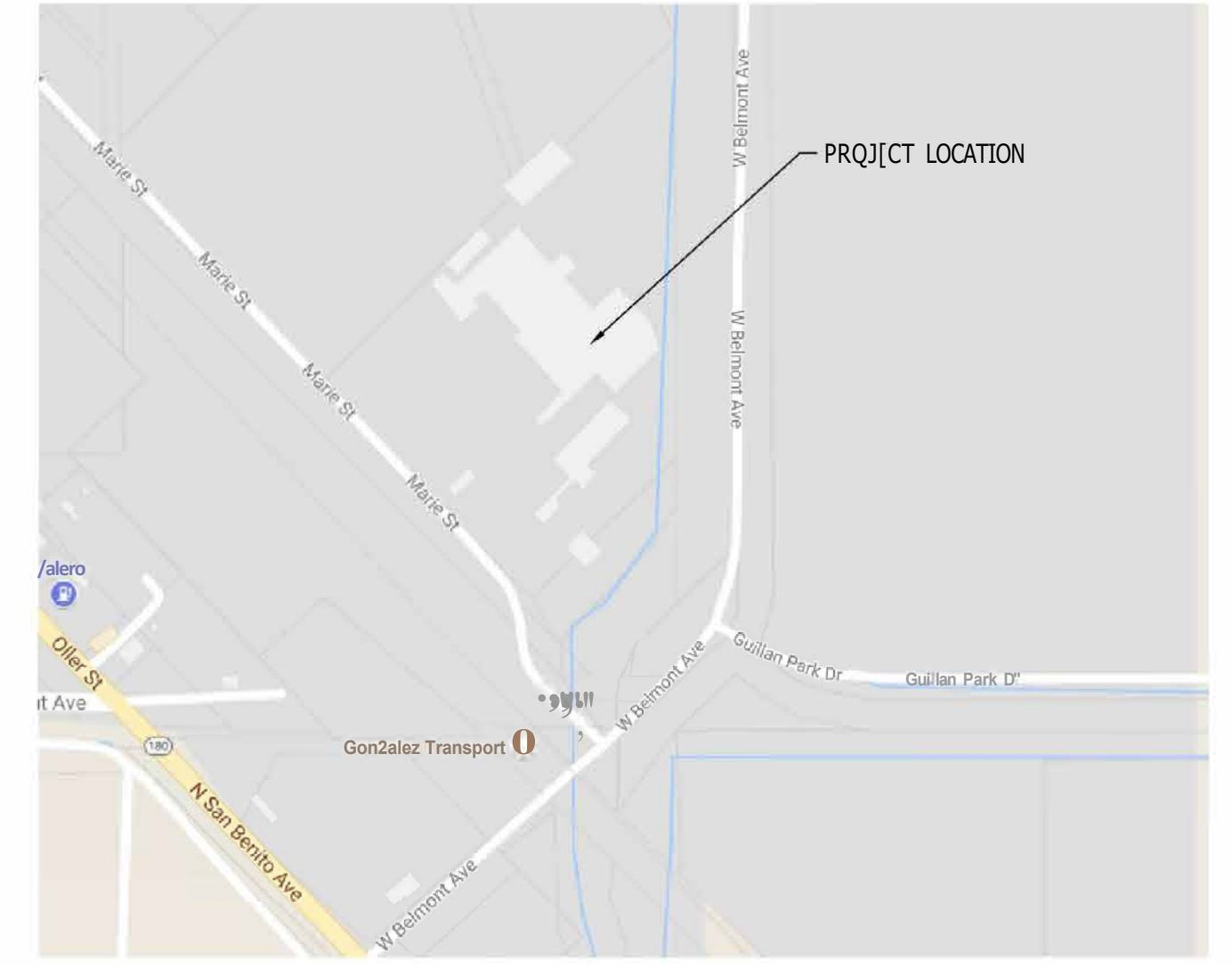
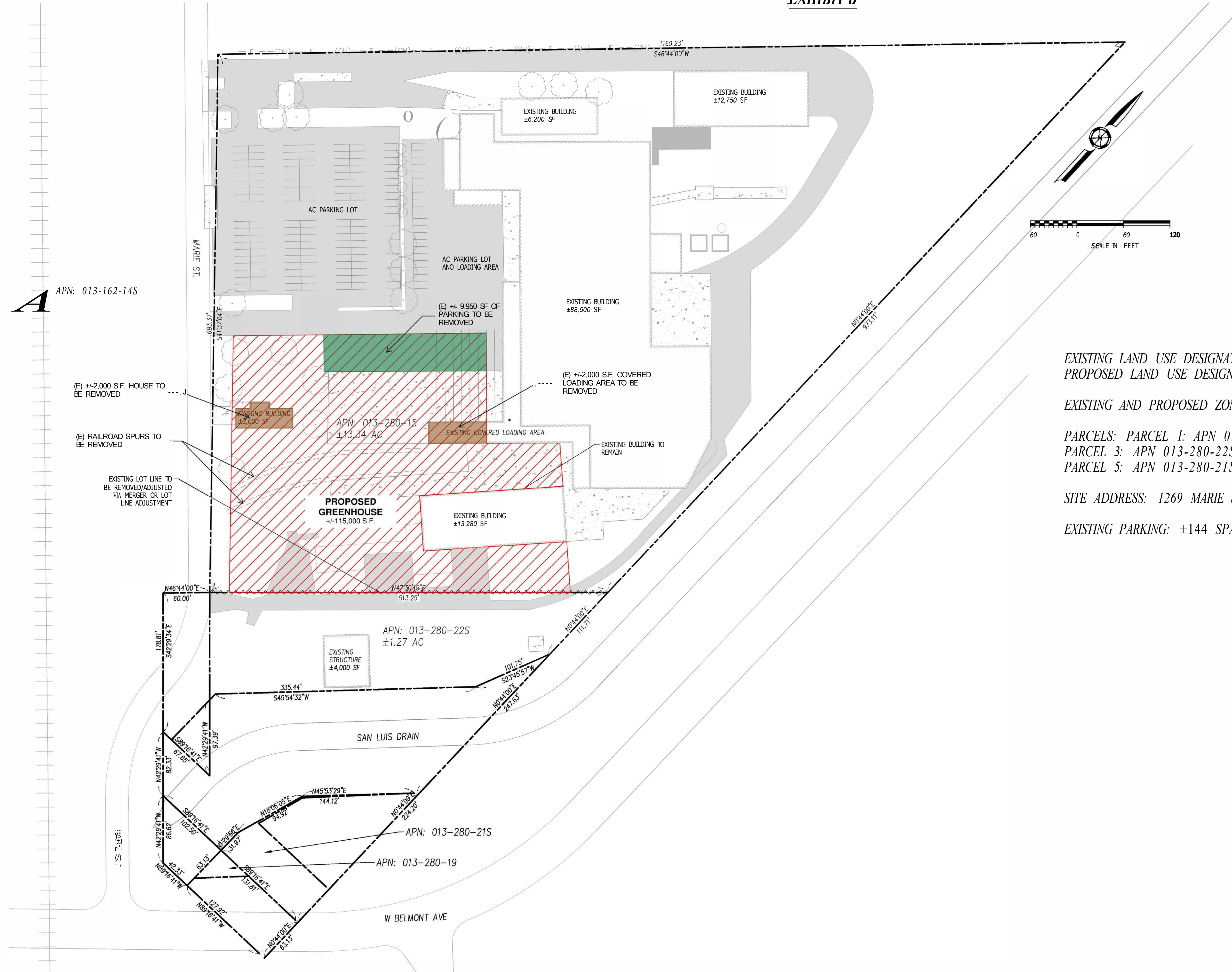
Also excepting an undivided one-fourth interest in and to all oil, gas, asphaltum and other hydrocarbons and minerals in or under said land, together with the right, privilege and easement to enter into and upon said property or any part thereof, in such manner and with such machinery, engines, tools, rigs, materials and supplies as may be proper, necessary and usual and therein or thereon to explore, dig, mine, and drill for the said reserved substances, and to erect buildings, barracks, tanks and other structures, usual, proper or necessary to extract, sever and remove all or any of the reserved portion of said substances from said land.

