CITY OF MENDOTA

"Cantaloupe Center Of The World"

CITY OF MENDOTA
PLANNING COMMISSION
AGENDA

City Council Chambers
Mendota, CA 93640
REGULAR MEETING
September 21, 2021
6:30 P.M.

The Mendota City Planning Commission welcomes you to its meetings, which are scheduled for the 3rd Tuesday every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Planning Commissioners may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phone off. Thank you for your respect and consideration.**

Any public writings distributed by the City of Mendota to at least a majority of the Planning Commission 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.

In compliance with the Americans with Disabilities Act, those 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.

Due to COVID-19, public in-person participation at this meeting is not permitted at this time. To participate in this meeting via Zoom, please use the following information:
Dial-in number: 1(669) 900-6833 Meeting ID: 963 3439 4752 Password: 081625
https://zoom.us/j/96334394752?pwd=NWRGeVViSVNnVFlLaUtzNytXemhodz09

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adjustments to Agenda

2. Adoption of final Agenda

MINUTES AND NOTICE OF WAIVING OF READING

1. Approval of the minutes of the regular Planning Commission meeting of April 20, 2021.

2. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA

The public is invited to speak to the Planning Commission at this time about any item that is not on the Agenda. Please limit your comments to five (5) minutes. Please note that the Planning Commission cannot take action on any item not listed on the agenda.

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fresno Line: (559) 266-6456 Fax: (559) 655-4064
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ci.mendota.ca.us

PUBLIC HEARING

1. Commission discussion and consideration of **Resolution No. PC 21-04**, making a recommendation to the City Council regarding amendments to Mendota Municipal Code Sections 17.99.020 and 17.99.060 regarding the Commercial Cannabis Overlay District.

    a. *Receive report from City Planner O'Neal*
    b. *Inquiries from Planning Commission to staff*
    c. *Chairperson Luna opens the public hearing*
    d. *Once all comment has been received, Chairperson Luna closes the public hearing*
    e. *Commission considers Resolution No. PC 21-04 for adoption*

2. Commission discussion and consideration of **Resolution No. PC 21-05**, adopting a mitigated negative declaration pursuant to the California Environmental Quality Act; **Resolution No. PC 21-06** approving a conditional use permit; and **Resolution No. PC 20-07**, making a recommendation to the City Council regarding a development agreement in the matter of Application No. 21-01, the Left Mendota II, LLC Commercial Cannabis Project.

    a. *Receive report from City Planner O'Neal*
    b. *Inquiries from Planning Commission to staff*
    c. *Chairperson Luna opens the public hearing*
    d. *Once all comment has been received, Chairperson Luna closes the public hearing*
    e. *Commission considers Resolution Nos. PC 21-05, PC 21-06, and PC 21-07 for adoption*

3. Commission discussion and consideration of **Resolution No. PC 21-08**, making a recommendation to the City Council regarding amendment of a development agreement in the matter of Application No. 20-24, the Left Mendota I, LLC Commercial Cannabis Project.

    a. *Receive report from City Planner O'Neal*
    b. *Inquiries from Planning Commission to staff*
    c. *Chairperson Luna opens the public hearing*
    d. *Once all comment has been received, Chairperson Luna closes the public hearing*
    e. *Commission considers Resolution No. PC 21-08 for adoption*

PLANNING DIRECTOR UPDATE

PLANNING COMMISSIONERS' REPORTS

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 Planning Commission Regular Meeting of Tuesday, September 21, 2021 was posted on the outside bulletin board of City Hall, 643 Quince Street on Friday, September 17, 2021 at 4:15 p.m.

Celeste Cabrera-Garcia, City Clerk

CITY OF MENDOTA
PLANNING COMMISSION
MINUTES

Regular Meeting **Tuesday, April 20, 2021** **6:30 p.m.**

Meeting called to order by Chairperson Luna at 6:30 PM.

Roll Call

Commissioners Present: Chairperson Juan Luna, Vice-Chairperson Jose Gutierrez, Commissioners Libertad Lopez, Jonathan Leiva, and Jessica Sanchez (at 6:34 p.m.)

Commissioners Absent: Commissioner Joshua Perez

Staff Present: Cristian Gonzalez, City Manager; Jeffrey O'Neal, City Planner; Jennifer Lekumberry, Director of Administrative Services; and Celeste Cabrera-Garcia, City Clerk

Flag Salute led by Commissioner Lopez

FINALIZE THE AGENDA

1. Adjustments to Agenda

2. Adoption of final Agenda

A motion was made by Commissioner Leiva to adopt the agenda, seconded by Commissioner Lopez; unanimously approved (4 ayes, absent: Perez and Sanchez).

MINUTES AND NOTICE OF WAIVING OF READING

1. Approval of the minutes of the regular Planning Commission meeting of February 16, 2021, and the minutes of the special Planning Commission meetings of February 17, 2021 and March 3, 2021.

3. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

A motion to approve items 1 and 2 was made by Commissioner Leiva, seconded

Commissioner Lopez; unanimously approved (4 ayes, absent: Perez and Sanchez).

At 6:34 p.m. Commissioner Sanchez joined the meeting.

PUBLIC HEARING

1. Commission discussion and consideration of **Resolution No. PC 21-01**, recommending that the City Council amend Mendota Municipal Code Section 17.99.080 to repeal the prohibition of cannabis dispensaries in the Commercial Cannabis Overlay District.

Chairperson Luna introduced the item and City Planner O'Neal provided the report.

Discussion was held on the item.

At 6:38 p.m. Chairperson Luna opened the hearing to the public and, hearing no one present willing to comment, closed it in that same minute.

City Clerk Cabrera-Garcia conducted a roll call vote for the approval of Resolution No. PC 21-01, recommending that the City Council amend Mendota Municipal Code Section 17.99.080 to repeal the prohibition of cannabis dispensaries in the Commercial Cannabis Overlay District.

Chairperson Luna: Yes; Vice-Chairperson Gutierrez: Yes; Commissioner Lopez: No; Commissioner Perez: Absent; Commissioner Sanchez: Yes; and Commissioner Leiva: No.

Resolution No. PC 21-01 was approved by a unanimous vote of three (3) ayes (no: Leiva and Lopez, absent: Perez).

2. Commission discussion and consideration of **Resolution No. PC 21-02**, making a determination of exemption from the California Environmental Quality Act and approved a conditional use permit, and **Resolution No. PC 21-03**, recommending that the City Council approve a development agreement with Element 7 Mendota LLC.

Chairperson Luna introduced the item and City Planner O'Neal summarized the report.

Discussion was held on the item.

At 6:49 p.m. Chairperson Luna opened the hearing to the public.

Josh Black – commented on the item.

Discussion was held on the comments made by Mr. Black and on the project.

Dino Perez – commented on the item.

Discussion was held on the comments made by Mr. Perez and on the item.

At 7:24 p.m. Chairperson Luna closed the hearing to the public.

City Clerk Cabrera-Garcia conducted a roll call vote for the approval of Resolution No. PC 21-02, making a determination of exemption from the California Environmental Quality Act and approved a conditional use permit.

Chairperson Luna: Yes; Vice-Chairperson Gutierrez: Yes; Commissioner Lopez: No; Commissioner Perez: Absent; Commissioner Sanchez: Yes; and Commissioner Leiva: No.

Resolution No. PC 21-02 was approved by a unanimous vote of three (3) ayes (absent: Perez).

City Clerk Cabrera-Garcia conducted a roll call vote for the approval of Resolution No. PC 21-03, recommending that the City Council approve a development agreement with Element 7 Mendota LLC.

Chairperson Luna: Yes; Vice-Chairperson Gutierrez: Yes; Commissioner Lopez: No; Commissioner Perez: Absent; Commissioner Sanchez: Yes; and Commissioner Leiva: No.

Resolution No. PC 21-03 was approved by a unanimous vote of three (3) ayes (no: Lopez and Leiva, absent: Perez).

PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA

Jessica Sanchez – commented on the Element 7 Mendota LLC project.

Discussion was held on Commissioner Sanchez's comments.

PLANNING DIRECTOR UPDATE

City Manager Gonzalez reported on the upcoming Earth Day event scheduled for Thursday, April 22nd; the grand opening of the Las Primas Lavolandia; the grand opening of the Mendota Pharmacy; an upcoming job fair for the Boca Del Rio project that will be held on May 1st; and the City being awarded a Proposition 64 grant.

City Planner O'Neal provided a timeline on the items that were discussed and approved at the meeting.

PLANNING COMMISSIONERS' REPORTS

Commissioner Leiva reported on other cities who hold trainings for their Planning Commission.

Discussion was held on Commissioner Leiva's comments.

ADJOURNMENT

At the hour of 7:34 p.m. with no more business to be brought before the Planning Commission, a motion for adjournment was made by Commissioner Leiva, seconded by Commissioner Lopez; unanimously approved (5 ayes, absent: Perez).

_____
Juan Luna, Chairperson

ATTEST:

_____
Celeste Cabrera-Garcia, City Clerk

AGENDA ITEM – STAFF REPORT

TO: HONORABLE CHAIR AND COMMISSIONERS

FROM: JEFFREY O'NEAL, AICP, CITY PLANNER

SUBJECT: ZONING TEXT AMENDMENT TO MENDOTA MUNICIPAL CODE CHAPTER 17.99

DATE: SEPTEMBER 21, 2021

ISSUE

Shall the Planning Commission adopt Resolution No. PC 21-04, recommending that the City Council amends Mendota Municipal Code Section 17.99.020 adding definitions and Section 17.99.060 regarding permitted uses in the Commercial Cannabis Overlay District?

BACKGROUND

In addition to the State of California's Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), Chapters 8.37 (Commercial Cannabis Businesses) and 17.99 (Commercial Cannabis Overly District) provide the regulations applicable to non-personal cannabis activities in Mendota. Pursuant to these local regulations, an applicant wishing to undertake commercial cannabis activities must meet certain location criteria, receive approval of a conditional use permit, and enter into a development agreement with the City. Since the enaction of the ordinances, each has been amended on occasion to modify various provisions, remove inconsistencies or conflicts, and streamline processes.

In May 2021, Section 17.99.080 was amended to remove the prohibition on dispensaries within the Commercial Cannabis Overlay District (CCOD). However, certain types of retail establishments are still not expressly allowed within the CCOD, and the City has determined that additional amendments to Chapter 17.99 are necessary. Accordingly, at this time the Planning Commission will be asked to review proposed changes to Sections 17.99.020 and 17.99.060 and make a recommendation to the City Council.

ANALYSIS

The proposed amendments would add definitions for "non-storefront retail" and "retail" to Section 17.99.020 and add "non-storefront retail" to Section 17.99.060 as a permitted use in the CCOD subject to issuance of a conditional use permit. The intention of these amendments is to clarify the regulations applicable to projects that have already been approved and to more easily facilitate future projects. Additionally, the existing ordinance makes reference to the Bureau of Cannabis Control, which, along with divisions of other State agencies, was recently consolidated into the new *Department* of Cannabis Control. The proposed changes also include updating that reference, which in and of itself is not a substantive amendment.

ENVIRONMENTAL

The first step in complying with the California Environmental Quality Act (CEQA) is to determine whether the activity in question constitutes a "project" as defined by CEQA (Public Resources

Code Section 21000, et seq.) and the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, Section 15000, et seq.). A "project" consists of the whole of an action (i.e., not the individual pieces or components) that may have a direct or reasonably foreseeable indirect effect on the environment. The second step is to determine whether the project is subject to or exempt from the statute. This proposal qualifies as a project under CEQA because it involves an amendment to the zoning ordinance as described in CEQA Guidelines Section 15378(a)(1).

The proposal does not authorize any particular activity. Any proposed development would be subject to CEQA analysis. Therefore, staff supports a finding consistent with CEQA Guidelines Section 15061(b)(3). 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.

PUBLIC NOTICE

Notice of the public hearing was published in the September 10, 2021 edition of *The Business Journal* and was posted at City Hall.

FISCAL IMPACT

Approximately $1,500 of staff time for preparation of documents and public noticing. The amendment may result in extensive future revenue via approval and operation of commercial cannabis facilities.

RECOMMENDATION

Staff recommends that the Planning Commission Adopts Resolution No. PC 21-04, forwarding a recommendation to the City Council to amend Sections 17.99.020 and 17.99.060 of the Mendota Municipal Code.

Attachment:

Resolution No. PC 21-04, including proposed ordinance language

AGENDA

BEFORE THE PLANNING COMMISSION
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENDOTA RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF MENDOTA AMENDS MENDOTA MUNICIPAL CODE SECTIONS 17.99.020 AND 17.99.060 REGARDING DEFINITIONS AND PERMITTED USES IN THE COMMERCIAL CANNABIS OVERLAY DISTRICT

RESOLUTION NO. PC 21-04

WHEREAS, pursuant to the authority granted to the City of Mendota ("City") by Article XI, Section 7 of the California Constitution, the City has the police power to adopt regulations designed to promote the public health, the public morals, or public safety; and

WHEREAS, comprehensive zoning regulations and regulations upon the use of land and property lie within the City's police power; and

WHEREAS, in 1996, the voters of the State of California adopted the Compassionate Use Act of 1996 ("CUA"), the intent being to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of state criminal prosecution under limited, specified circumstances; and

WHEREAS, in 2003, Senate Bill 420, titled the "Medical Marijuana Program Act" ("MMPA"), was enacted to clarify the scope of the CUA and to promulgate rules by which counties and cities can adopt and enforce regulations consistent with its provisions; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted, affirming that counties and cities can under state law adopt ordinances that control and restrict the location and establishment of a medical cannabis cooperative, collective, dispensary, operator, establishment, or provider; and

WHEREAS, in late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243, and SB 643, collectively called the Medical Marijuana Regulation and Safety Act ("MMRSA"), which provides a statewide program for the licensing and regulation of commercial medical cannabis activity, specifically, the operation of medical cannabis dispensaries and the delivery and cultivation of medical cannabis; and

WHEREAS, in November 2016, the voters of the State of California adopted the Adult Use of Marijuana Act ("AUMA"), the intent being to establish a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of cannabis; and

WHEREAS, in 2012, as amended in 2016 and 2017, the City adopted Chapter 8.36 of the Mendota Municipal Code pertaining to recreational and medical cannabis activities, which banned commercial cannabis cultivation, commercial deliveries of cannabis, and cannabis dispensaries in the City based upon various health, safety, welfare, and land use findings relating to cannabis cultivation, dispensing, and consumption; and

WHEREAS, in 2017, the Legislature passed, and the Governor signed, SB 94 and AB 133, the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), integrating the MCRSA and AUMA to create a general framework for the regulation of commercial medicinal and adult-use cannabis in California; and

WHEREAS, in 2017, the City added Chapter 17.99 to the Mendota Municipal Code ("MMC") establishing the Commercial Cannabis Overlay District ("CCOD") in order to address a number of health, safety, and welfare concerns associated with cannabis activities, and amended Chapter 8.36 for consistency therewith; and

WHEREAS, on June 11, 2019, the City adopted Ordinance No. 19-06, which amended Chapter 8.36 of the MMC to eliminate the ban on cannabis dispensaries, and added Chapter 8.37 to the MMC, which established regulations for the operation of commercial cannabis businesses, including cannabis dispensaries, referred to therein as commercial cannabis retail businesses; and

WHEREAS, on September 22, 2020, the City adopted Ordinance No. 20-16 to amend Chapter 17.99 of the MMC to further address a number of health, safety, and welfare concerns associated with cannabis activities within the CCOD, and amended Chapter 8.36 for consistency therewith; and

WHEREAS, on September 22, 2020, the City adopted Ordinance No. 20-16 to preserve and promote the public health, safety, and welfare of its citizens, to facilitate the establishment of permitted commercial cannabis businesses within the City while ensuring such businesses do not interfere with other lawful land uses, and to provide new sources of revenue to fund City services; and

WHEREAS, on May 25, 2021, the City adopted Ordinance Nos. 2021-07 and 2021-08 to create consistency with the City's June 11, 2019, adoption of Ordinance No. 19-06; the City's September 22, 2020, adoption of Ordinance No. 20-16; to avoid internal conflict within the MMC; and to avoid conflicts as the MMC relates to that certain Development Agreement entered into on or about March 13, 2018, between the City and Marie Street Development, LLC, as amended and augmented by Left Mendota I, LLC, with the adoption of City Ordinance No. 21-04 on or about February 9, 2021; and

WHEREAS, the City has determined that further amendments to Chapter 17.99 of Title 17 of the MMC are required in order to properly define specific types of cannabis-related uses and to ensure that the list of permitted uses captures specific activities that may have previously been approved and that may be approved in the future; and

WHEREAS, additional changes include correction of state agency title, which is not a substantive amendment to the language of the zoning ordinance; and

WHEREAS, the proposed amendments to Chapter 17.99 of Title 17 of the MMC will have a positive impact on the City and its citizens by generating significant revenues that would support transportation, parks and recreation, law enforcement, and fire protection services throughout the City.

WHEREAS, the Planning Commission finds that the proposal does not have the potential to have a significant effect on the environment and meets the criteria described in CEQA Guidelines Section 15061(b)(3).

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Mendota recommends that the City Council of the City of Mendota amends the text of Mendota Municipal Code Sections 17.99.020 and 17.99.060 in substantially the form contained in Exhibit "A" hereto.

_____
Juan Luna, Chairperson

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 Planning Commission at a regular meeting of said Commission, held at Mendota City Hall on the 21st day of September 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Celeste Cabrera-Garcia, City Clerk

Exhibit “A”
Resolution No. PC 21-04

Section 17.99.020 of Chapter 17.99 of Title 17 of the Mendota Municipal Code is hereby amended to read as follows:

17.99.020 - Definitions.

"Applicant" shall mean the individual or entity applying for a conditional use permit pursuant to the provisions of this section.

"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 Chapter, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.

"Cannabis dispensary" means any facility or location, whether fixed or mobile, where cannabis is offered, provided, sold, made available or otherwise distributed for commercial purposes to more than two persons.

"Cannabis products" 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.

"Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in Division 10 of the California Business and Professions Code.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform.

"Distribution" means the procurement, sale, and transport of cannabis and cannabis products between entities licensed pursuant to Division 10 of the California Business and Professions Code.

"Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“Non-Storefront Retail” means retail sales of cannabis or cannabis products to customers exclusively via means of delivery by a person authorized to do so by the Department of Cannabis Control.

“Retail” means the retail sale and delivery of cannabis or cannabis products to customers by a person authorized to do so by the Department of Cannabis Control.

"Testing laboratory" or "testing service" means a laboratory, facility, or entity in that offers or performs tests of cannabis or cannabis products and that is both of the following: (1) accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and (2) licensed by the **Department** ~~bureau~~ of **C**annabis **C**ontrol.

Section 17.99.060 of Chapter 17.99 of Title 17 of the Mendota Municipal Code is hereby amended to read as follows:

17.99.060 - Permitted uses.

A. The following uses shall be permitted in the commercial cannabis overlay district if a conditional use permit is obtained:

1. Cannabis cultivation.

2. Cannabis manufacturing.

3. Cannabis testing services.

4. Cannabis distribution.

5. Non-Storefront Retail.

B. In addition to the findings required by section 17.08.050, the following findings shall also be made before any conditional use permit for commercial cannabis activity is granted:

1. That a development agreement has been entered into by and between the city and the applicant, which is consistent with the provisions of this chapter, promotes the purposes and intent of the commercial cannabis

overlay district, and ensures that the property will be used for commercial cannabis activity only.

2. That a cannabis odors plan has been developed to mitigate site odors to the maximum extent feasible using best management practices.

3. That all commercial cannabis activities except cultivation will occur within a fully- or partially-enclosed building, or within a temporary structure, and will not be visible from the property boundary or public right-of-way.

4. That all pesticide use will comply with the state department of pesticide regulations.

5. That a site security plan has been prepared demonstrating sufficient site security measures to prevent all unauthorized access to the site.

6. That a power use plan has been prepared demonstrating sufficient power supply for the proposed use.

7. That the applicant has obtained all necessary state permits and authorizations to engage in the proposed use.

8. That the applicant has provided the city all information required by state authorities pursuant to Division 10 of the California Business and Professions Code.

9. That the applicant will provide the city all information required by the state for any renewal of a state license related to commercial cannabis activity as well as the state licensing authority's decision on any such renewal.

10. That the applicant has consented to the city's inspection, without notice, of any and all records required to be maintained under any local, state, or federal law.

11. That the applicant will immediately provide notice to the city of any suspension or revocation of any state license issued pursuant to

AGENDA

AGENDA ITEM – STAFF REPORT

TO: HONORABLE CHAIRPERSON AND COMMISSIONERS

FROM: JEFFREY O'NEAL, AICP, CITY PLANNER

SUBJECT: APPLICATION NO. 20-21, THE LEFT MENDOTA II, LLC COMMERCIAL CANNABIS PROJECT

DATE: SEPTEMBER 21, 2021

ISSUE

In the matter of Application No. 21-01, the Left Mendota II, LLC Commercial Cannabis Project, shall the Planning Commission:

1. Adopt a mitigated negative declaration pursuant to the California Environmental Quality Act;
2. Approve a conditional use permit; and
3. Make a recommendation to the City Council regarding a development agreement?

BACKGROUND

The State of California's Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) is the primary statute that regulates personal, medicinal, and commercial cannabis activity in the state. In addition to MAUCRSA, Chapters 8.37 (Commercial Cannabis Businesses) and 17.99 (Commercial Cannabis Overly District) of the Mendota Municipal Code (MMC) provide regulations applicable to non-personal cannabis activities at the local level. Pursuant to these local regulations, an applicant wishing to undertake commercial cannabis activities must meet certain location criteria, receive approval of a conditional use permit, and enter into a development agreement with the City.

On January 15, 2021 the Planning Department received an application from Left Mendota II, LLC requesting entitlements and actions to facilitate the construction and operation of a commercial cannabis cultivation facility.

Owner:	Pilibos Sales, Inc.
Applicant:	Left Mendota II, LLC
Representatives:	Chris Lefkovitz
Location:	APN 013-280-29 See attached map and photo
Site Size:	Approximately 15.05 acres
General Plan:	Light Industrial
Zoning:	M-1/CO (Light Manufacturing with Commercial Cannabis Overlay District)
Existing Use:	Vacant
Surrounding Uses:	North – Industrial uses; M-1 East – Airport, police station; A-D, P-F

South – Commercial cannabis uses, industrial uses; M-2/CO
West – Industrial uses; M-1

Street Access: Marie Street via the abutting property to the southeast

The Project Site is currently vacant. The parcel to the immediate southeast is owned by Left Mendota I, LLC and approved for various commercial cannabis activities. APN 013-030-61S to the east contains the remnant infrastructure of the Mendota Biomass (Covanta Energy Corporation) facility, which ceased operation in 2015. The Mendota Police Department and William Robert Johnston Municipal Airport are located to the north and northeast. The San Luis Drain runs south-to-north approximately 400 feet to the east. Across Marie Street to the southwest are the UPRR corridor and various industrial uses.

ANALYSIS

Application No. 21-01 proposes to expand the existing commercial cannabis use at 1269 Marie Street via the entitlement of approximately 15 acres (1111 Marie Street; APN 013-280-29) to allow outdoor cannabis cultivation. Cannabis plants would be planted above ground in five- to seven-gallon plastic pots oriented in rows spaced at five-foot intervals. Drip irrigation lines would also be above ground. The Project site is located immediately to the northwest of the existing operation; harvested product from the Project would be processed at the existing indoor facility next door. The Project would connect to the City's municipal water system and is expected to use approximately 9 million gallons or 27 acre-feet of water per year. The site will be graded such that all irrigation water will remain onsite and irrigation timing and duration will be closely monitored to prevent ponding or wastage. Since the irrigation season is opposite of the region's precipitation season and there will not be any impervious surface, there is not anticipated to be any runoff into the City's storm drainage system. The Project does not propose any onsite buildings, including restrooms, so it is not anticipated that any wastewater will be generated and, accordingly, there would be no connection to the City's wastewater system.

Access to the site would be via existing circulation areas on APN 013-280-15; i.e., the Project site would not have direct access to Marie Street. Onsite circulation would consist of a 20-foot-wide, all-weather surface at the site perimeter. The Project site would be enclosed by a six- to eight-foot-high chain link fence with privacy slats or similar obscuring material(s). The fence would be topped with three-strand barbed wire and/or razor wire. As a secondary barrier, electrified fencing with remote monitoring may be installed. Security lighting hooded and oriented toward the center of the property, along with video equipment monitored offsite, would be installed on the top of the fencing.

As currently proposed, an approximately 2.20-acre area at the southeastern corner of the Project site would remain vacant. That area lies within the Runway Protection Zone of the William Robert Johnston Municipal Airport as identified in the 2018 Fresno County Airport Land Use Compatibility Plan (ALUCP). The Project was considered by the Fresno County Airport Land Use Commission (ALUC) at meetings in February and March, 2021. The ALUC determined that, with exclusion of the 2.20-acre area and compliance with Federal Aviation Administration heights requirements, the Project was compatible with the ALUCP.

The Project would employ approximately 20 persons on a year-round basis and an additional 40 persons during planting and harvesting (April through October). Employee commuting would comprise the majority of vehicles trips.

GENERAL PLAN & ZONING

The site is currently designated for Light Industrial (LI) use by the General Plan and is zoned M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District). The M-1 zone allows agricultural uses, and the CO Overlay District facilitates commercial cannabis activities subject to approval of a conditional use permit and a development agreement.

DEVELOPMENT AGREEMENT

The Development Agreement (DA), the draft version of which is attached, is largely a contract document but also contain provisions for site development and use related to project entitlements, operations, and allowable cannabis license types, along with discussion of financial considerations. The term of the Agreement is 30 years. During that time, the applicant will pay various public benefit fees to the City:

1. Non-Storefront Payment. An annual payment of $85,000 for each non-storefront retailer or microbusiness operating on the site.
2. Quarterly Payment. An annual payment of $250,000 payable in quarterly installments.
3. Square Foot Charge. $8.00 per square foot of existing buildings on the site occupied by entities actively pursuing commercial cannabis activities.
4. Greenhouse Payment. $0.50 per square foot of mixed-light structures being actively used.
5. Outdoor Payment. $0.50 per square foot of outdoor canopy space.

Note that payments would only be required for activities that are actively being performed (i.e., the Project currently proposes only outdoor cultivation, so there would be no Greenhouse Payment). The payments are subject to increases each ten years of the agreement. The agreement also contains provisions for late payment.

