



CITY OF MENDOTA

"Cantaloupe Center Of The World"

ROLANDO CASTRO
Mayor

JESUS MENDOZA
Mayor Pro Tem

JOSE ALONSO

JOSEPH R. RIOFRIO

OSCAR ROSALES

AGENDA
MENDOTA CITY COUNCIL
Regular City Council Meeting
CITY COUNCIL CHAMBERS
643 QUINCE STREET
July 12, 2022
6:00 PM

CRISTIAN GONZALEZ
City Manager

JOHN KINSEY
City Attorney

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

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

In compliance with the Americans with Disabilities Act, individuals requiring special assistance to participate at this meeting please contact the City Clerk at (559) 655-3291 or (559) 577-7692. Notification of at least forty-eight hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to the meeting.

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

CALL TO ORDER

ROLL CALL

FLAG SALUTE

INVOCATION

FINALIZE THE AGENDA

1. Adjustments to Agenda
2. Adoption of final Agenda

PRESENTATION

1. Chief of Police Kevin Smith to introduce Police Officer Joshua Lane and Police Officer Luis Gutierrez Jr.

CITIZENS' ORAL AND WRITTEN PRESENTATIONS

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

City Council Agenda

1

July 12, 2022

APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of June 28, 2022.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

CONSENT CALENDAR

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

1. JUNE 22, 2022 THROUGH JUNE 30, 2022
WARRANT LIST CHECK NOS. 51925 THROUGH 51958
TOTAL FOR COUNCIL APPROVAL = \$325,787.79
2. Proposed adoption of **Resolution No. 22-41**, approving Amendment 1 to the ITI Self-Service Terminal Services Contract.

BUSINESS

1. Council discussion and consideration of **Resolution No. 22-42**, appointing Voting Delegates for the League of California Cities' Annual Business Meeting.
 - a. *Receive report from City Clerk Cabrera-Garcia*
 - b. *Inquiries from City Council to staff*
 - c. *Mayor Castro opens floor to receive any comment from the public*
 - d. *City Council appoints delegates and considers Resolution No. 22-42 for adoption*
2. Council discussion and consideration of **Ordinance No. 22-02**, amending Chapter 12.20 of the Mendota Municipal Code
 - a. *Receive report from City Attorney Kinsey*
 - b. *Inquiries from City Council to staff*
 - c. *Mayor Castro opens the floor to receive any comment from the public*
 - d. *City Council considers introduction and waiver of the first reading of Ordinance No. 22-02 and sets a public hearing for July 26, 2022*

PUBLIC HEARING

1. Council to hold the Development Agreement Annual Review Hearing for Boca Del Rio Agriculture LLC.
 - a. *Receive report from City Attorney Kinsey*
 - b. *Inquiries from City Council to staff*
 - c. *Mayor Castro opens the public hearing*
 - d. *Once all comment has been received, Mayor Castro closes the public hearing*
 - e. *City Council discusses Boca Del Rio Agriculture LLC's performance under the development agreement and provides direction to staff*

2. Council to hold the Development Agreement Annual Review Hearing for Odyssey Agricultural Development LLC.
 - a. *Receive report from City Attorney Kinsey*
 - b. *Inquiries from City Council to staff*
 - c. *Mayor Castro opens the public hearing*
 - d. *Once all comment has been received, Mayor Castro closes the public hearing*
 - e. *City Council discusses Odyssey Agricultural Development LLC's performance under the development agreement and provides direction to staff*

3. Council discussion and consideration of **Resolution No. 22-43**, adopting the First Amended Groundwater Sustainability Plan for portions of the Delta-Mendota Subbasin.
 - a. *Receive report from City Manager Gonzalez*
 - b. *Inquiries from City Council to staff*
 - c. *Mayor Castro opens the public hearing*
 - d. *Once all comment has been received, Mayor Castro closes the public hearing*
 - e. *City Council considers adoption of Resolution No. 22-43*

DEPARTMENT REPORTS AND INFORMATIONAL ITEMS

1. Finance Director
 - a) Grant Update
 - b) Budget Update

2. City Engineer
 - a) Update

3. City Attorney
a) Update
4. City Manager

MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS

1. Council Member(s)
2. Mayor

CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Potential initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9 (two potential cases).
2. CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to CA Government Code §§ 54954.5(f), 54957.6
 - a. Agency Designated Representative: Cristian Gonzalez, City Manager
 - b. Employee Organization: American Federation of State, County and Municipal Employees
3. CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to CA Government Code §§ 54954.5(f), 54957.6
 - a. Agency Designated Representative: Cristian Gonzalez, City Manager
 - b. Employee Organization: Unpresented Management Employees

ADJOURNMENT

CERTIFICATION OF POSTING

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of July 12, 2022, was posted on the outside bulletin board located at City Hall, 643 Quince Street, on Friday, July 8, 2022 at 5:00 p.m.



Celeste Cabrera-Garcia, City Clerk



MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

Regular Meeting

June 28, 2022

Meeting called to order by Mayor Castro at 6:01 p.m.

Roll Call

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

Council Members Absent: Councilor Joseph Riofrio

Flag salute led by Director of Administrative Services/Assistant City Manager Lekumberry

Invocation led by Police Chaplain Robert Salinas

FINALIZE THE AGENDA

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

A motion was made by Councilor Alonso to adopt the agenda, seconded by Mayor Pro Tem Mendoza; unanimously approved (4 ayes, absent: Riofrio).

CITIZENS ORAL AND WRITTEN PRESENTATIONS

Jonathan Leiva - thanked the Council and staff for the fireworks show and shared information about his experience volunteering.

APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of June 14, 2022.

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

A motion was made by Councilor Rosales to approve items 1 and 2, seconded by Councilor Alonso; unanimously approved (4 ayes, absent: Riofrio).

CONSENT CALENDAR

1. JUNE 8, 2022 THROUGH JUNE 21, 2022
WARRANT LIST CHECK NOS. 51874 THROUGH 51924
TOTAL FOR COUNCIL APPROVAL = \$945,057.64
2. Waiver of second reading and proposed adoption of **Ordinance No. 22-01**, amending the official zoning map of the City of Mendota in the matter of Application No. 21-10, the Carballo (Salomon) Apartments Project (755 Marie Street; APN 013-106-15).

A motion was made by Councilor Rosales to approve items 1 and 2 of the Consent Calendar, seconded by Councilor Alonso; unanimously approved (4 ayes, absent: Riofrio).

DEPARTMENT REPORTS AND INFORMATIONAL ITEMS

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

Chief of Police Smith provided the report for the Code Enforcement department including a personnel update; monthly statistics; the efforts of the department to educate the community regarding local ordinances; and the status of the weed abatement process.

Discussion was held on municipal code violations throughout the community.

Chief Smith provided the report for the Animal Control department including monthly statistics; a personnel update; and provided an update on the dog vaccine clinic.

Discussion was held on whether smoking is allowed at parks.

Chief Smith provided the report for the Police Department included a personnel update; the status of the drone program; an upcoming DUI checkpoint; crime trends and statistics; the department's participation in the fireworks show; and the department's participation in a demolition derby in Firebaugh.

Discussion was held on traffic issues at the roundabout; and a potential illegal vendor at La Colonia.

2. City Attorney
 - a) Update

Assistant City Attorney Castro provided an update on the tasks of his office.

Discussion was held on laws concerning a Councilmember holding employment with the City they serve.

3. City Manager

City Manager Gonzalez thanked the Council, staff, volunteers, community, and sponsors for their help with the fireworks show; provided an update on the Police Department project; items for the July 12th City Council meeting; the grand opening of Element 7 Mendota; and the status of the Pool Park project.

Discussion was held on the Boca Del Rio project; the ongoing Caltrans project; the possibility of acquiring the old high school stadium lights; the presentation of the flags at the fireworks show; and potential grants that the community may be eligible for.

MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS

1. Council Member(s)

Councilor Rosales inquired about the Caltrans project.

Councilor Alonso reported on upcoming events.

Mayor Pro Tem Mendoza thanked everyone for their efforts with the fireworks show; commented on upcoming events; and reported on upcoming infrastructure projects.

2. Mayor

Mayor Castro inquired on the current usage of the parks and the possibility of the public using the Daniel Porras youth soccer field.

Lisette Barrera – inquired as to whether the City is undergoing preparations to address a potential recession.

Discussion was held on Ms. Barrera's comments.

ADJOURNMENT

With no more business to be brought before the Council, a motion for adjournment was made at 7:08 p.m. by Mayor Pro Tem Mendoza, seconded by Councilor Alonso; unanimously approved (4 ayes, absent: Riofrio).

Rolando Castro, Mayor

ATTEST:

Celeste Cabrera-Garcia, City Clerk

CITY OF MENDOTA
CASH DISBURSEMENTS
6/22/2022-6/30/2022
CK# 51925-51958

Date	Check #	Check Amount	Vendor	Department	Description
June 22, 2022	51925	\$ 172,053.00	CITY OF MENDOTA PAYROLL	GENERAL	PAYROLL TRANSFER FOR 6/6/2022-6/19/2022
June 22, 2022	51926	\$ 227.58	ADT SECURITY SERVICES	GENERAL-WATER	SECURITY SERVICES 7/1/22-9/30/22 ROJAS PARK CONCESSION STAND, SECURITY SERVICES WATER PLANT 7/4/22-8/3/22
June 22, 2022	51927	\$ 348.00	CALIFORNIA POLICE	GENERAL	FY 22/23 MEMBERSHIP RENEWAL CHIEFS 13-25 PERSONNEL-THROUGH 6/30/23
June 22, 2022	51928	\$ 359.72	DATAMATIC, INC.	WATER	MONTHLY SOFTWARE LICENSE & SERVICE MAINTENANCE FEE: JULY 2022
June 22, 2022	51929	\$ 143.68	FRESNO COUNTY SHERIFF	GENERAL	RMS JMS ACCESS FEE - JULY 2022 (PD)
June 22, 2022	51930	\$ 355.97	UNION PACIFIC RAILROAD COMPANY	STREETS	PUBLIC ROADWAY ENCROACHMENT FOR JULY 2022
June 22, 2022	51931	\$ 60.40	JOSE M BARRERA	WATER	MO CUSTOMER REFUND FOR BAR0067
June 28, 2022	51932	\$ 29,482.76	AETNA LIFE INSURANCE COMPANY	GENERAL	MEDICAL INSURANCE FOR JULY 2022
June 28, 2022	51933	\$ 944.01	CORBIN WILLITS SY'S INC.	GENERAL-WATER-SEWER	ENHANCEMENT & SERVICE FEES MOMS SOFTWARE-JULY 2022
June 28, 2022	51934	\$ 2,469.00	LIEBERT CASSIDY WHITMORE	GENERAL-WATER-SEWER	ERC MEMBERSHIP W/ PREMIUM LIEBERT LIBRARY SUBSCRIPTION FY 2022/2023
June 28, 2022	51935	\$ 1,816.04	MUTUAL OF OMAHA	GENERAL	LIFE, AD&D, LTD, & STD INSURANCE FOR JULY 2022
June 30, 2022	51936-51949	VOID			
June 30, 2022	51950	\$ 2,735.06	BSK ASSOCIATES	WATER-SEWER	WW WEEKLY GRAB SAMPLE 11/30/2021, BACTI- WEEKLY TREATMENT & DISTRIBUTION 1/11/22, 3/2/22, 3/7/22, 3/29/22
June 30, 2022	51951	\$ 43,493.86	GUTHRIE PETROLEUM INC.	GENERAL-WATER-SEWER-STREETS	(3985 GAL) UNLEADED GAS 10% ETHANOL AND (3953 GAL) CLEAR DIESEL #2 ULSD
June 30, 2022	51952	\$ 200.00	JORGE GUZMAN	GENERAL	FACILITY USE DEPOSIT REFUND FOR ALCOHOLICS ANONYMOUS EVENT ON 4/30/22
June 30, 2022	51953	\$ 500.00	JUAN LEDESMA	GENERAL	FACILITY USE DEPOSIT REFUND- BASEBALL LEAGUE
June 30, 2022	51954	\$ 4,540.50	MID VALLEY DISPOSAL, INC.	REFUSE-STREETS	ROLL OFF BIN EXCHANGE 10Y QTY: 7.89, 8.46, 6.31, 10.11 AND 50YD QTY: 10.33, 21.78, 7.15, 18.78
June 30, 2022	51955	\$ 145.25	PITNEY BOWES INC.	GENERAL-WATER-SEWER	POSTAGE METER RENTAL 4/1/22-6/30/22
June 30, 2022	51956	\$ 63,279.12	PROVOST & PRITCHARD	GENERAL-WATER-SEWER-STREETS-LLDM	PROFESSIONAL SERVICES MAY 2022 ROJAS PIERCE PARK IMPROVEMENTS, MAY 2022 METER READING PROJECT
June 30, 2022	51957	\$ 2,103.70	PURCHASE POWER	GENERAL-WATER-SEWER	POSTAGE METER REFILL FOR 05/13/22, 6/10/22
June 30, 2022	51958	\$ 530.14	THE HOME DEPOT	REFUSE-STREETS	GENERAL TOOLS 1/2" GROMMET W/12 REFILL (10) BRACE, (2) BEHR 4400 FLAT MED 4.69GL, (1)BEHR 5400 SG MED

§ **325,787.79**

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: NANCY BANDA, FINANCE DIRECTOR
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: AMENDMENT 1 TO ITI SELF-SERVICE TERMINAL SERVICES CONTRACT
DATE: JULY 12, 2022

ISSUE

Shall the City Council adopt Resolution No. 22-41, approving the Amendment 1 to ITI Self-Service Terminal Services Contract.

BACKGROUND

On October 23, 2018, the City of Mendota entered into a services contract with Intellectual Technology, Inc. for the installation of an ITI DMV Kiosk at City Hall. The DMV Kiosk is located inside the entrance of the City Council Chambers and is available to the general public during City Hall business hours.

ANALYSIS

The contract between the City of Mendota and Intellectual Technology, Inc. for ITI Self-Service Terminal Services expires on June 30, 2022. Both parties desire to keep the existing services therefore an Amendment 1 attached to this report is being presented to extend services through June 30, 2026 and automatically renew for successive one (1) year terms thereafter.

FISCAL IMPACT

No fiscal impact. However, if Amendment 1 is not approved this will be a loss to the General Fund of \$2,400.00 per fiscal year.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 22-41, approving the Amendment 1 to ITI Self-Service Terminal Services Contract.

Attachment(s):

1. Resolution No. 22-41
2. Exhibit "A" – Amendment 1 to ITI Self-Service Terminal Services Contract

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

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPROVING
AMENDMENT 1 TO THE ITI SELF-SERVICE
TERMINAL SERVICES CONTRACT**

RESOLUTION NO. 22-41

WHEREAS, on October 23, 2018, the City of Mendota (“City”) entered into a services contract with Intellectual Technology, Inc. (“ITI”) for the installation of an ITI DMV Kiosk at City Hall; and

WHEREAS, the contract between the City and ITI expired on June 30, 2022, but the City wishes to continue using the ITI DMV Kiosk at City Hall; and

WHEREAS, the proposed amendment to the ITI contract, attached hereto as Exhibit “A,” would extend ITI’s DMV Kiosk services at City Hall until June 30, 2026, and would automatically renew for successive one (1) year terms thereafter.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Mendota hereby approves Amendment 1 to ITI Self-Service Terminal Services Contract, in substantially the form attached hereto as Exhibit “A,” and authorizes the City Manager to execute the same.

Rolando Castro, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 12th day of July, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit A

AMENDMENT 1 TO ITI SELF-SERVICE TERMINAL SERVICES CONTRACT

Amendment 1 to ITI Self-Service Terminal Services Contract, effective as of June 30, 2022 ("Effective Date") (the "Amendment"), between City of Mendota, a city in the State of California, ("City"), and Intellectual Technology Inc., a Delaware Corporate, having its principal place of business at 2980 E. Coliseum Blvd. Fort Wayne, Indiana 46805 ("ITI"), and together with City, the "Parties", and each, a "Party".