APN: 013-280-21S

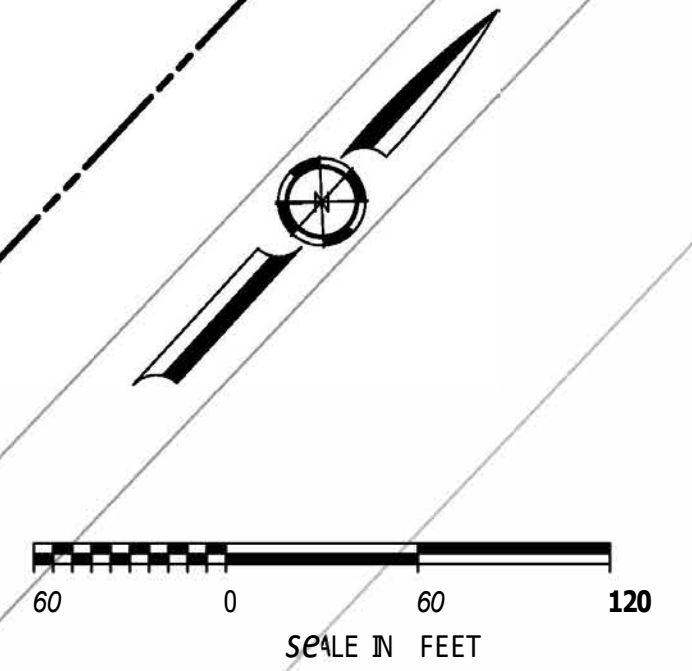
Assessor's Parcel Numbers(s):

- Parcel 1: 013-280-15
- Parcel 2: 013-162-14-S
- Parcel 3: 013-280-22-S
- Parcel 4: 013-280-19
- Parcel 5: 013-280-21-S

EXHIBIT B



VICINITY MAP



EXISTING LAND USE DESIGNATION: PUBLIC QUASI PUBLIC
 PROPOSED LAND USE DESIGNATION: LIGHT INDUSTRIAL

EXISTING AND PROPOSED ZONING DISTRICT: M-1 LIGHT MANUFACTURING

PARCELS: PARCEL 1: APN 013-280-15, PARCEL 2: APN 013-162-14S
 PARCEL 3: APN 013-280-22S, PARCEL 4: APN 013-280-19
 PARCEL 5: APN 013-280-21S