CONDITIONAL USE PERMIT FINDINGS

The provisions of MMC Section 17.84.050 require that the following findings be made prior to approval, or in this case amendment, of a conditional use permit:

FINDING No. 1: THE SITE FOR THE PROPOSED USE IS ADEQUATE IN SIZE AND SHAPE TO ACCOMMODATE SUCH USE AND ALL YARDS, SPACES, WALLS AND FENCES, PARKING, LOADING, LANDSCAPING AND OTHER FEATURES TO ADJUST SUCH USE WITH THE LAND AND USES IN THE NEIGHBORHOOD.

Staff believes that the proposed use is compatible with the surrounding uses. The project does not propose any structures, parking or loading areas, or landscaping. It is an agricultural use enclosed by privacy screening and is consistent with the industrial nature of the area.

FINDING No. 2: THE SITE FOR THE PROPOSED USE RELATES TO STREETS AND HIGHWAYS ADEQUATE IN WIDTH AND PAVEMENT TYPE TO CARRY THE QUANTITY AND KIND OF TRAFFIC GENERATED BY THE PROPOSED USE.

The Project is an expansion of an existing use on an abutting property and will access Marie Street, which is intended to support access to industrial facilities, via that property. The Project is anticipated to generate a limited amount of traffic, most of which will be commuter trips.

FINDING No. 3: THE PROPOSED USE WILL HAVE NO ADVERSE EFFECT ON ABUTTING PROPERTY OR THE PERMITTED USE THEREOF.

Uses on the surrounding properties consist of moderate to heavy industrial uses, the Police Department, the airport, and similar uses. The proposed use is considered to be of less or similar intensity to other uses in the vicinity.

FINDING No. 4: THE CONDITIONS STATED IN THE PROJECT APPROVAL ARE DEEMED NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE.

The conditions of approval will serve to accommodate the proposed use while protecting the health, safety, and welfare of the public. Conditions of approval are based upon standards contained within the Mendota General Plan and the Mendota Municipal Code, and upon precedent established through review and approval of similar projects. Further, the proposed conditions will serve to implement the goals and objectives of the General Plan, which itself is intended to provide for logical and orderly development of the City in a manner beneficial to its residents.

ENVIRONMENTAL

The first step in complying with the California Environmental Quality Act (CEQA) is to determine whether the activity in question constitutes a "project" as defined by CEQA, Public Resources Code section 21000, et seq. and the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, section 15000, et seq. A "project" consists of the whole of an action (i.e., not the individual pieces or components) that may have a direct or reasonably foreseeable indirect effect on the environment. The second step is to determine whether the project is subject to or exempt from the statute. This proposal qualifies as a project under CEQA because it involves the issuance to a person of a "lease, permit, license, certificate, or other entitlement for use" as described in CEQA Guidelines section 15378 and will have a direct physical effect on the environment. Additionally, section 15378 expressly includes amendments to a general plan or a zoning ordinance within the definition of "project."[1]

Assembly Bill 52 (AB 52), codified at Public Resources Code section 21080.3.1, et seq., requires that prior to releasing a CEQA document for public review, a lead agency, in this case the City of Mendota, must notify any Native American Tribe that has presented the City with a written request for notification. The City received such a letter from the Santa Rosa Rancheria Tachi Yokut Tribe on August 8, 2016. As a result, the City is obligated to notify Santa Rosa of any

[1] Recently clarified by the California Supreme Court regarding zoning in *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal. 5th 1171.

project for which it intends to prepare a negative declaration, mitigated negative declaration, or environmental impact report prior to releasing the document for public review.

Tribes have 30 days from receipt of the notice to provide comments or request that the City initiate formal consultation. Within a further 30 days, the City must initiate that consultation, the intention of which is to identify potential impacts to tribal cultural resources and any mitigation that can reduce or eliminate those impacts. Once initiated, there is no limit to the duration of the formal consultation: either mitigation is agreed upon; the parties agree that no mitigation is needed; or one party determines that a good-faith effort has been made to agree, but no agreement is forthcoming. The City mailed notice of the project to Santa Rosa on March 18, 2021 via certified mail. Although the Tribe did not respond within the designated timeframe, a Tribal representative emailed the City Planner on June 7, 2021 requesting that an archeological records search and archeological survey be conducted and that the City provide the results of those action to the Tribe. The Project applicant reached out to the Tribe and the parties agreed to include cultural sensitivity training as project mitigation.

Based on the results of the initial study, the City Planner made a preliminary finding on July 7, 2021 that, with implementation of mitigation measures, the project would not have a significant impact on the environment, and that a mitigated negative declaration would be prepared. Also on July 7, 2021, a notice of intent to adopt an initial study/ mitigated negative declaration (IS/MND) was published in *The Business Journal* and filed electronically with the State Clearinghouse.[2] The notice of intent indicated that the combined initial study/ mitigated negative declaration ("IS/MND") would be subject to a public review and comment period starting on July 7, 2021 and ending on August 5, 2021. It further stated that the Mendota Planning Commission would consider the CEQA document and other components of the project at a special meeting on August 9, 2021 and that the Mendota City Council would consider the project at a to-be-determined date no sooner than August 24, 2021. Although the August 9 special meeting was cancelled, CEQA does not require that a new or revised notice of intent be provided to advertise the later date.

SCH, having assigned the unique identifier 2021070121 to the IS/MND, distributed the document to numerous State agencies. Additionally, the City provided a digital download link to the County of Fresno, the Fresno County Fire Protection District/CAL FIRE, and Mid Valley Disposal. The City received two formal comments during the review period:

1. Department of California Highway Patrol dated August 2, 2021. CHP expressed concerns about the effects the project could have on public safety and law enforcement. None of the statements in the letter resulted in modifications to the initial study.
2. California Department of Cannabis Control dated August 3, 2021. CDD is a newly-formed agency that combines the previous responsibilities of a number of other agencies related to cannabis regulation in California. DCC has jurisdiction over the issuance of certain cannabis-related licensing and is a responsible agency under CEQA. The letter contained three comments/requests:

[2] Pursuant to Governor's Executive Order N-80-20, which incorporates by reference EO N-54-20, local filing requirements pursuant to CEQA are conditionally suspended and may be satisfied by filing with the State Clearinghouse.

a. That the IS/MND be modified to acknowledge additional regulatory provisions over which CDFA has jurisdiction.
b. That the IS/MND be modified to address the potential for cumulative impacts.
c. That the City advise applicants for cannabis licenses to provide all technical documents to CFDA as part of their license applications.

The CDFA letter did not suggest that the requested revisions would necessitate recirculation of the IS/MND. The initial study has been updated accordingly.

Additionally, staff received an email from the California Department of Fish and Wildlife (CDFW) on July 12, 2021 asking if a biological survey was conducted for the Project. Staff responded via email that a biological survey had not been prepared and noted that the site is vacant and has no trees, is regularly disked, is fenced on three sides, will not construct and structures or buildings, and is in essence an agricultural use. Photos of the site were provided. CDFW staff acknowledged receipt of that information and did not provide additional comments.

Overall, two mitigation measures were included in the document:

HYD-1 (Offsite Water Use Reduction). Prior to commencement of land use, the City shall identify a list and cost of water conservation and/or recharge projects that would reduce the net increase in water to 1.46 million gallons per year. The applicant shall pay its fair share towards the project(s). Such water conservation projects may include:

- Funding dishwasher, clothes washer, toilet, or landscape replacement and/or rebate programs.
- Identification and elimination of public water system leaks.
- Stormwater capture
- Construction of recharge basins

Agriculture irrigation efficiency projects may be funded and implemented in perpetuity by the project proponent.

TCR-1 (Cultural Sensitivity Training). The [Santa Rosa Rancheria Tachi Yokut] Tribe shall make a presentation at the Project site to all onsite workers. The presentation will show typical artifacts from the area and will explain the laws affecting cultural and tribal resources and the responsibilities of the parties regarding discovery of cultural resources or human remains. To facilitate this training, the applicant shall execute the Tribe's Native American Monitoring Contract.

Staff recommends that the Planning Commission adopts the IS/MND and MMRP as they relate to the conditional use permit.

PUBLIC NOTICE

In addition to the CEQA Notice of Intent published and filed on July 7, 2021, a notice of the September 21, 2021 public hearing was published in the September 10, 2021 edition of *The*

Business Journal, was individually mailed to property owners within 300 feet of the project site, and was posted at City Hall.

FISCAL IMPACT

Review and processing of the planning applications, engineering plans, and building plans are paid for by the applicant, and the project is responsible for payment of development impact fees. As discussed, the project will be responsible for payment of various public benefit fees that can amount to hundreds of thousands of dollars or more annually. Building fees will be determined when a building permit is requested.

RECOMMENDATION

Staff recommends that the Planning Commission:

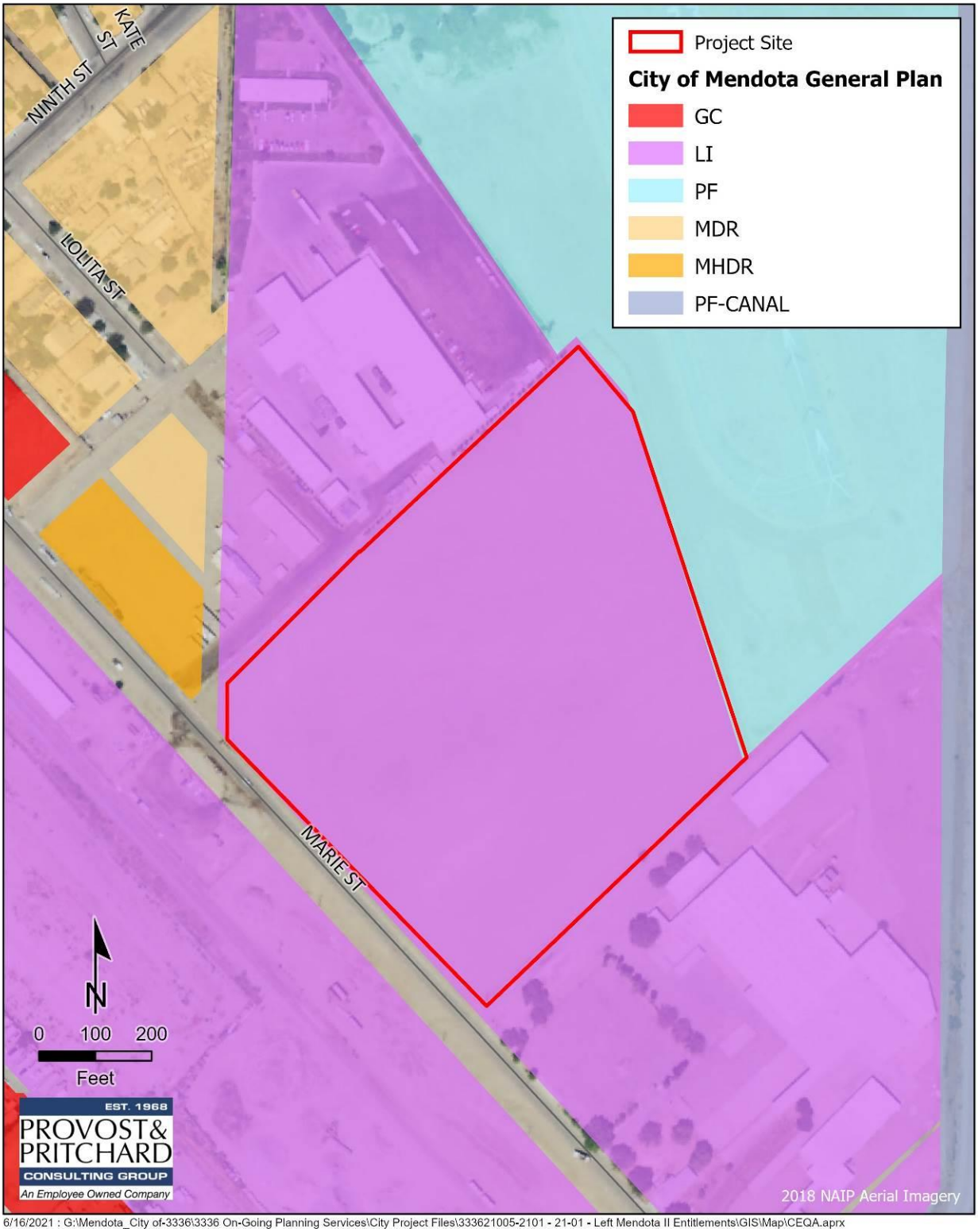
1. Adopts Resolution No. PC 21-05, adopting the mitigated negative declaration and mitigation monitoring and reporting program and determining that, with mitigation incorporated, the project will not result in a significant effect on the environment.
2. Adopts Resolution No. PC 21-06, approving the conditional use permit proposed by Application No. 21-01.
3. Adopts Resolution No. PC 21-07, forwarding a recommendation to the City Council to approve the development agreement proposed by Application No. 21-01.

Attachment(s):

1. Aerial photo and site depiction
2. General Plan Exhibit
3. Zoning Exhibit
4. Assessor's Parcel Map
5. Site Plan
6. Initial Study
7. Resolution No. PC 21-05
8. Resolution No. PC 21-06
9. Resolution No. PC 20-07

AERIAL PHOTO AND SITE DEPICTION

GENERAL PLAN EXHIBIT



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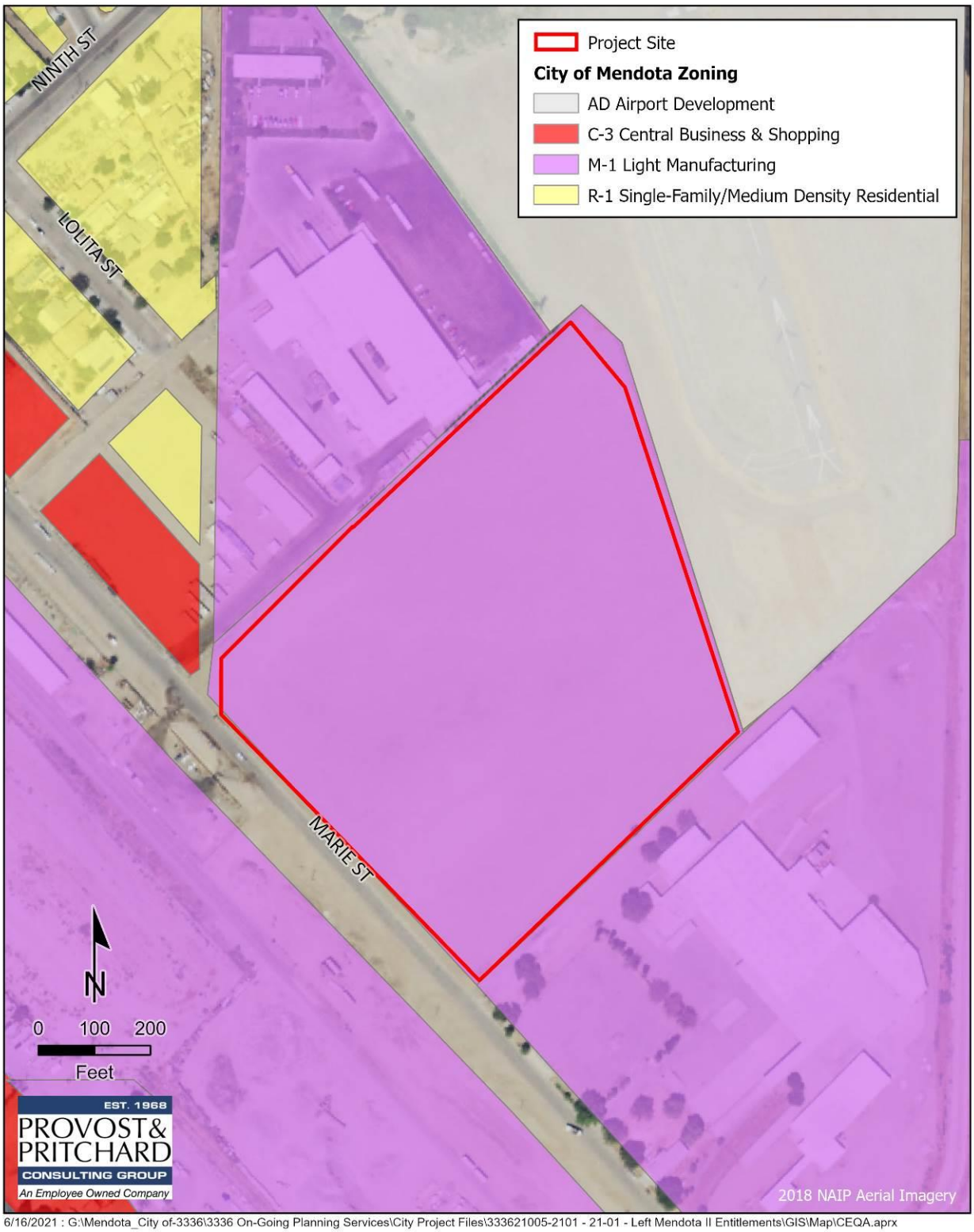
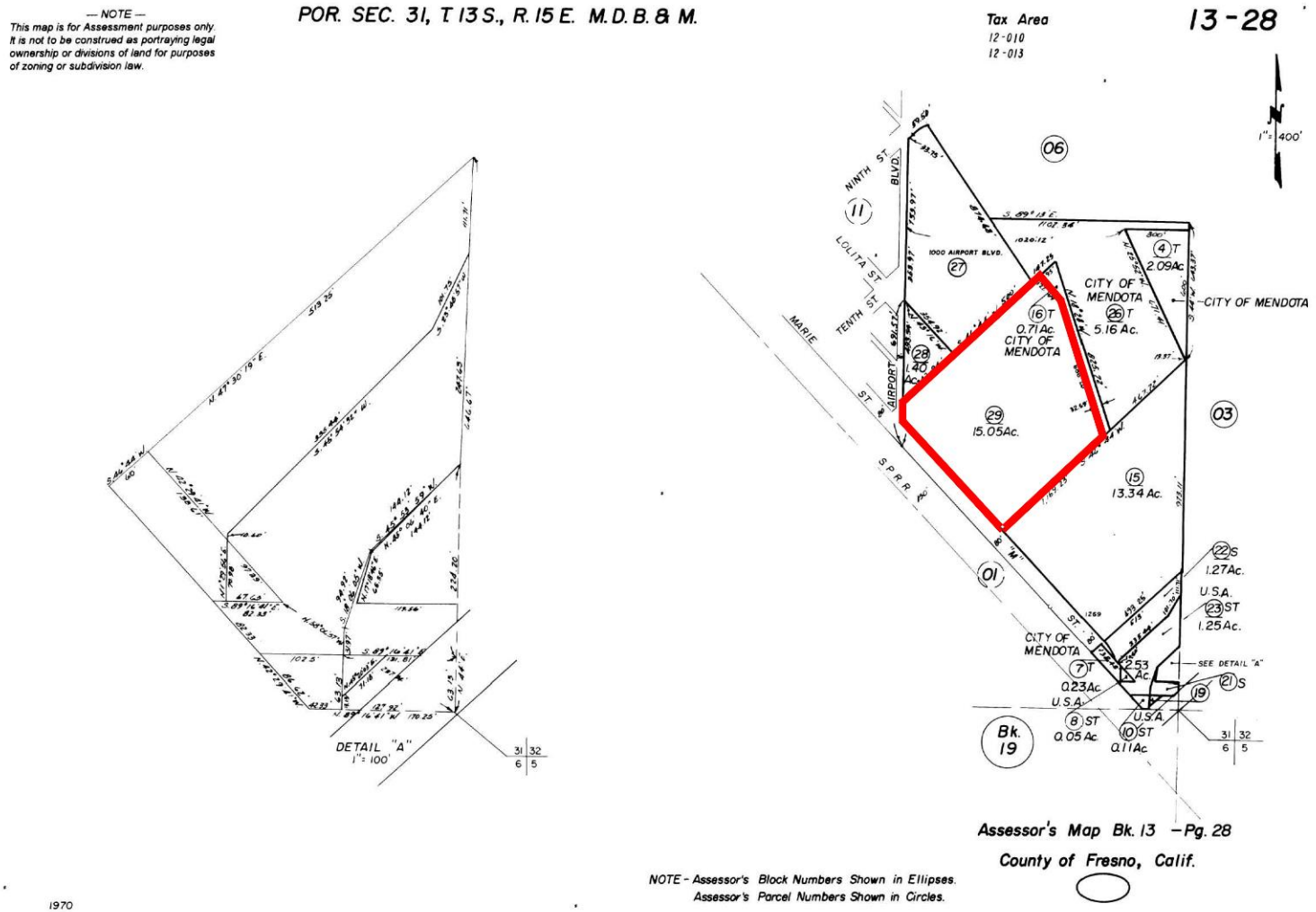
ZONING EXHIBIT



6/16/2021 : G:\Mendota_City of-3336\3336 On-Going Planning Services\City Project Files\333621005-2101 - 21-01 - Left Mendota II Entitlements\GIS\Map\CEQA.aprx

ASSESSOR'S PARCEL MAP



Application No. 21-01
APN 013-280-29

Left Mendota II, LLC
1111 Marie Street

SITE PLAN

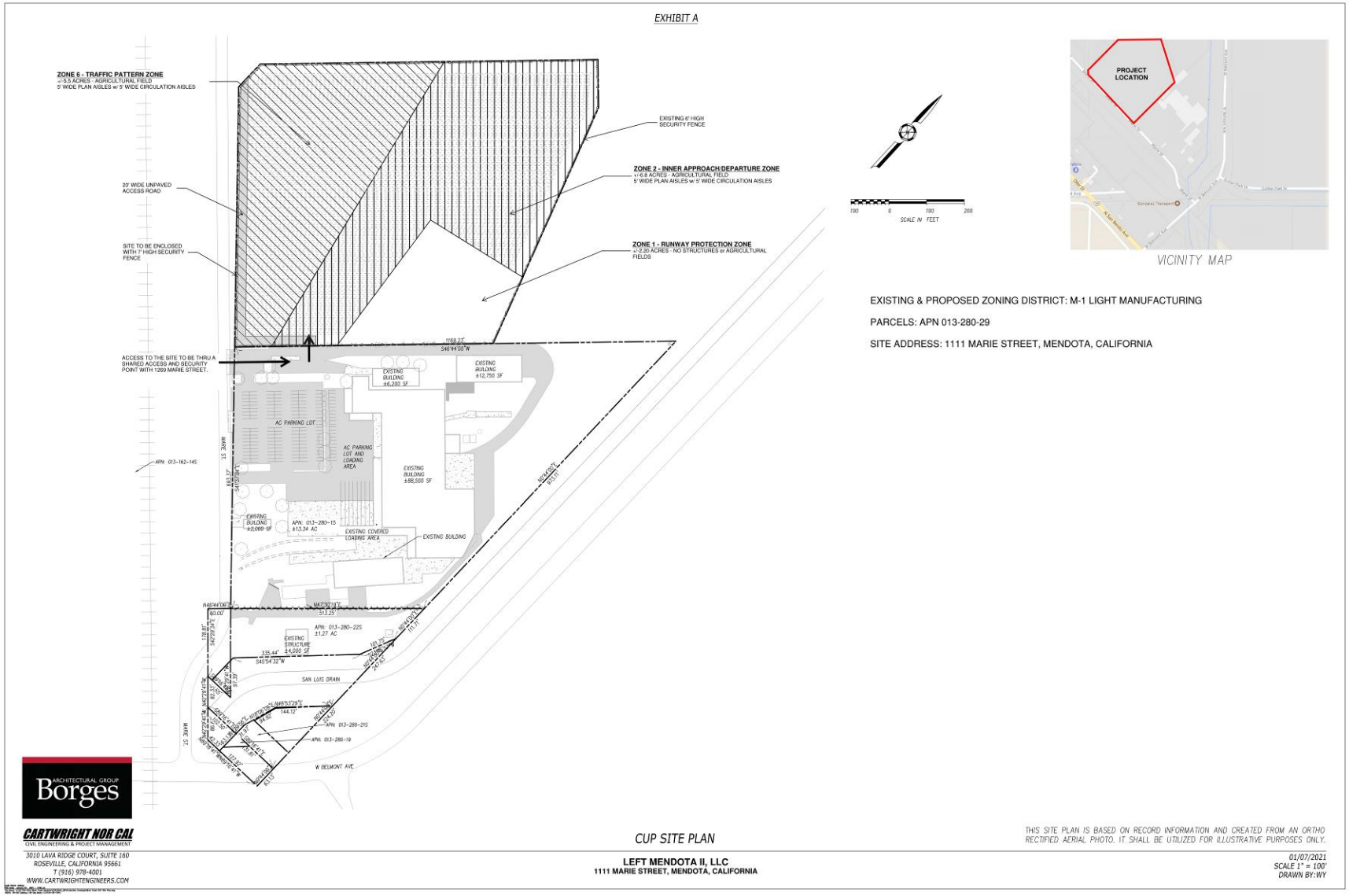


EXHIBIT A
ZONE 6 - TRAFFIC PATTERN ZONE
+/- 0.5 ACRES - AGRICULTURAL FIELD
5' WIDE PLAN AISLES w/ 5' WIDE CIRCULATION AISLES
EXISTING 6' HIGH SECURITY FENCE
ZONE 2 - INNER APPROACH/DEPARTURE ZONE
+/- 6.8 ACRES - AGRICULTURAL FIELD
5' WIDE PLAN AISLES W/ 5' WIDE CIRCULATION AISLES
20' WIDE UNPAVED ACCESS ROAD
SITE TO BE ENCLOSED WITH 7' HIGH SECURITY FENCE
ZONE 1 - RUNWAY PROTECTION ZONE
+/- 2.80 ACRES - NO STRUCTURES or AGRICULTURAL FIELDS
ACCESS TO THE SITE TO BE THRU A SHARED ACCESS AND SECURITY POINT WITH 1269 MARIE STREET.
EXISTING BUILDING ±46,200 SF
EXISTING BUILDING ±12,750 SF
AC PARKING LOT
AC PARKING LOT AND LOADING AREA
EXISTING BUILDING ±88,500 SF
EXISTING BUILDING ±2,000 SF
APN: 013-280-15 ±13.34 AC
EXISTING COVERED LOADING AREA
EXISTING BUILDING
APN: 013-280-225 ±1.27 AC
EXISTING STRUCTURE ±4,000 SF
SAN LUIS DRAIN
APN: 013-280-215
APN: 013-280-19
W BELMONT AVE
MARIE ST
APN: 013-162-145
100 0 100 200
SCALE IN FEET
PROJECT LOCATION
VICINITY MAP
EXISTING & PROPOSED ZONING DISTRICT: M-1 LIGHT MANUFACTURING
PARCELS: APN 013-280-29
SITE ADDRESS: 1111 MARIE STREET, MENDOTA, CALIFORNIA
Borges ARCHITECTURAL GROUP
CARTWRIGHT NOR CAL
CIVIL ENGINEERING & PROJECT MANAGEMENT
3010 LAVA RIDGE COURT, SUITE 160
ROSEVILLE, CALIFORNIA 95661
T (916) 978-4001
WWW.CARTWRIGHTENGINEERS.COM
CUP SITE PLAN
LEFT MENDOTA II, LLC
1111 MARIE STREET, MENDOTA, CALIFORNIA
THIS SITE PLAN IS BASED ON RECORD INFORMATION AND CREATED FROM AN ORTHO RECTIFIED AERIAL PHOTO. IT SHALL BE UTILIZED FOR ILLUSTRATIVE PURPOSES ONLY.
01/07/2021
SCALE 1" = 100'
DRAWN BY: WY

AGENDA

City of Mendota

Application No. 21-01 – Left Mendota II Commercial Cannabis Project

Admin Draft Initial Study / Mitigated Negative Declaration

September 2021

City of Mendota
643 Quince Street
Mendota, CA 93640

AGENDA

Table of Contents

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Acronyms and Abbreviations

AB	Assembly Bill
AFY	acre-feet/year
ALUCP	Airport Land Use Compatibility Plan
BPS	Best Performance Standards
CAL FIRE	California Department of Forestry and Fire Protection
CalEEMod	California Emissions Estimator Model (software)
CAP	Climate Action Plan
CCAP	Climate Change Action Plan
CDFW	California Department of Fish and Wildlife
City	City of Mendota
County	County of Fresno
CUP	Conditional use permit
CVRWQCB	Central Valley Regional Water Quality Control Board
DA	Development agreement
DOGGR	Division of Oil, Gas and Geothermal Resources
DTSC	Department of Toxic Substances Control
EIR	Environmental Impact Report
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
GHG	Greenhouse gas
GSP	Groundwater Sustainability Plan
HUC	Hydrologic Unit Code
IS	Initial Study
IS/MND	Initial Study/Mitigated Negative Declaration
km	kilometers
M-1	Light Industrial
mgd	million gallons per day
MMRP	Mitigation Monitoring and Reporting Program
MND	Mitigated Negative Declaration
MRZ	Mineral Resource Zone
NAAQS	National Ambient Air Quality Standards
ND	Negative Declaration
NEPA	National Environmental Policy Act

NO_X	nitrogen oxides
O_3	ozone
Pb	lead
PG&E	Pacific Gas and Electric Company
PM_{10}	particulate matter 10 microns in size
$PM_{2.5}$	particulate matter 2.5 microns in size
ppb	parts per billion
ppm	parts per million
Reclamation	U.S. Bureau of Reclamation
SB	Senate Bill
SJVAB	San Joaquin Valley Air Basin
SJVAPCD	San Joaquin Valley Air Pollution Control District
SMARA	Surface Mining and Reclamation Act
SO_2	sulfur dioxide
SR	State Route
SWRCB	State Water Resources Control Board
TAC	Toxic Air Contaminants
TPY	Tons Per Year
USFWS	U.S. Fish and Wildlife Service
$\mu g/m^3$	micrograms per cubic meter

AGENDA

Chapter 1 Introduction

The City of Mendota (City) has prepared this Initial Study/Mitigated Negative Declaration (IS/MND) to address the environmental effects of the Application No. 21-01, the Left Mendota II Commercial Cannabis Project (Project). This document has been prepared in accordance with the California Environmental Quality Act (CEQA; Public Resources Code Section 21000, *et seq.*) and the State CEQA Guidelines (CEQA Guidelines; California Code of Regulations Title 14, Chapter 3, Section 15000, *et seq.*). The City is the CEQA lead agency for this Project.