WHEREAS, the Parties have entered into an ITI Self-Service Terminal Services Contract, dated October 24, 2018 (the "Existing Agreement"); and

WHEREAS, the Parties hereto desire to amend the Existing Agreement to extend the term of the Existing Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.
2. Amendments to the Existing Agreement. As of the Effective Date (defined below), the Existing Agreement is hereby amended or modified as follows:
 - (a) Section 2 titled "Term" of the Existing Agreement is hereby and replaced with the following:
 2. Term. The initial term of this SST Contract shall be through June 30, 2026 and will automatically renew for successive 1 year terms thereafter. Notwithstanding the forgoing, either ITT or City may terminate this SST Contract at any time and for any reason with sixty (60) days written notice.
3. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Existing Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Existing Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import will mean and be a reference to the Existing Agreement as amended by this Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the ITI Self-Service Terminal Services Contract as of the Effective Date.

City of Mendota

By: _____

Name:

Title:

Intellectual Technology Inc.

By: _____

Name:

Title:

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: CELESTE CABRERA-GARCIA, CITY CLERK
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: DESIGNATION OF VOTING DELEGATES FOR LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE
DATE: JULY 12, 2022

ISSUE

Should the City Council adopt Resolution No. 22-42, appointing voting delegates for the League of California Cities' Annual Business Meeting?

BACKGROUND

The League of California Cities ("LOCC") requests that each City designate a voting delegate and alternates for its Annual Business Meeting that is held concurrently with the Annual Conference. This year's conference will be held from September 7-9, 2022 in Long Beach, CA. The Annual Business Meeting at which the City's representative is to vote will take place on Friday, September 9th. The League will be providing additional information regarding the conference at a later date.

ANALYSIS

In the past, the City Council has designated the Council Members who will be attending the event as the voting delegates. The Council Members that have been registered to attend the conference are Mayor Rolando Castro, Mayor Pro Tem Jesus Mendoza, and Councilor Jose Alonso. As such, staff recommends that the Council discuss and appoint the City's voting delegate and alternates from the Council Members who will be attending the conference.

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the City Council appoint the Voting Delegate and Alternate Delegates, and adopt Resolution No. 22-42, appointing voting delegates for the League of California Cities' Annual Business Meeting.

Attachment(s):

1. LOCC Voting Delegate Information
2. Resolution No. 22-42



Council Action Advised by August 31, 2022

DATE: June 1, 2022

TO: City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference & Expo – September 7-9, 2022**

Cal Cities 2022 Annual Conference & Expo is scheduled for September 7-9, 2022 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, September 9. At this meeting, Cal Cities membership considers and acts on resolutions that establish Cal Cities policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to Cal Cities office no later than Friday, September 2. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please view Cal Cities' [event and meeting policy](#) in advance of the conference.

- **Action by Council Required.** Consistent with Cal Cities bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open by June 1 on the [Cal Cities](#) website. In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.



- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Long Beach Convention Center, will be open at the following times: Wednesday, September 7, 8:00 a.m. – 6:00 p.m.; Thursday, September 8, 7:00 a.m. – 4:00 p.m.; and Friday, September 9, 7:30 a.m.–12:30 p.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to Cal Cities office by Friday, September 2. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the Cal Cities Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: _____

**2022 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to Cal Cities office by Friday, September 2, 2022. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

To vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ Email _____

Mayor or City Clerk _____ Date _____ Phone _____
(circle one) (signature)

Please complete and return by Friday, September 2, 2022 to:
Darla Yacub, Assistant to the Administrative Services Director
E-mail: dyacub@calcities.org; Phone: (916) 658-8254

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

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPOINTING
VOTING DELEGATES FOR THE LEAGUE
OF CALIFORNIA CITIES' ANNUAL
BUSINESS MEETING**

RESOLUTION NO. 22-42

WHEREAS, the League of California Cities ("League") will hold its Annual Conference from September 7th to the 9th, 2022; and

WHEREAS, during the League's Annual Conference, the League will hold its Annual Business Meeting wherein member cities vote on whether the League should take action on resolutions that establish League policy; and

WHEREAS, this year's Annual Business Meeting will be held in Long Beach, CA, on Friday, September 9, 2022; and

WHEREAS, the City of Mendota ("City") is a member of the League, and is allowed to vote in the League's Annual Business Meetings; and

WHEREAS, any official voting for a member city must be specifically authorized to do so by the legislative body of that city in advance of the vote being cast; and

WHEREAS, the City must authorize a representative to participate in the League's 2022 Annual Business Meeting to ensure the City and its residents are represented therein.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Mendota hereby designates _____ as the Voting Delegate, and _____ and _____ as the Alternate Voting Delegates, for representation of the City of Mendota in League matters at the League's 2022 Annual Business Meeting.

Rolando Castro, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 12th day of July, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

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

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MENDOTA AMENDING
CHAPTER 12.20 OF TITLE 12 OF THE
MENDOTA MUNICIPAL CODE TO
PROMOTE ACCESS TO CITY PARK
AND RECREATION FACILITIES**

ORDINANCE NO. 22-02

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, public morals, or public safety; and

WHEREAS, the City has invested substantial funds and work into building and maintaining its park and recreation areas to promote the public health and satisfaction of its citizens; and

WHEREAS, the City has received citizen requests that the City’s parks and recreation areas be opened to general public use and be made more available to the public; and

WHEREAS, Chapter 12.20 of the Mendota Municipal Code (“MMC”) governs the public’s use of City-owned parks and recreation areas; and

WHEREAS, among other things, Chapter 12.20 of the MMC requires advertised gatherings and gatherings of twenty-five or more persons to obtain an exclusive use permit prior to using City-owned parks and recreation areas; and

WHEREAS, at its regular meetings in April, May, and June 2022, the City Council discussed its concerns regarding balancing expanded public access to the City’s parks and recreation areas with the preservation of these facilities and continued enforcement of exclusive use permits; and

WHEREAS, the City Council has determined revisions to Chapter 12.20 of the MMC are required to ensure the public has expanded access to City parks and recreation areas while providing for consistent enforcement of exclusive use permits.

NOW, THEREFORE, the City Council of the City of Mendota does ordain as follows:

SECTION 1. The Recitals set forth above are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Section 12.20.010 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.010 - Purpose.

This Chapter is intended to promote the full use of City parks, recreation areas, and facilities.

SECTION 3. Section 12.20.020 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.020 - Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

"Amplified music" means music projected and transmitted by electronic equipment, including amplifiers, the total output of which, including the sum of the wattage output of each channel, exceeds twenty-five (25) watts.

"Amplified speech" means speech projected and transmitted by electronic equipment including amplifiers, the total output of which, including the sum of the wattage output of each channel, exceeds twenty-five (25) watts.

"Benefit to the community" means the amount of money that will be gained by a Mendota-based nonprofit organization for use in furthering athletic, recreational, cultural, educational, or charitable activities in the City.

"Building" means a structure under the supervision of the City established as a community center or recreational and/or meeting facility, and is considered for the purposes of permits, pursuant to this Chapter, as a park.

"Park" or "recreation area" means City-owned grounds, parks, and public areas devoted to park or recreational purposes.

"Permit" means a written authorization issued by the City for **exclusive** use of a park area or building as provided for in this Chapter.

"Persons" means individuals, associations, partnerships, corporations, and other legal entities.

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SECTION 4. Section 12.20.030 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.030 - Compliance with Chapter Required.

It is unlawful for any person to enter or remain in any City park, recreation area, facility, or building of the City unless he/she complies with all of the regulations set forth in this Chapter which applicable apply to such City park, recreation area, facility, or building.

SECTION 5. Section 12.20.040 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.040 – Exclusive Use Permits, Generally.

- A. No City park area, recreation area, building, or facility may be used for any pre-advertised assembly or by groups of twenty-five (25) or more persons without an exclusive use permit issued under Section 12.20.120. All applications for permits must be signed by an adult who shall agree to be responsible for the requested use of the City park area, recreation area, facility, or building. The execution of a permit application and acceptance of the issued permit shall constitute the applicant's consent and acceptance of all permit conditions and all restrictions and requirements set forth in this Chapter.
- B. All ~~park~~ events and activities at City parks, recreation areas, facilities, or buildings shall be conducted in strict compliance with the requirements and restrictions contained in this Chapter and all permit conditions, which shall include the statements and information set forth in the permit application and all provisions set forth in the promoter's agreement. Any park event or activity conducted in violation of any permit condition, ~~and all provisions set forth in the promoter's agreement,~~ any of the provisions of this Chapter, or the provisions of the promoter's ~~agreement~~ agreement may be summarily terminated by the City and the permit shall be deemed revoked.

SECTION 6. Section 12.20.050 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.050 - Permit Applications, Timing.

- A. Applications for exclusive use permits shall be filed with the City during the month of February annually. All such permit applications for the use of any City park, recreation area, facility, or building shall be considered by the City Council at its first regular meeting in March annually. All applications for the exclusive use of any City park, recreation area, facility, or building submitted after this annual process shall be

approved or denied by the City Manager, and shall be deemed secondary to Council-approved permits in the event of a conflict.

- B.** The City Council and City Manager shall consider the financial and other benefits to the people of Mendota that are likely to result from each of the proposed park events, and shall issue permits to those events which will provide the most overall benefit to the community. ~~"Benefit to the community," for purposes of this Chapter, includes the amount of money that will be gained by a Mendota based nonprofit organization for use in furthering athletic, recreational, cultural, educational or charitable activities in the city.~~

SECTION 7. Section 12.20.060 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.060 - Contents of Permit Application.

All applications for an exclusive use permit shall contain the following information:

- A. The name of the applicant, the sponsoring organization, and the person(s) in charge of the proposed event or activity;
- B. The addresses and telephone numbers of those **persons and/or entities** named in **pursuant to S**ubsection (A) of this **S**ection;
- C. The date(s) and time(s) of the proposed event or activity;
- D. The number of persons expected to attend the proposed event or activity;
- E. A full description of all proposed activities, including, **but not limited to**, equipment and vehicles to be brought into the City park, **recreation area, facility, or building**, the nature and duration of the use of such equipment, and the nature and duration of the use of any amplified sound equipment;
- F. Whether alcoholic beverages will be sold or served;
- G. Whether the proposed event or activity will be promoted by any person for a fee or a share of the proceeds of the event or activity;
- H. The names, addresses, and telephone numbers of the event or activity sponsor(s) and promoter(s);
- I. The specific City park area, **recreation area, facility, or building** requested for exclusive use;
- J. A full description of all entertainment to be provided at the proposed event or activity;

- K. If the event or activity is a ~~fund-raiser~~ **fundraiser**, the purpose(s) of the ~~fund-raising~~ **fundraising** activities shall be described in full;
- L. The charge to be imposed for admission to the activity or event in the **City** park, **recreation area, facility, or building** (not including amusement park rides), including, **but not limited to**, a full description of how the proceeds from such admission charge will be distributed among the applicant, promoter(**s**), and any other person(s);
- M. A statement explaining the benefits likely to be derived by the community as a result of the proposed activity or event; and
- N. Such other information as may be requested by the **City Council or City Manager** ~~or council~~.

SECTION 8. Section 12.20.070 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.070 - Action on **Permit Application**.

The decision granting or denying an **exclusive use permit** application shall be mailed to the applicant. Denials shall state the reason or reasons for the denial.

SECTION 9. Section 12.20.080 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.080 - Grounds for **Denial of Permit Application**.

The city shall deny the application if it finds that any of the following exist:

- A. That the proposed activity is of a size or nature that will entail unusual expense to the **City** or will require special police operations;
- B. That the applicant has failed to agree to provide a reasonable means of informing all the persons participating in the proposed activity of the terms and conditions of such permit;
- C. That the proposed activity or use will unreasonably interfere with or detract from the promotion of public health, welfare, safety, or recreational activities in the **City**;
- D. That the applicant refused to agree in writing to comply with all lawful conditions of the permit;
- E. That the applicant failed to file a timely application (twenty-one (21) business days before the event); **or**

- F. That the application failed to adequately specify and inform the City of all the information required by Section 12.20.060 to the satisfaction of the City.

SECTION 10. Section 12.20.090 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.090 - Fees and Deposits.

Every applicant for an exclusive use permit shall pay fees and deposits as set by resolution of the City Council.

SECTION 11. Section 12.20.100 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.100 - Violations.

Any violation of the restrictions in this Chapter, conditions upon an exclusive use permit, provisions of a promoter's agreement, or established park rule, shall be an infraction. ~~subject to a fine set by resolution of the city council.~~

SECTION 12. Section 12.20.110 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.110 - Indemnity and Financial Responsibility.

All persons to whom an exclusive use permit has been granted must provide the City with certificates of insurance evidencing liability and property damage limits with a combined single limit of not less than one million dollars (\$1,000,000.00), with a deductible of no more than five hundred dollars (\$500.00), and which shall specify the City and the applicant as named insureds. The certificate of insurance shall be filed with the City at the time of application for an exclusive use permit. Failure to submit the certificate with the application will result in immediate and automatic rejection of the ~~permit~~ application.

SECTION 13. Section 12.20.120 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.120 - Exclusive Use of Facilities.

The City's park and recreation facilities may be made available for the exclusive use of persons and groups subject to the issuance of a permit as provided in this Section:

- A. ~~Exclusive Use Permit for Park Facility.~~ Permits for the exclusive use of any park, recreation area, building, or facility for which an admission fee will be charged, shall be subject to review by the City Council, and special fees may be assessed.

B. Events sponsored by the City shall not be subject to the provisions of this Section.

C. ~~Such~~ Exclusive use permits must meet all conditions listed in this Chapter.

SECTION 14. Section 12.20.130 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.130 - Hours of Operation.

All public parks, facilities, buildings, and recreation facilities shall be closed to the public between the hours of eleven p.m. and seven a.m. unless their use during such time is authorized by a special permit issued by the City Council.

SECTION 15. Section 12.20.140 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.140 - Interference with Use by Permittee.

No person within any City park, recreation area, facility, or building shall use, or attempt to use, or interfere with the use of any table, space, or facility within said park, recreation area, facility, or building, ~~which at~~ during the time is reserved for any other person or group ~~which has received~~ pursuant to an exclusive use permit from the City.

SECTION 16. Section 12.20.150 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.150 - Weapons.

No person shall discharge or shoot any firearm, air gun, slingshot, or bow and arrow in any City park, recreation area, facility, or building, except at places designated and posted specifically for such purpose.

SECTION 17. Section 12.20.170 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.170 - Parking.

No person shall operate or park any vehicle as defined in the California Vehicle Code within a City park, recreation area, facility, or building, except upon areas designated for such use.

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SECTION 18. Section 12.20.180 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.180 - Solicitation.

No person shall solicit, in any manner or for any purpose, or sell, or offer for sale any goods, wares, or merchandise in any **City park, recreation area, facility, or building** except as expressly authorized by permit.

SECTION 19. Section 12.20.190 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.190 - Marking, Injuring, or Disturbing any Structure.

No person other than a duly authorized City employee **or contractor** in the performance of his their duty shall:

- A. Cut, break, injure, deface, or disturb any rock, building, cage, pen, monument, sign, fence, bench, structure, apparatus, equipment, or property at a **City park, recreation area, facility, or building**;
- B. Mark or place thereon any mark, writing, or printing; **or**
- C. Attach thereto any sign, card, display, or other similar device, except as authorized by permit.

SECTION 20. Section 12.20.200 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.200 - Fires.

No persons shall light or maintain any fire in any municipal **City park, recreation area, building, or facility**, unless such fire is lit and maintained only in a stove, or fire circle, or specific place provided for such purpose **by the City**.

SECTION 21. Section 12.20.210 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.210 - Litter.

No person within any **City park, recreation area, building, or facility** shall leave any garbage, trash, cans, bottles, papers, or other refuse elsewhere than in the receptacles provided therefor **for such purpose by the City**.

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SECTION 22. Section 12.20.220 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.220 - Glass Containers.

No person shall use or possess any glass beverage container within any City-owned park, **recreation area, building, or facility.**

SECTION 23. Section 12.20.230 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.230 - Flora.

No person other than a duly authorized City employee **or contractor** in the performance of his **their** duty or persons participating in City-sponsored activities shall dig, remove, destroy, injure, mutilate, cut, or attach any wire, rope, or contrivance to any tree, plant, shrub, bloom, or flower, or any portion thereof, growing in ~~the~~ **a City park, recreation area, building,** or at a facility and no person other than a duly authorized City employee **or contractor** in the performance of his **their** duty shall remove any wood, turf, grass, soil, rock, sand, or gravel from any City park, **recreation area, building,** or facility.

SECTION 24. Section 12.20.240 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.240 - Use of Amplified Sound.