SITE ADDRESS: 1269 MARIE ST. MENDOTA, CA

EXISTING PARKING: ±144 SPACES

APN: 013-162-14S

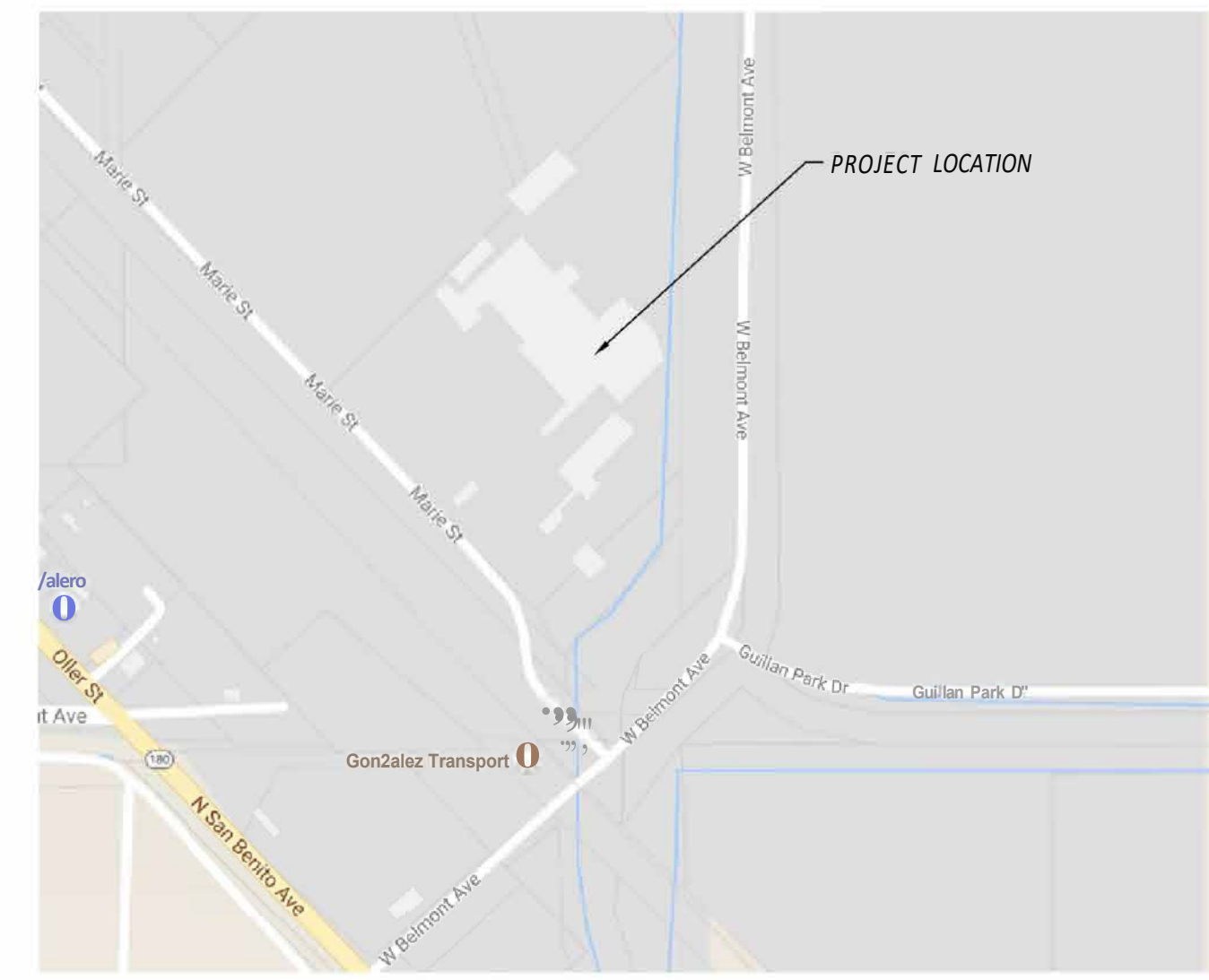
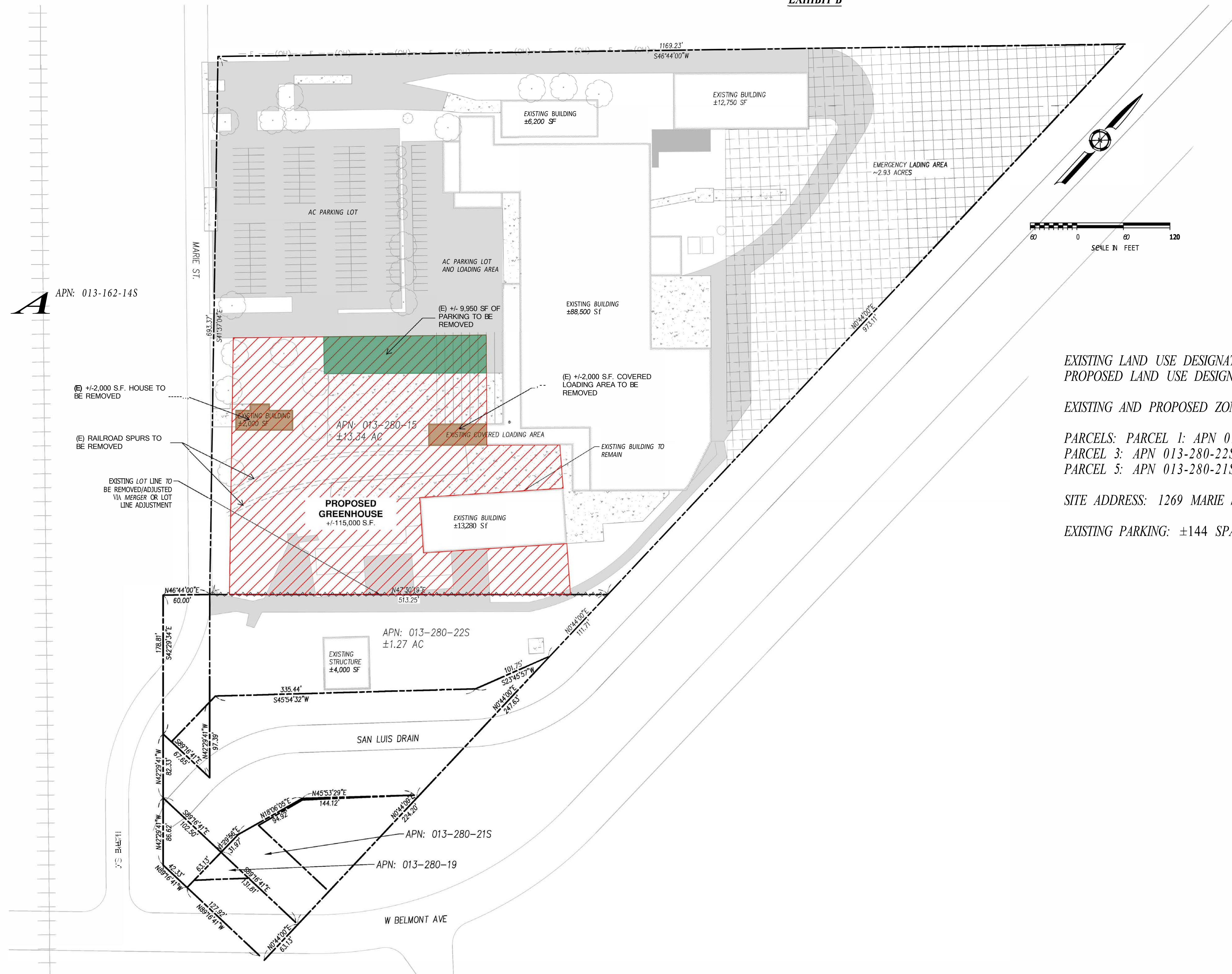
CUP SITE PLAN