The site and the proposed Project are described in detail in the **Chapter 2 Project Description**.

1.1 Regulatory Information

An Initial Study (IS) is a document prepared by a lead agency to determine whether a project may have a significant effect on the environment. In accordance with CEQA Guidelines Section 15064(a)(1), an environmental impact report (EIR) must be prepared if there is substantial evidence in light of the whole record that the proposed Project under review may have a significant effect on the environment and should be further analyzed to determine mitigation measures or project alternatives that might avoid or reduce project impacts to less than significant levels. A negative declaration (ND) may be prepared instead if the lead agency finds that there is ***no*** substantial evidence in light of the whole record that the project may have a significant effect on the environment. An ND is a written statement describing the reasons why a proposed Project, not otherwise exempt from CEQA, would not have a significant effect on the environment and, therefore, why it would not require the preparation of an EIR (CEQA Guidelines Section 15371). According to CEQA Guidelines Section 15070, a ND or *mitigated* ND shall be prepared for a project subject to CEQA when either:

a. The IS shows there is no substantial evidence, in light of the whole record before the agency, that the proposed Project may have a significant effect on the environment, or

b. The IS identified potentially significant effects, but:

    1. Revisions in the project plans or proposals made by or agreed to by the applicant before the proposed MND and IS is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur is prepared, and

    2. There is no substantial evidence, in light of the whole record before the agency, that the proposed Project *as revised* may have a significant effect on the environment.

1.2 Document Format

This IS/MND contains four chapters. **Chapter 1 Introduction**, provides an overview of the proposed Project and the CEQA process. **Chapter 2 Project Description**, provides a detailed description of proposed Project components and objectives. **Chapter 3 Impact Analysis**, presents the CEQA checklist and environmental analysis for all impact areas, mandatory findings of significance, and feasible mitigation measures. If the proposed Project does not have the potential to significantly impact a given issue area, the relevant section provides a brief discussion of the reasons why no impacts are expected. If the proposed Project could have a potentially significant impact on a resource, the issue area discussion provides a description of potential impacts, and appropriate mitigation measures and/or permit requirements that would reduce those impacts to a less than significant level. **Chapter 3** concludes with the Lead Agency's determination based upon this initial evaluation. **Chapter 4 Mitigation Monitoring and Reporting Program** (MMRP), provides the proposed mitigation measures, implementation timelines, and the entity/agency responsible for ensuring implementation.

AGENDA

Chapter 2 Project Description

2.1 Project Background and Objectives

2.1.1 Project Title

Application No. 21-01 – Left Mendota II Commercial Cannabis Project

2.1.2 Lead Agency Name and Address

City of Mendota
643 Quince Street
Mendota, CA 93640

2.1.3 Contact Person and Phone Number

Lead Agency Contact

Jeffrey O'Neal, AICP
City Planner
559.655.3291

Project Applicant

Left Mendota II, LLC
Chris Lefkovitz, Managing Partner
866.500.3838

2.1.4 Project Location

The Project is located in southeastern Mendota, approximately 162 miles southeast of Sacramento and 137.1 miles northwest of Bakersfield (see **Figure 2-1**). The Project site consists primarily of Fresno County Assessor's Parcel Number 013-280-29 (see **Figure 2-2**); abutting parcels are also affected in a limited fashion as described below. State Route 180/Oller Street runs northwest to southeast and is approximately 850 feet southwest of the Project site. State Route 33/Derrick Avenue runs north-south and is approximately 4,000 feet west of the Project site. The Project site is situated in Section 31, Township 13 South, Range 15 East, Mount Diablo Base & Meridian.

2.1.5 Latitude and Longitude

The approximate centroid of the Project area is 36° 45' 10.39" North, 120° 22' 17.91" West.

2.1.6 General Plan Designation

The Project site is designated Light Industrial.

2.1.7 Zoning

The Project site is zoned M-1/CO, Light Manufacturing with Commercial Cannabis Overlay District.

2.1.8 Description of Project

2.1.8.1 Project Background and Purpose

Since 2017, the City has adopted two cannabis control ordinances and processed various amendments to those ordinances in order to attract and accommodate commercial cannabis activities, which it views as a mechanism to increase employment and provide direct revenue to the City via cannabis regulatory fees. In 2018, the City of Mendota Planning Commission and City Council took actions, respectively, to approve a conditional use permit (CUP) and a development agreement (DA) authorizing the then-applicant to renovate and convert existing structures and facilities at 1269 Marie Street (APNs 013-162-14S and 013-280-15, 19, 21S, and 22S) for commercial cannabis activities, including indoor cultivation, processing, distribution/delivery, and other uses allowed under the Medicinal and Adult Use Cannabis Regulatory and Safety Act and the City's ordinances. In December 2020 and January 2021, the CUP and DA were amended at the request of the current applicant to authorize the construction of approximately 2.0 acres of mixed-light greenhouses on APN 013-280-15.

2.1.8.2 Project Description

Application No. 21-01 proposes to expand the existing commercial cannabis use at 1269 Marie Street via the entitlement of approximately 15 acres (1111 Marie Street; APN 013-280-29) to allow outdoor cannabis cultivation. Cannabis plants would be planted above ground in five- to seven-gallon plastic pots oriented in rows spaced at five-foot intervals. Drip irrigation lines would also be above ground. The Project site is located immediately to the northwest of the existing operation; harvested product from the Project would be processed at the existing indoor facility next door. The Project would connect to the City's municipal water system and is expected to use approximately 9 million gallons or 27 acre-feet of water per year. The site will be graded such that all irrigation water will remain onsite and irrigation timing and duration will be closely monitored to prevent ponding or wastage. Since the irrigation season is opposite of the region's precipitation season and there will not be any impervious surface, there is not anticipated to be any runoff into the City's storm drainage system. The Project does not propose any onsite buildings, including restrooms, so it is not anticipated that any wastewater will be generated and, accordingly, there would be no connection to the City's wastewater system.

Access to the site would be via existing circulation areas on APN 013-280-15; i.e., the Project site would not have direct access to Marie Street. Onsite circulation would consist of a 20-foot-wide, all-weather surface at the site perimeter. The Project site would be enclosed by a six- to eight-foot-high chain link fence with privacy slats or similar obscuring material(s). The fence would be topped with three-strand barbed wire and/or razor wire. As a secondary barrier, electrified fencing with remote monitoring may be installed. Security lighting hooded and oriented toward the center of the property, along with video equipment monitored offsite, would be installed on the top of the fencing.

As currently proposed, an approximately 2.20-acre area at the southeastern corner of the Project site would remain vacant. That area lies within the Runway Protection Zone of the William Robert Johnston Municipal Airport as identified in the 2018 Fresno County Airport Land Use Compatibility Plan. See **Section 3.10**, Hazards and Hazardous Materials for further discussion. This document accounts for the possibility of future use of the 2.20-acre area should regulations change or the land otherwise be permitted to develop. The application includes amendments to the previously-approved CUP and DA to incorporate the proposed activities.

2.1.8.3 Operation and Maintenance

The Project site would be fully operational 24 hours a day, seven days a week, although only security would be present outside of normal business hours (approximately 9:00 am to 6:00 pm). The facility will be closed to the public, so persons entering and exiting the facility will be employees. The primary duties performed by the employees will be to plant, maintain, and harvest the crops. The equipment used for cultivation of the crops is not currently known, although the applicant expects operations to be conducted by hand. The applicant expects

to hire approximately 15 local residents to operate and maintain the facility. This will provide economic benefits to the City and its residents. Throughout its operation, the Project would be subject to the requirements set by the Department of Cannabis Control for licensing, regulation, and enforcement of commercial cultivation activities, as defined in the Medicinal and Adult Use Cannabis Regulation and Safety Act.

2.1.9 Site and Surrounding Land Uses and Setting

William Robert Johnston Municipal Airport abuts the site to the northeast. To the immediate northwest and southeast are industrial developments. The Southern Pacific Railroad is across and parallel to Marie Street to the southwest. Various residential uses are located across the rail corridor and to the northwest of the abutting industrial uses.

See **Figure 2-5** and **Figure 2-6** for the zoning and general plan designations, respectively.

2.1.10 Other Public Agencies Whose Approval May Be Required

The Project may require the following discretionary actions and approvals by regional and/or State agencies:

- Department of Cannabis Control (DCC)
- State Water Resources Control Board (SWRCB)
- Central Valley Regional Water Quality Control Board (CVRWQCB)
- Department of Fish and Wildlife (CDFW)
- Fresno County Department of Environmental Health
- San Joaquin Valley Air Pollution Control District (SJVAPCD)
- Central Valley Flood Protection Board

2.1.11 Consultation with California Native American Tribes

Public Resources Code Section 21080.3.1, *et seq*. (codification of AB 52, 2013-14) requires that a lead agency, within 14 days of determining that it will deeming a project application complete, must notify in writing any California Native American Tribe traditionally and culturally affiliated with the geographic area of the project if that Tribe has previously requested notification about projects in that geographic area. The notice must briefly describe the project and inquire whether the Tribe wishes to initiate request formal consultation. Tribes have 30 days from receipt of notification to request formal consultation. The lead agency then has 30 days to initiate the consultation, which then continues until the parties come to an agreement regarding necessary mitigation or agree that no mitigation is needed, or one or both parties determine that negotiation occurred in good faith, but no agreement will be made.

The City has received written correspondence from the Santa Rosa Rancheria Tachi Yokut Tribe pursuant to Public Resources Code Section 21080.3.1 requesting notification of proposed projects. The City notified the Tribe about the Project on March 24, 2021. The results of the correspondence are detailed in **Section 3.19**, Tribal Cultural Resources.

Figure 2-1. Regional Vicinity Map

Figure 2-2. Area of Potential Effect Map

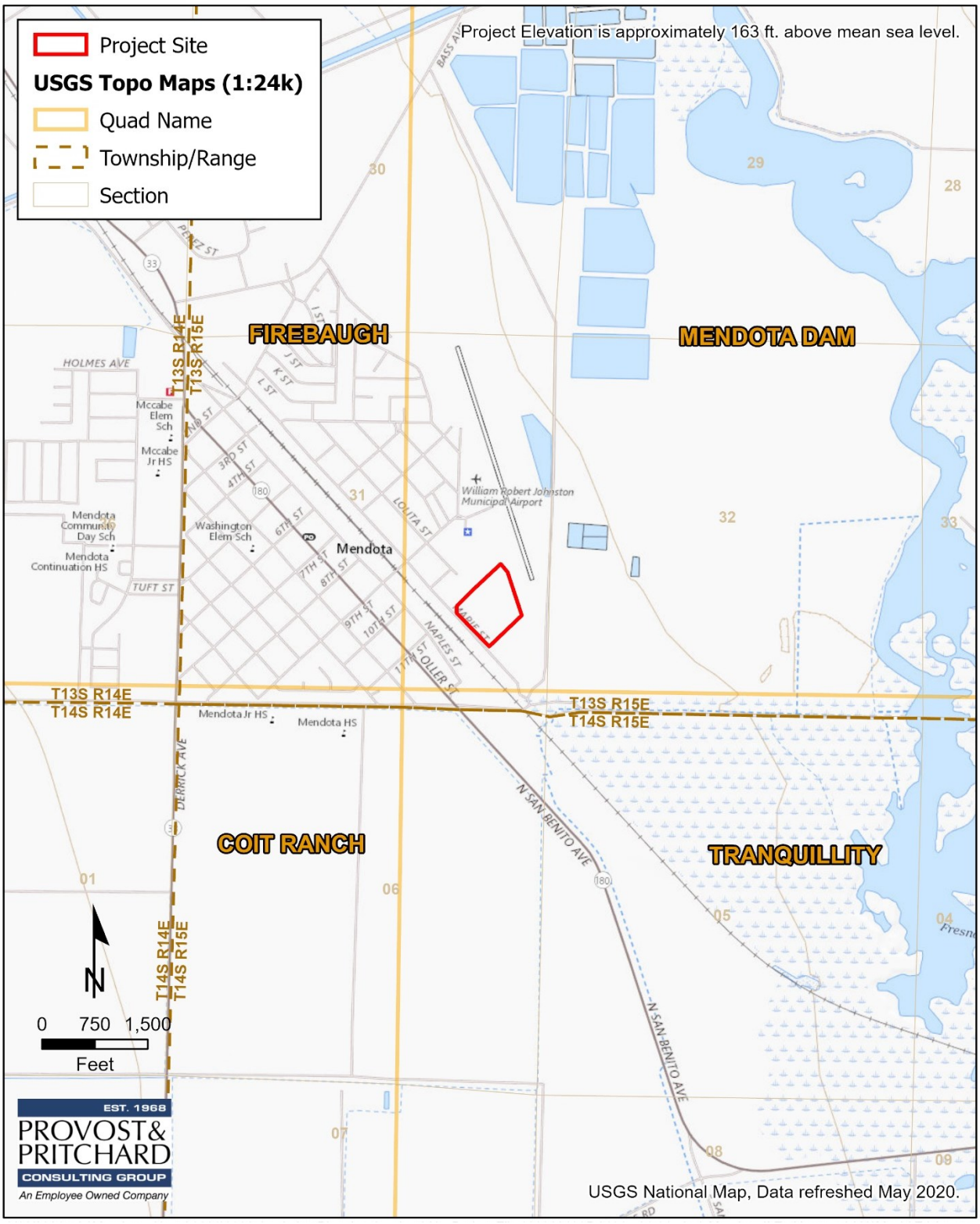


Figure 2-3. Topographic Quadrangle Map

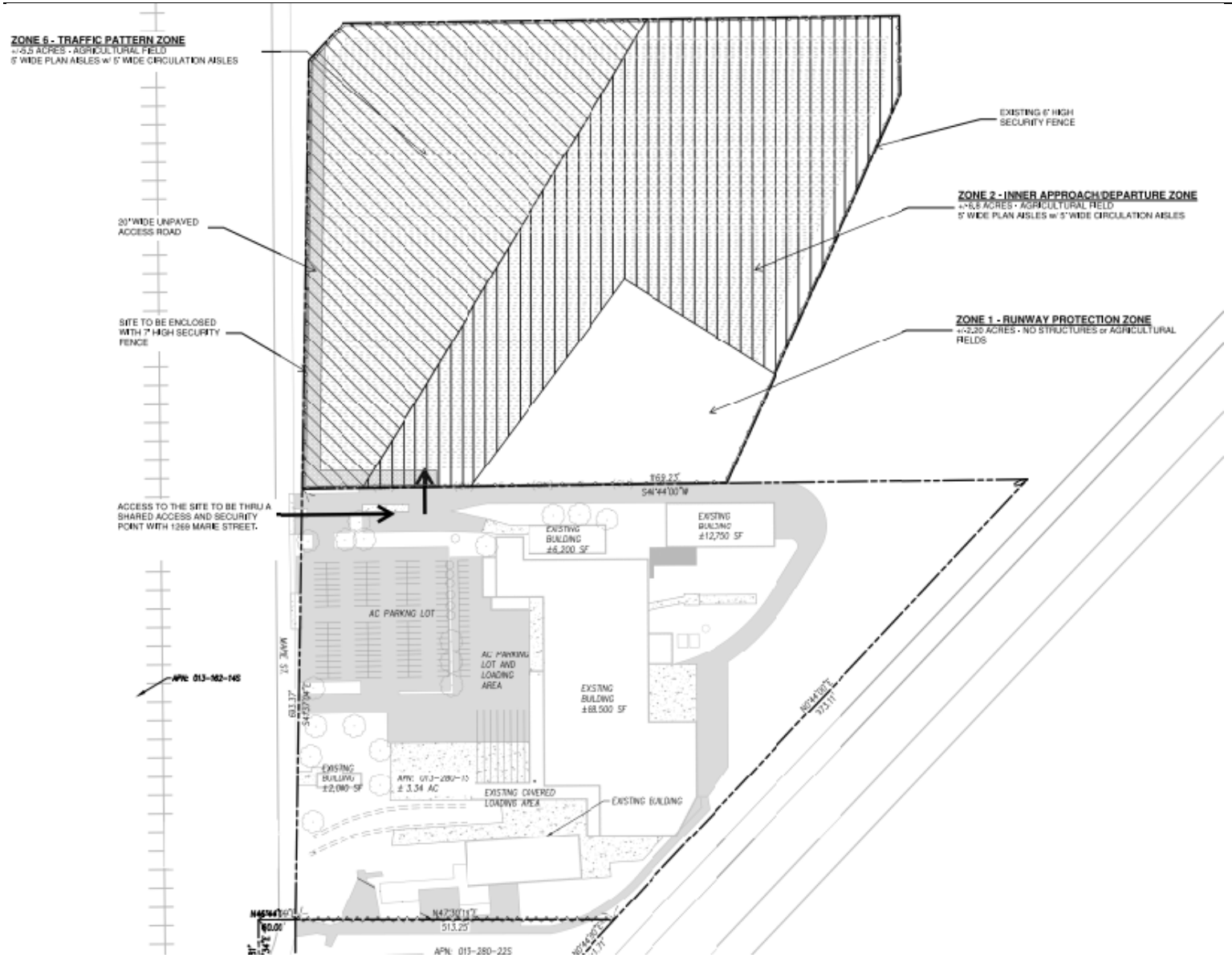


Figure 2-4. Site Plan

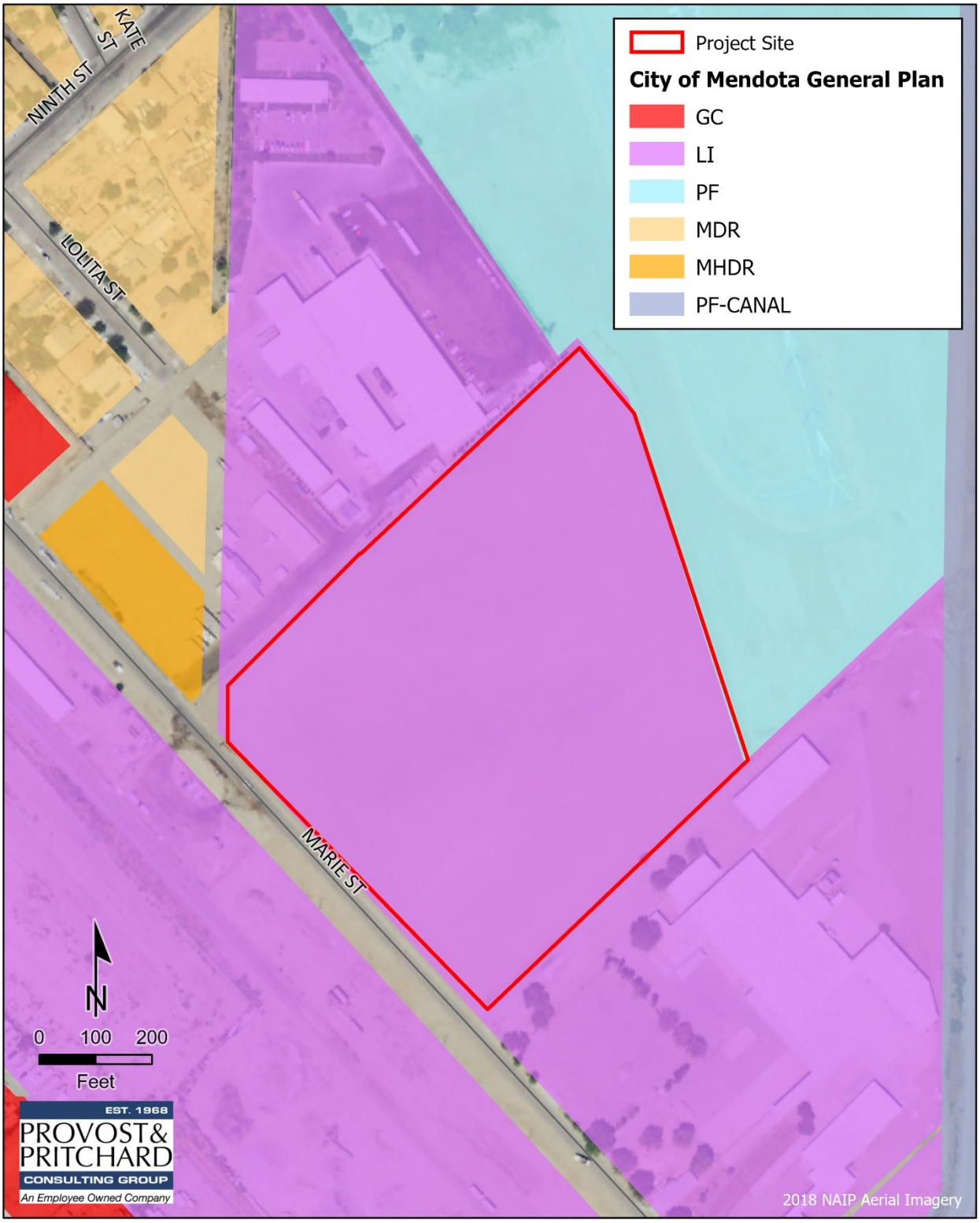


Figure 2-5. General Plan Land Use Designation Map

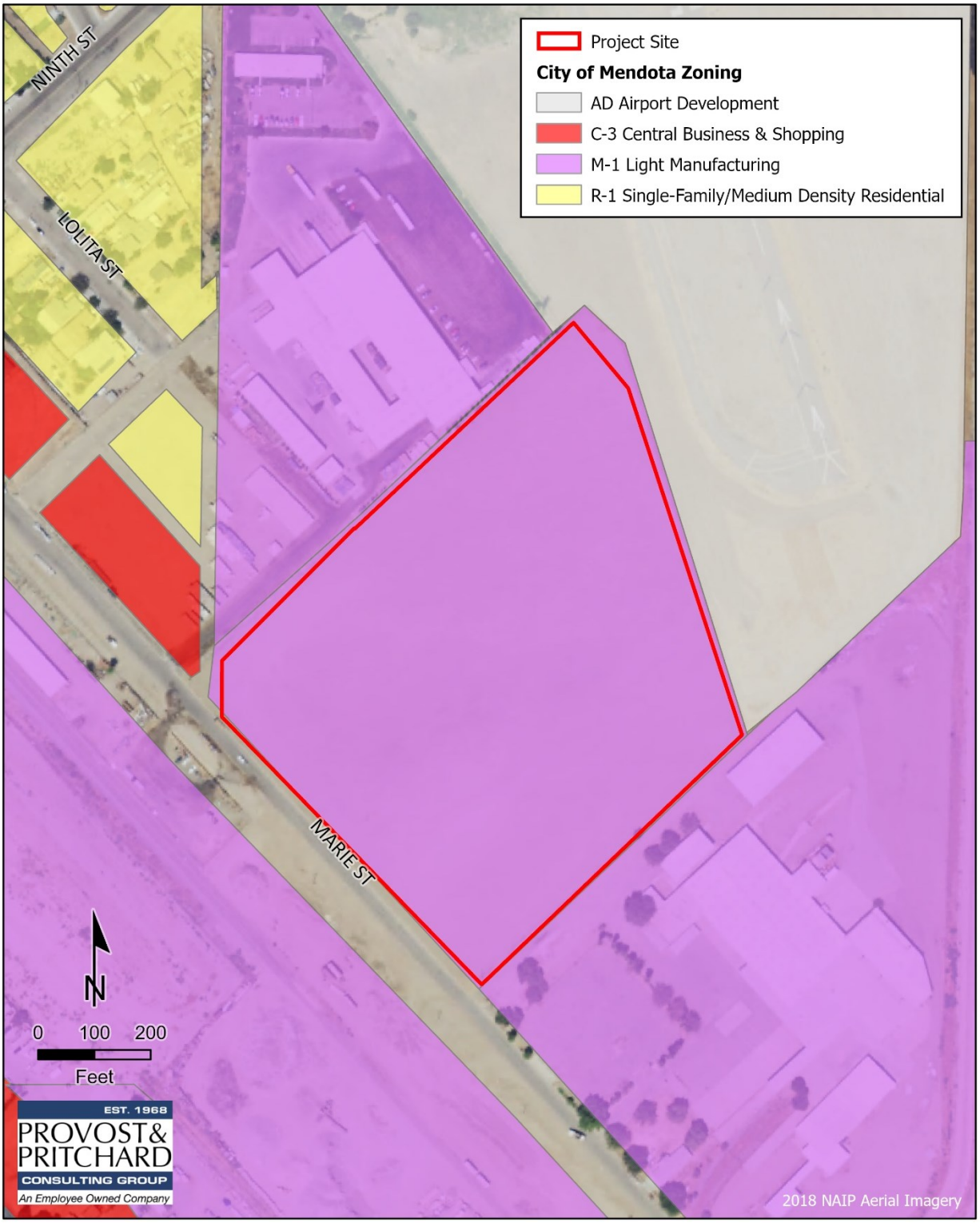


Figure 2-6. Zone District Map

AGENDA

Chapter 3 Impact Analysis

3.1 Environmental Factors Potentially Affected

As indicated by the discussions of existing and baseline conditions, and impact analyses that follow in this Chapter, environmental factors not checked below would have no impacts or less than significant impacts resulting from the project. Environmental factors that are. checked below would have potentially significant impacts resulting from the project. Mitigation measures are recommended for each of the potentially significant impacts that would reduce the impact to less than significant.