The use of any system for amplifying sounds, whether for speech, ~~or~~ music, or otherwise, is prohibited in any City park, **recreation area, building, or facility** unless **pursuant to** an exclusive use permit authorizing **the use of** such amplification **system.** ~~is first secured.~~

SECTION 25. Section 12.20.250 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.250 - Golf.

No person shall play or practice golf or use golf clubs in any City park, **recreation area, facility, building,** or area thereof, ~~not designated for such use.~~ **except at places designated and posted specifically for such use.**

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SECTION 26. Section 12.20.260 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.260 - Model **A**irplanes.

No person shall operate any motor-driven model airplane in a **C**ity park, **r**ecreation **a**rea, **f**acility, or **b**uilding, except in areas designated **a**nd **p**osted **s**pecifically for such use.

SECTION 27. Section 12.20.270 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.270 - Bicycles and **A**nimals.

No person shall operate, drive, or ride upon any bicycle, unicycle, horse, or any other animal in any **C**ity park, **f**acility, **b**uilding, or recreational area, except in areas designated and posted specifically for such use.

SECTION 28. Section 12.20.280 of Chapter 12.20 of Title 12 of the Mendota Municipal Code is hereby amended to read as follows:

12.20.280 - Additional **R**ules and **R**egulations.

The **C**ity **C**ouncil is authorized and directed to make such reasonable rules and regulations for the use of the **C**ity's facilities and regulations of conduct therein as may ~~to it~~ seem necessary or advisable in the best interest of the **C**ity.

SECTION 29. Severability. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, as if such invalid portion thereof had been deleted.

SECTION 30. The City Council hereby finds and determines that its adoption of this Ordinance is not subject to environmental review under the Public Resources Code, § 21000 et seq., the California Environmental Quality Act ("CEQA"), because the amendments do not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and therefore are not considered a "project" under CEQA. (Pub. Res. Code, § 21065; 14 Cal. Code Regs., §§ 15378(a), 15064(d)(3).) Accordingly, the City Clerk is hereby directed to file a Notice of Exemption.

SECTION 31. This ordinance shall take effect thirty (30) days after its passage.

SECTION 32. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

* * * * *

The foregoing ordinance was introduced on the 12th day of July, 2022, and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 26th day of July, 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Rolando Castro, Mayor

ATTEST:

Celeste Cabrera-Garcia, City Clerk

APPROVED AS TO FORM:

John Kinsey, City Attorney

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: HOLDING THE DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING FOR BOCA DEL RIO AGRICULTURE LLC
DATE: JULY 12, 2022

ISSUE

Shall the City Council hold the Development Agreement Annual Review Hearing for Boca Del Rio Agriculture LLC?

BACKGROUND

Government Code section 65865.1 provides development agreements “shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement.” (Gov. Code, § 65865.1.) “If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.” (Gov. Code, § 65865.1.)

Section 8.2 of the Development Agreement with Boca Del Rio Agriculture LLC (“Developer”) provides:

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, BDR, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer, BDR, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project’s performance, at least seven (7) calendar days prior to such periodic review. Developer, BDR, and/or VA shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, BDR, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

On Tuesday, July 5, 2022, the City of Mendota provided Developer a Notice of Annual Review of Development Agreement (the “Notice”). The Notice included the Development Agreement and all Resolutions and Ordinances related to its approval. The Notice also informed Developer

that it would be permitted an opportunity to be heard orally or in writing regarding its performance under the Development Agreement at this hearing.

RECOMMENDATION

Staff recommends that the City Council discuss Boca Del Rio Agriculture LLC's performance under the development agreement and provides direction to staff.

Attachment(s):

1. Notice of Annual Review Hearing
2. Development Agreement for Boca Del Rio Agriculture LLC
3. Electronic Link to: Documents related to Development Agreement's Approval



CITY OF MENDOTA

"Cantaloupe Center Of The World"

NOTICE OF DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING Government Code § 65865.1

VIA U.S. MAIL:

Boca Del Rio Agriculture LLC
1201 K Street, Suite 920
Sacramento, CA 95814
Attn: Legal Department

Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attn: Russell Greenman, Esq.

Re: **Annual Review of Development Agreement, Mendota California
Boca Del Rio Agriculture, LLC**

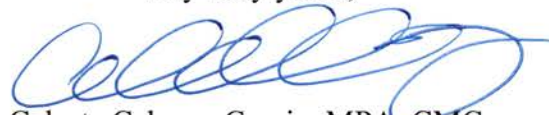
To Whom It May Concern:

On Tuesday, July 12, 2022, at 6:00 p.m., the City of Mendota shall host an annual review hearing to determine the extent of your good faith, substantial compliance with the Development Agreement bearing the date January 26, 2021, between you and the City of Mendota (the "Hearing"). This annual review hearing is scheduled pursuant to Government Code section 65865.1 and Section 8.2 of the Development Agreement. During the Hearing, you shall be permitted an opportunity to be heard orally or in writing regarding your performance under the Development Agreement.

Pursuant to Section 8.2 of the Development Agreement, the City of Mendota has enclosed copies of all staff reports and agenda items related to your performance.

Please contact Cristian Gonzalez, City Manager for the City of Mendota, by phone at (559) 655-3291 or via email at cristian@cityofmendota.com if you have any concerns.

Very truly yours,



Celeste Cabrera-Garcia, MPA, CMC

2021-0063171

FRESNO County Recorder
Paul Dictos, CPA

Friday, Apr 16, 2021 01:48:33 PM

CONFORMED COPY

Copy of document recorded.
Has not been compared with original.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

City of Mendota
643 Quince Street
Mendota, California 93640
Attn: Cristian Gonzalez

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103 and §27388.1(2)(D)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 26 day of January, 2021, by and between the CITY OF MENDOTA, a municipal corporation of the State of California ("City"), BOCA DEL RIO AGRICULTURE, LLC, a California limited liability company ("Developer"), BOCA DEL RIO HOLDINGS, LLC, a California limited liability company ("BDR"), and VALLEY AGRICULTURAL HOLDINGS, LLC, a California limited liability company ("VA"). City, Developer, BDR, or VA may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.

C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

D. Government Code section 65865 requires an applicant for a development agreement to hold a legal or equitable interest in the real property that is the subject of the development agreement. On or about October 22, 2019 the City and VA entered into that certain Purchase and Sale Agreement to purchase that certain real property located approximately one-quarter mile east of W. Belmont Avenue, and approximately one-half mile north of Guillan Park Drive, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-030-68ST (the "Site"), as more particularly described in the legal descriptions attached hereto as **Exhibit A** and depicted on the Site Map attached hereto as **Exhibit B**.

E. The members of VA determined that it would be in their respective best interests to cause VA to assign the right to purchase the Site under the Purchase and Sale Agreement to two single-purpose entities: (1) BDR; and (2) **ODYSSEY AGRICULTURAL HOLDINGS, LLC** ("OAH"). On January 26, 2021, the City Council of the City of Mendota approved a third amendment to the Purchase and Sale Agreement, permitting VA to assign its right to purchase the Property to BDR and OAH. VA has assigned its interest in approximately twenty-four (24) acres of the Property to BDR.

F. Prior to close of escrow on Developer's purchase of the Property, Developer shall submit an application to the City to subdivide the Property into two (2) separate legal parcels, with the first parcel being sixty percent (60%) of the Property, or approximately thirty-five (35) acres (to be operated by **ODYSSEY AGRICULTURAL DEVELOPMENT, LLC**, a California Limited Liability Company; OAH; and/or VA), and the second parcel being forty percent (40%) of the Property, or approximately twenty-four (24) acres (to be operated by Developer, BDR, and/or VA).

G. Developer, BDR, and/or VA propose to improve, develop, and use the Property as a guard-gated and secure Cannabis Facility for cultivation, manufacturing, and distribution of Cannabis and Cannabis Products, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 of this Agreement, as they may be amended from time to time, and the Municipal Code of the City of Mendota as it existed on the Effective Date (the "Project"). Developer, BDR, and/or VA intends to develop the Project in two distinct phases, specifically: (1) the first phase of the Project will consist of land development and the construction of "Outdoor and Mixed Light Cultivation" structures as defined in Section 1.4 of this agreement, located in various areas throughout the Site ("Phase I"), and (2) the second phase of the Project may consist of the construction of a "headhouse" used for the processing of harvested cannabis, administrative offices, employee breakroom(s), restrooms, and other ancillary Project needs ("Phase 2").

H. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

I. On September 12, 2017, the City Council of Mendota ("City Council") adopted Ordinance No. 17-13, creating the Commercial Cannabis Overlay District and establishing zoning limitations and requirements for all cannabis businesses located therein, including the proposed

cannabis facility to be located at the Site.

J. On June 11, 2019, the City Council adopted Ordinance No. 19-06, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

K. Prior to the City's adoption of Ordinance No. 19-06, VA submitted a request to the City for consideration of a development agreement for the Project pursuant to the requirements of Chapter 17.99 of the Mendota Municipal Code.

L. On September 8, 2020, the City Council adopted Ordinance No. 20-16, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

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

N. On December 29, 2021, after a duly noticed and held meeting in accordance with Government Code § 65867, the City's Planning Commission voted to recommend approval of VA's application for a development agreement for the Project.

O. On January 12, 2021, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. 21-03, an Ordinance to Approve a Development Agreement by and Between the City of Mendota and VA.

P. Pursuant to Government Code section 65867.5, on January 26, 2021, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 21-~~XX~~⁰³.

Q. This Agreement is entered into pursuant to the Development Agreement Statute and the Mendota Municipal Code.

R. City, Developer, BDR, and VA desire to enter into this Agreement to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City, Developer, and BDR.

S. The Parties intend through this Agreement to allow Developer, BDR, and/or VA to develop and manage the Project in accordance with the terms of this Agreement.

T. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are

hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City’s General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

Section 1.3. Exhibits. The following “Exhibits” are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description (Entire Site)
Exhibit B	Site Map (Entire Site)
Exhibit C	Legal Description (Developer/BDR/VA Parcel)
Exhibit D	Site Map (Developer/BDR/VA Parcel)
Exhibit E	Notice of Non-performance Late Fee
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) “Additional Insureds” has the meaning set forth in Section 6.1.
- (b) “Additional License” means a state license to operate a cannabis business pursuant to the California Cannabis Laws that is not an Authorized License.
- (c) “Adult-Use Cannabis” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.
- (d) “Agreement” means this Development Agreement, inclusive of all Exhibits attached hereto.
- (e) “Application” means the application for a development agreement submitted by

Developer to the City.

- (f) “Assignment and Assumption Agreement” has the meaning set forth in Section 10.1.
- (g) “AUMA” means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.
- (h) “Authorized License” has the meaning set forth in Section 2.3.
- (i) “Bureau” means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.
- (j) “California Building Standards Codes” means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Mendota Municipal Code.
- (k) “California Cannabis Laws” includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable state laws that may be enacted or approved.
- (l) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term “marijuana” may be used interchangeably.
- (m) “Cannabis Business” means a cannabis business operating pursuant to an Authorized License.
- (n) “Cannabis Product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- (o) “CEQA” means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.
- (p) “City” means the City of Mendota, a municipal corporation having general police

powers.

- (q) “City Council” means the City of Mendota City Council.
- (r) “City Manager” means the City Manager of the City of Mendota, or his or her designee.
- (s) “Charged Party” has the meaning set forth in Section 8.1.
- (t) “Charging Party” has the meaning set forth in Section 8.1.
- (u) “Commercial Cannabis Activity” means to cultivate, manufacture, distribute, or test a cannabis product provided for by Division 10 (commencing with Section 26000) of the Business and Professions Code.
- (v) “Conditional Use Permit” means a conditional use permit for the Project issued by the City pursuant to Mendota Municipal Code Chapter 17.08.050.
- (w) “Contribution Payment” has the meaning set forth in Section 4.2.
- (x) “CUA” means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.
- (y) “Developer” means BOCA DEL RIO AGRICULTURE LLC, and its assignees or successors as allowed herein. Developer also has the meaning set forth in Section 6.1.
- (z) “Developed Portions of the Property” means the designated structure or structures and land specified in the development agreement application that is owned, leased, or otherwise held under the control of Developer, BDR, and/or VA.
- (aa) “Development Agreement Statute” has the meaning set forth in Recital H.
- (bb) “Exhibits” has the meaning set forth in Section 1.3.
- (cc) “Gross Receipts” shall mean total revenue received or receivable by the Developer, BDR, and/or VA from any Commercial Cannabis Activity on the Property or from operation of the Project on the Property, including: all sales; the total amount of compensation received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "Gross Receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (1) Cash discounts allowed and taken on Commercial Cannabis Activity sale;

- (2) Any tax required by law to be included in or added to the purchase price of Commercial Cannabis Activity and collected from the consumer or purchaser;
- (3) Such part of the sale price of property returned by purchasers in any Commercial Cannabis Activity upon rescission of a contract of sale as is refunded either in cash or by credit; and
- (4) Receipts of refundable deposits in any Commercial Cannabis Activity, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payments required under Section 17.99.070(A) of the Mendota Municipal Code, all sales related to Commercial Cannabis Activity or any other cannabis and cannabis products at the Property or through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(dd) “Indoor Cultivation” means a Type 1A, Type 2A, Type 3A, and Type 5A license classifications, as set forth in Business and Professions code sections 26061(a)(2), 26061(a)(6), 26061(a)(9), and 26061(b)(2).

(ee) “Major Amendment” means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(ff) “Marijuana” has the same meaning as cannabis and those terms may be used interchangeably.

(gg) “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*

(hh) “MCRSA” has the meaning set forth in Recital A.

(ii) “Ministerial Fee” or “Ministerial Fees” have the meanings set forth in Section 4.1.

(jj) “Minor Amendment” means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement (e.g., change of notice address) and any amendment described as minor herein.

(kk) “Mixed-Light Cultivation” means a Type 1B, Type 2B, Type 3B, and Type 5B license classifications, as set forth in Business and Professions code sections 26061(a)(3), 26061(a)(7), 26061(a)(10), and 26061(b)(3).

(ll) “Mortgage” has the meaning set forth in Article 7.

(mm) “Non-Performance Late Fee” has the meaning set forth in Section 4.3.

(nn) “Notice of Non-Performance Late Fee” has the meaning set forth in Section 4.3.

(oo) “Notice of Termination” has the meaning set forth in Section 9.1.

(pp) “Processing Costs” has the meaning set forth in Section 1.11.

(qq) “Project” has the meaning set forth in Recital G.

(rr) “Project Litigation” has the meaning set forth in Section 10.6.

(ss) “Public Benefit Fee” has the meaning set forth in Section 4.2.

(tt) “Outdoor Cultivation” means Type 1, Type 2, Type 3, and Type 5 license classifications, as set forth in Business and Professions code sections 26061(a)(1), 26061 (a)(5), 26061 (a)(8), and 26061(b)(1)

(uu) “Site” has the meaning set forth in Recital D.

(vv) “State Cannabis Manufacturing Regulations” means the regulations related to cannabis manufacturing issued by a State Licensing Authority in accordance with Chapter 13 (commencing with Section 26130) of Division 10 of the Business and Professions Code, which may be amended from time to time.

(ww) “State Licensing Authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.

(xx) “State Taxing Authority” has the meaning set forth in Section 4.2.

(yy) “Subsequent City Approvals” has the meaning set forth in Section 3.1.

(zz) “Term” has the meaning described in Section 1.7.

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent, partner, or joint venturer of Developer, BDR, VA, or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective and title to the Site is vested in the Developer (the “Effective Date”).

Section 1.7. Term. The “Term” of this Agreement is twenty (20) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer, BDR, and/or VA to cease all Commercial Cannabis Activity, upon which Developer, BDR, and VA shall immediately comply, only if City is specifically required to comply with federal

or state law and such federal or state law requires cessation of Cannabis Cultivation Activities. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for an equivalent period of time (the “Tolling Period”). Developer, BDR, and/or VA shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer, BDR, and/or VA shall resume paying any applicable fees after the Tolling Period ends. City and Developer, BDR, and/or VA shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) Developer/BDR/VA Tolling or Termination. Developer, BDR, and VA shall not temporarily halt or suspend this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(c) Developer/BDR/VA Termination. Developer, BDR, and/or VA may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer, BDR, and/or VA are required, directed, or believes, in their sole and absolute discretion, they must temporarily halt or terminate Commercial Cannabis Activity. In such an event, Developer’s, BDR’s, and/or VA’s obligations under this Agreement shall terminate. Any resumption of Commercial Cannabis Activity shall be subject to approval by the City Manager.