CHH - SILVER CREEK
 1269 MARIE STREET, MENDOTA, CA

THIS SITE PLAN IS BASED ON RECORD INFORMATION AND CREATED FROM AN ORTHO RECTIFIED AERIAL PHOTO. IT SHALL BE UTILIZED FOR ILLUSTRATIVE PURPOSES ONLY.

12/02/2020
 SCALE 1" = 60'
 DRAWN BY: WY

EXHIBIT B



VICINITY MAP

EXISTING LAND USE DESIGNATION: PUBLIC QUASI PUBLIC
 PROPOSED LAND USE DESIGNATION: LIGHT INDUSTRIAL

EXISTING AND PROPOSED ZONING DISTRICT: M-1 LIGHT MANUFACTURING

PARCELS: PARCEL 1: APN 013-280-15, PARCEL 2: APN 013-162-14S
 PARCEL 3: APN 013-280-22S, PARCEL 4: APN 013-280-19
 PARCEL 5: APN 013-280-21S

SITE ADDRESS: 1269 MARIE ST. MENDOTA, CA

EXISTING PARKING: ±144 SPACES

APN: 013-162-14S

- (E) ±2,000 S.F. HOUSE TO BE REMOVED
- (E) RAILROAD SPURS TO BE REMOVED
- EXISTING LOT LINE TO BE REMOVED/ADJUSTED VIA MERGER OR LOT LINE ADJUSTMENT

Exhibit C

Notice of Non-Performance Penalty

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota (“City”) and LEFT MENDOTA I, LLC (“Developer”) for the development of property located at 1269 Marie Street, Mendota, California 93640 (“Agreement”), if Developer fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty (“Notice”) to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer that Developer has failed to make payment(s) required by the Agreement. The past due amount is _____. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of _____ (“Penalty Amount”) is hereby imposed. Please remit payment of the Penalty Amount by _____.