☐ Aesthetics	☐ Agriculture & Forestry Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Energy
☐ Geology/Soils	☐ Greenhouse Gas Emissions	☐ Hazards & Hazardous Materials
☒ Hydrology/Water Quality	☐ Land Use/Planning	☐ Mineral Resources
☐ Noise	☐ Population/Housing	☐ Public Services
☐ Recreation	☐ Transportation	☒ Tribal Cultural Resources
☐ Utilities/Service Systems	☐ Wildfire	☒ Mandatory Findings of Significance

The analyses of environmental impacts here in **Chapter 3 Impact Analysis** are separated into the following categories:

Potentially Significant Impact. This category is applicable if there is substantial evidence that an effect may be significant, and no feasible mitigation measures can be identified to reduce impacts to a less than significant level. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

Less than Significant with Mitigation Incorporated. This category applies where the incorporation of mitigation measures would reduce an effect from a "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measure(s), and briefly explain how they would reduce the effect to a less than significant level (mitigation measures from earlier analyses may be cross-referenced).

Less than Significant Impact. This category is identified when the proposed Project would result in impacts below the threshold of significance, and no mitigation measures are required.

No Impact. This category applies when a project would not create an impact in the specific environmental issue area. "No Impact" answers do not require a detailed explanation if they are adequately supported by the information sources cited by the lead agency, which show that the impact does not apply to the specific project (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis)

3.2 Aesthetics

Table 3-1. Aesthetics Impacts

Aesthetics Impacts				
Except as provided in Public Resources Code Section 21099, would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	☐	☐	☐	☒
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☒	☐

3.2.1 Environmental Setting and Baseline Conditions

The Project site is a vacant lot. To the northeast is the William Robert Johnston Municipal Airport, and industrial developments to the immediate northwest and southeast. To the southwest, across the Southern Pacific Railroad, are various residential land uses.

Concerning regulatory compliance, the Project is subject to Department of Cannabis Control (DCC) regulation that address potential impacts on aesthetic resources under California Code of Regulations Sections 16304(c) and 16304(g) which generally require shielded and downward facing lighting. Compliance with these regulations would help reduce potential impacts to aesthetic resources.

3.2.2 Impact Assessment

a) Would the project have a substantial adverse effect on a scenic vista?

No Impact. The Project would place a six- to eight-foot-tall chain link fence with privacy medium at the property line adjacent to Marie Street. Potted plants, approximately 7 feet in height, would be placed behind the fence.

b) Would the project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

No Impact. The Scenic Highway Program was created to preserve and protect scenic highway corridors from change which would diminish the aesthetic value of lands adjacent to highways. A highway may be officially designated "scenic" depending upon how much of the natural landscape can be seen by travelers, the scenic quality of the landscape, and the extent to which development intrudes upon the traveler's enjoyment of the view. As the closest segment of state scenic highway is located approximately 38 miles to the east of the Project, there would be no impact.

c) In non-urbanized areas, would the project substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public view are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

No Impact. The City of Mendota is mostly flat and level with no significant hills or topographical features. The Coast Ranges are occasionally visible to the west and the Sierra Nevada Mountains can be seen to the east on clear days. According to the City of Mendota General Plan Update,[1] the City currently has no designated scenic corridors, protected vistas, or policies regulating development in scenic areas.

d) Would the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Less than Significant Impact. Security lighting would be installed on the Project site; however, these lights are required to be hooded to prevent glare onto adjacent properties. Impacts would be less than significant.

[1] City of Mendota General Plan Update 2005-2025.

3.3 Agriculture and Forestry Resources

Table 3-2. Agriculture and Forest Impacts

Agriculture and Forest Impacts				
Would the project:	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	☒
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☒
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☒

3.3.1 Environmental Setting and Baseline Conditions

The Project site consists of vacant industrial land surrounded by industrial and other urban land uses. The Project site is designated Urban and Built-Up Land by the Farmland Mapping and Monitoring Program.

3.3.2 Impact Assessment

a) Would the project convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

No Impact. Pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, the subject property is not considered Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, therefore the project would not convert said Farmland to non-agricultural use.

b) Would the project conflict with existing zoning for agricultural use, or a Williamson Act contract?

No Impact. The subject property is zoned M-1 (Light Manufacturing) in the City of Mendota's Zoning Ordinance. According to the M-1 zone district in the City of Mendota Zoning Ordinance, agricultural uses are a permitted use. There would be no conflict with a Williamson Act contract because the Project site is not subject to such a contract.

c) Would the project conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?

d) Would the project result in the loss of forest land or conversion of forest land to non-forest use?

c) and d) No Impact. The Project is not within the vicinity of a forest as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g)). Therefore, the Project will not conflict with existing zoning for, or cause rezoning of, forest land nor will it result in the loss of forest land or conversion of forest land to non-forest use.

e) Would the project involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?

No Impact. The Project is located in an urbanized area on a vacant lot surrounded by industrial and residential development. The Project proposes to create an urban agricultural land use, where no agricultural land use recently existed. There will be no impact.

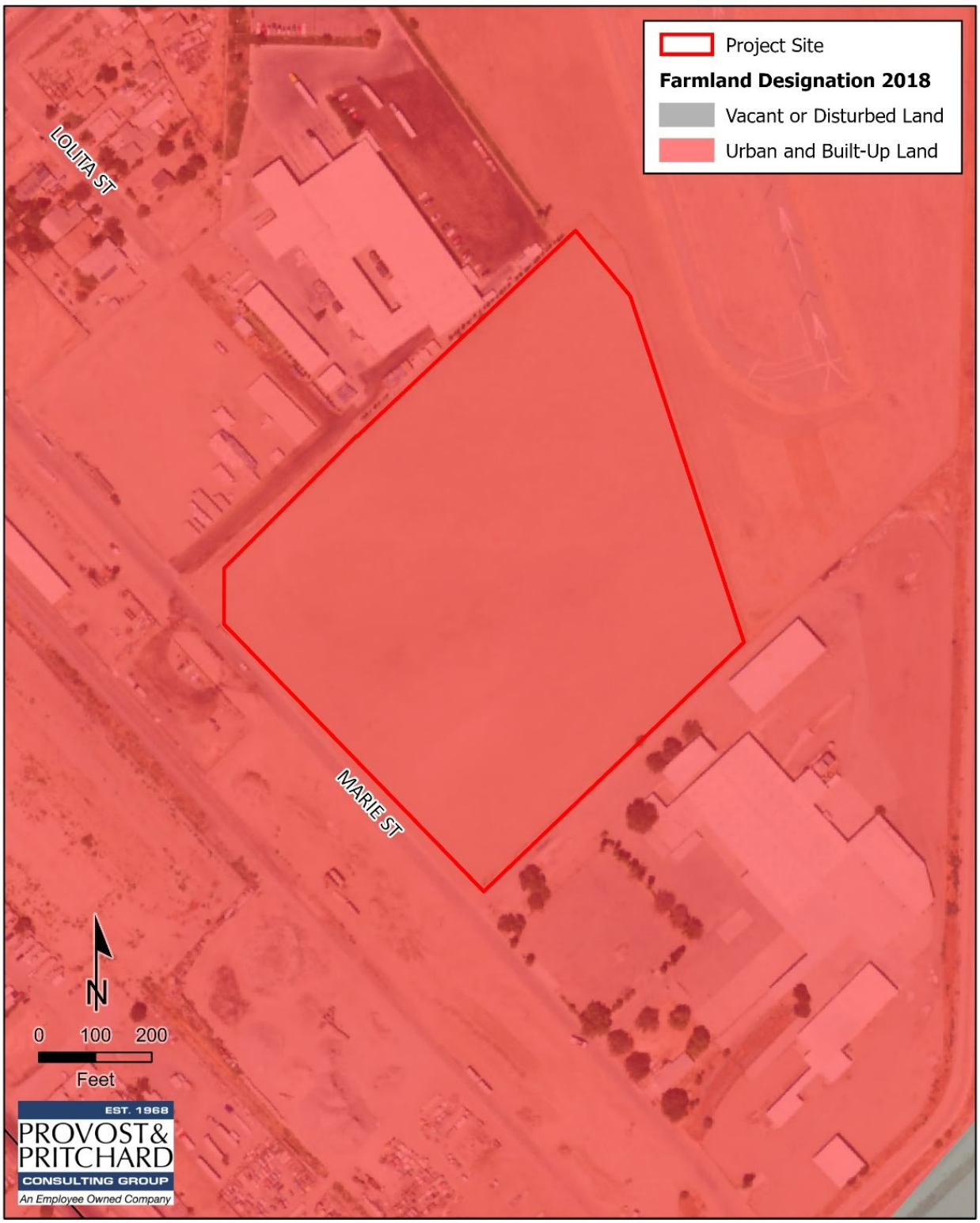


Figure 3-1. Farmland Designation Map

3.4 Air Quality

Table 3-3. Air Quality Impacts

Air Quality Impacts					
Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations. Would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☒	☐
b)	Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	☐	☐	☒	☐
c)	Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐
d)	Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	☐	☐	☒	☐

3.4.1 Environmental Setting and Baseline Conditions

3.4.1.1 Regulatory Attainment Designations

Under the CCAA, the CARB is required to designate areas of the State as attainment, nonattainment, or unclassified with respect to applicable standards. An "attainment" designation for an area signifies that pollutant concentrations did not violate the applicable standard in that area. A "nonattainment" designation indicates that a pollutant concentration violated the applicable standard at least once, excluding those occasions when a violation was caused by an exceptional event, as defined in the criteria. Depending on the frequency and severity of pollutants exceeding applicable standards, the nonattainment designation can be further classified as serious nonattainment, severe nonattainment, or extreme nonattainment, with extreme nonattainment being the most severe of the classifications. An "unclassified" designation signifies that the data does not support either an attainment or nonattainment designation. The CCAA divides districts into moderate, serious, and severe air pollution categories, with increasingly stringent control requirements mandated for each category.

The EPA designates areas for ozone, CO, and NO_2 as "does not meet the primary standards," "cannot be classified," or "better than national standards." For SO_2, areas are designated as "does not meet the primary standards," "does not meet the secondary standards," "cannot be classified," or "better than national standards." However, the CARB terminology of attainment, nonattainment, and unclassified is more frequently used. The EPA uses the same sub-categories for nonattainment status: serious, severe, and extreme. In 1991, EPA assigned new nonattainment designations to areas that had previously been classified as Group I, II, or III for PM_{10} based on the likelihood that they would violate national PM_{10} standards. All other areas are designated "unclassified."

The State and national attainment status designations pertaining to the SJVAB are summarized in **Table 3-4** The SJVAB is currently designated as a nonattainment area with respect to the State PM_{10} standard, ozone, and $PM_{2.5}$ standards. The SJVAB is designated nonattainment for the NAAQS 8-hour ozone and $PM_{2.5}$ standards. On September 25, 2008, the EPA re-designated the San Joaquin Valley to attainment status for the PM_{10} NAAQS and approved the PM_{10} Maintenance Plan.

Table 3-4. Summary of Ambient Air Quality Standards and Attainment Designation

Pollutant	Averaging Time	California Standards*		National Standards*	
		Concentration*	Attainment Status	Primary	Attainment Status
Ozone (O_3)	1-hour	0.09 ppm	Nonattainment/ Severe	–	No Federal Standard
	8-hour	0.070 ppm	Nonattainment	0.075 ppm	Nonattainment (Extreme)**
Particulate Matter (PM_{10})	AAM	20 µg/m^3	Nonattainment	–	Attainment
	24-hour	50 µg/m^3		150 µg/m^3	
Fine Particulate Matter ($PM_{2.5}$)	AAM	12 µg/m^3	Nonattainment	12 µg/m^3	Nonattainment
	24-hour	No Standard		35 µg/m^3	
Carbon Monoxide (CO)	1-hour	20 ppm	Attainment/ Unclassified	35 ppm	Attainment/ Unclassified
	8-hour	9 ppm		9 ppm	
	8-hour (Lake Tahoe)	6 ppm		–	
Nitrogen Dioxide (NO_2)	AAM	0.030 ppm	Attainment	53 ppb	Attainment/ Unclassified
	1-hour	0.18 ppm		100 ppb	
Sulfur Dioxide (SO_2)	AAM	–	Attainment	--	Attainment/ Unclassified
	24-hour	0.04 ppm		--	
	3-hour	–		0.5 ppm	
	1-hour	0.25 ppm		75 ppb	
Lead (Pb)	30-day Average	1.5 µg/m^3	Attainment	–	No Designation/ Classification
	Calendar Quarter	–		--	
	Rolling 3-Month Average	–		0.15 µg/m^3	
Sulfates (SO_4)	24-hour	25 µg/m^3	Attainment	No Federal Standards	
Hydrogen Sulfide (H_2S)	1-hour	0.03 ppm (42 µg/m^3)	Unclassified		
Vinyl Chloride (C_2H_3Cl)	24-hour	0.01 ppm (26 µg/m^3)	Attainment		
Visibility-Reducing Particle Matter	8-hour	Extinction coefficient: 0.23/km-visibility of 10 miles or more due to particles when the relative humidity is less than 70%.	Unclassified		

** For more information on standards visit: https://ww3.arb.ca.gov/research/aaqs/aaqs2.pdf*
*** No Federal 1-hour standard. Reclassified extreme nonattainment for the Federal 8-hour standard.*
****Secondary Standard*
Source: CARB 2015; SJVAPCD 2015

3.4.2 Impact Assessment

3.4.2.1 Thresholds of Significance

To assist local jurisdictions in the evaluation of air quality impacts, the SJVAPCD has published the *Guide for Assessing and Mitigating Air Quality Impacts*. This guidance document includes recommended thresholds of significance to be used for the evaluation of short-term construction, long-term operational, odor, toxic air contaminant, and cumulative air quality impacts. Accordingly, the SJVAPCD-recommended thresholds of significance are used to determine whether implementation of the proposed Project would result in a significant air quality impact. Projects that exceed these recommended thresholds would be considered to have a potentially significant impact to human health and welfare. The thresholds of significance are summarized, as follows:

Short-Term Emissions of Particulate Matter (PM_{10}): Construction impacts associated with the proposed Project would be considered significant if the feasible control measures for construction in compliance with Regulation VIII as listed in the SJVAPCD guidelines are not incorporated or implemented, or if project-generated emissions would exceed 15 tons per year (TPY).

Short-Term Emissions of Ozone Precursors (ROG and NO_X): Construction impacts associated with the proposed Project would be considered significant if the project generates emissions of Reactive Organic Gases (ROG) or NO_X that exceeds 10 TPY.

Long-Term Emissions of Particulate Matter (PM_{10}): Operational impacts associated with the proposed Project would be considered significant if the project generates emissions of PM_{10} that exceed 15 TPY.

Long-Term Emissions of Ozone Precursors (ROG and NO_X): Operational impacts associated with the proposed Project would be considered significant if the project generates emissions of ROG or NO_X that exceeds 10 TPY.

Conflict with or Obstruct Implementation of Applicable Air Quality Plan: Due to the region's nonattainment status for ozone, $PM_{2.5}$, and PM_{10}, if the project-generated emissions of either of the ozone precursor pollutants (i.e., ROG and NO_x) or PM_{10} would exceed the SJVAPCD's significance thresholds, then the project would be considered to conflict with the attainment plans. In addition, if the project would result in a change in land use and corresponding increases in vehicle miles traveled, the project may result in an increase in vehicle miles traveled that is unaccounted for in regional emissions inventories contained in regional air quality control plans.

Local Mobile-Source CO Concentrations: Local mobile source impacts associated with the proposed Project would be considered significant if the project contributes to CO concentrations at receptor locations in excess of the CAAQS (i.e., 9.0 ppm for 8 hours or 20 ppm for 1 hour).

Toxic Air Contaminants (TACs): Exposure to toxic air contaminants (TAC) would be considered significant if the probability of contracting cancer for the Maximally Exposed Individual (i.e., maximum individual risk) would exceed 10 in 1 million or would result in a Hazard Index greater than 1.

Odors: Odor impacts associated with the proposed Project would be considered significant if the project has the potential to frequently expose a substantial number of sensitive receptors to objectionable odors.

Concerning regulatory compliance, the Project is subject to DCC regulation that address potential impacts from air quality and greenhouse gas emissions under California Code of Regulations Sections 16102(s), 16304(e), 16305, and 16306, which generally require heating and cooling power identification, requirements for generators, adherence to renewable energy requirements, and generator requirements. Compliance with these regulations would help reduce potential project impacts to air quality.

a) Would the project conflict with or obstruct implementation of the applicable air quality plan?

Less than Significant Impact. Due to the region's nonattainment status for ozone, $PM_{2.5}$, and PM_{10}, if the project-generated emissions of either of the ozone precursor pollutants (i.e., ROG and NO_x) or PM_{10} would exceed the SJVAPCD's significance thresholds, then the project would be considered to conflict with the attainment plans. In addition, if the project would result in a change in land use and corresponding increases in vehicle miles traveled, the project may result in an increase in vehicle miles traveled that is unaccounted for in regional emissions inventories contained in regional air quality control plans. However, as the Project's operational impacts are not anticipated to exceed two (2) tons per year, as described below, impacts would be less than significant.

b) Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

Less than Significant Impact.

Short-Term Construction-Generated Emissions

Given the lack of substantial construction generated by the Project, construction-related air quality impacts are expected to be minute and therefore have not been analyzed.

Long-Term Operational Emissions

Operational emissions generated from Project operations would consist of electricity for water pumps and additional electricity and natural gas consumption for processing. The Project is expected to be cultivated by hand and would not require the use of machinery or equipment during cultivation operations. Impacts resulting from natural gas consumption are not likely to be substantial enough to exceed criteria pollutant thresholds. Operational emissions are estimated to be less than two (2) tons per year according to **Appendix A**. Impacts would be less than significant.

c) Would the project expose sensitive receptors to substantial pollutant concentrations?

Less than Significant Impact. Pollutants generated by the Project would consist of diesel particulate matter generated from heavy duty truck trips delivering finished products to and/or from the Project site. The amounts would not be significant given that the Project site is estimated to produce approximately 2,000 kilograms, or 2.2 tons, per acre per year. The Project would generate the equivalent of two (2) heavy duty truck trips annually. Impacts would be less than significant.

d) Would the project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Less than Significant Impact. The cultivation of cannabis is known to generate odorous and airborne constituents. CDFA acknowledges odor as a potential concern, although determination of what constitutes nuisance odor is highly subjective. CDFA cites in its 2017 *Medical Cannabis Cultivation Program Literature Review* findings from the Oregon judicial system that odor from cannabis is offensive to some people and enjoyable to others. Further, the perception of whether an odor is offensive is "linked to the intensity, duration, and frequency of the odor and the location at which the odor occurred."[2] In the instant case, it is anticipated that peak odor would coincide with harvesting, which amounts to an approximately two- to three-week period each year. Harvested crop would not be stored on the site but would immediately be moved indoors to the nearby manufacturing facility. Generation of odor at this facility would not be unlike similar situations involving viticulture/enology, brewing, or dairy/livestock activities that result in offsite odor that some may find offensive.

Further CDFA, BCC, and local agencies' examination of odor, whether in the context of cannabis or otherwise, is limited to "sensitive receptors;" (i.e., schools, churches, residences, apartments, hospitals, licensed daycare

[2] California Department of Food and Agriculture 2017 *Medical Cannabis Cultivation Program Literature Review,* citing a 2015 article from the *Los Angeles Time* discussing *State of Oregon v. Jared William Lang,* CM1320460; A154498, August 19, 2015

facilities, and elderly care facilities) and doesn't apply to commercial, industrial, or most other public or institutional uses. The issue was also examined pursuant to CEQA in the BCC's 2017 Initial Study/Negative Declaration for its Commercial Cannabis Business Licensing Program and CDFA's 2017 Final Environmental Impact Report for the CalCannabis Cultivation Licensing Program, with the same conclusions being reached. The San Joaquin Valley Air Pollution Control District (SJVAPCD) requires permits for certain cannabis-related activities, although it considers cultivation to be an agricultural activity that is exempt from its nuisance odor regulations (Rule 4102). SJVAPCD recommends that local agencies implement odor-reduction policies.

The proposed use is considered an agricultural use, and therefore is not subject to SJVAPCD Rule 4102, Nuisance. Furthermore, the City has not adopted a threshold of significance related to odors. The Project site is approximately 0.35 miles away from Mendota High School, 0.49 miles away from Washington Elementary School, and 0.58 miles away from Mendota Junior High School. The nearest residences are approximately 450 feet to the northwest and 600 feet to the southwest. However, prevailing winds in Mendota are from the northwest, indicating that, for most of the year, wind will carry any potential odors away from sensitive receptors. Although the project is not anticipated to result in adverse effects to a substantial number of people, the applicant has proposed to implement an escalating series of odor-mitigation actions that have had success at other similar facilities:

1. Cultivation of strains or varietals that are known and/or specifically hybridized to produce less odor.
2. Co-planting of fragrant herbs such as mint, lavender, rosemary, or other plants intended to mask the odor of cannabis.
3. Installation of chemical fog machines.

The listed actions would be completed voluntarily by the applicant, and are not designed to serve as mitigation as a result of any significant impact that the Project would result in. Although Action 1 would be implemented at the start of operation, subsequent actions would be implemented as needed based on observations of odor effects through successive harvests.

Related to odor are alleged potential health concerns for persons subjected to the odor. CDFA does not provide guidance on this subject other than to note that symptoms "have been reported to include headaches, eye and throat irritation, nausea, discomfort being outside (exercising, gardening, socializing), mental stress, and lack of desire to entertain due to strong odors,"[3] also noting that these symptoms can result from exposure to common pollen. According to CDFA, most onsite and offsite health issues correlated with cannabis cultivation are related to mold (indoor grows only) and illegal use of rodenticides, fungicides, herbicides, and insecticides,[4] along with substandard storage of pesticides, diesel, gasoline, and butane.[5] Importantly, these violations are related to *illegal* cannabis cultivation sites; the use of chemicals under CalCannabis is highly regulated.

Therefore, impacts due to odor would be less than significant.

[3] California Department of Food and Agriculture 2017 *Medical Cannabis Cultivation Program Literature Review,* citing a 2016 study by Denver Environmental Health.
[4] *Ibid,* citing violations recorded by the State Water Resources Control Board, the North Coast Regional Water Quality Control Board, and the Central Valley Regional Water Quality Control Board.
[5] *Ibid*, citing publications from the Department of Fish and Wildlife.

3.5 Biological Resources

Table 3-5. Biological Resources Impacts

Biological Resources Impacts				
Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☒	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☒	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☒

3.5.1 Environmental Setting and Baseline Conditions

The Project site is located in The City of Mendota within Fresno County, within the lower San Joaquin Valley, part of the Great Valley of California. The Valley is bordered by the Sierra Nevada Mountain Ranges to the east, the Coast Ranges to the west, the Klamath Mountains and Cascade Range to the north, and the Transverse Ranges and Mojave Desert to the south.

Like most of California, the San Joaquin Valley experiences a Mediterranean climate. Warm, dry summers are followed by cool, moist winters. Summer temperatures often reach above 90 degrees Fahrenheit, and the humidity is generally low. Winter temperatures are often below 60 degrees Fahrenheit during the day and rarely exceed 70 degrees. On average, the Central Valley receives approximately 12 inches of precipitation in the form of rainfall yearly, most of which occurs between October and March.

The Project is located within the Mowry Lake-Fresno Slough watershed; Hydrologic Unit Code (HUC): 180300091003[6], approximately two miles south of the Mendota Pool at the confluence of the San Joaquin River and the Fresno Slough. and seven miles east of Panoche Creek. The San Joaquin River, Fresno Slough, and Mendota Pool have been levied and much of the surrounding land is now intensively cultivated for agricultural production. Historically, the Mendota area supported large areas of riparian wetlands and important waterfowl habitat. Due to alteration of the aquatic features in the vicinity and the conversion of natural habitat to agricultural lands, the riparian habitat is now limited to the margins of these waterways and to undisturbed areas within ecological reserves, managed wildlife areas, and national wildlife refuges.