Section 1.8. Priority of Enactment. In the event of conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (c) Conditional Use Permit, and (d) Subsequent City Approvals, as defined in Section 3.1 of this Agreement.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited fifteen thousand dollars (\$15,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation, processing and annual review of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, “Processing Costs”). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) **Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, City shall provide notice to Developer, BDR, and/or VA and Developer, BDR, and/or VA shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may immediately terminate this Agreement and all entitlements associated with the project.

(b) **Accounting.** Developer may request, and City shall issue within two (2) weeks, an accounting and written acknowledgement of Processing Costs paid to City.

**ARTICLE 2
DEVELOPMENT OF PROPERTY**

Section 2.1. Vested Right of Developer/BDR/VA. During the Term, in developing the Site consistent with the Project described herein, Developer, BDR, and/or VA are assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer, BDR, and/or VA and may not be modified or terminated by City except as set forth in this Agreement or with Developer, BDR, and VA’s written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer, BDR, and/or VA shall have the vested right to develop and use the Project consistent with this Agreement, the existing City regulations and codes, the Conditional Use Permit, and Subsequent City Approvals. Developer, BDR, and VA hereby acknowledge and agree that a condition of approval for the Conditional Use Permit will be that this Agreement remain in full force and effect for the duration of the Term and that any assignment or transfer of Developer’s, BDR’s, and/or VA’s interests under this Agreement may be made only with the City’s consent in accordance with Section 10.1 herein.

Section 2.3. Permitted Uses and Development Standards. Developer, BDR, and/or VA shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types (the “Authorized License”):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A/5A
Mixed Light Cultivation	1B/2B/3B/5B
Outdoor Cultivation	1/2/3/5
Cultivation Nursery	4
Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Transportation	12
Cultivation Processor	C-P

Developer, BDR, and/or VA or their tenants or assignees shall be permitted to use the Site consistent

with the Authorized License for the Term of this Agreement and during the time Developer, BDR, and/or VA, or their tenants or assignees, are applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer, BDR, and/or VA, or their tenants or assignees, are required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer and/or BDR, or their tenants or assignees, Developer, BDR, and/or VA, or their tenants or assignees, shall immediately cease Commercial Cannabis Activity on the Site. Developer, BDR, and/or VA, or their tenants or assignees, shall also, within ten (10) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer, BDR, and/or VA, or their tenants or assignees, shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer, BDR, and/or VA may request to add one or more of the license types then authorized by the California Cannabis Laws to the Authorized License. If City Council allows any Additional Licenses, City Council shall make a finding of whether Developer's, BDR's, and/or VA's, or their tenants' or assignees', Additional Authorized Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer, BDR, and/or VA shall be required to compensate City for all additional impacts on City infrastructure or services associated with any Additional Licenses and the Public Benefit Fee amount shall be revised accordingly. This process shall be a Major Amendment to this Agreement.

Section 2.5. Development Permit. By entering into this Agreement, City understands and acknowledges that prior to Developer, BDR, and/or VA commencing any development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site, Developer, BDR, and/or VA are required to obtain from the City a Conditional Use Permit and any applicable Subsequent City Approvals. Developer and/or BDR shall be required to comply with all provisions of the Mendota Municipal Code and any other City rules and administrative guidelines associated with implementation of the Commercial Cannabis Overlay District. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Mendota Municipal Code or issue rules or administrative guidelines associated with implementation of the Commercial Cannabis Overlay District or Developer's, BDR's, and VA's obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer, BDR, and/or VA to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. Any entitlements and/or development standards required by the City that are not contemplated in the Conditional Use Permit shall, to the extent practicable, be consistent with the County of Fresno's development standards for "Exclusive Agricultural" uses as set forth in the Fresno County Ordinance Code - Division 6, Zoning Ordinance. The exercise of this discretion is not prohibited by this Agreement, but the exercise of

that discretion must be reasonable and consistent with this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

Section 2.7. No Commitment to Project Approval. Developer, BDR, and VA understand and acknowledge that City shall be under no obligation whatsoever to approve or to issue to Developer, BDR, or VA any development entitlement, including, but not limited to, a Conditional Use Permit or any applicable Subsequent City Approvals, related to Developer's, BDR's, and/or VA's development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site. City will conduct environmental review of the relevant activity or activities in accordance with the requirements of CEQA prior to granting any approval associated with the Development Entitlements. Developer, BDR, and VA acknowledge and agree that, in accordance with Seller's obligations under CEQA, City may, after conducting appropriate environmental review, decide not to approve some or all of the required development entitlements, or may approve some or all of the development entitlements subject to conditions. The Parties expressly intend that nothing in this Agreement shall be interpreted as a commitment by City to grant any development entitlements to Developer, BDR, or VA prior to City's completion of appropriate environmental review in accordance with CEQA, or as an abrogation of the City's obligation to exercise its independent judgement in deciding whether to grant any development entitlement or whether to impose conditions on any development entitlement.

Section 2.8. Initiatives and Referenda. If any City ordinance, rule, or regulation, or addition to the Mendota Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer, BDR, and VA in this Agreement, such Mendota Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer, BDR, and/or VA and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.9. Regulation by Other Government Entities. Developer, BDR, and VA acknowledge that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer, BDR, and/or VA or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.10. Developer's Right to Rebuild. Developer, BDR, and/or VA may renovate portions of the Site or the BDR Parcel any time within the Term of this Agreement consistent with the Mendota Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.11. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring

from time to time to the California Building Standards Codes.

Section 2.12. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Mendota Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Commercial Cannabis Overlay District. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City, Developer, BDR, and/or VA shall provide the other Parties with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Mendota Municipal Code or this Agreement. Promptly thereafter, City, Developer, BDR, and/or VA shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City, Developer, BDR, and/or VA will attempt to preserve the terms of this Agreement and the rights of Developer, BDR, and VA derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer, BDR, and/or VA for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's, BDR's, and/or VA's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.13. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency so as to not have a material adverse impact on the Project, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City has the authority to permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely review, pursuant to the terms of this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and applicable law, any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. Subsequent City Approvals include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer, BDR,

and/or VA with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any applicable law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer/BDR/VA. Consistent with the terms set forth herein, City agrees to cooperate with Developer, BDR, and/or VA, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder, or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4 PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer, OAH, and/or VA shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer, BDR, and VA that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Developer, BDR, and VA (the "Public Benefit Fee"). Developer, BDR, and VA acknowledge that the Public Benefit Fees provided for herein are greater than the annual fee provided for in Mendota Municipal Code section 17.99.070 and, despite this fact, voluntarily agree to pay the fees contemplated herein, acknowledging that the private benefits conferred are of equal or greater consideration to the fees, and waives any right to challenge said fees as a violation of any law. In consideration of the foregoing, Developer, BDR, and/or VA shall remit to City:

(1) A one-time Public Contribution Payment in the amount of EIGHTY THOUSAND DOLLARS (\$80,000) (the "Contribution Payment") within thirty (30) days of Developer, BDR, and/or VA closing escrow on that certain Purchase and Sale Agreement and Joint Escrow Instructions entered into by and between Developer and City on or about October 22, 2019, and thereby,

Developer, BDR, and/or VA obtaining fee title interest to the Property. City acknowledges that Developer's, BDR's, and/or VA's obligation to remit the Contribution Payment to the City, or any portion thereof, is strictly conditioned on (a) the Agreement having obtained final City approval, (b) Developer having obtained the Conditional Use Permit as discussed in Section 2.5 above, (c) Developer having obtained any and all "Subsequent Entitlements, Approvals, and Permits" as discussed in Section 2.6 above, and (d) Developer having obtained any and all "Subsequent City Approvals" as discussed in Section 3.1 above.

(2) As described in Section 17.99.070 of the Mendota Municipal Code, an annual "Public Benefit Fee" in the greatest amount of the following, as applicable:

(i) FIVE DOLLARS (\$5.00) per square foot for so long as the Developed Portions of the Property are less than two hundred thousand (200,000) square feet; or

(ii) FOUR DOLLARS (\$4.00) per square foot for so long as the Developed Portions of the Property are between two hundred thousand (200,000) square feet and four hundred ninety-nine, nine hundred ninety-nine thousand (499,999) square feet; or

(iii) For so long as the Developed Portions of the Property are five hundred thousand (500,000) square feet or greater, the greater amount of the following:

(a) FOUR HUNDRED THOUSAND DOLLARS (\$400,000); or

(b) Four percent (4%) of the Project's annual Gross Receipts, as defined in Section 1.4.

To the extent that Section 4.2(a)(2) is applicable for the calculation of the Public Benefit Fee, said fee will be adjusted pursuant to the Consumer Price Index for the Fresno/Clovis metropolitan area (All Urban Consumers) published by the United States Department of Labor, Bureau of Labor and Statistics ("Index"). The adjustment shall be made based on the first Index published in the year for which the Public Benefit Fee is paid and shall be subject to a maximum increase of 2% in any given year.

(3) The annual Public Benefit Fee described in Section 4.2, above, shall be paid in quarterly installments on the first (1st) business day of every third (3rd) month ("Quarterly Payment").

(b) Developer, BDR, and/or VA shall remit the Contribution Payment and the Public Benefit Fee as applicable, to City as described in subdivisions (a.1), (a.2), and (a.3) of this Section. Failure to remit the Contribution Payment and Public Benefit Fee, as applicable, is a material breach of this Agreement and shall be sufficient grounds for revocation of all entitlements associated with the Project. For purposes of clarity and avoidance of doubt, the Parties agree and acknowledge that Developer's, BDR, and/or VA's obligation to commence making the Public Benefit Fee payment to the City shall commence on the first day of Project operation when the first crop is planted and not prior to that date.

Section 4.3. Reporting. Developer, BDR, and VA shall provide City with copies of any reports

provided to a State Licensing Authority or a State Taxing Authority within forty-five (45) calendar days of that submission. Failure or refusal of Developer, BDR, and/or VA to (a) provide any such report to City, State Licensing Authority, or the State Taxing Authority within the time required by that entity, or (b) pay the Public Benefit Amount or amount due to a State Licensing Authority or State Taxing Authority when the same are due and payable, shall constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit and all entitlements associated with the Project.

Section 4.4. Records. Subsequent tenants or assignees shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the State Retail Cannabis Regulations. All records required by this Article 4 shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee. Upon request, Developer, BDR, and/or VA shall make all records relating to this Article 4 available to City within three (3) calendar days.

Section 4.5. Late Fee. Developer, BDR, and VA acknowledge that, to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Liquidated damages and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer, BDR, or VA fail to make any payment when due as required by this Agreement, including the Public Benefit Amount, City may impose a "Non-Performance Late Fee." A Non-Performance Late Fee of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer, BDR, and/or VA a "Notice of Non-Performance Late Fee," attached hereto as **Exhibit C**. Payment of the Non-Performance Late Fee shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee. The Parties hereto acknowledge and agree that the sums payable under this Section 4.5 shall constitute liquidated damages and not penalties and are in addition to all other rights of the City, including the right to call a default. The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the amounts specified herein bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure by Developer, BDR, or VA to remit payment as required by this Agreement, (iii) one of the reasons for the Parties' agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Parties are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

Section 4.6. Interest on Unpaid Non-Performance Late Fee. If Developer, BDR, and/or VA fail to pay the Non-Performance Late Fee after City has delivered the Notice of Non-Performance Late Fee, then, in addition to the principal amount of the Non-Performance Late Fee, Developer, BDR, and/or VA shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Late Fee, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee.

Section 4.7. Exempt from City Tax. For the Term of this Agreement, Developer, BDR, and VA shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the

foregoing, Developer, BDR, and/or VA and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Fresno, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event that the City applies a new tax on commercial cannabis businesses during the term of this Agreement, the City shall refund or credit the amount owed by Developer, BDR, and/or VA pursuant to the Public Benefit Fee by an equal amount to any new tax on commercial cannabis businesses.

Section 4.8. Employing City Residents. Developer, BDR, and/or VA agree to use their best efforts to promote the hiring and employment of local City residents to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, BDR, and/or VA agree to include in any lease, license, or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to hire and employ local City residents for its business.

Section 4.9. Contracting with Local Businesses. Developer, BDR, and VA agree to use their best efforts to promote the contracting of local businesses to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, BDR, and/or VA agree to include in any lease, license or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to contract with local City businesses for its business.

Section 4.10. Manner of Payment. All payments required to be made to City pursuant to this Agreement shall be paid by Developer, BDR, and/or VA via check, ACH payment, or wire transfer through a bank licensed and in good standing with all appropriate regulatory bodies. No payment required pursuant to this Agreement may be made in cash. Developer, BDR, and VA understand and agree that any failure to comply with this Section 4.10 shall constitute a material breach of this Agreement.

Section 4.11. Development Incentive. To provide an incentive for Developer's development of the Property and construction of the Project, and to facilitate Developer's prompt performance of its obligations under this Agreement in a manner that will maximize the financial benefit to City over the Term of this Agreement, City shall, within the first year of the Project's operation, recognize a \$25,000 credit in Developer's favor to be applied to any liability of Developer to the City. The liability or liabilities to which the credit is applied shall be determined by the City Manager in consultation with Developer.

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

Section 5.1. City Use of Public Benefit Fee. City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods, for the general welfare of the residents of Mendota, and the existing level of service of City infrastructure and services to accommodate for the Project.

**ARTICLE 6
INSURANCE AND INDEMNITY**

Section 6.1. Insurance. Developer, BDR, and/or VA shall require all persons doing work on the Project, including their contractors and subcontractors (collectively, “Developer” for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) General Liability Insurance. Developer, BDR, and/or VA shall maintain commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as “Additional Insureds” by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) Automotive Liability Insurance. Developer, BDR, and/or VA shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) Workers’ Compensation Insurance. Developer, BDR, and/or VA shall take out and maintain during the Term of this Agreement, workers’ compensation insurance for all of Developer’s, BDR’s, and/or VA’s employees employed at or on the Project, and in the case any of the work is subcontracted, Developer, BDR, and/or VA shall require any general contractor or subcontractor similarly to provide workers’ compensation insurance for such contractor’s or subcontractor’s employees, unless such employees are covered by the protection afforded by Developer, BDR, and/or VA. In case any class of employee engaged in work on the Project is not protected under any workers’ compensation law, Developer, BDR, and/or VA shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of

employees not otherwise protected. Developer, BDR, and VA hereby indemnify City for any damage resulting from failure of Developer, BDR, and/or VA, their agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

Section 6.2. Other Insurance Requirements. Developer, BDR, and VA shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

(c) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(e) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer, BDR, and/or VA shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals.

Upon receiving notice of a claim, action, or proceeding, Developer, BDR, and/or VA shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter. The City's remedies are limited to that portion of the Project that is in breach of this Section 6.3.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify City shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit or entitlements associated with the Project. Developer's, BDR's, and/or VA's failure to

indemnify City shall be a waiver by Developer, BDR, and/or VA of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's, BDR's, and/or VA's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's, BDR's, and/or VA's failure to indemnify City.

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer, BDR, and/or VA and, therefore, Developer, BDR, and VA hereby waive all claims for damages against City for breach of this Agreement. Developer, BDR, and VA further acknowledge that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer, BDR, and VA therefore waive all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer and/or BDR are opposed. Developer, BDR, and VA further acknowledge that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer, BDR, and VA waive all claims for damages against City in this regard.

ARTICLE 7 MORTGAGEE PROTECTION

Section 7.1. Supremacy Over Liens. This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall be deemed in default and terminate as to an interest in the Site or Project upon the foreclosure or transfer of that interest, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing, which such authorization shall not be unreasonably withheld or conditioned.

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than thirty (30) calendar days' written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal

proceedings for the breach of this Agreement.

(b) After expiration of the thirty (30) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within thirty (30) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit or other entitlement related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 or the comparable provisions of the Mendota Municipal Code within thirty (30) calendar days from the expiration of the thirty (30) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer, BDR, and/or VA are in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer, BDR, and/or VA until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer, BDR, and/or VA are in default, Developer, BDR, and/or VA shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer, BDR, and/or VA with notice and opportunity to cure as provided for in paragraph (a) through (e) above, except that the time periods in paragraphs (a), (b), (c), and (e) shall be ninety (90) days.