City Manager
City of Mendota

Date

Exhibit D

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:**

City of Mendota
643 Quince St
Mendota, CA 93640
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Recording Fee Exempt per Government Code §6103

Notice of Termination

Pursuant to Article 9, Section 9.1 of the Development Agreement by and between the City of Mendota ("City") and LEFT MENDOTA I, LLC ("Developer") for the development of property located at 1269 Marie Street, Mendota, California 93640 ("Agreement"), _____ informs _____ that the Agreement is hereby terminated, in accordance with the terms and conditions as stated therein, pursuant to Article ____, Section ____.

In accordance with Article 9, Section 9.1 of the Agreement, City shall record this Notice of Termination.

Title:
Entity:

Date

Exhibit E

Assignment and Assumption Agreement

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, _____, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California (“City”), **LEFT MENDOTA I, LLC**, a Delaware limited liability company (“Assignor”), and _____, a _____ (“Assignee”). City, Assignor, or Assignee may be referred to herein individually as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

RECITALS

A. City and Assignor entered into a development agreement, dated _____, for the development of property located at 1269 Marie Street, in the City of Mendota, County of Fresno, State of California, Assessor’s Parcel Number 013-280-15 (“Development Agreement”), attached hereto as Exhibit “1” and incorporated herein by this reference;

B. Pursuant to Article 10, Section 10.1 of the Development Agreement, Assignor may transfer all or part of its rights, title, and/or interests in all or a portion of Site, or Project, as those terms are defined in the Development Agreement, to any person, firm, corporation, or entity during the Term of the Development Agreement only with the advance written consent of the City Manager, who shall not unreasonably withhold or condition such consent;

C. Assignor desires to transfer to Assignee some or all of Assignor’s rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

D. Assignee desires to assume some or all of Assignor’s rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

E. The City Manager has agreed to permit Assignor’s transfer of some or all of Assignor’s rights and obligations under the Development Agreement to Assignee, and to Assignee’s assumption of same, subject to the terms and conditions specified in this Agreement;

F. The Parties intend through this Agreement to allow Assignor to transfer, and Assignee to assume, some or all of Assignor’s rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement.

G. The City Council has conducted all necessary proceedings in accordance with City’s Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

Section 1. Assignment. Assignor hereby assigns to Assignee (all/some) of Assignor's rights and obligations under the Development Agreement. If Assignor is transferring only some of Assignor's rights and obligations under the Development Agreement, then the specific rights and obligations subject to transfer shall be specified in Exhibit "1," attached hereto and incorporated herein by this reference.

Section 2. Assumption. Assignee hereby accepts and assumes the foregoing transfer or assignment of (all/some) of Assignor's rights and obligations under the Development Agreement.

Section 3. Consent. In accordance with Article 10, Section 10.1 of the Development Agreement, the City Manager hereby consents to Assignor's transfer of, and Assignee's assumption of, Assignor's rights and obligations under the Development Agreement, as specified herein, subject to any reasonable terms and conditions the City Manager may require, as set forth in Exhibit "2," attached hereto and incorporated herein.

Section 4. Conditions of Assignment. The Parties hereby agree to abide by the terms or conditions of assignment, if any, set forth in Exhibit 2, and acknowledge that City's consent would not have been provided but for the Parties' agreement to abide by the terms or conditions of assignment.

Section 4. Effective Date. The assignment and assumption of rights and obligations as specified herein shall be effective on _____.

Section 5. Terms of the Development Agreement. The terms of the Development Agreement are incorporated herein by this reference. Assignor acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Development Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.

Section 6. Inconsistency. In the event of any conflict or inconsistency between the terms of the Development Agreement and the terms of this Agreement, the terms of the Development Agreement shall govern.

Section 7. Further Actions. Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other Parties hereto, such further instruments of transfer and assignment and to take such other action as such the other Parties may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

“City”

Date: _____, ____

CITY OF MENDOTA, CA
a California Municipal Corporation

By: Cristian Gonzalez
Its: City Manager

Attest:

City Clerk

Approved to as Form:

John P. Kinsey
City Attorney

“Assignor”

Date: _____, ____

LEFT MENDOTA I, LLC, a Delaware Limited
Liability Company

By:
Its:

“Assignee”

Date: _____, ____

Name:
Corporate Status:

Title:
Name:

Exhibit 1
(Interest Subject to Transfer)

Exhibit 2
(Conditions of Consent)