There are several managed reserves and wildlife areas in the vicinity of Mendota, most of which are dedicated to the preservation of native habitat for waterfowl and special status species. The CDFW-managed Mendota Wildlife Area lies approximately 2.5 miles southeast of the Project and encompasses 11,825 acres of wetland and upland habitats including a portion of the Fresno Slough. The Alkali Sink Ecological Reserve and the Kerman Ecological Reserve are located east-southeast of the Project, at an approximate distance of 5.5 miles and 10 miles, respectively. Little Panoche Reservoir Wildlife Area and the Panoche Hills Ecological Reserve are located west of Interstate 5, approximately 20 miles west of the Project. The southern portion of the San Luis National Wildlife Refuge complex, which encompasses over 26,800 acres of wetlands, riparian forests, native grasslands, and vernal pools lies approximately 20 miles northwest of the Project.

The Project is subject to DCC regulations that address potential impacts on biological resources under California Code of Regulations Sections 16102(w), 16102(dd), 16216, 16304(a-c), and 16304(g), which generally include compliance with CDFW Lake and Streambed Alteration Agreement conditions, consideration for watersheds that could be adversely impacted by cannabis, avoiding impacted watersheds, compliance with section 13149 of the Water Code, compliance with conditions of CDFW and SWRCB, outdoor lighting limits, and shielded lighting. Compliance with these regulations would help reduce potential project impacts to biological resources to less than significant.

Table 3-6. List of Special Status Animals with Potential to Occur Onsite and/or in the Vicinity

Species	Status	Habitat
giant garter snake (*Thamnophis gigas*)	FT, CT	Occurs in marshes, sloughs, drainage canals, irrigation ditches, rice fields, and adjacent uplands. Prefers locations with emergent vegetation for cover and open areas for basking. This species uses small mammal burrows adjacent to aquatic habitats for hibernation in the winter and to escape from excessive heat in the summer.
western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)	FT, CE	Suitable nesting habitat in California includes dense riparian willow-cottonwood and mesquite habitats along a perennial river. Once a common breeding species in riparian habitats of lowland California, this species currently breeds consistently in only two locations in the State: along the Sacramento and South Fork Kern Rivers.
burrowing owl (*Athene cunicularia*)	CSC	Resides in open, dry annual or perennial grasslands, deserts, and scrublands with low growing vegetation. Nests underground in existing burrows created by burrowing mammals, most often ground squirrels.
western pond turtle (*Emys marmorata*)	CSC	An aquatic turtle of ponds, marshes, slow-moving rivers, streams, and irrigation ditches with riparian vegetation. Requires adequate basking sites and sandy banks or grassy open fields to deposit eggs.
San Joaquin kit fox (*Vulpes macrotis mutica*)	FE, CT	Underground dens with multiple entrances in alkali sink, valley grassland, and woodland in valleys and adjacent foothills.
western mastiff bat (*Eumops perotis californicus*)	CSC	Found in open, arid to semi-arid habitats, including dry desert washes, flood plains, chaparral, oak woodland, open ponderosa pine forest, grassland, and agricultural areas, where it feeds on insects in

[6] (United States Environmental Protection Agency, n.d.) Accessed May 2021.

		flight. Roosts most commonly in crevices in cliff faces, but may also use high buildings and tunnels.
blunt-nosed leopard lizard (*Gambelia sila*)	FE, CE, CFP	Inhabits semi-arid grasslands, alkali flats, low foothills, canyon floors, large washes, and arroyos, usually on sandy, gravelly, or loamy substrate, sometimes on hardpan. Often found where there are abundant rodent burrows in dense vegetation or tall grass. Cannot survive on lands under cultivation. Known to bask on kangaroo rat mounds and often seeks shelter at the base of shrubs, in small mammal burrows, or in rock piles. Adults may excavate shallow burrows, but rely on deeper pre-existing rodent burrows for hibernation and reproduction.
longhorn fairy shrimp (*Branchinecta longiantenna*)	FE	Inhabits clear to turbid vernal pools or seasonally ponded areas.
western spadefoot (*Spea hammondii*)	CSC	Prefers open areas with sandy or gravelly soils, in a variety of habitats including mixed woodlands, grasslands, coastal sage scrub, chaparral, sandy washes, lowlands, river floodplains, alluvial fans, playas, alkali flats, foothills, and mountains. Vernal pools or temporary wetlands, lasting a minimum of three weeks, which do not contain bullfrogs, fish, or crayfish are necessary for breeding.

Table 3-7. List of Special Status Plants with Potential to Occur Onsite and/or in the Vicinity

Species	Status	Habitat
Sanford's arrowhead (*Sagittaria sanfordii*)	CNPS 1B	Found in the San Joaquin Valley and other parts of California in freshwater-marsh, primarily ponds and ditches, at elevations below 1000 feet. Blooms May – October.
Lost Hills crownscale (Atriplex coronata var. vallicola)	CNPS 1B	Found in the San Joaquin Valley in chenopod scrub, valley and foothill grassland, and vernal pools at elevations below 1400 feet. Typically found in dried ponds on alkaline soils. Blooms April – September.
recurved larkspur (*Delphinium recurvatum*)	CNPS 1B	Found in the San Joaquin Valley and other parts of California. Occurs in poorly drained, fine, alkaline soils in grassland at elevations between 100 feet and 1965 feet. Most often found in non-wetlands, but occasionally found in wetlands. Blooms March – June.

EXPLANATION OF STATUS CODES

STATUS CODES

FE	Federally Endangered
FT	Federally Threatened
FPE	Federally Endangered (Proposed)
FPT	Federally Threatened (Proposed)
FC	Federal Candidate
CE	California Endangered
CT	California Threatened
CCT	California Threatened (Candidate)
CFP	California Fully Protected
CSC	California Species of Special Concern
CWL	California Watch List
CCE	California Endangered (Candidate)
CR	California Rare

CNPS LISTING

1A	Plants Presumed Extinct in California
1B	Plants Rare, Threatened, or Endangered in California and elsewhere
2	Plants Rare, Threatened, or Endangered in California, but more common elsewhere

3.5.2 Impact Assessment

a) Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Less than Significant Impact. According to a Project site search using the California Department of Fish and Wildlife's California Natural Diversity Database, there may be special status animal and plant species near the

Project site. However, the site is surrounded by urban uses, including an airport, cold storage and warehousing, and the rail corridor. Further, aside from installation of chain-link fencing along the Marie Street frontage, the only activities occurring on the site will consist of potted agriculture; i.e., there will be no construction. The potential to adversely affect candidate, sensitive, or special status species is less than significant.

b) Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

c) Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

b and c) No Impact. The Project area is located in an urbanized area surrounded by residential uses, industrial uses, and an airport. The Project is not located on or near any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. Also, the Project is not located on or near any State or federally protected wetlands. Therefore, there will be no impact.

d) Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Less than Significant Impact. The Project area does not contain features that would be likely to function as a wildlife movement corridor. Furthermore, the Project is located in a region often disturbed by intensive agricultural cultivation practices and human disturbance which would discourage dispersal and migration. Therefore, implementation of the Project will have no impact on wildlife movement corridors, and mitigation is not warranted.

e) Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

No Impact. The Project description is in compliance with the goals and policies set forth in the City of Mendota General Plan. There will be no impact.

f) Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

No Impact. The Project site is not within a designated Habitat Conservation Plan, Natural Conservation Plan, or any other State or local habitat conservation plan. There would be no impact.

Figure 3-2. Wetlands Map

3.6 Cultural Resources

Table 3-8. Cultural Resources Impacts

Cultural Resources Impacts					
Would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Cause a substantial adverse change in the significance of a historical resource pursuant to in §15064.5?	☐	☐	☒	☐
b)	Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	☐	☐	☒	☐
c)	Disturb any human remains, including those interred outside of dedicated cemeteries?	☐	☐	☒	☐

3.6.1 Environmental Setting

The Project site is located in Fresno County within the San Joaquin Valley, which is an archaeologically and historically rich area.

3.6.2 Impact Assessment

a) Would the project cause a substantial adverse change in the significance of a historical resource pursuant to in §15064.5?

Less than Significant Impact. The Project's ground disturbance will be minimal in nature, the Project's potential to cause a substantial adverse change in the significance of a historical resource would be less than significant. Additionally, please see **Section 3.19**, Tribal Cultural Resources.

b) Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

Less than Significant Impact. The Project proposes up to 15 acres of cannabis planted in pots on the ground. While no known archaeological deposits are present on the Project site, it is possible that unknown buried archaeological materials could be found during ground disturbing activities, including unrecorded Native American prehistoric archaeological materials. If such resources were discovered, the impact to archeological resources could be significant. In the event that important archaeological or paleontological resources are encountered during construction, all earth-moving activity in the specific construction area shall cease until the applicant retains the services of a qualified archaeologist. The archaeologist shall examine the findings, assess their significance, and offer recommendations for procedures deemed appropriate to either further investigate or mitigate adverse impacts. No additional work shall take place within the immediate vicinity of thew find until the identified appropriate actions have been completed. Implementation of the required condition, in accordance with the provisions of Public Resources Code Section 21083.2, would reduce the impact to less than significant.

c) Would the project disturb any human remains, including those interred outside of dedicated cemeteries?

Less than Significant Impact. As discussed above in subsection b), The Project proposes up to 15 acres of cannabis planted in pots on the ground. There are no known formal cemeteries or known interments to have occurred on the Project site. Though unlikely, there is the possibility human remains may be present beneath the Project site. Should human remains be discovered during ground disturbing construction activities, such

discovery could be considered significant. Any human remain encountered during ground disturbing activities are required to be treated in accordance with California Code of Regulations Section 15064.5(e), Public Resources Code Section 5097.98, and California Health and Safety Code Section 7050.5, which state the mandated procedures of conduct following discovery of human remains. If human remains are found during construction in the planning area, all work must stop in the vicinity of the find and the Fresno County Coroner shall be contacted immediately. In accordance with Section 7050.5 of California's Health and Safety Code. If the remains are determined to be Native American, the procedures outlined in CEQA Section 15064.5 (d) and (e) shall be followed. If human remains are determined to be of possible Native American descent, the Coroner shall notify the Native American Heritage Commission who will appoint a "Most Likely Descendent" and the local Native American Tribe representative to identify and preserve Native American remains, burial, and cultural artifacts. Implementation of the required condition and above-referenced sections would reduce the impact to less than significant.

3.7 Energy

Table 3-9. Energy Impacts

Energy Impacts				
Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	☐	☐	☒	☐
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	☐	☐	☒	☐

3.7.1 Environmental Setting

Pacific Gas and Electric (PG&E) supplies electricity and natural gas to the Project area. PG&E obtains its power through hydroelectric, thermal (natural gas), wind, and solar generation or via purchase. PG&E continually produces new electric generation and natural gas sources and implements improvements to gas lines throughout its service areas to ensure the provision of services to customers. New construction would be subject to Titles 20 and 24 of the California Code of Regulations (CCR) which each serve to reduce demand for electrical energy by implementing energy-efficient standards for residential, as well as non-residential buildings.

The Project is also subject to DCC regulations that address potential impacts on energy under California Code of Regulations Sections 16102(s), 16305, and 16306 which generally include heating and cooling power considerations, adhering to renewable energy requirements, and compliance with generator requirements. Compliance with these regulations would help reduce potential project impacts to energy resources to less than significant.

3.7.2 Local

City of Mendota General Plan: The Mendota General Plan sets forth the following goals and policies that pertain to energy of the City and which may be relevant to the Project's CEQA review:

- *Policy OSC-10.10 The City shall encourage new development projects to reduce air quality impacts from area sources and from energy consumption, such as the use of "EPA Energy Star" appliances.*
- *Policy OSC-11.2 The City shall require that new buildings and additions be in compliance with the energy efficiency standards of the California Building Standards Code.*

3.7.3 Impact Assessment

a) Would the project result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

Less than Significant Impact. The Project proposes to operate up to 15 acres of outdoor cannabis cultivation using natural light and ventilation. Water production-related energy consumption is anticipated to be approximately 31,500 kilowatt-hours annually. The project would not result in potentially significant

environmental impacts due to wasteful, inefficient, or unnecessary consumption of energy resources. Impacts will be less than significant.

b) Would the project conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

Less than Significant Impact. The Project proposes the outdoor cultivation of up to 15 acres of cannabis. While indoor cultivation requires artificial lighting and mechanical ventilation, the Project will utilize natural light and ventilation. Impacts will be less than significant.

3.8 Geology and Soils

Table 3-10. Geology and Soils Impacts

Geology and Soils Impacts				
Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving: i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☒	☐
ii) Strong seismic ground shaking?	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☒
iv) Landslides?	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994) creating substantial direct or indirect risks to life or property?	☐	☐	☐	☒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒
f) Directly or indirectly destroy a unique paleontological resource or site or unique geological feature?	☐	☐	☐	☒

3.8.1 Environmental Setting and Baseline Conditions

3.8.1.1 Geology and Soils

The Project is located in northwestern Fresno County, in the central section of California's Great Valley Geomorphic Province, or Central Valley. The Sacramento Valley makes up the northern third and the San Joaquin Valley makes up the southern two-thirds of the geomorphic province. Both valleys are watered by large rivers flowing west from the Sierra Nevada Range, with smaller tributaries flowing east from the Coast Ranges. Most of the surface of the Great Valley is covered by Quaternary (present day to 1.6 million years ago) alluvium. The sedimentary formations are steeply upturned along the western margin due to the uplifted Sierra Nevada

Range.[7] From the time the Valley first began to form, sediments derived from erosion of igneous and metamorphic rocks and consolidated marine sediments in the surrounding mountains have been transported into the Valley by streams.

3.8.1.2 Faults and Seismicity

The Project site is not located within an Alquist-Priolo Earthquake Fault Zone and no known faults cut through the local soil at the site. The nearest named fault is the O'Neill fault located approximately 20 miles away.

3.8.1.3 Liquefaction

The potential for liquefaction, which is the loss of soil strength due to seismic forces, is dependent on soil types and density, depth to groundwater, and the duration and intensity of ground shaking. Although no specific liquefaction hazard areas have been identified in the county, this potential is recognized throughout the San Joaquin Valley where unconsolidated sediments and a high-water table coincide. According to the United States Department of Agriculture - Natural Resources Conservation Service soil survey in Fresno County, liquefaction risk in the Project area is low.

3.8.1.4 Soil Subsidence

Subsidence occurs when a large land area settles due to over-saturation or extensive withdrawal of ground water, oil, or natural gas. These areas are typically composed of open-textured soils that become saturated. These areas are high in silt or clay content. The Project site is mostly comprised of calfax clay loam (0–1% slopes). It is moderately well drained with a low risk of subsidence (Soil Survey).

3.8.1.5 Dam and Levee Failure

The Mendota Diversion Dam is located approximately 2.3 miles north of the Project.

3.8.2 Impact Assessment

a) Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:

a-i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

a-ii) Strong seismic ground shaking?

Less than Significant Impact. There are no known faults near the Project area. The Project site is subject to relatively low seismic hazards compared to many other parts of California. Potential ground shaking produced by earthquakes generated on regional faults lying outside the immediate vicinity in the Project area may occur. Due to the distance of the known faults in the region, no significant ground shaking is anticipated on this site.

a-iii) Seismic-related ground failure, including liquefaction?

Less than Significant Impact. As discussed above in Section 3.8.1.3, no subsidence-prone soils, oil or gas production or overdraft exists at the Project site. Furthermore, soil conditions on the site are not prone to soil instability due to its low shrink-swell behavior. The impact would be less than significant.

a-iv) Landslides?

No Impact. As the Project is located on the San Joaquin Valley floor, no major geologic landforms exist on or near the site that could result in a landslide. The potential landslide impact at this location is minimal as the site

[7] Harden, D.R. 1998, California Geology, Prentice Hall, 479 pages

[4] Soil Web: An Online Soil Survey Boundary SoilWeb: An Online Soil Survey Browser | California Soil Resource Lab (ucdavis.edu)

is approximately 20 miles from the foothills and the local topography is essentially flat and featureless. There will be no impact.

b) Would the project result in substantial soil erosion or the loss of topsoil?

No Impact. The Project proposes up to 15 acres of cannabis planted in pots on the ground. Ground disturbance would be minimal; therefore, the Project will not result in substantial soil erosion or the loss of topsoil.

c) Would the project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

d) Would the project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?

c and d) No Impact. Soils onsite consist of calfax clay loam (0–1% slopes). The Project site and surrounding areas do not contain substantial grade changes. Risk of landslides, lateral spreading, subsidence, liquefaction, and collapse are minimal. The Project does not propose any modification or alteration of the topography of the site and is not located on expansive soil. There will be no impact.

e) Would the project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

No Impact. No septic system is proposed. Since the Project does not involve contrition of any buildings, neither will the site be connected to the City's wastewater conveyance system. There will be no impact.

f) Would the project directly or indirectly destroy a unique paleontological resource or site or unique geological feature?

No Impact. The Project proposes up to 15 acres of cannabis planted in pots on the ground. Ground disturbance would be minimal. The placement of these planters will not cause adverse effects as a result of earthquakes, strong seismic ground shaking, landslides, liquefaction, the loss of topsoil or substantial soil erosion. The Project would not disturb existing septic tanks or alternative wastewater disposal systems, nor unique paleontological or geological resources. There would be no impact.

3.9 Greenhouse Gas Emissions

Table 3-11. Greenhouse Gas Emissions Impacts

Greenhouse Gas Emissions Impacts				
Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☒	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☒	☐

3.9.1 Environmental Setting and Baseline Conditions

Commonly identified GHG emissions and sources include the following:

Carbon dioxide (CO_2) is an odorless, colorless natural greenhouse gas. CO_2 is emitted from natural and anthropogenic sources. Natural sources include the following: decomposition of dead organic matter; respiration of bacteria, plants, animals, and fungus; evaporation from oceans; and volcanic out gassing. Anthropogenic sources include the burning of coal, oil, natural gas, and wood.

Methane (CH_4) is a flammable greenhouse gas. A natural source of methane is the anaerobic decay of organic matter. Geological deposits, known as natural gas fields, also contain methane, which is extracted for fuel. Other sources are from landfills, fermentation of manure, and ruminants such as cattle.

Nitrous oxide (N_2O), also known as laughing gas, is a colorless greenhouse gas. Nitrous oxide is produced by microbial processes in soil and water, including those reactions that occur in fertilizer containing nitrogen. In addition to agricultural sources, some industrial processes (fossil fuel-fired power plants, nylon production, nitric acid production, and vehicle emissions) also contribute to its atmospheric load.

Water vapor is the most abundant, and variable greenhouse gas. It is not considered a pollutant; in the atmosphere, it maintains a climate necessary for life.

Ozone (O_3) is known as a photochemical pollutant and is a greenhouse gas; however, unlike other greenhouse gases, ozone in the troposphere is relatively short-lived and, therefore, is not global in nature. Ozone is not emitted directly into the atmosphere but is formed by a complex series of chemical reactions between volatile organic compounds, nitrogen oxides, and sunlight.

Aerosols are suspensions of particulate matter in a gas emitted into the air through burning biomass (plant material) and fossil fuels. Aerosols can warm the atmosphere by absorbing and emitting heat and can cool the atmosphere by reflecting light.

Chlorofluorocarbons (CFCs) are nontoxic, nonflammable, insoluble, and chemically unreactive in the troposphere (the level of air at the earth's surface). CFCs were first synthesized in 1928 for use as refrigerants, aerosol propellants, and cleaning solvents. CFCs destroy stratospheric ozone; therefore, their production was stopped as required by the Montreal Protocol in 1987.

Hydrofluorocarbons (HFCs) are synthetic chemicals that are used as a substitute for CFCs. Of all the greenhouse gases, HFCs are one of three groups (the other two are perfluorocarbons and sulfur

hexafluoride) with the highest global warming potential. HFCs are human-made for applications such as air conditioners and refrigerants.

Perfluorocarbons (PFCs) have stable molecular structures and do not break down through the chemical processes in the lower atmosphere; therefore, PFCs have long atmospheric lifetimes, between 10,000 and 50,000 years. The two main sources of PFCs are primary aluminum production and semiconductor manufacture.

Sulfur hexafluoride (SF_6) is an inorganic, odorless, colorless, nontoxic, nonflammable gas. It has the highest global warming potential of any gas evaluated. Sulfur hexafluoride is used for insulation in electric power transmission and distribution equipment, in the magnesium industry, in semiconductor manufacturing, and as a tracer gas for leak detection.

There are uncertainties as to exactly what the climate changes will be in various local areas of the earth, and what the effects of clouds will be in determining the rate at which the mean temperature will increase. There are also uncertainties associated with the magnitude and timing of other consequences of a warmer planet: sea level rise, spread of certain diseases out of their usual geographic range, the effect on agricultural production, water supply, sustainability of ecosystems, increased strength and frequency of storms, extreme heat events, air pollution episodes, and the consequence of these effects on the economy.

Emissions of GHGs contributing to global climate change are largely attributable to human activities associated with the industrial/manufacturing, utility, transportation, residential, and agricultural sectors. About three-quarters of human emissions of CO_2 to the global atmosphere during the past 20 years are due to fossil fuel burning. Atmospheric concentrations of CO_2, CH_4, and N_2O have increased 31 percent, 151 percent, and 17 percent respectively since the year 1750 (CEC 2008). GHG emissions are typically expressed in carbon dioxide-equivalents (CO_2e), based on the GHG's Global Warming Potential (GWP). The GWP is dependent on the lifetime, or persistence, of the gas molecule in the atmosphere. For example, one ton of CH_4 has the same contribution to the greenhouse effect as approximately 21 tons of CO_2. Therefore, CH_4 is a much more potent GHG than CO_2.

3.9.1.1 Short-Term Construction-Generated Emissions

Due to the nature of the Project, construction equipment is not anticipated. Construction-related emissions are therefore not discussed further.

3.9.1.2 Long-Term Operational Emissions

Operational emissions would consist of additional heavy duty truck deliveries occurring from processing, as well as additional electricity usage related to the additional water pumping.

3.9.1.3 Effects of Climate Change

The sections below detail the methodology of the report and its conclusions.

3.9.2 Impact Assessment

3.9.2.1 Thresholds of Significance

CEQA Guidelines Amendments for GHG became effective March 18, 2010. Included in the Amendments are revisions to the Appendix G Initial Study Checklist. In accordance with these Amendments, a project would be considered to have a significant impact to climate change if it would:

a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or,
b. Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.

In accordance with SJVAPCD's *CEQA Greenhouse Gas Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects*[8], proposed projects complying with Best Performance Standards (BPS) would be determined to have a less-than-significant impact. Projects not complying with BPS would be considered less than significant if operational GHG emissions would be reduced or mitigated by a minimum of 29 percent, in comparison to business-as-usual (year 2004) conditions. In addition, project-generated emissions complying with an approved plan or mitigation program would also be determined to have a less-than-significant impact.

a) Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Less than Significant Impact.

Long-Term Operational Emissions

Estimated long-term operational emissions are summarized in **Table 3-12** (See **Appendix A**).

Table 3-12. Long-Term Operational GHG Emissions

	Emissions (MT CO_2e)(1)
Delivery Emissions	*26.57*
Water Pumping	*2.94*
Total	*29.51*
*AB 32 Consistency Threshold for Land-Use Development Projects**	*1,100*

* As published in the Bay Area Air Quality Management District's CEQA Air Quality Guidelines. Available online at http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en

b) Would the project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Less than Significant Impact. The Project will cause the emission of approximately 30 metric tons of CO2e annually, an amount less than established thresholds. Impacts would be less than significant.

[8] Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA. http://www.valleyair.org/Programs/CCAP/12-17-09/3%20CCAP%20-%20FINAL%20LU%20Guidance%20-%20Dec%2017%202009.pdf

3.10 Hazards and Hazardous Materials

Table 3-13. Hazards and Hazardous Materials Impacts

Hazards and Hazardous Materials Impacts					
Would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☒	☐
b)	Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☒
c)	Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒
d)	Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?	☐	☐	☒	☐
f)	Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
g)	Expose people or structures, either directly or indirectly to a significant risk of loss, injury or death involving wildland fires?	☐	☐	☐	☒

3.10.1 Environmental Setting and Baseline Conditions

3.10.1.1 Hazardous Materials

The Hazardous Waste and Substances Sites (Cortese) List is a planning document used by the State, local agencies, and developers to comply with CEQA requirements in providing information about the location of hazardous materials release sites. Government Code Section 65962.5 requires the California Environmental Protection Agency (CalEPA) to develop at least annually an updated Cortese List. The Department of Toxic Substances Control (DTSC) is responsible for a portion of the information contained in the Cortese List. Other State and local government agencies are required to provide additional hazardous material release information for the Cortese List. DTSC's EnviroStor database provides DTSC's component of Cortese List data (DTSC, 2010). In addition to the EnviroStor database, the State Water Resources Control Board (SWRCB) Geotracker database provides information on regulated hazardous waste facilities in California, including underground storage tank (UST) cases and non-UST cleanup programs, including Spills-Leaks-Investigations-Cleanups (SLIC) sites, Department of Defense (DOD) sites, and Land Disposal program. A search of the DTSC

EnviroStor database and the SWRCB Geotracker performed on May 14, 2021 determined that there are no known active hazardous waste generators or hazardous material spill sites within the Project site or immediate surrounding vicinity.

The Project is also subject to DCC regulation addressing potential impacts from hazards and hazardous materials under California Code of Regulations Sections 16102(q), 16106(a)(3), 16304(f), and 16307 which generally include establishing a responsible party for the project, including adhering to conditions requested by CDFW or SWRCB, compliance with pesticide laws, regulations, and use requirements. Compliance with these regulations would help reduce potential project impacts of hazards and hazardous materials to less than significant.

3.10.1.2 Airports

The William Robert Johnston Municipal Airport is approximately one mile northeast of the Project.

3.10.1.3 Emergency Response Plan

The City of Mendota prepared an Emergency Operations Plan (EOP) in 2006. The objective of the EOP is to incorporate and coordinate all the facilities and personnel of the City into an efficient organization capable of responding to any emergency.[9]

3.10.1.4 Sensitive Receptors

Approximately 600 feet southeast of the Project site is mobile home/RV residential area.