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, BDR, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section

65865.1. City shall deposit in the mail or fax to Developer, BDR, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer and/or BDR shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, BDR, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

Section 8.3. Estoppel Certificates. City shall, with at least twenty (20) calendar days' prior written notice, execute, acknowledge, and deliver to Developer, BDR, VA, Developer's, and/or BDR's lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(a) At Developer's, BDR's, and/or VA's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's, BDR's, and/or VA's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer, BDR, and/or VA shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer, BDR, and/or VA.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City, Developer, BDR, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to Section 8.1(c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by any Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as **Exhibit D**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer/BDR/VA Obligations. Termination of this Agreement shall eliminate any further obligation of Developer, BDR, and/or VA to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer, BDR, and/or VA to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.9, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10 OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. The rights granted to Developer, BDR, and/or VA under this Agreement are personal to Developer, BDR, and/or VA and Developer, BDR, and VA shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager.

(a) The City Manager's consent shall not be unreasonably withheld or conditioned; however, Developer, BDR, and VA hereby acknowledge and agree that in no event shall it be unreasonable for the City Manager to withhold or condition consent if the proposed assignee or transferee cannot:

(i) Demonstrate financial resources in the form of a financial statement, balance sheet, or tax returns that attest to the assignee or transferee's financial health and ability to finance and operate the proposed business for a minimum of twelve (12) months; and

(ii) Demonstrate technical expertise through utilization of a substantial portion of the Project's existing management team or through a detailed description of the transferee's experience in operating the same or similar type of project.

(b) Upon City's receipt of written notice that Developer, BDR, and/or VA propose to assign or transfer any of its rights or interests under this Agreement, the City Manager shall, within thirty (30) days of receiving all requested information regarding the proposal from Developer, BDR, and/or VA, notify Developer, BDR, and/or VA in writing whether the City intends to withhold or condition its consent pursuant to this Section 10.1 and the reasons therefor.

(c) If the City Manager notifies Developer, BDR, and/or VA that the City intends to withhold consent pursuant to this Section 10.1, the Parties shall meet and confer in good faith to determine whether, in lieu of withholding consent, the City's concerns can be adequately addressed by imposing appropriate conditions on the City's consent.

(d) If the Parties are unable to reach agreement regarding the proposed assignment or transfer, Developer, BDR, and/or VA may, within ten (10) days after meeting and conferring pursuant to subdivision (c) above, appeal the City Manager's decision to the City Council. In such event, the City Council shall finally determine, in its sole and absolute discretion, whether the withholding or conditioning of consent to the proposed assignment or transfer is reasonable.

(e) Any assignment or transfer in violation of this Section 10.1 will be automatically void and will be considered an immediate, material breach of this Agreement such that City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City, Developer, BDR, and VA shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit E**. Nothing in this Section 10.1 applies to the Developer's, BDR's, or VA's capitalization or ownership provisions.

Section 10.2. Covenants Running with the Land. For so long as this Agreement is in full force and effect, all of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer, BDR, and VA .

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer, BDR, and/or VA must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which

such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Mendota
643 Quince Street
Mendota, CA 93640
Attention: Cristian Gonzalez, City Manager

And to: Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno, California 93720
Attention: John P. Kinsey, Esq.

If to Developer: BOCA DEL RIO AGRICULTURE LLC,
1201 K Street, Suite 920
Sacramento, CA 95814
Attention: Legal Department

And to: Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

If to BDR: BOCA DEL RIO HOLDINGS LLC,
1201 K Street, Suite 920
Sacramento, CA 95814
Attention: Legal Department

And to: Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

If to VA: Valley Agricultural Holdings LLC
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention: Richard Munkvold

And to: Valley Agricultural Holdings, LLC
2151 E. Convention Center Way, Suite 114
Ontario, CA 91764
Attention: Steven B. Imhoof, Esq.

Section 10.4. Governing Law and Binding Arbitration. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State

of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Fresno, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings of the Judicial Arbitration and Mediation Services. Judgment on the arbitration award may be entered in any court having jurisdiction thereof.

Section 10.5. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City, Developer, BDR, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer, BDR, and VA agree that Developer, BDR, and VA may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer, BDR, and/or VA in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer, BDR, and/or VA for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer, BDR, and/or VA will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer, BDR, and/or VA shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer, BDR, and/or VA will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person

acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City, Developer, BDR, and VA agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City, Developer, BDR, and VA shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer, BDR, or VA operate the Project in violation of the Agreement, or any applicable regulations issued pursuant to the California Cannabis Laws, as may be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Fresno.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) **Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) **Number and Gender.** In this Agreement, the neutral gender includes the feminine and masculine, and the singular includes the plural, and the word "person" includes corporations,

partnerships, firms, or associations, wherever the context requires.

(g) Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.

(h) Term Includes Extensions. All references to the Term of this Agreement shall include any extensions of such Term.

(i) Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) Other Documents. The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) Time is of the Essence. Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) Document Preparation. This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) Attorney’s Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney’s fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) Calculation of Time Periods. All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

(q) Confidentiality. Both Parties agree to maintain the confidentiality of the other

Party's "Confidential Information" under this Agreement and shall not disclose such information to third parties. "Confidential Information" shall include, but not be limited to, business plans, trade secrets, and industry knowledge. Confidential Information shall not apply to information that: (i) is in the public domain at the time of disclosures or (ii) is required to be disclosed pursuant to a court order, governmental authority, or existing state law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer, Odyssey, and City as of the Effective Date of the Agreement, as defined above.

“CITY”


Date: March 29, 2021

CITY OF MENDOTA,
a California Municipal Corporation



By: Cristian Gonzalez
Its: City Manager

Attest:


Celeste Cabrera
City Clerk

“DEVELOPER”

Date: March 25, 2021

BOCA DEL RIO AGRICULTURE, LLC,
a California limited liability company



By: Dustin Moore
Its: Authorized Signatory

“BDR”

Date: March 25, 2021

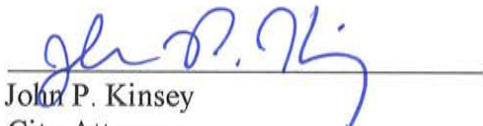
BOCA DEL RIO HOLDINGS, LLC,
a California limited liability company



By: Dustin Moore
Its: Authorized Signatory

Date: ^{April} March 6, 2021

Approved to as Form:


John P. Kinsey
City Attorney

“VA”

Date: March 25, 2021

VALLEY AGRICULTURAL HOLDINGS,
LLC, a California limited liability company



By: Dustin Moore

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Sacramento)

On 03/25/2021, before me Hivayat Ali, a Notary Public, personally appeared Dustin Moore who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.



(Signature)



(Seal)

California All-Purpose Acknowledgment

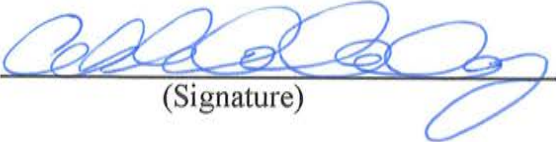
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

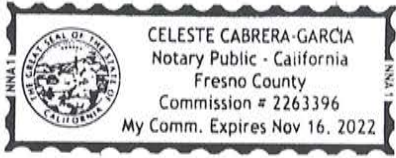
State of California)
County of Fresno)

On March 29, 2021, before me Celeste Cabrera-Garcia, a Notary Public, personally appeared Cristian Gomez who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.


(Signature)



(Seal)

EXHIBIT "A"

Legal Description

Entire Site:

That portion of the North half of Section 32, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, according to the official plat thereof, in the City of Mendota, County of Fresno, State of California, described as follows:

Commencing for reference at the Northwest corner of said Section 32; thence

South 1°30'52" West, along the West line of said Section 32, a distance of 736.94 feet; thence

South 89°00'35" East, 135.56 feet to the Northwest corner of that parcel described in the Grant Deed recorded as Document 2009-0093031, Official Records of Fresno County; thence

South 89°00'35" East, along the North line of said parcel, 1401.95 feet to the Northeast corner of said parcel and the TRUE POINT OF BEGINNING; thence

South 89°00'35" East, along the easterly prolongation of said North line, 1622.80 feet, more or less, to the East line of that parcel conveyed to the City of Mendota by the Grant Deed recorded as Document 2007-0027736, Official Records of Fresno County; thence

South 1°30'52" West, along said East line, 1610.64 feet, more or less, to the Southeast corner of last said parcel; thence

North 89°00'35" West, along the South line of last said parcel, 1622.75 feet, more or less, to the Southeast corner of said parcel described in Document 2009-0093031; thence

North 1°30'46" East, along the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

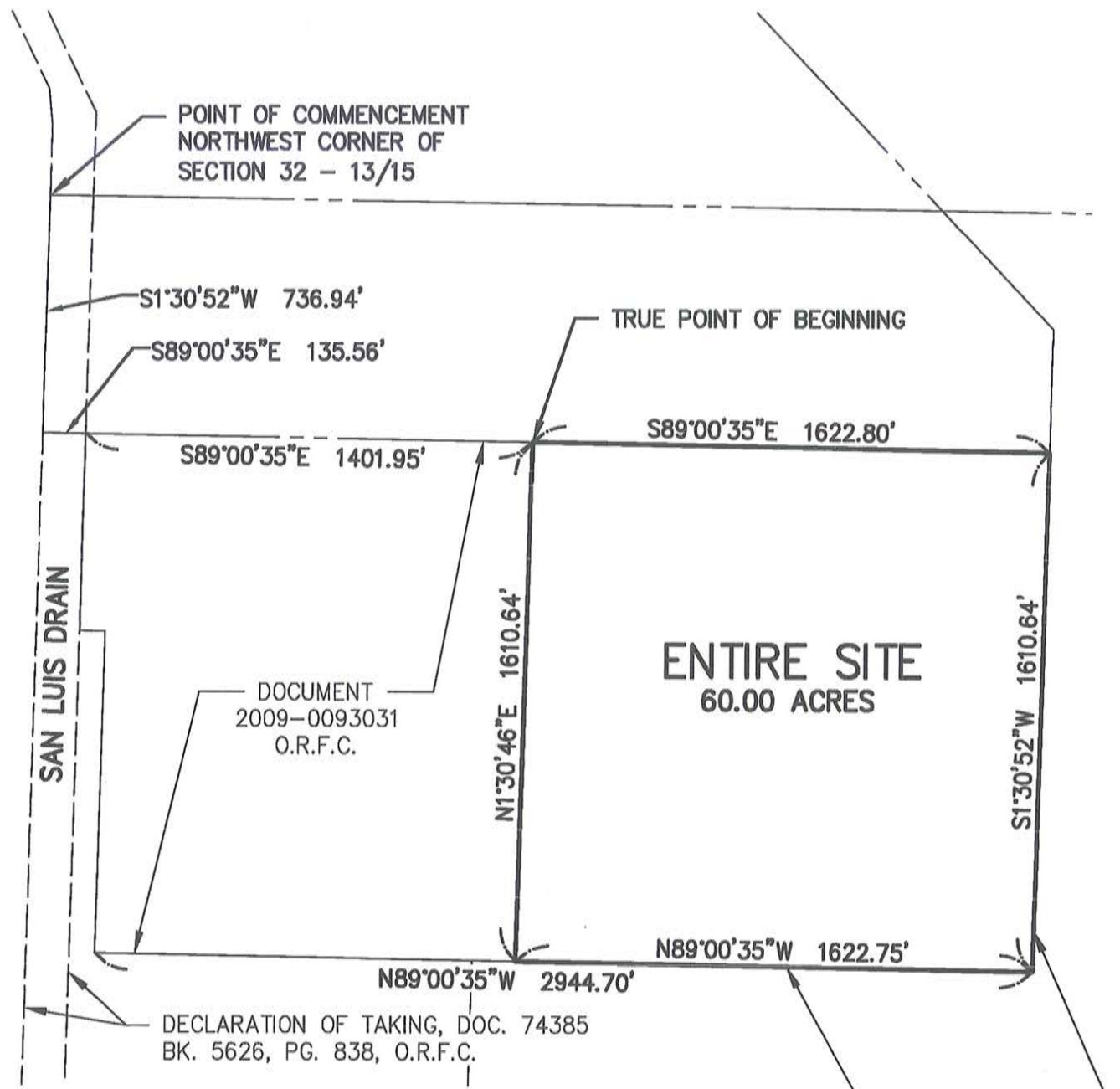
Containing an area of 60.00 acres, more or less.

END OF DESCRIPTION



2/1/21

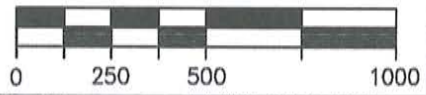
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2/1/21



SCALE IN FEET



EST. 1968
PROVOST & PRITCHARD
 CONSULTING GROUP
 An Employee Owned Company

A PORTION OF THE NORTH HALF OF SECTION 32
 TOWNSHIP 13 SOUTH, RANGE 15 EAST, M.D.B.&M.
 CITY OF MENDOTA
EXHIBIT B

LAND SURVEYOR:
 T. ODOM, PLS 8468
 DATE: 1/29/2021
 JOB NO: 333620013
 SHEET 1 OF 1

EXHIBIT "C"

Legal Description

BDR Parcel:

That portion of the North half of Section 32, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, according to the official plat thereof, in the City of Mendota, County of Fresno, State of California, described as follows:

Commencing for reference at the Northwest corner of said Section 32; thence

South 1°30'52" West, along the West line of said Section 32, a distance of 736.94 feet; thence

South 89°00'35" East, 135.56 feet to the Northwest corner of that parcel described in the Grant Deed recorded as Document 2009-0093031, Official Records of Fresno County; thence

South 89°00'35" East, along the North line of said parcel, 1401.95 feet to the Northeast corner of said parcel; thence

South 89°00'35" East, along the easterly prolongation of said North line, 973.67 feet to the TRUE POINT OF BEGINNING; thence

South 89°00'35" East, continuing along the easterly prolongation of said North line, 649.13 feet, more or less, to the East line of that parcel conveyed to the City of Mendota by the Grant Deed recorded as Document 2007-0027736, Official Records of Fresno County; thence

South 1°30'52" West, along said East line, 1610.64 feet, more or less, to the Southeast corner of last said parcel; thence

North 89°00'35" West, along the South line of last said parcel, 649.08 feet; thence

North 1°30'46" East, parallel with the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

Containing an area of 24.00 acres, more or less.