3.10.1.5 Local

City of Mendota General Plan:[10] The Mendota General Plan sets forth the following goals and policies that pertain to hazards and hazardous materials of the City and which may be relevant to the Project's CEQA review:

- *S-5.3 Hazardous materials procedures should be consistent the Fresno County Hazardous Waste Management Plan (HWMP).*
- *S-5.5 The City should storage handling, transport and disposal issues.*

3.10.2 Impact Assessment

a) Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

Less than Significant Impact. Truck deliveries will be made to and from the Project site, utilizing diesel fuel. However, truck deliveries currently exist in the City of Mendota. In addition, the Project would utilize pesticides, herbicides, and other agricultural materials during operation of the Project. These materials are allowed under the Department of Cannabis Control regulations. Therefore impacts would be less than significant.

b) Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

No Impact. The Project is not expected to generate excessive traffic to the Project site and the Project will not produce or utilize and hazardous substances. The Project will not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

[9] (City of Mendota General Plan, n.d.) Accessed May 2021.
[10] (City of Mendota General Plan, n.d.) Accessed May 2021.

c) Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

No Impact. The Project site is not within one-quarter mile of an existing or proposed school. There is no impact.

d) Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

No Impact. The Project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. There will be no impact.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

Less than Significant Impact. The Project Site is located within the planning area of the Fresno County Airport Land Use Compatibility Plan (ALUCP). Three Airport Safety Zones overlie the Project site: Runway Protection Zone, Inner Approach Zone, and Traffic Pattern Zone. At a special meeting on March 8, 2021, the Fresno County Airport Land Use Commission made a conditional finding of compatibility with the ALUCP 1) provided that no part of the operation would occur within the 2.20 acres of Runway Protection Zone and 2) pending consultation with the Federal Aviation Administration regarding perimeter fence height. Impacts will be less than significant.

f) Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

No Impact. The City of Mendota's adopted Emergency Operations Plan (EOP) would not be significantly affected by the Project. Disturbances to traffic patterns are not to be expected. Therefore, Project-related impacts to emergency evacuation routes or emergency response routes on local roadways would have no impact.

g) Would the project expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?

No Impact. The nearest State Responsibility Area is located approximately 15 miles southwest of the Project site. The Project is located in an urbanized area. To the northeast is the William Robert Johnston Municipal Airport, industrial developments to the immediate northwest and southeast, and the southwest, across the Southern Pacific Railroad, is residential land uses of differing types.

3.11 Hydrology and Water Quality

Table 3-14. Hydrology and Water Quality Impacts

Hydrology and Water Quality Impacts					
	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?	☐	☐	☒	☐
b)	Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	☐	☒	☐	☐
c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				
	i) result in substantial erosion or siltation on- or off-site;	☐	☐	☒	☐
	ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;	☐	☐	☒	☐
	iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	☐	☐	☒	☐
	iv) impede or redirect flood flows?	☐	☐	☒	☐
d)	In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	☐	☐	☐	☒
e)	Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	☐	☒	☐	☐

3.11.1 Environmental Setting and Baseline Conditions

The Project site is located in the Delta-Mendota Subbasin the City of Mendota's three water supply wells are located northeast of the city limits on land leased from a private agricultural interest. These wells have a production capacity of approximately 3,500 to 3,600 gallons per minute (GPM) or 5.0 to 5.2 million gallons per day (MGD). Peak summer water usage is approximately 2.5 MGD for the City. Water from the well field is delivered to the City's water treatment plant prior to distribution throughout the City. The plant can treat approximately 3,000 GPM, or 4.3 MGD. The plant also contains two 1.0-million-gallon water storage tanks.

DCC regulation that governs the Project and addresses potential impacts on hydrology and water quality is included under California Code of Regulations Sections 16102(p), 16102(v), 16102(w), 16102(dd), 16107(b), 16216, 16304(a and b), and 16307 which generally include evidence of enrollment in an order of waste discharge requirements, identification of the water source, adherence to lake or streambed alteration requirements,

avoidance of impacted watersheds, compliance with section 13149 of the Water Code, compliance with conditions requested by CDFW or SWRCB, and compliance with pesticide use requirements. Compliance with these regulations would help reduce potential project impacts to hydrology and water quality to less than significant.

3.11.2 Impact Assessment

a) Would the project violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

Less than Significant Impact. The Project proposes up to 15 acres of cannabis planted in pots on the ground. Ground disturbance would be minimal. The site will be graded such that all irrigation water will remain onsite and irrigation timing and duration will be closely monitored to prevent ponding or wastage. Since the irrigation season is opposite of the region's precipitation season and there will not be any impervious surface, there is not anticipated to be any runoff into the City's storm drainage system. The Project does not propose any onsite buildings, including restrooms, so it is not anticipated that any wastewater will be generated and, accordingly, there would be no connection to the City's wastewater system. Impacts will be less than significant.

b) Would the project substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

Less than Significant Impact with Mitigation. The Applicant estimates approximately 9 million gallons per year, or roughly 3.66 acre-feet per acre per year. The City has sufficient water production capacity to serve the Project; however, if irrigation at the Project coincides with daily peak domestic water use, the City's water treatment plant may not be able to treat water at a rate sufficient to maintain City-wide pressure. Implementation of **HYD-1** below would ensure that the effects are reduced to a less than significant level.

c) Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

c-i) result in substantial erosion or siltation on- or off-site;

c-ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;

c-iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or

c-iv) impede or redirect flood flows?

Less than Significant Impact. The Project proposes up to 15 acres of cannabis planted in pots on the ground. The area of impermeable surface would not increase. The site will be graded such that all irrigation water will remain onsite and irrigation timing and duration will be closely monitored to prevent ponding or wastage. Since the irrigation season is opposite of the region's precipitation season and there will not be any impervious surface, there is not anticipated to be any runoff into the City's storm drainage system. The Project does not propose any onsite buildings that could or impede or redirect flood flows. Impacts will be less than significant.

d) Would the project in flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundations?

No Impact. The Project is not located in a flood hazard, tsunami, or seiche zone. There will be no impact.

e) Would the project conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

Less than Significant Impact with Mitigation. The Project proposes up to 15 acres of cannabis planted in pots on the ground. The Applicant estimates that approximately 9 million gallons per year, or roughly 3.66 acre-feet per acre per year, or 1.83 acre-feet per gross acre, will be used to irrigate the plants. The SJREC GSP states that the City of Mendota has a sustainable yield of 800 AF per year, or roughly 0.3 acre-feet per acre.

As stated in the SJREC GSP, the City is actively pursuing water conservation. In order to maintain sustainability, the City is committed to offsetting an increase in demand based on projected population growth, by developing certain projects. Each project will be analyzed jointly with the City and the SJREC to maximize the regional benefits. The City will develop projects including:

1) *storm water capture;*
2) *demand reduction through reduced watering;*
3) *surface water transfer;*
4) *purchasing groundwater credits;*
5) *participation in recharge projects;*
6) *reclaimed water for outdoor watering; and,*
7) *the city will continue to investigate other types of projects.*

Because there are no identified projects to improve groundwater sustainability, this constitutes a significant impact. Implementation of HYD-1 would reduce impacts to less than significant.

Mitigation Measure

HYD-1 (Off-Site Water Use Reduction). Prior to commencement of land use, the City shall identify a list and cost of water conservation and/or recharge projects that would reduce the net increase in water to 1.46 million gallons per year. The applicant shall pay its fair share towards the project(s). The City shall cause the completion of the identified projects prior to exceedance of the City's sustainable yield amount (800 AFY). Such water conservation projects may include:

- Funding dishwasher, clothes washer, toilet, or landscape replacement and/or rebate programs.
- Identification and elimination of public water system leaks.
- Stormwater capture
- Construction of recharge basins

Agriculture irrigation efficiency projects may be funded and implemented in perpetuity by the project proponent.

Figure 3-3 FEMA Map

3.12 Land Use and Planning

Table 3-15. Land Use and Planning Impacts

Land Use and Planning Impacts					
Would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Physically divide an established community?	☐	☐	☐	☒
b)	Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☒

3.12.1 Environmental Setting and Baseline Conditions

The Project is located at the southeastern region of the City of Mendota in the northwestern portion of Fresno County. The Project site is located in an urbanized area, with the William Robert Johnston Municipal Airport to the northeast, industrial developments to the immediate northwest and southeast, and residential land uses across the Southern Pacific Railroad to the southwest.

The Project site consists of Assessor's Parcel Number 013-280-29, an approximately 15-acre site. The site is planned as Light Industrial by the Mendota General Plan and is zoned M-1/CO (Light Manufacturing with Commercial Cannabis Overlay District). Surrounding zone designations and General Plan land use designations are detailed in **Figure 2-5** and **Figure 2-6.**

3.12.2 Impact Assessment

a) Would the project physically divide an established community?

No Impact. The existing site is an undeveloped vacant lot. The Project is not proposing a physical barrier or other physical division within an established community. There is no impact.

b) Would the project cause a significant environmental conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

No Impact. The Project is consistent with the designated land use and zone district; therefore, the Project will not cause a significant environmental conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

3.13 Mineral Resources

Table 3-16. Mineral Resources Impacts

Mineral Resources Impacts					
	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b)	Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

3.13.1 Environmental Setting and Baseline Conditions

The Project is located in the City of Mendota within the northwestern portion of Fresno County, in the southern section of California's Great Valley Geomorphic Province, or Central Valley. Historically, Fresno County has been a leading producer of a variety of minerals including aggregate, fossil fuels, metals, and other materials used construction or in industrial processes. Currently, aggregate and petroleum are the County's most significant mineral resources. The Coalinga area, in western Fresno County, has been a valuable region for mineral resources as a top producer of commercial asbestos and home to extensive oil recovery operations.

California Department of Conservation's Division of Oil, Gas, and Geothermal Resources (DOGGR) maintains a database of oil wells in the Project area. According to the DOGGR Well Finder there are three plugged and abandoned wells within two miles of the Project site (Donco Co. #1, D.J. Pickrell #1, and Gamma Corp #1). There are no active wells within two miles of the Project site.

There are no known current or historic mineral resource extraction or recovery operations in the Project vicinity nor are there any known significant mineral resources onsite.

3.13.2 Impact Assessment

a) Would the project result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

b) Would the project result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

a and b) No Impact. The California Surface Mining and Reclamation Act of 1975 (SMARA) was intended to protect the State's need for a continuing supply of mineral resources, while protecting public an environmental health. SMARA requires that all cities incorporate into their general plans mapped mineral resource designations approved by the State Mining and Geology Board. The State Geologist classifies land in California based on availability of mineral resources. Because available aggregate construction material is limited, five designations have been established for the classification of sand, gravel and crushed rock resources: Scientific Resource, Mineral Resource Zone 1, Mineral Resources Zone 2, and Mineral Resource Zone 3, and Mineral Resource Zone 4.

According to the Department of Conservation Special Report 158, *Mineral Land Classification: Aggregate Materials in the Fresno Production-Consumption Region Sanger Plate,* the Project is in an undefined area of Fresno County. However, there are no known mineral resources locations near the Project. Mineral Resource Zone 3 (MRZ-3) is an area where the significance of mineral deposits cannot be determined from the available data. There are no known sources of mineral resources extraction or recovery operations in the Project vicinity nor any known significant mineral resources onsite.[11] Therefore, the Project could be classified in as MRZ-3. Implementation of the Project would not result in the loss of availability of a known mineral resource since no known mineral resources occur in this area. In addition, DOGGR has no record of active or inactive oil or gas wells or petroleum resources on the Project site or in the vicinity[12] and the Project area has not been designated as a locally important mineral resource recovery site by a general plan, specific plan, or land use plan. There would be no impact.

[11] (Fresno County General Plan Policy Document, 2000) Accessed May 2021.
[12] (California Department of Conservation Well Finder, 2020) Accessed May 2021.

3.14 Noise

Table 3-16. Noise Impacts

Noise Impacts					
	Would the project result in:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☒	☐
b)	Generation of excessive ground borne vibration or ground borne noise levels?	☐	☐	☐	☒
c)	For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

3.14.1 Environmental Setting and Baseline Conditions

There are a variety of sources that produce noise in Mendota including traffic, airport operations, and agricultural operations. Airport, traffic, and railroad noise are the dominant sources of ambient noise near the Project site. The William Robert Johnston Municipal Airport is the largest source of noise in the area due to the airport being immediately adjacent to the Project site. The Southern Pacific Railroad, which runs parallel to the southwest of the property, is a large source of noise as well.

The Project is subject to DCC regulation that address potential impacts from noise under California Code of Regulations Sections 16304(e) and 16306 which generally include requirements for generators and generator use. Compliance with these regulations would help reduce potential project noise impacts to less than significant.

3.14.1.1 Local

City of Mendota General Plan[13]: The Mendota General Plan sets forth the following goal pertaining to noise standards and may have relevance to the Project's CEQA review:

- *N-1 Prevention of noise from interfering with human activities and protection of the community from the harmful effects of exposure to excessive noise, maintaining an amiable community in which to live for the residents of Mendota.*

3.14.2 Impact Assessment

a) Would the project result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

[13] (City of Mendota General Plan, n.d.) Accessed 14 May 2021.

No Impact. Due to the Project's location in relation to the existing airport, which currently generates a significant amount of noise, the project would not result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies. During operation, the site would be cultivated by hand and is not expected to utilize machinery or equipment that would result in increased levels of noise for the surrounding area. The impact would be less than significant.

b) Would the project result in generation of excessive ground borne vibration or ground borne noise levels?

No Impact. The Project proposes to cultivate up to 15 acres of cannabis planted in pots placed on the ground. Ground disturbance would be minimal in nature, therefore the Project will not result in generation of excessive ground borne vibration or ground borne noise levels.

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

No Impact. The Project proposes to cultivate up to 15 acres of cannabis planted in pots placed on the ground. Ground disturbance would be minimal in nature. It is assumed a negligible amount of noise will be generated from the Project. The Project will not expose people residing or working in the Project area to excessive noise levels.

3.15 Population and Housing

Table 3-17. Population and Housing Impacts

Population and Housing Impacts					
	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b)	Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

3.15.1 Environmental Setting and Baseline Conditions

The City of Mendota's population was 11,014 at the 2010 U.S. Census and was estimated to be at 11,511 as of July 2019. The U.S. Census also estimates approximately 4.06 persons per household in the City.[14] The State Routes 180 and 33 traverse the agricultural city. Mendota is located approximately 8.5 miles south-southeast of Firebaugh, at an elevation of 174 feet.

3.15.2 Impact Assessment

a) Would the project induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

No Impact. The Project proposes the cultivation of up to 15 acres of cannabis planted in pots placed on the ground. No new homes will be proposed, but the Project will hire employees to plant, maintain, and harvest the crops. The need for employees will not affect population growth because the Project intends to hire local City residents. There will be no impact.

b) Would the project displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

No Impact. The Project will utilize vacant land that is located in an urbanized area. It will not result in the displacement of housing or any people. There will be no impact.

[14] https://www.census.gov/quickfacts/mendotacitycalifornia U.S. Census, accessed May 2021.

3.16 Public Services

Table 3-18. Public Services Impacts

Public Services Impacts				
Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	☐	☐	☒	☐
Police protection?	☐	☐	☒	☐
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Other public facilities?	☐	☐	☒	☐

3.16.1 Environmental Setting and Baseline Conditions

Fire Protection: The closest fire station is Fresno County Fire District/CAL FIRE Station 96 located approximately 0.95 miles northwest of the Project.

Police Protection: The closest law enforcement is the Mendota Police Department located approximately 0.15 miles east of the Project. The next closest law enforcement is the Fresno County Sheriff's Office, San Joaquin Station, located approximately 17.1 miles southeast of the Project site.

Schools: The closest school to the Project is Mendota High School located approximately 0.35 miles west of the Project site.

Parks: The closest park is the Veteran's Park located approximately 0.50 miles northwest of the Project site. There is also Rojas-Pierce Park approximately 0.76 miles west of the Project and the Lindgren-Lozano Park located approximately 1.08 miles northwest of the Project.

Landfills: The closest landfill to the Project site is the American Avenue Landfill located approximately 14 miles southeast.

3.16.2 Impact Assessment

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the

construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire Protection: Less than Significant Impact. The City of Mendota is located in the Fresno County Fire Protection District (FCFPD). The Project site would be served by Station 96, located approximately 0.95 mile northwest at the intersection of McCabe Street and State Route 33/Derrick Avenue. The Project would be required to comply with the requirements of the FCFPD regarding access, water mains, fire flow, hydrants, and review of engineering plans. Standard fire suppression conditions are incorporated as part of the Project. Increased demands for fire service are funded almost entirely through property taxes. Therefore, impacts to fire protection services are considered less than significant.

Police Protection: Less than Significant Impact. The City of Mendota provides local policing. The Project proposal would be served by the City of Mendota Police Department and the cultivation of cannabis on the Project site is not anticipated to negatively impact police protection. Therefore, adverse impacts would be less than significant.

Schools: No Impact. The closest school to the Project site is Mendota High School at 0.35 miles away. The Project site and Mendota High School are physically divided by residential development and the Project is not expected to generate new students, therefore there will be no impacts to schools.

Parks: No Impact. The closest park is the Veteran's Park located approximately 0.57 miles northwest of the Project site. The Project will have no impact on parks.

Landfills: Less than Significant Impact. Virtually all waste generated at the site would be in the form of green waste or recyclable materials (plastic or metal containers) that would be disposed of in compliance with CalRecycle requirements. Therefore, the Project will have a less than significant impact on landfills.

3.17 Recreation

Table 3-19. Recreation Impacts

Recreation Impacts					
	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b)	Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☒

3.17.1 Environmental Setting and Baseline Conditions

The Mendota General Plan calculated the amount of park and recreational land based upon the combined total of developed park acreage plus 50 percent of the amount of school sites that have adjoining sports fields. The City currently has 23 acres of existing park and recreational land. Mendota's three primary parks developed for recreational use are: Veteran's Park, Lozano-Lindgren Park, and Rojas-Pierce Park. Veteran's Park, the nearest park is approximately 0.57 miles northwest of the Project. Existing recreational opportunities in Mendota range from traditional active sports such as baseball and soccer to passive recreation such as nature observation and simply spending time outdoors. Between these two extremes falls a range of activities enjoyed by many residents, including picnicking in parks, walking and bicycling, and playground activities.

3.17.1.1 Local Regulations

City of Mendota General Plan:[15] The Mendota General Plan sets forth the following goals and policies that pertain to recreational facilities of the City and which have potential relevance to the Project's CEQA review:

- *OSC-2.1 The City shall maintain a standard of 5.0 acres of developed parkland per 1,000 residents.*
- *OSC-2.3 The City shall reserve and promote open space and recreational areas of varying scales and uses in Mendota. The provision of private and common open space shall be required for multi-family residential development projects.*

3.17.2 Impact Assessment

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

No Impact. The Project proposes the cultivation of up to 15 acres of cannabis planted in pots placed on the ground. The Project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.

[15] (City of Mendota General Plan, n.d.) Accessed May 2021.

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

No Impact. The Project proposes the cultivation of up to 15 acres of cannabis planted in pots placed on the ground. The Project does not include recreational facilities or require the construction or expansion of recreational facilities therefore there would be no impact.

3.18 Transportation

Table 3-20. Transportation Impacts

Transportation Impacts					
	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?	☐	☐	☐	☒
b)	Conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)??	☐	☐	☒	☐
c)	Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
d)	Result in inadequate emergency access?	☐	☐	☐	☒

3.18.1 Environmental Settings and Baseline Conditions

The City of Mendota is a small rural community in western Fresno County. The City is located west of Fresno and east of Interstate 5. SR 180/Oller Street runs northwest to southeast and is approximately 850 feet southwest of the Project site. SR 33/Derrick Avenue runs north-south and is approximately 4,000 feet east of the Project site. Both routes provide a transportation corridor for residents of Mendota, farmers, and others in the region.

3.18.2 Impact Assessment

a) Would the project conflict with a plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?

No Impact. There will be no work done in the existing right-of-way. The Project will not require any off-site improvements that would conflict with a plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities.

b) Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3 subdivision (b)?

Less than Significant Impact. The project is located within the city limits in an urbanized environment. The Project will not increase vehicles miles traveled (See **Appendix A**). The Project will be consistent with CEQA Guidelines section 15064.3 subdivision (b).

c) Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

No Impact. The Project site does not propose any sharp curves or dangerous intersections, nor does it propose any incompatible uses. The Project site is fronting Marie Street at a location that does not have an intersection. The closest intersection is approximately 900 feet northwest of the Project site at 9th Street. There will be no impact.

d) Would the project result in inadequate emergency access?

No Impact. This Project will not result in a modification to any roads that would impact emergency access; therefore, the Project will not result in inadequate emergency access.

3.19 Tribal Cultural Resources

Table 3-21. Tribal Cultural Resources Impacts

Tribal Cultural Resources Impacts				
Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:	☐	☒	☐	☐
i. Listed or eligible for listing in the California Register of Historical Resources, or in the local register of historical resources as defined in Public Resources Code section 5020.1(k), or	☐	☒	☐	☐
ii. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	☐	☒	☐	☐

3.19.1 Environmental Setting and Baseline Conditions

Penutian-speaking Yokuts tribal groups occupied the southern San Joaquin Valley region and much of the nearby Sierra Nevada. For a variety of historical reasons, existing research information emphasizes the central Yokuts tribes who occupied both the valley and particularly the foothills of the Sierra Nevada mountains.

Although population estimates vary and population size was greatly affected by the introduction of Euro-American diseases and social disruption, the Yokuts were one of the largest, most successful groups in Native California. Cook estimates that the Yokuts region contained 27 percent of the aboriginal population in the state at the time of contact; other estimates are even higher. Many Yokut descendants continue to live in Fresno County, either on tribal reservations, or in local towns and communities.

3.19.1.1 Local

- *Goal OSC-6 Preservation and enhancement of archaeological, historic and other cultural resources within Mendota.*
- *Policy OSC-6.1 Establish and promote programs that identify, maintain and protect buildings, sites, or other features of the landscape possessing historic or cultural significance.*
- *Policy OSC-6.10 If human remains are discovered, all work shall be halted immediately within 50 feet of the discovery, the City of Mendota Planning Department shall be notified, and the County Coroner must be notified, according to Section 5097.98 of the State Public Resources Code and Section 7050.5 of California's Health and Safety Code. If the*

remains are determined to be Native American, the coroner will notify the Native American Heritage Commission, and the procedures outlined in CEQA Section 15064.5(d) and (e) shall be followed.

- *Policy OSC-6.11 Prior to the commencement of project ground disturbing activities, all construction personnel shall be informed of the type(s) of cultural resources that might be inadvertently uncovered in the area and protocols to be implemented to protect Native American human remains and any subsurface cultural resources.*

3.19.2 Impact Assessment

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

a-i) Listed or eligible for listing in the California Register of Historical Resources, or in the local register of historical resources as defined in Public Resources Code section 5020.1(k), or

a-ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Less Than Significant With Mitigation. As noted in **Section 2.1.11**, the City notified the Santa Rosa Rancheria Tachi Yokut Tribe about the Project on March 24, 2021. On June 7, 2021, the tribe responded via email with requests for an archaeological survey and archaeological records search, and to be notified of any discoveries made on the Project site. Following discussions with the applicant, during which it was made evident that there would be little ground disturbance, the Tribe modified its request to include only cultural sensitivity training for onsite Project personnel. The applicant has agreed to execute a contract with the Tribe for said training. With incorporation of **Mitigation Measure TCR-1**, the Project's potential to cause a substantial adverse change in the significance of a tribal cultural resource would be less than significant.

Mitigation Measure

TCR-1 (Cultural Sensitivity Training) Prior to commencement of construction, the Tribe shall make a presentation at the Project site to all onsite workers. The presentation will show typical artifacts from the area and will explain the laws affecting cultural and tribal resources and the responsibilities of the parties regarding discovery of cultural resources or human remains. To facilitate this training, the applicant shall execute the Tribe's Native American Monitoring Contract.

3.20 Utilities and Service Systems

Table 3-22. Utilities and Service Systems Impacts

Utilities and Service Systems Impacts					
	Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	☐	☒	☐	☐
b)	Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	☐	☒	☐	☐
c)	Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒
d)	Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	☐	☐	☒	☐
e)	Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?	☐	☐	☐	☒

3.20.1 Environmental Setting and Baseline Conditions

The Project is located within the Mowry Lake-Fresno Slough watershed; HUC: 180300091003 (EPA, 2019), approximately 2.5 miles southwest of the Mendota Pool at the confluence of the San Joaquin River and the Fresno Slough. and 7 miles east of Panoche Creek. The San Joaquin River, Fresno Slough, and Mendota Pool have been levied and much of the surrounding land is now intensively cultivated for agricultural production. Historically, the Mendota area supported large areas of riparian wetlands and important waterfowl habitat. Due to alteration of the aquatic features in the vicinity and the conversion of natural habitat to agricultural lands, the riparian habitat is now limited to the margins of these waterways and to undisturbed areas within ecological reserves, managed wildlife areas, and national wildlife refuges.

The City of Mendota's Public Utilities Department's mission is to deliver potable water to the residents of Mendota and provide sewer services for the disposal of wastewater. See **Section 3.11.1** for a discussion of the City's water production capabilities.

The City's wastewater treatment plant (WWTP) has been in operation since 1974 and is located northeast of the city. The Project will not connect to the WWTP.

The Project is subject to DCC regulation that address potential impacts on utilities and service systems under California Code of Regulations Sections 16102(s), 16108, and 16308 which generally include heating and cooling power source identification and consideration, as well as compliance with the need for creation or adherence

to a cannabis waste management plan. Compliance with these regulations would help reduce potential project impacts to utilities and service systems to less than significant.

3.20.1.1 Water Supply

The proposed Project will connect to the City of Mendota's existing water supply system. 10-inch water mains exist in Marie Street as well as along the southeastern and northeastern property lines.

3.20.1.2 Wastewater Collection and Treatment

The proposed Project is not anticipated to generate any wastewater, and thus will not be connected to the City of Mendota's sewer system.

3.20.1.3 Landfills

The City of Mendota is served by the American Avenue Landfill which is located approximately 14 miles southwest of the Project site. Most waste generated at the site is anticipated to be green waste and other plastic and metal recyclables.

3.20.2 Impact Assessment

a) Would the project require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?

b) Would the project have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

a) and b) Less than Significant Impact With Mitigation. The Project is anticipated to use approximately 8,000 gallons of water per day. As discussed in **Section 3.11.2,** the City has a water supply of 5.0 MGD, and a usage rate of 2.5 MGD. The Project would have a minimal impact on the supply of water for the City, and the City has enough water capacity for future development and possible dry years. Therefore, impacts would be less than significant.

c) Would the project result in a determination by the wastewater treatment provider which serves or may serve **the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?**

No Impact. The project will not generate any wastewater. There is no impact.

d) Would the project generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

Less than Significant Impact. It is undetermined at this time how much waste the Project will generate, but the Project site will be served by the American Avenue landfill, operated by the County of Fresno, approximately 14 miles southwest, which has sufficient capacity to operate through 2031.

e) Would the project comply with federal, state, and local management and reduction statutes and regulations related to solid waste?

No Impact. The Project will comply with all regulations related to the generation, storage, and disposal of solid waste.

3.21 Wildfire

Table 3-23. Wildfire Impacts

Wildfire Impacts					
If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a)	Substantially impair an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
b)	Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrollable spread of wildfire?	☐	☐	☐	☒
c)	Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	☐	☐	☐	☒
d)	Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	☐	☐	☐	☒

3.21.1 Environmental Setting and Baseline Conditions

The Project is located in Fresno County in the City of Mendota. The Project site is in a flat urbanized area of the Central San Joaquin Valley. The Project is not located in or near State Responsibility Areas (SRA) or lands classified as very high fire hazard severity zones.

3.21.2 Impact Assessment

If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

a) Substantially impair an adopted emergency response plan or emergency evacuation plan?

b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

No Impact (a)(b)(c)(d). The Project is not located in or near an SRA or lands classified as very high fire hazard severity zones. The nearest SRA is approximately 15 miles southwest of the Project site. Additionally, the site is approximately 20 miles from the nearest Very High classification of Fire Hazard Severity Zone (FHSZ). The Project will not impair an emergency response plan or exacerbate fire risks. Therefore, further analysis of the Projects potential impacts to wildfire are not warranted. There would be no impacts.

3.22 CEQA Mandatory Findings of Significance

Table 3-24. Mandatory Findings of Significance Impacts

Mandatory Findings of Significance Impacts				
Does the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a) Have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☒	☐	☐
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☒	☐
c) Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☒	☐

3.22.1 Environmental Settings and Baseline Conditions

The Project site is a vacant lot covered with weeds. To the northeast is the William Robert Johnston Municipal Airport, and industrial developments to the immediate northwest and southeast. To the southwest, across the Southern Pacific Railroad, are residential land uses of differing types.

3.22.2 Impact Assessment

a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

Less than Significant Impact with Mitigation Incorporated**.** The analysis conducted in this Initial Study/Mitigated Negative Declaration results in a determination that the Project, with incorporation of mitigation measures, will have a less than significant effect on the environment. The potential for impacts to hydrological resources and Tribal resources from the implementation of the Project will be less than significant with the incorporation of the mitigation measures discussed in this analysis. Accordingly, the Project will involve no potential for significant impacts through the degradation of the quality of the environment, the reduction in the habitat or population of fish or wildlife, including endangered plants or animals, the elimination of a plant or animal community or example of a major period of California history or prehistory.

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

Less than Significant Impact. CEQA Guidelines Section 15064(i) states that a Lead Agency shall consider whether the cumulative impact of a project is significant and whether the effects of the project are cumulatively considerable. The assessment of the significance of the cumulative effects of a project must, therefore, be conducted in connection with the effects of past projects, other current projects, and probable future projects. In addition, the City of Mendota includes a Cannabis Overlay District that encourages additional cannabis related businesses within the City limits that will increase the potential for cannabis related businesses within the area, and as a result would increase the potential for cumulative impacts. Several other outdoor cannabis projects have been proposed that would likely cause some impacts due to water consumption, however these impacts have been reduced to a less than significant level. The City would have the capacity within its existing utility infrastructure to support additional cannabis related businesses.

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Less than Significant Impact. The analysis conducted in this Initial Study results in a determination that the Project would have a less than a substantial adverse effect on human beings, either directly or indirectly.

3.23 Determination: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature

July 7, 2021
Date

Jeffrey O'Neal, AICP, City Planner
Printed Name/Position

AGENDA

Chapter 4 Mitigation Monitoring and Reporting Program

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the IS/MND for the Project in the City of Mendota. The MMRP lists mitigation measures recommended in the IS/MND and identifies monitoring and reporting requirements.

Table 4-1 presents the mitigation measures identified for the proposed Project. Each mitigation measure is numbered with a symbol indicating the topical section to which it pertains, a hyphen, and the impact number. For example, AIR-2 would be the second mitigation measure identified in the Air Quality analysis of the IS/MND.

The first column of **Table 4-1** identifies the mitigation measure. The second column, entitled "When Monitoring is to Occur," identifies the time the mitigation measure should be initiated. The third column, "Frequency of Monitoring," identifies the frequency of the monitoring of the mitigation measure. The fourth column, "Agency Responsible for Monitoring," names the party ultimately responsible for ensuring that the mitigation measure is implemented. The last two columns will be used respectively by the City of Mendota to verify the method utilized to confirm or implement compliance with mitigation measures and identify the individual(s) responsible to confirm mitigation measures have been complied with and monitored.

AGENDA

Table 4-1 Mitigation Monitoring and Reporting Program

Mitigation Measure/Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Verification of Compliance
Hydrology					
HYD-1 (Off-Site Water Use Reduction)					
Prior to commencement of land use, the City shall identify a list and cost of water conservation and/or recharge projects that would reduce the net increase in water to 1.46 million gallons per year. The applicant shall pay its fair share towards the project(s). Such water conservation projects may include: • *Funding dishwasher, clothes washer, toilet, or landscape replacement and/or rebate programs.* • *Identification and elimination of public water system leaks.* • *Stormwater capture* • *Construction of recharge basins* Agriculture irrigation efficiency projects may be funded and implemented in perpetuity by the project proponent.	Prior to commencement of land use	Once	City of Mendota	Permit condition; Receipt of funding for project(s)	
Tribal Cultural Resources					
TCR-1 (Cultural Sensitivity Training)					
The Tribe shall make a presentation at the Project site to all onsite workers. The presentation will show typical artifacts from the area and will explain the laws affecting cultural and tribal resources and the responsibilities of the parties regarding discovery of cultural resources or human remains. To facilitate this training, the applicant shall execute the Tribe's Native American Monitoring Contract.	Prior to commencement of construction	Once	City of Mendota	Permit condition; receipt of sign-in sheet	

AGENDA

Appendix A

Air Quality and Greenhouse Gas Emissions Output Files

AGENDA

BEFORE THE PLANNING COMMISSION
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENDOTA ADOPTING A MITIGATED NEGATIVE DECLARATION REGARDING APPLICATION NO. 21-01, THE LEFT MENDOTA II, LLC COMMERCIAL CANNABIS PROJECT APN 013-280-29)

RESOLUTION NO. PC 21-05

WHEREAS, at a regular meeting on September 21, 2021 the Mendota Planning Commission considered Application No. 21-01, submitted by Left Mendota II, LLC, said application proposing to develop approximately Assessor's Parcel No. 013-280-29 with a commercial cannabis facility; and

WHEREAS, to facilitate said development, the applicant has requested that the City undertake various processes, said processes to include:

1. A conditional use permit;
2. A development agreement; and

WHEREAS, the requested processes and the resulting physical development of the Project Site, individually and collectively, constitute a "project" pursuant to the California Environmental Quality Act, Public Resources Code section 21000, *et seq*. ("CEQA") and the CEQA Guidelines, California Code of Regulations, title 14, division 6, section 15000, *et seq*.; and

WHEREAS, pursuant to Public Resources Code section 21080.3.1, on March 18, 2021the City provided notice of the Project to the Santa Rosa Rancheria Tachi Yokut Tribe, and received a response therefrom requesting that cultural sensitivity training be included as mitigation for the project; and

WHEREAS, the City has prepared an initial study pursuant to the provisions of the CEQA and made a preliminary determination that approval of the Project, with mitigation incorporated, would not result in any significant impacts to the environment, and accordingly adoption of a mitigated negative declaration would be appropriate; and

WHEREAS, on July 7, 2021 the City published a notice of intent to adopt a mitigated negative declaration in *The Business Journal,* said notice indicating that the initial study and proposed mitigated negative declaration (IS/MND) would be available for public review starting on July 7, 2021 and ending on August 5, 2021; and

WHEREAS, on July 7, 2021 the City filed the IS/MND and accompanying support documents with the State Clearinghouse pursuant to Governor's Executive Orders N-80-

20 and N-54-20, which in pertinent part conditionally suspend CEQA's local filing requirements; and

WHEREAS, the IS/MND was assigned the State Clearinghouse Number 2021070121; and

WHEREAS, on July 7, 2021 the City also provided copies of said IS/MND to various local entities for review; and

WHEREAS, comments were received from the Department of Highway Patrol and the Department of Cannabis Control; and

WHEREAS, comments received from the Department of Cannabis Control have been incorporated into the IS/MND; and

WHEREAS, incorporation of said comments served only to clarify statements and information already contained within the IS/MND and does not constitute new information, new mitigation, new potentially significant effects, or other change in circumstances of the Project that would necessitate recirculation of the IS/MND pursuant to CEQA Guidelines section 15073.5; and

WHEREAS, the Planning Commission finds that it cannot be fairly argued, nor is there any substantial evidence in the record, that the project could have a significant effect on the environment, either directly or indirectly; and

WHEREAS, based upon the initial study and mitigated negative declaration and the record, the project will not individually or cumulatively have an adverse impact on environmental resources; and

WHEREAS, the City of Mendota is the custodian of the documents and other materials that constitute the record of the proceedings upon which the Planning Commission's recommendation is based, and Mendota City Hall, 643 Quince Street, Mendota, CA is the location of this record; and

NOW, THEREFORE BE IT RESOLVED that the Mendota Planning Commission takes the following actions:

1. Finds that the initial study and mitigated negative declaration prepared for the project comply with provisions of the California Environmental Quality Act and the CEQA Guidelines, and affirm that, with incorporation of mitigation, the project will not have a significant effect on the environment; and
2. Adopts the initial study/mitigated negative declaration and mitigation monitoring & reporting program as contained in Exhibit "A" and Exhibit "B" hereto, respectively; and
3. Directs the City Manager or his designee to file a notice of determination with the Fresno County Clerk within five (5) business days following approval of the Project.

_____
Juan Luna, Chairperson

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 Planning Commission at a regular meeting of said Commission, held at Mendota City Hall on the 21st day of September 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Celeste Cabrera-Garcia, City Clerk

AGENDA

Exhibit "A"
Resolution No. PC 21-05

MITIGATED NEGATIVE DECLARATION

LEAD AGENCY: City of Mendota
643 Quince Street
Mendota, CA 93640

PROJECT TITLE: Application No. 21-01 – Left Mendota II, LLC Commercial Cannabis Project

STATE CLEARINGHOUSE: 2021070121

ADDRESS/LOCATION: 1111 Marie Street; Fresno County APN 013-280-29

PROJECT APPLICANT: Left Mendota II, LLC

PROJECT DESCRIPTION: The Project proposes to develop a 15-acre commercial cannabis cultivation facility requiring a conditional use permit and a development agreement along with various State approvals for cannabis licensing.

CONTACT PERSON: Jeffrey O'Neal, AICP, City Planner; 559.655.3291

The City Council of the City of Mendota has reviewed the proposed Project described herein along with the initial study prepared pursuant to the California Environmental Quality Act (CEQA), and has found that this Project will have no significant impact on the environment for the following reasons:

1. The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

2. The project does not have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

3. The project does not have possible environmental effects which are individually limited but cumulatively considerable; "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

4. The environmental effects of a project will not cause substantial adverse effects on human beings, either directly or indirectly.

5. Mitigation measures ☒ were, ☐ were not made a condition of the approval of the project.

On December 29, 2020, based upon a recommendation from staff, the Mendota Planning Commission adopted Resolution No. PC 20-05, determining that with mitigation the above Project would have no significant effect on the environment. Copies of the documents relating to the Project, including the initial study, may be examined by interested parties at Mendota City Hall, 643 Quince Street, Mendota, CA 93640.

Dated: September 21, 2021

Attest: _____
Jeffrey O'Neal, AICP, City Planner

Exhibit "B"
Resolution No. PC 21-05

Mitigation Monitoring and Reporting Program

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the IS/MND for the Project in the City of Mendota. The MMRP lists mitigation measures recommended in the IS/MND and identifies monitoring and reporting requirements.

Table 0-1 presents the mitigation measures identified for the proposed Project. Each mitigation measure is numbered with a symbol indicating the topical section to which it pertains, a hyphen, and the impact number. For example, AIR-2 would be the second mitigation measure identified in the Air Quality analysis of the IS/MND.

The first column of Table 0-1 identifies the mitigation measure. The second column, entitled "When Monitoring is to Occur," identifies the time the mitigation measure should be initiated. The third column, "Frequency of Monitoring," identifies the frequency of the monitoring of the mitigation measure. The fourth column, "Agency Responsible for Monitoring," names the party ultimately responsible for ensuring that the mitigation measure is implemented. The last two columns will be used respectively by the City of Mendota to verify the method utilized to confirm or implement compliance with mitigation measures and identify the individual(s) responsible to confirm mitigation measures have been complied with and monitored.

This space intentionally left blank.

AGENDA

Exhibit "B"
Resolution No. PC 21-05

Table 0-1 Mitigation Monitoring and Reporting Program

Mitigation Measure/Condition of Approval	When Monitoring is to Occur	Frequency of Monitoring	Agency Responsible for Monitoring	Method to Verify Compliance	Verification of Compliance
Hydrology					
HYD-1 (Off-Site Water Use Reduction)					
Prior to commencement of land use, the City shall identify a list and cost of water conservation and/or recharge projects that would reduce the net increase in water to 1.46 million gallons per year. The applicant shall pay its fair share towards the project(s). Such water conservation projects may include: • Funding dishwasher, clothes washer, toilet, or landscape replacement and/or rebate programs. • Identification and elimination of public water system leaks. • Stormwater capture • Construction of recharge basins Agriculture irrigation efficiency projects may be funded and implemented in perpetuity by the project proponent.	Prior to commencement of land use	Once	City of Mendota	Permit condition; Receipt of funding for project(s)	
Tribal Cultural Resources					
TCR-1 (Cultural Sensitivity Training)					
The Tribe shall make a presentation at the Project site to all onsite workers. The presentation will show typical artifacts from the area and will explain the laws affecting cultural and tribal resources and the responsibilities of the parties regarding discovery of cultural resources or human remains. To facilitate this training, the applicant shall execute the Tribe's Native American Monitoring Contract.	Prior to commencement of construction	Once	City of Mendota	Permit condition; receipt of sign-in sheet	

BEFORE THE PLANNING COMMISSION
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENDOTA APPROVING A CONDITIONAL USE PERMIT FOR APPLICATION NO. 21-01, THE LEFT MENDOTA II, LLC COMMERCIAL CANNABIS PROJECT (APN 013-280-29)

RESOLUTION NO. PC 21-06

WHEREAS, on January 15, 2021 the City of Mendota received Application No. 21-01, submitted by Left Mendota II, LLC and proposing the construction and operation of commercial cannabis cultivation facilities on Fresno Co. APN 013-280-29, consisting of approximately 15 acres; and

WHEREAS, the project site is designated Light Industrial by the City of Mendota 2005-2025 General Plan and is zoned M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District); and

WHEREAS, the proposed use is permitted in the M-1/CO zone subject to approval of a conditional use permit and entrance into a development agreement as described in Mendota Municipal Code Chapters 8.37 and 17.99; and

WHEREAS, on September 10, 2021 a notice of public hearing 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, on September 21, 2021 the Mendota Planning Commission conducted a public hearing at a regular meeting to consider Application No. 21-01; and

WHEREAS, approval of the project consists of a "lease, permit, license, certificate, or other entitlement for use", and is therefore a "project" pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, *et seq*. ("CEQA") 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 Planning Commission, via adoption of Resolution No. PC 21-05, has determined that, with mitigation incorporated, the Project will not have a significant effect on the environment and that the provisions of the California Environmental Quality Act have been met; and

WHEREAS, the Planning Commission has made the following findings pursuant to Mendota Municipal Code Section 17.84.050, said findings substantiated in the record:

a. The site for the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping and other features to adjust such use with the land and uses in the neighborhood;
b. That the site for proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
c. That the proposed use will have no adverse effect on abutting property or the permitted use thereof;
d. That the conditions stated in the project approval are deemed necessary to protect the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED that the Mendota Planning Commission hereby approves the conditional use permit proposed within Application No. 21-01 substantively as illustrated in Exhibit "A" hereto subject to the Conditions of Approval contained in Exhibit "B" hereto

_____
Juan Luna, Chairperson

ATTEST:

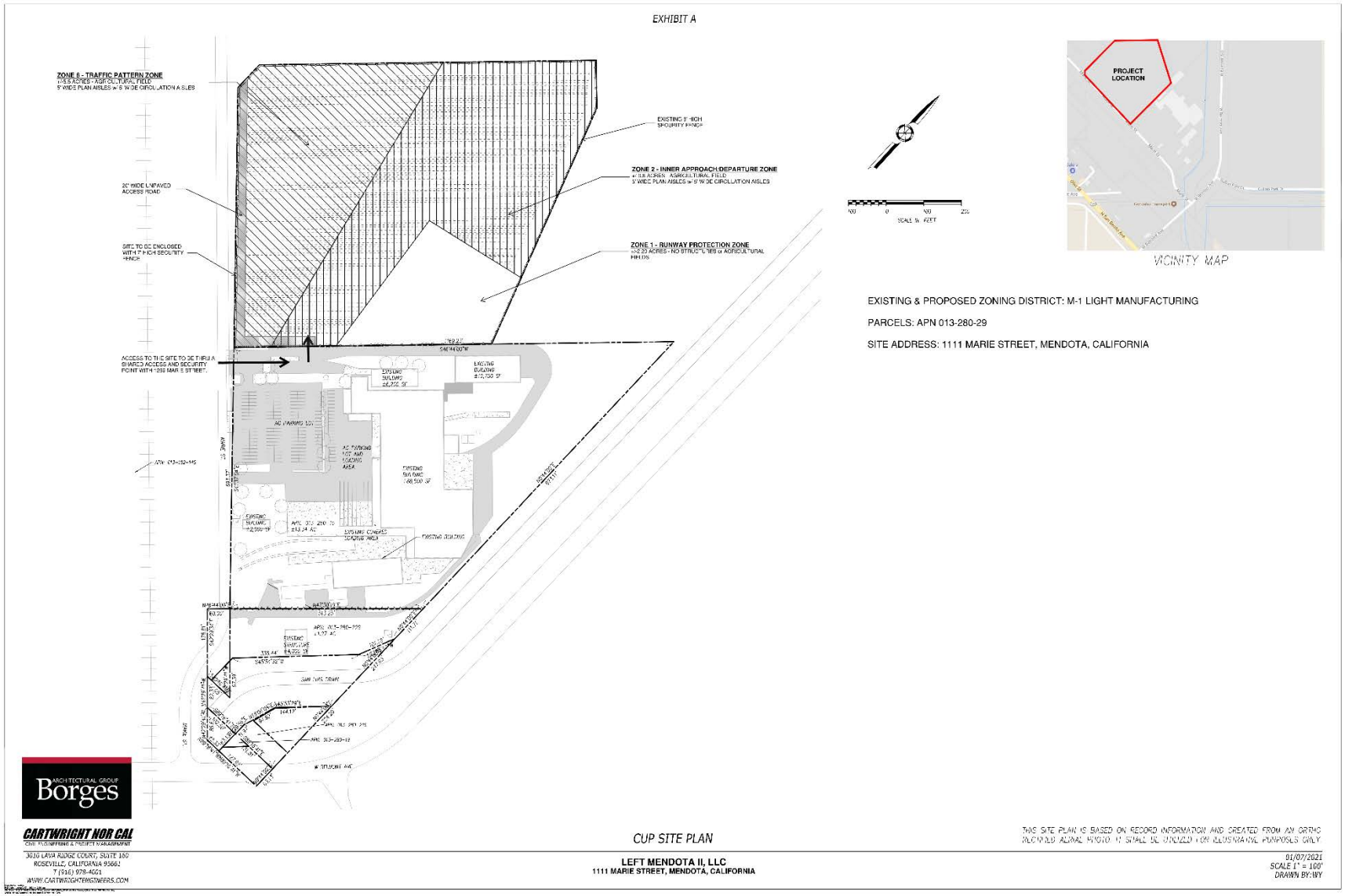
I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the Planning Commission at a regular meeting of said Commission, held at Mendota City Hall on the 21st day of September 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Celeste Cabrera-Garcia, City Clerk

AGENDA

EXHBIT "A" TO RESOLUTION NO. PC 21-0
SITE PLAN FOR APPLICATION NO. 21-01



EXHBIT “B” TO RESOLUTION NO. PC 21-06
CONDITIONS OF APPROVAL
APPLICATION NO. 21-01; APN 013-280-29
LEFT MENDOTA II, LLC

As may be used herein, the words “applicant”, “owner,” “operator”, and “developer” shall be interchangeable, excepting when the word is indicated in ***bold italics***. In that event, the condition of approval is specific to the entity named.

Operations

1. The operator shall acquire and maintain any licenses, approvals, waivers, or similar that may be issued by the State of California requisite to cannabis operations and shall comply with all provisions of any State regulatory agency that may have oversight over said operations.

2. The operator shall acquire and maintain all City of Mendota licenses pursuant to Mendota Municipal Code Chapter 8.37, including payment of applicable fees.

3. The contractor and any subcontractor(s) shall acquire a City of Mendota business license, including payment of any applicable business license fees, prior to commencing construction.

4. The City will monitor the operation for violations of conditions of approval. Penalty for violation may include but is not limited to warnings, fines, and/or permit revocation.

General & Site

5. Operation of this conditional use permit is contingent upon recordation of a development agreement pursuant to MMC Section 8.37.050(1).

6. The conditional use permit detailed within Application No. 21-01 shall expire two (2) years following the date of its approval unless, prior to expiration, a building permit for the requested site modifications is issued by the City of Mendota and construction is commenced and being diligently pursued. At the discretion of the City Manager, and upon valid request not less than thirty (30) days prior to its expiration, this conditional use permit may be extended for a period or periods not to exceed two (2) additional years in the aggregate.

7. Development shall comply with all applicable provisions of the City of Mendota General Plan and the Mendota Municipal Code (MMC), including but not limited to: potable water protection regulations (Chapter 13.30), business licensing requirements (Title 5), and Building Code Standards (Title 15); the Subdivision Ordinance (Title 16); the regulations of the applicable zone district(s) and other relevant portions of the Zoning Ordinance (Title 17); and the City of Mendota Standard Specifications and Standard Drawings, unless exceptions therefrom are approved by the City Engineer.

8. Use of the site shall conform to all applicable requirements for the M-1 Light Manufacturing Zone District as modified by the provisions of the CO Commercial Cannabis Overlay District.

9. Construction drawings (building and improvement plans; site, grading, irrigation, and landscaping, as applicable) shall be submitted to the Planning and Building Department and City Engineer for review and approval. A building permit shall be acquired prior to start of any construction activities.

10. No new landscaping is required. Any existing landscaping damaged or destroyed as a result of construction shall be repaired or replaced in-kind by the applicant at the discretion of the City Planner.

11. The applicant shall provide a lighting plan for the review and approval of the City Engineer. All exterior lights shall be shielded or otherwise oriented to prevent disturbance to surrounding or neighboring properties or traffic on abutting rights-of-way.

12. The applicant shall consult with and shall comply with the requirements of the San Joaquin Valley Air Pollution Control District, including but not limited to compliance with Regulation VIII (Fugitive PM_{10} Prohibitions) and Rule 9510 (Indirect Source Review).

13. The applicant shall consult with and shall comply with the requirements of the Fresno County Fire Protection District/CAL FIRE, including but not limited to requirements related to sprinklers, fire hydrants, and fire access.

14. The developer shall comply with Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.98, and 21083.2 and related statutes regarding regulation of cultural and historical resources that may be discovered on the site.

15. Development and operation of the project site shall be in substantial conformance with the Site Plan dated January 7, 2021 and the operational statement submitted January 15, 2021, both as modified pursuant to the determination of the Fresno County Airport Land Use Commission dated March 9, 2021 and as incorporated herein by reference. The City Planner shall determine the extent to which incremental or minor changes to the site plan, the landscape plan, and/or the operational statement meet this requirement.

16. Following any changes made to the site plan as a result of these conditions or other commentary, correspondence, or official requirement, the applicant shall submit a copy of the final site plan as revised to the Planning Department for inclusion in the project file. Changes made pursuant to these conditions shall be considered minor or incremental.

17. Prior to issuance of a certificate of occupancy, all relevant conditions of approval shall be verified as complete by the Planning Department, and any and all outstanding fees shall have been paid. Any discrepancy or difference in

interpretation of the conditions between the subdivider and the Planning Department shall be subject to review and determination by the Planning Commission.

18. All above-ground features including but not limited to lighting, fire hydrants, postal boxes, electrical and related boxes, and backflow devices shall be installed outside of the public-right-of-way. All utilities shall be installed underground.

19. Hours of construction shall be limited to 6:00 AM to 7:00 PM, Monday through Saturday.

20. Construction debris shall be contained within an on-site trash bin and the project site shall be watered for dust control during construction.

21. Any non-structural fencing shall be subject to approval by the Community Development Department consistent with Standard Drawing Nos. M-3 through M-7.

22. The applicant shall comply with all relevant components of the California Building Code and associated trade codes.

23. All signage must be approved pursuant to the standards and guidelines of the Mendota Municipal Code prior to installation.

24. Development shall at all times respect existing or new easements by, for, and between all private and public entities, including but not limited to the City of Mendota.

25. It shall be the responsibility of the subdivider to grant/secure easements as necessary for the installation and maintenance of private utilities, including but not limited to electricity, gas, telephone, and cable television.

26. Connection points for water and wastewater shall be determined by the City Engineer. Connections shall be made in accordance with City of Mendota standards and shall be coordinated with the Director of Public Utilities.

27. The applicant shall comply with the City of Mendota Cross-Connection Control Regulations contained within MMC Section 13.24.

28. The applicant shall coordinate with the City Engineer and Mid Valley Disposal to establish necessary solid waste procedures and facilities.

<u>Water System Improvements</u>

29. The applicant shall execute, and the project is subject to the provisions of, the Conditional Will-Serve Letter issued by the City of Mendota on May 4, 2021.