END OF DESCRIPTION

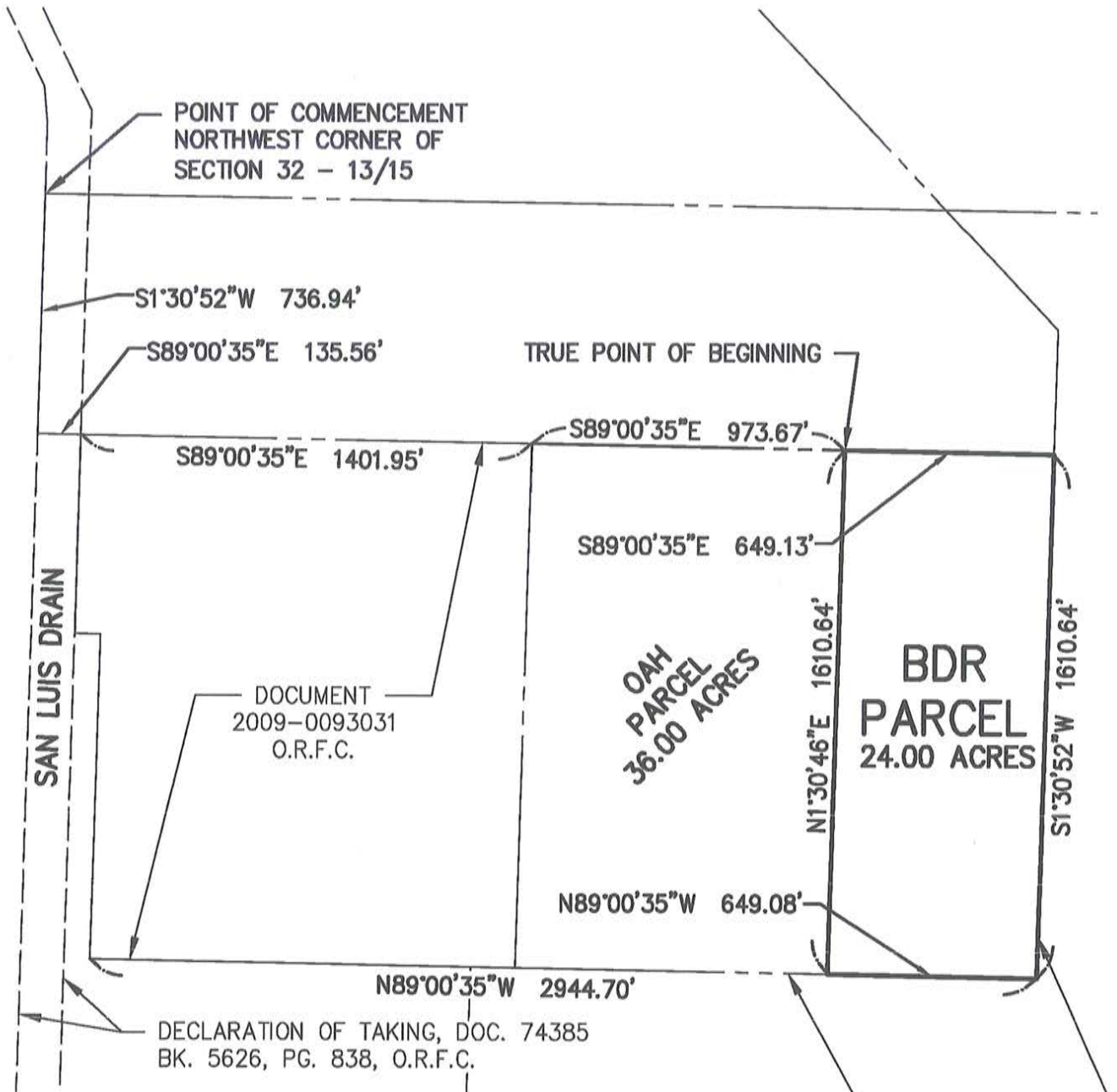


2/4/21

Page 1 of 1

APN 013-030-68ST (portion)

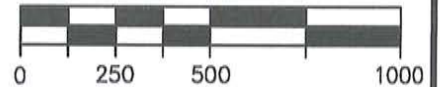
2/4/2021 3:58 PM c:\mendon\city of mendota\city project files\333620013-2023 - 20-23 - Valley Ag Holdings (A1000)\Survey\Background & Working Docs\Exhibit D - Parcel 2-BDR mapping - Tim Odom



2/4/21



SCALE IN FEET



EST. 1968
PROVOST & PRITCHARD
 CONSULTING GROUP
 An Employee Owned Company

A PORTION OF THE NORTH HALF OF SECTION 32
 TOWNSHIP 13 SOUTH, RANGE 15 EAST, M.D.B.&M.
 BOCA DEL RIO HOLDINGS, LLC
 CITY OF MENDOTA

EXHIBIT D

LAND SURVEYOR:
 T. ODOM, PLS 8468
 DATE: 2/4/2021
 JOB NO: 333620013
 SHEET 1 OF 1

Exhibit E

Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and BOCA DEL RIO AGRICULTURE LLC, a California limited liability company ("Developer"), BOCA DEL RIO HOLDINGS LLC, a California limited liability company ("BDR"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at _____, Mendota, California 93640 ("Agreement"), if Developer, BDR, and/or VA 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, BDR, and VA that Developer, BDR, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is _____. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of _____ ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by _____.

City Manager
City of Mendota

Date

Exhibit F

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:**

**City of Mendota
643 Quince St, Mendota, CA 93640
Attention: 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 BOCA DEL RIO AGRICULTURE LLC, a California limited liability company ("Developer"), BOCA DEL RIO HOLDINGS LLC, a California limited liability company ("BDR"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at _____, Mendota, California 93640 ("Agreement"), _____ informs _____ that the Agreement is hereby terminated, in accordance with the terms and conditions as stated therein, pursuant to Article __, Section ____.

In accordance with Article 9, Section 9.1 of the Agreement, City shall record this Notice of Termination.

Title:
Entity:

Date

Exhibit G

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”), and **BOCA DEL RIO AGRICULTURE LLC**, a California limited liability company (“Developer”), **BOCA DEL RIO HOLDINGS LLC**, a California limited liability company (“BDR”), and **VALLEY AGRICULTURAL HOLDINGS LLC**, a California limited liability company (“VA”) (Developer, OAH, and VA collectively, “Assignors”), and _____, a _____ (“Assignee”). City, Assignors, 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 Assignors entered into a development agreement, dated _____, for the development of property located at _____, in the City of Mendota, County of Fresno, State of California, Assessor’s Parcel Number 013-030-68ST (“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, Assignors 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. Assignors desire to transfer to Assignee some or all of Assignors’ 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 Assignors’ 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 Assignors’ 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 Assignors to transfer, and Assignee to assume, some or all of Assignors’ 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. Assignors hereby assign to Assignee (all/some) of Assignors' 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 Assignors' 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 Assignors' 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. Assignors acknowledge and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Development Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.

Section 6. Inconsistency. In the event of any conflict or inconsistency between the terms of the Development Agreement and the terms of this Agreement, the terms of the Development Agreement shall govern.

Section 7. Further Actions. Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other Parties hereto, such further instruments of transfer and assignment and to take such other action as such the other Parties may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

“CITY”

Date: January _____, 2021

CITY OF MENDOTA,
a California Municipal Corporation

By: Cristian Gonzalez

Its: City Manager

Attest:

City Clerk

Date: January _____, 2021

Approved to as Form:

John P. Kinsey
City Attorney

“DEVELOPER”

Date: _____

BOCA DEL RIO AGRICULTURE, LLC,
a California limited liability company

By:

Its:

“BDR”

Date: _____

BOCA DEL RIO HOLDINGS, LLC,
a California limited liability company

By:

Its:

“VA”

Date: _____

VALLEY AGRICULTURAL HOLDINGS,
LLC, a California 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 MAYOR AND COUNCILMEMBERS
FROM: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: HOLDING THE DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING FOR ODYSSEY AGRICULTURAL DEVELOPMENT LLC
DATE: JULY 12, 2022

ISSUE

Shall the City Council hold the Development Agreement Annual Review Hearing for Odyssey Agricultural Development LLC?

BACKGROUND

Government Code section 65865.1 provides development agreements “shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement.” (Gov. Code, § 65865.1.) “If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.” (Gov. Code, § 65865.1.)

Section 8.2 of the Development Agreement with Odyssey Agricultural Development LLC (“Developer”) provides:

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, OAH, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer, OAH, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project’s performance, at least seven (7) calendar days prior to such periodic review. Developer, OAH, and/or VA shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, OAH, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

On Tuesday, July 5, 2022, the City of Mendota provided Developer a Notice of Annual Review of Development Agreement (the “Notice”). The Notice included the Development Agreement and all Resolutions and Ordinances related to its approval. The Notice also informed Developer

that it would be permitted an opportunity to be heard orally or in writing regarding its performance under the Development Agreement at this hearing.

RECOMMENDATION

Staff recommends that the City Council discuss Odyssey Agricultural Development LLC's performance under the development agreement and provides direction to staff.

Attachment(s):

1. Notice of Annual Review Hearing
2. Development Agreement for Odyssey Agricultural Development LLC
3. Electronic Link to: Documents related to Development Agreement's Approval



CITY OF MENDOTA

"Cantaloupe Center Of The World"

NOTICE OF DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING Government Code § 65865.1

VIA U.S. MAIL:

Odyssey Agricultural Development LLC
2222 E Olympic Boulevard
Los Angeles, CA 90021
Attn: Legal Department

Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attn: Russell Greenman, Esq.

Re: **Annual Review of Development Agreement, Mendota California
Odyssey Agricultural Development, LLC**

To Whom It May Concern:

On Tuesday, July 12, 2022, at 6:00 p.m., the City of Mendota shall host an annual review hearing to determine the extent of your good faith, substantial compliance with the Development Agreement dated March 26, 2021, between you and the City of Mendota (the "Hearing"). This annual review hearing is scheduled pursuant to Government Code section 65865.1 and Section 8.2 of the Development Agreement. During the Hearing, you shall be permitted an opportunity to be heard orally or in writing regarding your performance under the Development Agreement.

Pursuant to Section 8.2 of the Development Agreement, the City of Mendota has enclosed copies of all staff reports and agenda items related to your performance.

Please contact Cristian Gonzalez, City Manager for the City of Mendota, by phone at (559) 655-3291 or via email at cristian@cityofmendota.com if you have any concerns.

Very truly yours,

Celeste Cabrera-Garcia, MPA, CMC

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:**

City of Mendota
643 Quince Street
Mendota, California 93640
Attn: Cristian Gonzalez

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103 and §27388.1(2)(D)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 26th day of March, 2021, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), **ODYSSEY AGRICULTURAL DEVELOPMENT, LLC**, a California limited liability company ("Developer"), **ODYSSEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("OAH"), and **VALLEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("VA"). City, Developer, OAH, or VA may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.

C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

D. Government Code section 65865 requires an applicant for a development agreement to hold a legal or equitable interest in the real property that is the subject of the development agreement. On or about October 22, 2019 the City and VA entered into that certain Purchase and Sale Agreement to purchase that certain real property located approximately one-quarter mile east of W. Belmont Avenue, and approximately one-half mile north of Guillan Park Drive, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-030-68ST (the "Site"), as more particularly described in the legal descriptions attached hereto as **Exhibit A** and depicted on the Site Map attached hereto as **Exhibit B**.

E. The members of VA determined that it would be in their respective best interests to cause VA to assign the right to purchase the Site under the Purchase and Sale Agreement to two single-purpose entities: (1) OAH; and (2) **BOCA DEL RIO HOLDINGS, LLC** ("**BDR**"). On January 26, 2021, the City Council of the City of Mendota approved a third amendment to the Purchase and Sale Agreement, permitting VA to assign its right to purchase the Property to BDR and OAH. VA has assigned its interest in approximately thirty-five (35) acres of the Property to OAH.

F. Prior to close of escrow on Developer's purchase of the Property, Developer shall submit an application to the City to subdivide the Property into two (2) separate legal parcels, with the first parcel being sixty percent (60%) of the Property, or approximately thirty-five (35) acres (to be operated by Developer, OAH, and/or VA), and the second parcel being forty percent (40%) of the Property, or approximately twenty-four (24) acres (to be operated by **BOCA DEL RIO AGRICULTURE, LLC**, a California limited liability company; BDR; and/or VA).

G. Developer, OAH, and/or VA proposes to improve, develop, and use the Property as a guard-gated and secure Cannabis Facility for cultivation, manufacturing, and distribution of Cannabis and Cannabis Products, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 of this Agreement, as they may be amended from time to time, and the Municipal Code of the City of Mendota as it existed on the Effective Date (the "Project"). Developer, OAH, and/or VA intend to develop the Project in two distinct phases, specifically: (1) the first phase of the Project will consist of land development and the construction of "Outdoor and Mixed Light Cultivation" structures as defined in Section 1.4 of this agreement, located in various areas throughout the Site ("Phase I"), and (2) the second phase of the Project may consist of the construction of a "headhouse" used for the processing of harvested cannabis, administrative offices, employee breakroom(s), restrooms, and other ancillary Project needs ("Phase 2").

H. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

I. On September 12, 2017, the City Council of Mendota ("City Council") adopted Ordinance No. 17-13, creating the Commercial Cannabis Overlay District and establishing zoning limitations and requirements for all cannabis businesses located therein, including the proposed

cannabis facility to be located at the Site.

J. On June 11, 2019, the City Council adopted Ordinance No. 19-06, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

K. Prior to the City's adoption of Ordinance No. 19-06, VA submitted a request to the City for consideration of a development agreement for the Project pursuant to the requirements of Chapter 17.99 of the Mendota Municipal Code.

L. On September 8, 2020, the City Council adopted Ordinance No. 20-16, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

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

N. On December 29, 2021, after a duly noticed and held meeting in accordance with Government Code § 65867, the City's Planning Commission voted to recommend approval of VA's application for a development agreement for the Project.

O. On January 12, 2021, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. 21-XX, an Ordinance to Approve a Development Agreement by and Between the City of Mendota and Valley Agricultural Holdings, LLC.

P. Pursuant to Government Code section 65867.5, on January 26, 2021, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 21-XX. 03.

Q. This Agreement is entered into pursuant to the Development Agreement Statute and the Mendota Municipal Code.

R. City, Developer, OAH, and VA desire to enter into this Agreement to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City, Developer, OAH, and VA .

S. The Parties intend through this Agreement to allow Developer, OAH, and/or VA to develop and manage the Project in accordance with the terms of this Agreement.

T. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are

hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City’s General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

Section 1.3. Exhibits. The following “Exhibits” are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description (Entire Site)
Exhibit B	Site Map (Entire Site)
Exhibit C	Legal Description (Developer/OAH/VA Parcel)
Exhibit D	Site Map (Developer/OAH/VA Parcel)
Exhibit E	Notice of Non-performance Late Fee
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) “Additional Insureds” has the meaning set forth in Section 6.1.
- (b) “Additional License” means a state license to operate a cannabis business pursuant to the California Cannabis Laws that is not an Authorized License.
- (c) “Adult-Use Cannabis” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.
- (d) “Agreement” means this Development Agreement, inclusive of all Exhibits attached hereto.
- (e) “Application” means the application for a development agreement submitted by

Developer to the City.

- (f) “Assignment and Assumption Agreement” has the meaning set forth in Section 10.1.
- (g) “AUMA” means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.
- (h) “Authorized License” has the meaning set forth in Section 2.3.
- (i) “Bureau” means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.
- (j) “California Building Standards Codes” means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Mendota Municipal Code.
- (k) “California Cannabis Laws” includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable state laws that may be enacted or approved.
- (l) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term “marijuana” may be used interchangeably.
- (m) “Cannabis Business” means a cannabis business operating pursuant to an Authorized License.
- (n) “Cannabis Product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- (o) “CEQA” means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.
- (p) “City” means the City of Mendota, a municipal corporation having general police

powers.

- (q) “City Council” means the City of Mendota City Council.
- (r) “City Manager” means the City Manager of the City of Mendota, or his or her designee.
- (s) “Charged Party” has the meaning set forth in Section 8.1.
- (t) “Charging Party” has the meaning set forth in Section 8.1.
- (u) “Commercial Cannabis Activity” means to cultivate, manufacture, distribute, or test a cannabis product provided for by Division 10 (commencing with Section 26000) of the Business and Professions Code.
- (v) “Conditional Use Permit” means a conditional use permit for the Project issued by the City pursuant to Mendota Municipal Code Chapter 17.08.050.
- (w) “Contribution Payment” has the meaning set forth in Section 4.2.
- (x) “CUA” means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.
- (y) “Developer” means Odyssey Agricultural Development LLC and its assignees or successors as allowed herein. Developer also has the meaning set forth in Section 6.1.
- (z) “Developed Portions of the Property” means the designated structure or structures and land specified in the development agreement application that is owned, leased, or otherwise held under the control of Developer, OAH, and/or VA.
- (aa) “Development Agreement Statute” has the meaning set forth in Recital H.
- (bb) “Exhibits” has the meaning set forth in Section 1.3.
- (cc) “Gross Receipts” shall mean total revenue received or receivable by the Developer, OAH, and/or VA from any Commercial Cannabis Activity on the Property or from operation of the Project on the Property, including: all sales; the total amount of compensation received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "Gross Receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (1) Cash discounts allowed and taken on Commercial Cannabis Activity sale;

- (2) Any tax required by law to be included in or added to the purchase price of Commercial Cannabis Activity and collected from the consumer or purchaser;
- (3) Such part of the sale price of property returned by purchasers in any Commercial Cannabis Activity upon rescission of a contract of sale as is refunded either in cash or by credit; and
- (4) Receipts of refundable deposits in any Commercial Cannabis Activity, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payments required under Section 17.99.070(A) of the Mendota Municipal Code, all sales related to Commercial Cannabis Activity or any other cannabis and cannabis products at the Property or through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(dd) “Indoor Cultivation” means a Type 1A, Type 2A, Type 3A, and Type 5A license classifications, as set forth in Business and Professions code sections 26061(a)(2), 26061(a)(6), 26061(a)(9), and 26061(b)(2).

(ee) “Major Amendment” means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(ff) “Marijuana” has the same meaning as cannabis and those terms may be used interchangeably.

(gg) “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*

(hh) “MCRSA” has the meaning set forth in Recital A.