30. The site plan shall be revised to illustrate existing and proposed water facilities.

31. The project shall make connection(s) to the City water system as determined by the City Engineer.

32. The improvement plans shall include the location of existing water mains, valves, and valve boxes located in adjacent streets that the proposed water system is to be connected to.

33. All connections to the existing water mains shall include a temporary reduced pressure double check backflow preventer (see Standard Drawing No. W-8) and follow the connection procedures outlined in that standard, or exhibit compliance with AWWA Standard C651-05.

34. Fire hydrants shall be spaced not to exceed 300 feet on center and shall be individually valved between the hydrant and the water system.

35. Fire flow conditions are subject to review and approval by the Fresno County Fire Protection District/CAL FIRE.

36. A meter, meter box, and service shall be installed to each unit. Applicant shall obtain meter type, size and service requirements from the Public Utilities Department and/or the City Engineer. The construction of the water service with meter shall be installed per Standard Drawing No. W-1 and Standard Specifications.

37. All water meters shall be Badger Model E Series with Nicor Connector (E-Series Ultra Plus for sizes 3/4" and 5/8") with Badger Model Orion CMNA-N Cellular Endpoint with Nicor Connector fully loaded with through lid mounting kit

38. No water services are allowed within drive approaches.

39. The project shall comply with City of Mendota's Automated Water Meter Reading System

Sewer System Improvements

40. The site plan shall be revised to illustrate existing and proposed sewer facilities.

41. The project shall connect make connection(s) to the City wastewater system as determined by the City Engineer.

42. No sewer laterals are allowed within driveways. All laterals and cleanouts shall be installed per Standard Drawings No. S-7A and M-1.

43. To ensure proper spacing between underground facilities and allow for unimpeded placement of brass cap monuments in the road surfaces at the intersections of the streets, the location of sewer mains shall conform to Standard Drawing No. M-1.

Storm Drain Improvements

44. Storm drainage shall be accommodated onsite unless an alternative is approved by the City Engineer.

45. Storm drainage facilities shall be constructed per City of Mendota Standard Drawings and Specifications.

46. If applicable, valley gutter construction shall be consistent with City of Mendota Standard Drawing No. ST-14 unless an alternate design is approved by the City Engineer.

Streets

47. To ensure continued access to the site from the abutting parcel to the southeast, the applicant shall cause to be recorded reciprocal cross-access agreement or similar instrument meeting the approval of the City Attorney's office.

48. Any work within the City of Mendota right-of-way shall require an encroachment permit.

49. All concrete work, including curbs, gutters, valley gutters, sidewalks, drive approaches, curb ramps, and other concrete features shall contain a minimum of six (6) sacks of cementitious material per cubic yard unless otherwise approved by the City Engineer.

50. Any broken, damaged, or substandard sidewalk, curb, gutter, or pavement along the project frontages, or any of the above damaged during construction wherever located, shall be removed and replaced as directed by the City Engineer consistent with City Standard Drawings.

51. Drive approaches, as necessary, shall be installed consistent with Standard Drawing No. ST-15.

Fees

52. This project is also subject to a development agreement. Fees discussed in that agreement are not included herein and are in addition to this section.

53. The applicant shall be responsible for payment of any and all outstanding planning, building, plan check, engineering, and attorney fees prior to issuance of a certificate of occupancy. This shall include all fees incurred by the City's consultants or contract staff resulting from preliminary review, correspondence, review of formal application materials, peer review of documents, processing of application materials, attendance at and/or participation in meetings and conference calls, or other services rendered in relation to the project.

54. Concurrently with submittal of improvement and/or building plans, the applicant shall deposit with the City of Mendota funds in an amount estimated by the City Engineer and/or Building Official, respectively, to be sufficient to offset costs to the City for review of such plans. In the event that such funds are not sufficient to

cover costs to the City, the City Engineer and/or Building Official, as appropriate, shall contact the applicant to request additional funds, which the applicant shall then deposit with the City.

55. The applicant shall pay to the City of Mendota development impact fees consistent with the City's current Development Impact Fee Schedule (January 2007). Fees are due in full prior to issuance of a certificate of occupancy.

56. The applicant shall be responsible for payment of fees to the Mendota Unified School District and shall provide the City with evidence of payment, or evidence of the District's determination that no payment is required, prior to issuance of a certificate of occupancy.

57. The applicant shall be responsible for payment of Fresno County Regional Transportation Mitigation Fees and Fresno County Public Facilities Impact Fees and shall provide the City with evidence of payment, or evidence of the County's determination that no payment is required, prior to issuance of a certificate of occupancy.

BEFORE THE PLANNING COMMISSION
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENDOTA RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF MENDOTA MAKES A DETERMINATION PURSANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND ENTERS INTO A DEVELOPMENT AGREEMENT WITH LEFT MENDOTA II, LLC REGARDING COMMERCIAL CANNABIS ACTIVITIES AS DETAILED IN APPLICATION NO. 21-01 (APN 013-280-29)

RESOLUTION NO. PC 21-07

WHEREAS, on January 15, 2021 the City of Mendota received Application No. 21-01, submitted by Left Mendota II, LLC and proposing the construction and operation of commercial cannabis cultivation facilities on Fresno Co. APN 013-280-29, consisting of approximately 15 acres; and

WHEREAS, the project site is designated Light Industrial by the City of Mendota 2005-2025 General Plan and is zoned M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District); and

WHEREAS, the proposed use is permitted in the M-1/CO zone subject to approval of a conditional use permit and entrance into a development agreement as described in Mendota Municipal Code Chapters 8.37 and 17.99; and

WHEREAS, on September 10, 2021 a notice of public hearing 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, on September 21, 2021 the Mendota Planning Commission conducted a public hearing at a regular meeting to consider Application No. 21-01; and

WHEREAS, as part of Application No. 21-01, a conditional use permit was considered and approved by the Planning Commission via Resolution No. P 21-06, in part upon the condition that said conditional use permit would not become operative until the recordation of a development agreement pursuant to Mendota Municipal Code Section 8.37.060

WHEREAS, approval of the project consists of a "lease, permit, license, certificate, or other entitlement for use", and is therefore a "project" pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, *et seq*. ("CEQA") 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, Government Code Section 65865 provides that any city may enter into a development agreement with any person having a legal authority or equitable interest in real property for the development of such property; and

WHEREAS, the proposed project meets the objectives of the project proponent as listed in the project application and ensures that certain requirements are implemented that promote the public health, safety, and welfare of the community, and assures the developer of certainty in the development of the property; and

WHEREAS, the Planning Commission of the City of Mendota has conducted a duly noticed public hearing, as required by law, to consider Application No. 21-01, which includes a proposed development agreement or development agreements a project site consisting of Assessor's Parcel No. 013-280-29; and

NOW, THEREFORE, BE IT RESOLVED that the Mendota Planning Commission makes the following recommendations to the Mendota City Council:

1. That the City Council determines that, with mitigation incorporated, the activities proposed within Application No. 21-01 will not have a significant effect on the environment and that the City Council, consistent with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, adopts a mitigated negative declaration and mitigation monitoring & reporting program.
2. That the City Council enters into a development agreement or development agreements in substantially the same form as contained in Exhibit "A" hereto.

_____
Juan Luna, Chairperson

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 Planning Commission at a special meeting of said Commission, held at Mendota City Hall on the 21st day of September 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Celeste Cabrera-Garcia, City Clerk

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
City of Mendota
643 Quince 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 _____, 2021, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), and **LEFT MENDOTA II, 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 15.05 acres of land (consisting of approximately 655,578 square feet) 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 1111 Marie Street, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-280-29 (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. 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.

J. On May 25, 2021, the City Council adopted Ordinance Nos. 21-07 and 21-08, revising the requirements applicable to the operation and entitlement of commercial cannabis businesses within the City.

K. Government Code section 65867.5 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

L. On September 21, 2021, after a duly noticed and held Planning Commission meeting, the Planning Commission voted to recommend approval of Developer's application for a development agreement for the Project.

M. On October __, 2021, the City Council, in a duly noticed and conducted public hearing, and conducted the first reading of proposed Ordinance No. 21-__, an Ordinance of the

City Council of the City of Mendota Approving Entrance into the Development Agreement No. 21-__ in the matter of Application No. 21-01, the Left Mendota II, LLC Commercial Cannabis Project (APN 013-280-29).

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 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:

Designation	**Description**
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 II, LLC and as further set forth in Section 6.1.

(y) "Developed Portions of the Property" means the designated structure or structures and all land specified in the development agreement application that is owned, leased, or otherwise held under the control of Developer.

(z) "Development Agreement Statute" has the meaning set forth in Recital E.

(aa) "Exhibits" has the meaning set forth in Section 1.3.

(bb) "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.

(cc) "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

(dd) "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.

(ee) "MCRSA" has the meaning set forth in Recital A.

(ff) "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.

(gg) "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.

(hh) "Mortgage" has the meaning set forth in Article 7.

(ii) "Non-Performance Penalty" has the meaning set forth in Section 4.3

(jj) "Notice of Non-Performance Penalty" has the meaning set forth in Section 4.3.

(kk) "Notice of Termination" has the meaning set forth in Section 9.1.

(ll) "Processing Costs" has the meaning set forth in Section 1.11.

(mm) "Project" has the meaning set forth in Recital D.

(nn) "Project Litigation" has the meaning set forth in Section 10.7.

(oo) "Public Benefit Fees" has the meaning set forth in Section 4.2.

(pp) "Public Benefit Amount" has the meaning set forth in Section 4.2.

(qq) "Site" has the meaning set forth in Recital G.

(rr) "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.

(ss) "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.

(tt) "State Taxing Authority" has the meaning set forth in Section 4.2.

(uu) "Subsequent City Approvals" has the meaning set forth in Section 3.1.

(vv) "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 and 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
Distributor	11
Distributor Transport Only (Self-Distribution)	13
Non-storefront Retailer	9
Microbusiness*	12
*Microbusiness Licensees may not engage in Commercial Cannabis Activity associated with a Storefront Retailer license (Type 10), but may engage in Commercial Cannabis Activity usually associated with a Non-Storefront Retailer license (Type 9) provided that they are included within the Non-Storefront Retailer designation for purposes of paying the Non-Storefront Payment laid out in Section 4.2 below.	

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 Developers 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 aw. In consideration of the foregoing, Developer shall remit to City the following payments (collectively referred to as the "Public Benefit Amounts").

(b) An annual payment of Eighty-Five Thousand Dollars ($85,000) for each Non-Storefront Retailer and Microbusiness Authorized License actively operating on the Site and engaging in Commercial Cannabis Activity usually associated with a Non-Storefront Retailer license ("Non-Storefront Payment"), that shall be paid on the last business day of each year; and

(c) 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

(i) $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 Commercial Cannabis Activity, including, but not limited to indoor cultivation, manufacturing, distribution, or non-storefront retail 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 Sixth (6th) month throughout the Term. For purposes of clarification, the Square Foot Charge shall only become due as to that potion 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

(ii) 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 Third (3rd) month of the Term. For the purposes of this Section, the basis for calculation of the Greenhouse Payment shall be the actual amount of canopy (measured by the aggregate area of vegetative growth of mature cannabis plants on the premises).

(iii) Fifty Cents ($0.50) per square foot of the canopy space on any land used for outdoor cultivation Authorized Licenses, which are occupied by tenants and such tenants are actually engaging in outdoor cultivation of cannabis ("Outdoor Payment"). For the purposes of this section, tenants shall be considered actually engaging in outdoor cultivation of cannabis when the canopy area of such tenant's Authorized License contains mature cannabis plants. The Outdoor Payment shall be paid to the City annually, on the last business day of each year. For the purposes of this Section, the basis for calculation of the Outdoor Payment shall be the actual amount of canopy (measured by the aggregate area of vegetative growth of mature cannabis plants on the premises).

(d) Developer shall remit the Non-Storefront Payment, Quarterly Payment, Square Foot Charge, Greenhouse Payment, and the Outdoor Payment, as applicable, to City on as described in subdivision (a) of this section. Failure to remit the Quarterly Payment, Non-Storefront Payment, Square Foot Charge, Greenhouse Payment, and the Outdoor Payment, as applicable, is a material breach of this Agreement.

(e) The Square Foot Charge, the Outdoor Payment, and the Greenhouse Payment referred to in subdivision (a) of this section shall be subject to a five percent (5%) increase at the commencement of the tenth (10^{th}) year of the term ("First Adjustment Date"), the twentieth (20^{th}) year of the Term ("Second Adjustment Date"), and the thirtieth (30^{th}) 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.

(f) 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: (l) 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 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'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 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 II, 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)(l)(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"

Date: _____, 2021

CITY OF MENDOTA,
a California Municipal Corporation

_____

By: Cristian Gonzalez

Its: City Manager

Attest:

_____

_____
City Clerk

Approved to as Form:

_____
John P. Kinsey
City Attorney

"DEVELOPER"

Date: _____, 2021

LEFT MENDOTA II, LLC, a Delaware
Limited Liability Company

_____

By: _____

Its: _____

Exhibit A

Legal Description

Exhibit B

Site Map

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 II, LLC ("Developer") for the development of property located at 1111 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 Date
City of Mendota

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 II, LLC ("Developer") for the development of property located at 1111 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: Date
Entity:

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 II, 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 1111 Marie Street, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-280-29 ("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.

Resolution No. PC 21-07
Exhibit "A"
Draft Development Agreement – Left Mendota II, LLC

"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 II, 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)

AGENDA ITEM – STAFF REPORT

TO: HONORABLE CHAIRPERSON AND COMMISSIONERS

FROM: JEFFREY O'NEAL, AICP, CITY PLANNER

SUBJECT: APPLICATION NO. 20-24, THE LEFT MENDOTA I, LLC COMMERCIAL CANNABIS PROJECT

DATE: SEPTEMBER 21, 2021

ISSUE

In the matter of Application No. 20-24, the Left Mendota I, LLC Commercial Cannabis Project, shall the Planning Commission adopt Resolution No. PC 21-08 recommending that the City Council approves amendments to the Development Agreement enacted pursuant to Ordinance No. 18-02?

BACKGROUND

In addition to the State of California's Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), Chapters 8.37 (Commercial Cannabis Businesses) and 17.99 (Commercial Cannabis Overly District) provide the regulations applicable to non-personal cannabis activities in Mendota. Pursuant to these local regulations, an applicant wishing to undertake commercial cannabis activities must meet certain location criteria, receive approval of a conditional use permit, and enter into a development agreement with the City. The project site currently supports an approximately-100,000-square-foot (SF) main building along with a number of outbuildings and covered areas and was historically used for cold storage and produce packing. Ingress and egress occur at several locations: a main drive approach with guard hut located approximately central to the Marie Street frontage, a second approach approximately 100 feet to the northwest that enters the main parking area, and two nearly-adjoining drive approaches on Marie Street at the northern end of the site. A fourth point of access could be provided via and existing (but closed) approach on APN 013-280-22S at the far south end of the project areas. In addition to paved access, circulation, and loading areas, the site currently supports approximately 144 delineated parking spaces. Two abandoned rail spurs extend from Marie Street easterly into the site. Portions of the site are enclosed with six-foot chain-link fence topped with barbed wire.

On January 24, 2018, the Planning Commission adopted Resolution No. PC 18-01, which authorized the then-applicant to renovate and convert the existing structures and facilities for cannabis cultivation and processing uses consistent with the City's commercial cannabis ordinance. No changes to building footprints, landscaping, or hardscaped area were proposed or have subsequently occurred. Via separate action, the City Council adopted Ordinance No. 18-02, which approved a development agreement consistent with the City's commercial cannabis ordinance. The Planning Commission and City Council took subsequent actions on the Project on December 15, 2020 and January 12, 2021,[1] respectively, to revise the conditional use permit and the development agreement.

[1] The previous amendment to the Development Agreement was effected by Ordinance No. 21-04.

Owner/Applicant:	Left Mendota I, LLC
Representative:	Chris Lefkovitz
Location:	1269 Marie Street, APNs 013-280-15 and 013-280-22S[2] See attached map and photo
Site Size:	Approximately 14.61 acres
General Plan:	Light Industrial
Zoning:	M-1/CO, Light Manufacturing with Commercial Cannabis Overlay District
Existing Use:	Commercial cannabis operation
Surrounding Uses:	North – Airport, vacant; P-F, M-1/CO East – Idle biomass plant; M-2/CO South – Tow yard, concrete plant, agriculture; M-1 West – Materials storage, vacant; M-1
Street Access:	Marie Street

ANALYSIS

At present, there are two proposed modifications to the agreement as recommended by the Planning Commission on December 15, 2020 and adopted by the City Council on January 12, 2021.

First, Section 2.3, Permitted Uses and Development Standards, has been updated to include Microbusiness licenses (Type 12) as a permissible use. Notably, this Microbusiness license will not result in any additional uses of the project site. Instead, the Microbusiness license, as implemented in this modified version of the agreement, permits easier licensing of Developer's tenants' operations by allowing small-scale cultivation, manufacturing, distribution, and/or non-storefront retail under a singular license. Microbusiness licensees performing non-storefront retail services will also be subject to the same $85,000 per year Non-Storefront Payment required of tenants operating under a standard Non-Storefront Retailer license as in the original version of the agreement.

Second, the agreement is receiving minor amendments to clarify the application of the various Section 4.2 Public Benefit Fee charges to be applied to the various authorized uses as the Parties originally intended.

ENVIRONMENTAL

The first step in complying with the California Environmental Quality Act (CEQA) is to determine whether the activity in question constitutes a "project" as defined by CEQA, Public Resources Code Section 21000, et seq. and the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Section 15000, et seq. A "project" consists of the whole of an action (i.e., not the individual pieces or components) that may have a direct or reasonably

[2] APNs 013-162- 14S, 013-280-19, and 013-280-21S are under the same ownership but are not proposed for development with cannabis-related uses.

foreseeable indirect effect on the environment. The second step is to determine whether the project is subject to or exempt from the statute. This proposal qualifies as a project under CEQA because it involves the issuance to a person of a "lease, permit, license, certificate, or other entitlement for use" as described in CEQA Guidelines Section 15378.

After consideration, since the proposed activities constitute an incremental change to activities already occurring on the site and no new structures or physical improvements are proposed, staff supports a finding consistent with CEQA Guidelines Section 15301, Existing Facilities. This exemption applies to "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." The development agreement already identifies several permissible uses and establishes the types of State-licensed cannabis operations that are allowed to operate at the site. The addition of "microbusinesses" does not constitute a substantial expansion of the existing use.

As the Planning Commission is not being asked to approve a project but only to make a recommendation, it is not required to make a determination regarding the finding of exemption.

PUBLIC NOTICE

Notice of the public hearing was published in the September 10, 2021 edition of *The Business Journal*, was individually mailed to property owners within 300 feet of the project site, and was posted at City Hall.

FISCAL IMPACT

Review and processing of the application are paid for by the applicant.

RECOMMENDATION

Staff recommends that the Planning Commission adopts Resolution No. PC 21-08, forwarding a recommendation to the City Council to amend the Development Agreement approved pursuant to Ordinance No. 18-02.

Attachment(s):

Resolution No. PC 21-08, including draft development agreement

AGENDA

BEFORE THE PLANNING COMMISSION
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENDOTA RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF MENDOTA AMENDS THE DEVELOPMENT AGREEMENT WITH LEFT MENDOTA I, LLC APPROVED PURSUANT TO ORDINANCE NO. 18-02 AS PART OF APPLICATION NO. 20-24

RESOLUTION NO. PC 21-08

WHEREAS, California Government Code Section 65865 provides that any city may enter into a development agreement with any person having a legal authority or equitable interest in real property for the development of such property; and

WHEREAS, the proposed project meets the objectives of the project proponent as listed in the project application and ensures that certain requirements are implemented that promote the public health, safety, and welfare of the community, and assures the developer of certainty in the development of the property; and

WHEREAS, there exists a proposal to amend the development agreement between the City of Mendota and Left Mendota I, LLC approved pursuant to Ordinance No. 18-02 and previously amended by Ordinance No. 21-04 to include "microbusinesses" as an allowable use; and

WHEREAS, the Planning Commission of the City of Mendota has conducted a duly noticed public hearing, as required by law, to consider Application No. 20-24, which includes a proposed development agreement for the property located at 1269 Marie Street (APNs 013-280-15 & 22S); and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Mendota recommends that the City Council of the City of Mendota amends the development agreement approved pursuant to Ordinance No. 18-02 and previously amended pursuant to Ordinance No. 21-04 to read in substantially the form contained in Exhibit "A" hereto.

_____
Juan Luna, Chairperson

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 Planning Commission at a regular meeting of said Commission, held at Mendota City Hall on the 21st day of September, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Celeste Cabrera-Garcia, City Clerk

Exhibit "A"
Resolution No. PC 21-08
Draft Development Agreement – Left Mendota I, LLC

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
City of Mendota
643 Quince Street
Mendota, CA 93640
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

AMENDED DEVELOPMENT AGREEMENT

THIS AMENDED DEVELOPMENT AGREEMENT ("Agreement") is made and entered into on this _____, day of _____, 2021, 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 and additional outdoor space 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.

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. On May 25, 2021, the City Council adopted Ordinance Nos. 21-07 and 21-08, revising the requirements applicable to the operation and entitlement of commercial cannabis businesses operating within the City.

N. Government Code section 65867 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

O. On December 15, 2020, after a duly noticed and held Planning Commission meeting, the Planning Commission voted to recommend approval of Developer's application for an amended development agreement for the Project.

P. On January 12, 2021, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. 21-04, an Ordinance of the Council of the City of Mendota Approving Amendments to the Development Agreement No. 2018-01 in the matter of Application No. 20-24, the Left Mendota I, LLC Commercial Cannabis Project (APNs 013-280-15 & 22S).

Q. Pursuant to Government Code section 65867.5, on January 26, 2021, the City Council reviewed, considered, adopted, and entered into the prior iteration of Agreement pursuant to Ordinance No. 21-04.

R. In its prior iteration, as adopted on January 26, 2021, this Agreement amended and superseded the original Development Agreement No. 18-01 with MARIE STREET DEVELOPMENT, LLC ("Former Developer"), dated March 13, 2018, Fresno County Recorded Instrument No. 20180033953, and any and all non-financial and terminable obligations of Former Developer therein. Former Developer executed the Agreement's prior iteration, and, as a result, is no longer a party to the Agreement and its amendments as contemplated herein.

S. On September 21, 2021, after a duly noticed and held Planning Commission meeting, the Planning Commission voted to recommend approval of Developer's application for an amended development agreement for the Project.

T. On October __, 2021, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. 21-__, an Ordinance of the City Council of the City of Mendota Approving Amendments to the Development Agreement No. 21-__ in the matter of Application No. 20-04, the Left Mendota I, LLC Commercial Cannabis Project (APNs 013-280-15 & 22S).

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. The City further finds (i) that Developer shall not be liable for any outstanding obligations or defaults of Former Developer under the original Development Agreement No. 18-01 and shall not be considered a successor-in-interest of the Former Developer for the purposes of Section 10.2 of the original Development Agreement; and (ii) that upon execution of this Agreement, there shall be no outstanding amounts due to the City by Developer stemming from the original Development Agreement No. 18-01.

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:

Designation	**Description**
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) "Developed Portions of the Property" means the designated structure or structures and all land specified in the development agreement application that is owned, leased, or otherwise held under the control of Developer.

(z) "Development Agreement Statute" has the meaning set forth in Recital E.

(aa) "Exhibits" has the meaning set forth in Section 1.3.

(bb) "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.

(cc) "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

(dd) "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.

(ee) "MCRSA" has the meaning set forth in Recital A.

(ff) "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.

(gg) "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.

(hh) "Mortgage" has the meaning set forth in Article 7.

(ii) "Non-Performance Penalty" has the meaning set forth in Section 4.3

(jj) "Notice of Non-Performance Penalty" has the meaning set forth in Section 4.3.

(kk) "Notice of Termination" has the meaning set forth in Section 9.1.

(ll) "Processing Costs" has the meaning set forth in Section 1.11.

(mm) "Project" has the meaning set forth in Recital D.

(nn) "Project Litigation" has the meaning set forth in Section 10.7.

(oo) "Public Benefit Fees" has the meaning set forth in Section 4.2.

(pp) "Public Benefit Amount" has the meaning set forth in Section 4.2.

(qq) "Site" has the meaning set forth in Recital G.

(rr) "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.

(ss) "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.

(tt) "State Taxing Authority" has the meaning set forth in Section 4.2.

(uu) "Subsequent City Approvals" has the meaning set forth in Section 3.1.

(vv) "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
Distributor	11
Distributor Transport Only (Self-Distribution)	13
Non-storefront Retailer	9
Microbusiness*	12
*Microbusiness Licensees may not engage in Commercial Cannabis Activity associated with a Storefront Retailer license (Type 10), but may engage in Commercial Cannabis Activity usually associated with a Non-Storefront Retailer license (Type 9), provided that they are included within the Non-Storefront Retailer designation for purposes of paying the Non-Storefront Payment laid out in Section 4.2 below.	

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 and Microbusiness Authorized License actively operating on the Site and engaging in Commercial Cannabis Activity usually associated with a Non-Storefront Retailer license ("Non-Storefront Payment"), paid in equal payments of Twenty-One Thousand Two Hundred and Fifty Dollars ($21,250) on the First (1st) business day of every Third (3rd) month; 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 Commercial Cannabis Activity, including, but not limited to, indoor cultivation, manufacturing, distribution, or non-storefront retail 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 Sixth (6th) month throughout the Term. For purposes of clarification, the Square Foot Charge shall only become due as to that potion 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 third (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 subdivision (a)(iii) 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.

S**ection 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 calendar 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: (l) 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 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'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 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)(l)(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"

Date: _____, 2020

CITY OF MENDOTA, CA
a California Municipal Corporation

_____
By: Cristian Gonzalez
Its: City Manager

Attest:

_____
Celeste Cabrera-Garcia
City Clerk

Approved to as Form:

_____
John P. Kinsey
City Attorney

"DEVELOPER"

Date: _____, 2020

LEFT MENDOTA I, LLC, a Delaware
Limited Liability Company

_____
By:
Its:

Exhibit "A"
Resolution No. PC 21-08
Draft Development Agreement – Left Mendota I, LLC

Exhibit A

Legal Description

Exhibit B

Site Map

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 Date
City of Mendota

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: Date
Entity:

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.

Exhibit "A"
Resolution No. PC 21-08
Draft Development Agreement – Left Mendota I, LLC

"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)