(ii) “Ministerial Fee” or “Ministerial Fees” have the meanings set forth in Section 4.1.

(jj) “Minor Amendment” means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement (e.g., change of notice address) and any amendment described as minor herein.

(kk) “Mixed-Light Cultivation” means a Type 1B, Type 2B, Type 3B, and Type 5B license classifications, as set forth in Business and Professions code sections 26061(a)(3), 26061(a)(7), 26061(a)(10), and 26061(b)(3).

(ll) “Mortgage” has the meaning set forth in Article 7.

(mm) “Non-Performance Late Fee” has the meaning set forth in Section 4.3.

(nn) “Notice of Non-Performance Late Fee” has the meaning set forth in Section 4.3.

- (oo) “Notice of Termination” has the meaning set forth in Section 9.1.
- (pp) “Processing Costs” has the meaning set forth in Section 1.11.
- (qq) “Project” has the meaning set forth in Recital G.
- (rr) “Project Litigation” has the meaning set forth in Section 10.6.
- (ss) “Public Benefit Fee” has the meaning set forth in Section 4.2.
- (tt) “Outdoor Cultivation” means Type 1, Type 2, Type 3, and Type 5 license classifications, as set forth in Business and Professions code sections 26061(a)(1), 26061 (a)(5), 26061 (a)(8), and 26061(b)(1)
- (uu) “Site” has the meaning set forth in Recital D.
- (vv) “State Cannabis Manufacturing Regulations” means the regulations related to cannabis manufacturing issued by a State Licensing Authority in accordance with Chapter 13 (commencing with Section 26130) of Division 10 of the Business and Professions Code, which may be amended from time to time.
- (ww) “State Licensing Authority” means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.
- (xx) “State Taxing Authority” has the meaning set forth in Section 4.2.
- (yy) “Subsequent City Approvals” has the meaning set forth in Section 3.1.
- (zz) “Term” has the meaning described in Section 1.7.

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent, partner, or joint venturer of Developer, OAH, VA , or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective and title to the Site is vested in the Developer (the “Effective Date”).

Section 1.7. Term. The “Term” of this Agreement is twenty (20) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer, OAH, and/or VA to cease all Commercial Cannabis Activity, upon which Developer, OAH, and/or VA shall immediately comply, only if City is specifically required to comply with

federal or state law and such federal or state law requires cessation of Cannabis Cultivation Activities. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for an equivalent period of time (the “Tolling Period”). Developer, OAH, and/or VA shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer, OAH, and/or VA shall resume paying any applicable fees after the Tolling Period ends. City and Developer, OAH, and/or VA shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) Developer/OAH/VA Tolling or Termination. Developer, OAH, and/or VA shall not temporarily halt or suspend this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(c) Developer/OAH/VA Termination. Developer, OAH, and/or VA may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer, OAH, and/or VA are required, directed, or believes, in their sole and absolute discretion, they must temporarily halt or terminate Commercial Cannabis Activity. In such an event, Developer’s, OAH’s, and/or VA’s obligations under this Agreement shall terminate. Any resumption of Commercial Cannabis Activity shall be subject to approval by the City Manager.

Section 1.8. Priority of Enactment. In the event of conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (c) Conditional Use Permit, and (d) Subsequent City Approvals, as defined in Section 3.1 of this Agreement.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited fifteen thousand dollars (\$15,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation, processing and annual review of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, “Processing Costs”). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) **Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, City shall provide notice to Developer, OAH, and/or VA and Developer, OAH, and/or VA shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may immediately terminate this Agreement and all entitlements associated with the project.

(b) **Accounting.** Developer may request, and City shall issue within two (2) weeks, an accounting and written acknowledgement of Processing Costs paid to City.

**ARTICLE 2
DEVELOPMENT OF PROPERTY**

Section 2.1. Vested Right of Developer/OAH/VA. During the Term, in developing the Site consistent with the Project described herein, Developer, OAH, and VA are assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer, OAH, and VA and may not be modified or terminated by City except as set forth in this Agreement or with Developer, OAH, and/or VA written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer, OAH, and/or VA shall have the vested right to develop and use the Project consistent with this Agreement, the existing City regulations and codes, the Conditional Use Permit, and Subsequent City Approvals. Developer, OAH, and VA hereby acknowledge and agree that a condition of approval for the Conditional Use Permit will be that this Agreement remain in full force and effect for the duration of the Term and that any assignment or transfer of Developer's, OAH's, and/or VA's interests under this Agreement may be made only with the City's consent in accordance with Section 10.1 herein.

Section 2.3. Permitted Uses and Development Standards. Developer, OAH, and/or VA shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types (the "Authorized License"):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A/5A
Mixed Light Cultivation	1B/2B/3B/5B
Outdoor Cultivation	1/2/3/5
Cultivation Nursery	4
Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Transportation	12
Cultivation Processor	C-P

Developer, OAH, and/or VA or their tenants or assignees shall be permitted to use the Site consistent

with the Authorized License for the Term of this Agreement and during the time Developer, OAH, and/or VA, or their tenants or assignees, are applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer, OAH, and/or VA, or their tenants or assignees, are required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, OAH, and/or VA, or their tenants or assignees, Developer, OAH, and/or VA, or their tenants or assignees, shall immediately cease Commercial Cannabis Activity on the Site. Developer and/or OAH, or their tenants or assignees, shall also, within ten (10) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer, OAH, and/or VA, or their tenants or assignees, shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer, OAH, and/or VA may request to add one or more of the license types then authorized by the California Cannabis Laws to the Authorized License. If City Council allows any Additional Licenses, City Council shall make a finding of whether Developer's, OAH's, and/or VA's, or their tenants' or assignees', Additional Authorized Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer, OAH, and/or VA shall be required to compensate City for all additional impacts on City infrastructure or services associated with any Additional Licenses and the Public Benefit Fee amount shall be revised accordingly. This process shall be a Major Amendment to this Agreement.

Section 2.5. Development Permit. By entering into this Agreement, City understands and acknowledges that prior to Developer, OAH, and/or VA commencing any development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site, Developer, OAH, and/or VA are required to obtain from the City a Conditional Use Permit and any applicable Subsequent City Approvals. Developer, OAH, and/or VA shall be required to comply with all provisions of the Mendota Municipal Code and any other City rules and administrative guidelines associated with implementation of the Commercial Cannabis Overlay District. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Mendota Municipal Code or issue rules or administrative guidelines associated with implementation of the Commercial Cannabis Overlay District or Developer's, OAH's, and VA's obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer, OAH, and/or VA to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. Any entitlements and/or development standards required by the City that are not contemplated in the Conditional Use Permit shall, to the extent practicable, be consistent with the County of Fresno's development standards for "Exclusive Agricultural" uses as set forth in the Fresno County Ordinance Code - Division 6, Zoning Ordinance. The exercise of this discretion is not prohibited by this Agreement, but the exercise of

that discretion must be reasonable and consistent with this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

Section 2.7. No Commitment to Project Approval. Developer, OAH, and VA understand and acknowledge that City shall be under no obligation whatsoever to approve or to issue to Developer, OAH, or VA any development entitlement, including, but not limited to, a Conditional Use Permit or any applicable Subsequent City Approvals, related to Developer's, OAH's, and/or VA's development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site. City will conduct environmental review of the relevant activity or activities in accordance with the requirements of CEQA prior to granting any approval associated with the Development Entitlements. Developer, OAH, and VA acknowledge and agree that, in accordance with Seller's obligations under CEQA, City may, after conducting appropriate environmental review, decide not to approve some or all of the required development entitlements, or may approve some or all of the development entitlements subject to conditions. The Parties expressly intend that nothing in this Agreement shall be interpreted as a commitment by City to grant any development entitlements to Developer, OAH, or VA prior to City's completion of appropriate environmental review in accordance with CEQA, or as an abrogation of the City's obligation to exercise its independent judgement in deciding whether to grant any development entitlement or whether to impose conditions on any development entitlement.

Section 2.8. Initiatives and Referenda. If any City ordinance, rule, or regulation, or addition to the Mendota Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer, OAH, and VA in this Agreement, such Mendota Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer, OAH, and/or VA and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.9. Regulation by Other Government Entities. Developer, OAH, and VA acknowledge that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer, OAH, and VA or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.10. Developer's Right to Rebuild. Developer, OAH, and/or VA may renovate portions of the Site or the OAH Parcel any time within the Term of this Agreement consistent with the Mendota Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.11. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring

from time to time to the California Building Standards Codes.

Section 2.12. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Mendota Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Commercial Cannabis Overlay District. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City, Developer, OAH, and/or VA shall provide the other Parties with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Mendota Municipal Code or this Agreement. Promptly thereafter, City, Developer, OAH, and/or VA shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City, Developer, OAH, and/or VA will attempt to preserve the terms of this Agreement and the rights of Developer, OAH, and VA derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer, OAH, and/or VA for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's, OAH's, or VA's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.13. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency so as to not have a material adverse impact on the Project, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City has the authority to permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely review, pursuant to the terms of this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and applicable law, any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. Subsequent City Approvals include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer, OAH,

and/or VA with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any applicable law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer/OAH/VA. Consistent with the terms set forth herein, City agrees to cooperate with Developer, OAH, and/or VA, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder, or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4 PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer, OAH, and/or VA shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer, OAH, and VA that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Developer, OAH, and VA (the "Public Benefit Fee"). Developer, OAH, and VA acknowledge that the Public Benefit Fees provided for herein are greater than the annual fee provided for in Mendota Municipal Code section 17.99.070 and, despite this fact, voluntarily agree to pay the fees contemplated herein, acknowledging that the private benefits conferred are of equal or greater consideration to the fees, and waives any right to challenge said fees as a violation of any law. In consideration of the foregoing, Developer, OAH, and/or VA shall remit to City:

(1) A one-time Public Contribution Payment in the amount of ONE HUNDRED AND TWENTY THOUSAND DOLLARS (\$120,000) (the "Contribution Payment") within thirty (30) days of Developer, OAH, and/or VA closing escrow on that certain Purchase and Sale Agreement and Joint Escrow Instructions entered into by and between Developer, OAH, VA, and City on or

about October 22, 2019, and thereby, Developer, OAH, and/or VA obtaining fee title interest to the Property. City acknowledges that Developer's, OAH's, and/or VA's obligation to remit the Contribution Payment to the City, or any portion thereof, is strictly conditioned on (a) the Agreement having obtained final City approval, (b) Developer having obtained the Conditional Use Permit as discussed in Section 2.5 above, (c) Developer having obtained any and all "Subsequent Entitlements, Approvals, and Permits" as discussed in Section 2.6 above, and (d) Developer having obtained any and all "Subsequent City Approvals" as discussed in Section 3.1 above.

(2) As described in Section 17.99.070 of the Mendota Municipal Code, an annual "Public Benefit Fee" in the greatest amount of the following, as applicable:

(i) FIVE DOLLARS (\$5.00) per square foot for so long as the Developed Portions of the Property are less than two hundred thousand (200,000) square feet; or

(ii) FOUR DOLLARS (\$4.00) per square foot for so long as the Developed Portions of the Property are between two hundred thousand (200,000) square feet and four hundred ninety-nine, nine hundred ninety-nine thousand (499,999) square feet; or

(iii) For so long as the Developed Portions of the Property are five hundred thousand (500,000) square feet or greater, the greater amount of the following:

(a) SIX HUNDRED THOUSAND DOLLARS (\$600,000); or

(b) Four percent (4%) of the Project's annual Gross Receipts, as defined in Section 1.4.

To the extent that Section 4.2(a)(2) is applicable for the calculation of the Public Benefit Fee, said fee will be adjusted pursuant to the Consumer Price Index for the Fresno/Clovis metropolitan area (All Urban Consumers) published by the United States Department of Labor, Bureau of Labor and Statistics ("Index"). The adjustment shall be made based on the first Index published in the year for which the Public Benefit Fee is paid and shall be subject to a maximum increase of 2% in any given year.

(3) The annual Public Benefit Fee described in Section 4.2, above, shall be paid in quarterly installments on the first (1st) business day of every third (3rd) month ("Quarterly Payment").

(b) Developer, OAH, and/or VA shall remit the Contribution Payment and the Public Benefit Fee as applicable, to City as described in subdivisions (a.1), (a.2), and (a.3) of this Section. Failure to remit the Contribution Payment and Public Benefit Fee, as applicable, is a material breach of this Agreement and shall be sufficient grounds for revocation of all entitlements associated with the Project. For purposes of clarity and avoidance of doubt, the Parties agree and acknowledge that Developer's, OAH's, and/or VA's obligation to commence making the Public Benefit Fee payment to the City shall commence on the first day of Project operation when the first crop is planted and not prior to that date.

Section 4.3. Reporting. Developer, OAH, and/or VA shall provide City with copies of any reports

provided to a State Licensing Authority or a State Taxing Authority within forty-five (45) calendar days of that submission. Failure or refusal of Developer, OAH, and/or VA to (a) provide any such report to City, State Licensing Authority, or the State Taxing Authority within the time required by that entity, or (b) pay the Public Benefit Amount or amount due to a State Licensing Authority or State Taxing Authority when the same are due and payable, shall constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit and all entitlements associated with the Project.

Section 4.4. Records. Subsequent tenants or assignees shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the State Retail Cannabis Regulations. All records required by this Article 4 shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee. Upon request, Developer, OAH, and/or VA shall make all records relating to this Article 4 available to City within three (3) calendar days.

Section 4.5. Late Fee. Developer, OAH, and VA acknowledge that, to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Liquidated damages and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer, OAH, or VA fail to make any payment when due as required by this Agreement, including the Public Benefit Amount, City may impose a "Non-Performance Late Fee." A Non-Performance Late Fee of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer, OAH, and/or VA a "Notice of Non-Performance Late Fee," attached hereto as **Exhibit C**. Payment of the Non-Performance Late Fee shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee. The Parties hereto acknowledge and agree that the sums payable under this Section 4.5 shall constitute liquidated damages and not penalties and are in addition to all other rights of the City, including the right to call a default. The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the amounts specified herein bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any failure by Developer, OAH, or VA to remit payment as required by this Agreement, (iii) one of the reasons for the Parties' agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Parties are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

Section 4.6. Interest on Unpaid Non-Performance Late Fee. If Developer, OAH, and/or VA fail to pay the Non-Performance Late Fee after City has delivered the Notice of Non-Performance Late Fee, then, in addition to the principal amount of the Non-Performance Late Fee, Developer, OAH, and/or VA shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Late Fee, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Late Fee.

Section 4.7. Exempt from City Tax. For the Term of this Agreement, Developer, OAH, and VA shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the

foregoing, Developer, OAH, and/or VA and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Fresno, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event that the City applies a new tax on commercial cannabis businesses during the term of this Agreement, the City shall refund or credit the amount owed by Developer, OAH, and/or VA pursuant to the Public Benefit Fee by an equal amount to any new tax on commercial cannabis businesses.

Section 4.8. Employing City Residents. Developer, OAH, and/or VA agree to use their best efforts to promote the hiring and employment of local City residents to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, OAH, and/or VA agree to include in any lease, license, or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to hire and employ local City residents for its business.

Section 4.9. Contracting with Local Businesses. Developer, OAH, and VA agree to use their best efforts to promote the contracting of local businesses to construct, if necessary, and operate the business(es) within the Project. As part of such efforts, Developer, OAH, and/or VA agree to include in any lease, license or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to contract with local City businesses for its business.

Section 4.10. Manner of Payment. All payments required to be made to City pursuant to this Agreement shall be paid by Developer, OAH, and/or VA via check, ACH payment, or wire transfer through a bank licensed and in good standing with all appropriate regulatory bodies. No payment required pursuant to this Agreement may be made in cash. Developer, OAH, and VA understand and agree that any failure to comply with this Section 4.10 shall constitute a material breach of this Agreement.

Section 4.11. Development Incentive. To provide an incentive for Developer's development of the Property and construction of the Project, and to facilitate Developer's prompt performance of its obligations under this Agreement in a manner that will maximize the financial benefit to City over the Term of this Agreement, City shall, within the first year of the Project's operation, recognize a \$25,000 credit in Developer's favor to be applied to any liability of Developer to the City. The liability or liabilities to which the credit is applied shall be determined by the City Manager in consultation with Developer.

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

Section 5.1. City Use of Public Benefit Fee. City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods, for the general welfare of the residents of Mendota, and the existing level of service of City infrastructure and services to accommodate for the Project.

**ARTICLE 6
INSURANCE AND INDEMNITY**

Section 6.1. Insurance. Developer, OAH, and/or VA shall require all persons doing work on the Project, including their contractors and subcontractors (collectively, “Developer” for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) General Liability Insurance. Developer, OAH, and/or VA shall maintain commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as “Additional Insureds” by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) Automotive Liability Insurance. Developer, OAH, and/or VA shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) Workers’ Compensation Insurance. Developer, OAH, and/or VA shall take out and maintain during the Term of this Agreement, workers’ compensation insurance for all of Developer’s, OAH’s, and/or VA’s employees employed at or on the Project, and in the case any of the work is subcontracted, Developer, OAH, and/or VA shall require any general contractor or subcontractor similarly to provide workers’ compensation insurance for such contractor’s or subcontractor’s employees, unless such employees are covered by the protection afforded by Developer, OAH, and/or VA . In case any class of employee engaged in work on the Project is not protected under any workers’ compensation law, Developer, OAH, and/or VA shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of

employees not otherwise protected. Developer, OAH, and VA hereby indemnify City for any damage resulting from failure of Developer, OAH, and/or VA, their agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

Section 6.2. Other Insurance Requirements. Developer, OAH, and VA shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

(c) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(e) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer, OAH, and/or VA shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals.

Upon receiving notice of a claim, action, or proceeding, Developer, OAH, and/or VA shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter. The City's remedies are limited to that portion of the Project that is in breach of this Section 6.3.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify City shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit or entitlements associated with the Project. Developer's, OAH's, and/or VA's failure to

indemnify City shall be a waiver by Developer, OAH, and/or VA of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's, OAH's, and/or VA's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's, OAH's, and/or VA's failure to indemnify City.

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer, OAH, and/or VA and, therefore, Developer, OAH, and VA hereby waive all claims for damages against City for breach of this Agreement. Developer, OAH, and VA further acknowledge that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer, OAH, and VA therefore waive all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer, OAH, and/or VA are opposed. Developer, OAH, and VA further acknowledge that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer, OAH, and VA waive all claims for damages against City in this regard.

ARTICLE 7 MORTGAGEE PROTECTION

Section 7.1. Supremacy Over Liens. This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall be deemed in default and terminate as to an interest in the Site or Project upon the foreclosure or transfer of that interest, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing, which such authorization shall not be unreasonably withheld or conditioned.

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than thirty (30) calendar days' written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal

proceedings for the breach of this Agreement.

(b) After expiration of the thirty (30) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within thirty (30) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit or other entitlement related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 or the comparable provisions of the Mendota Municipal Code within thirty (30) calendar days from the expiration of the thirty (30) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in thirty (30) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer, OAH, and/or VA are in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer, OAH, and/or VA until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer, OAH, and/or VA are in default, Developer, OAH, and/or VA shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer, OAH, and/or VA with notice and opportunity to cure as provided for in paragraph (a) through (e) above, except that the time periods in paragraphs (a), (b), (c), and (e) shall be ninety (90) days.

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer, OAH, and/or VA and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section

65865.1. City shall deposit in the mail or fax to Developer, OAH, and/or VA a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer, OAH, and/or VA shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer, OAH, and/or VA shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

Section 8.3. Estoppel Certificates. City shall, with at least twenty (20) calendar days' prior written notice, execute, acknowledge, and deliver to Developer, OAH, VA, Developer's, and/or OAH's lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(a) At Developer's, OAH's, and/or VA's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's, OAH's, and/or VA's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer, OAH, and/or VA shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer, OAH, and/or VA.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City, Developer, OAH, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to Section 8.1(c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by either Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as **Exhibit D**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer/OAH/VA Obligations. Termination of this Agreement shall eliminate any further obligation of Developer, OAH, and/or VA to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer, OAH, and/or VA to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.9, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10 OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. The rights granted to Developer, OAH, and/or VA under this Agreement are personal to Developer, OAH, and/or VA and Developer, OAH, and VA shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager.

(a) The City Manager's consent shall not be unreasonably withheld or conditioned; however, Developer, OAH, and VA hereby acknowledge and agree that in no event shall it be unreasonable for the City Manager to withhold or condition consent if the proposed assignee or transferee cannot:

(i) Demonstrate financial resources in the form of a financial statement, balance sheet, or tax returns that attest to the assignee or transferee's financial health and ability to finance and operate the proposed business for a minimum of twelve (12) months; and

(ii) Demonstrate technical expertise through utilization of a substantial portion of the Project's existing management team or through a detailed description of the transferee's experience in operating the same or similar type of project.

(b) Upon City's receipt of written notice that Developer, OAH, and/or VA propose to assign or transfer any of its rights or interests under this Agreement, the City Manager shall, within thirty (30) days of receiving all requested information regarding the proposal from Developer, OAH, and/or VA, notify Developer, OAH, and/or VA in writing whether the City intends to withhold or condition its consent pursuant to this Section 10.1 and the reasons therefor.

(c) If the City Manager notifies Developer, OAH, and/or VA that the City intends to withhold consent pursuant to this Section 10.1, the Parties shall meet and confer in good faith to determine whether, in lieu of withholding consent, the City's concerns can be adequately addressed by imposing appropriate conditions on the City's consent.

(d) If the Parties are unable to reach agreement regarding the proposed assignment or transfer, Developer, OAH, and/or VA may, within ten (10) days after meeting and conferring pursuant to subdivision (c) above, appeal the City Manager's decision to the City Council. In such event, the City Council shall finally determine, in its sole and absolute discretion, whether the withholding or conditioning of consent to the proposed assignment or transfer is reasonable.

(e) Any assignment or transfer in violation of this Section 10.1 will be automatically void and will be considered an immediate, material breach of this Agreement such that City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City, Developer, OAH, and VA shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit E**. Nothing in this Section 10.1 applies to Developer's, OAH's, and/or VA's capitalization or ownership provisions.

Section 10.2. Covenants Running with the Land. For so long as this Agreement is in full force and effect, all of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer, OAH, and VA .

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer, OAH, and/or VA must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which

such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Mendota
643 Quince Street
Mendota, CA 93640
Attention: Cristian Gonzalez, City Manager

And to: Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno, California 93720
Attention: John P. Kinsey, Esq.

If to Developer: Odyssey Agricultural Development LLC
2222 E. Olympic Blvd.
Los Angeles, CA 90021
Attention: Legal Department

And to: Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

If to OAH: Odyssey Agricultural Holdings LLC
2222 E. Olympic Blvd.
Los Angeles, CA 90021
Attention: Legal Department

And to: Weinberg Gonser LLP
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
Attention: Russell Greenman, Esq.

If to VA: Valley Agricultural Holdings LLC
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention: Richard Munkvold

And to: Valley Agricultural Holdings, LLC
2151 E. Convention Center Way, Suite 114
Ontario, CA 91764
Attention: Steven B. Imhoof, Esq.

Section 10.4. Governing Law and Binding Arbitration. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State

of California. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Fresno, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings of the Judicial Arbitration and Mediation Services. Judgment on the arbitration award may be entered in any court having jurisdiction thereof.

Section 10.5. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City, Developer, OAH, and/or VA may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer, OAH, and VA agree that Developer, OAH, and VA may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer, OAH, and/or VA in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer, OAH, and/or VA for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer, OAH, and/or VA will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer, OAH, and/or VA shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer, OAH, and/or VA will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person

acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City, Developer, OAH, and VA agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City, Developer, OAH, and VA shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer, OAH, or VA operate the Project in violation of the Agreement, or any applicable regulations issued pursuant to the California Cannabis Laws, as may be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Fresno.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) **Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) **Number and Gender.** In this Agreement, the neutral gender includes the feminine and masculine, and the singular includes the plural, and the word "person" includes corporations,

partnerships, firms, or associations, wherever the context requires.

(g) Mandatory and Permissive. “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.

(h) Term Includes Extensions. All references to the Term of this Agreement shall include any extensions of such Term.

(i) Counterparts. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) Other Documents. The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) Time is of the Essence. Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) Document Preparation. This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) Attorney’s Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney’s fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) Calculation of Time Periods. All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

(q) Confidentiality. Both Parties agree to maintain the confidentiality of the other

Party's "Confidential Information" under this Agreement and shall not disclose such information to third parties. "Confidential Information" shall include, but not be limited to, business plans, trade secrets, and industry knowledge. Confidential Information shall not apply to information that: (i) is in the public domain at the time of disclosures or (ii) is required to be disclosed pursuant to a court order, governmental authority, or existing state law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer, Odyssey, and City as of the Effective Date of the Agreement, as defined above.

“CITY”

Date: March 30, 2021

CITY OF MENDOTA,
a California Municipal Corporation

By: Cristian Gonzalez
Its: City Manager

Attest:

City Clerk

“DEVELOPER”

Date: March 26, 2021

ODYSSEY AGRICULTURAL
DEVELOPMENT, LLC,
a California limited liability company

By: Aaron Mamann (on behalf of
Odyssey Insights, Inc.)
Its: Managing Member

“OAH”

Date: March 26, 2021

ODYSSEY AGRICULTURAL HOLDINGS,
LLC,
a California limited liability company

By: Aaron Mamann
Its: Managing Member

Date: ^{April} March 6, 2021

Approved to as Form:

John P. Kinsey
City Attorney

“VA”

Date: March 26, 2021

VALLEY AGRICULTURAL HOLDINGS,
LLC, a California limited liability company

By: Aaron Mamann
Its: Authorized Signatory

California All-Purpose Acknowledgment

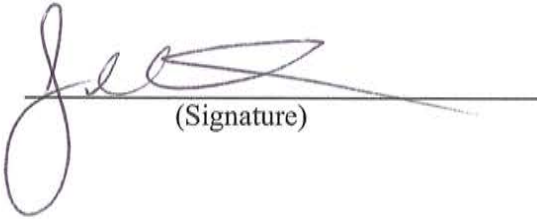
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

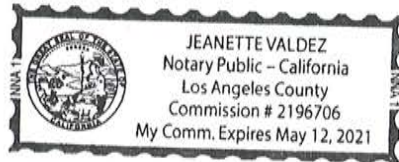
On March 26, 2021, before me Jeanette Valdez, a Notary Public, personally appeared Aaron Yehuda who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.


(Signature)

(Seal)



California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

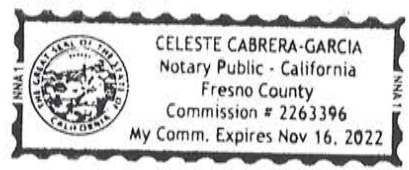
State of California)
County of Fresno)

On March 30, 2021, before me Celeste Cabrera Garcia, a Notary Public, personally appeared Cristian Gomez who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)



(Seal)

EXHIBIT "A"

Legal Description

Entire Site:

That portion of the North half of Section 32, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, according to the official plat thereof, in the City of Mendota, County of Fresno, State of California, described as follows:

Commencing for reference at the Northwest corner of said Section 32; thence

South 1°30'52" West, along the West line of said Section 32, a distance of 736.94 feet; thence

South 89°00'35" East, 135.56 feet to the Northwest corner of that parcel described in the Grant Deed recorded as Document 2009-0093031, Official Records of Fresno County; thence

South 89°00'35" East, along the North line of said parcel, 1401.95 feet to the Northeast corner of said parcel and the TRUE POINT OF BEGINNING; thence

South 89°00'35" East, along the easterly prolongation of said North line, 1622.80 feet, more or less, to the East line of that parcel conveyed to the City of Mendota by the Grant Deed recorded as Document 2007-0027736, Official Records of Fresno County; thence

South 1°30'52" West, along said East line, 1610.64 feet, more or less, to the Southeast corner of last said parcel; thence

North 89°00'35" West, along the South line of last said parcel, 1622.75 feet, more or less, to the Southeast corner of said parcel described in Document 2009-0093031; thence

North 1°30'46" East, along the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

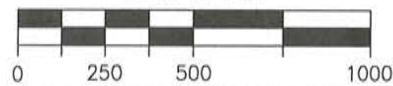
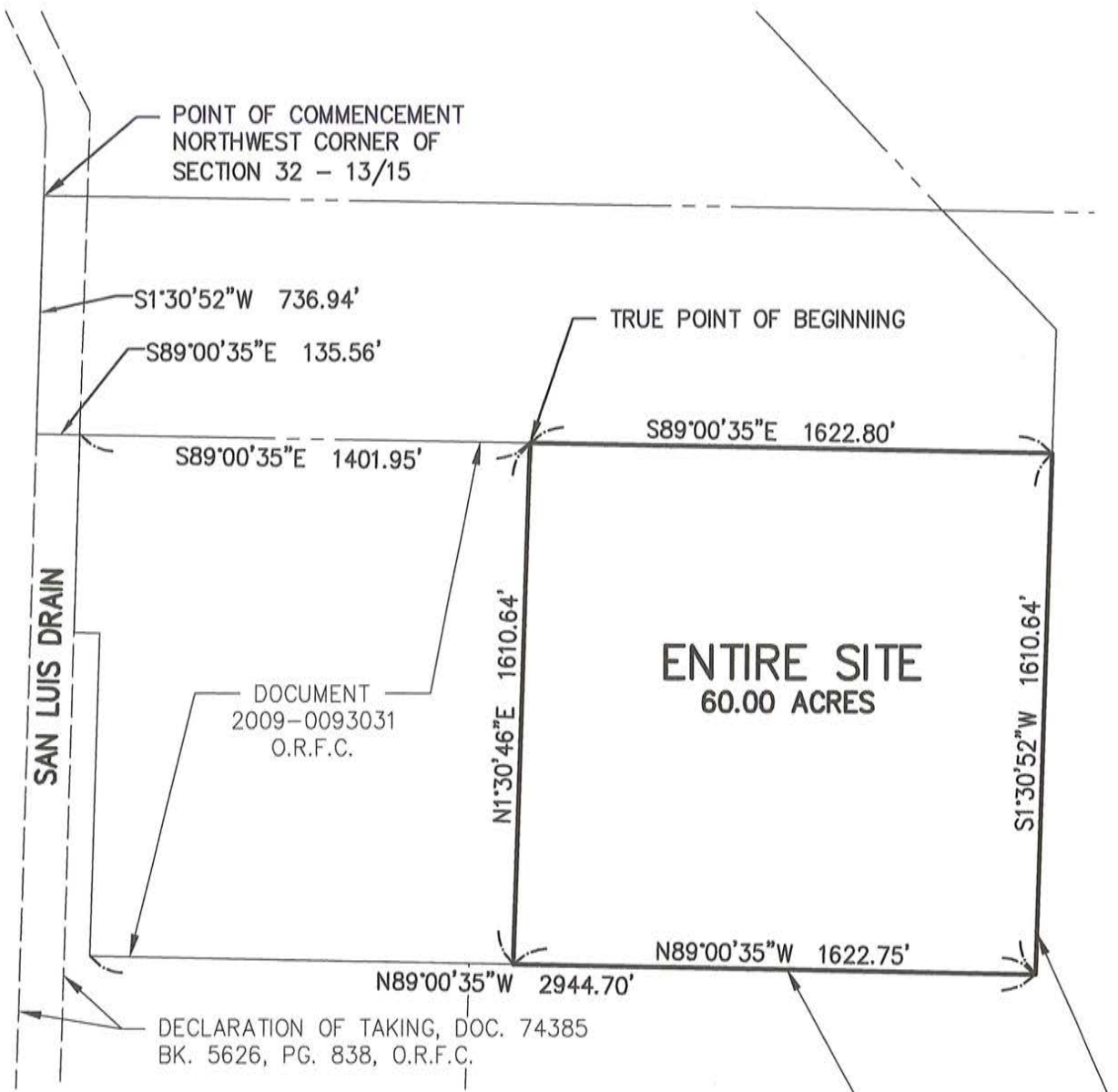
Containing an area of 60.00 acres, more or less.

END OF DESCRIPTION



2/1/21

Z:\2021 10:56 AM G:\Mendota_City_of_Mendota\GIS\3336\3336 On-Going Planning Services\City Project Files\333620013-2023 - 20-23 - Valley Ag Holdings (ASUM)\Survey\Background & Working Docs\Exhibit B - Entire Site map.dwg --Tim Odom



EST. 1968
PROVOST & PRITCHARD
 CONSULTING GROUP
 An Employee Owned Company

A PORTION OF THE NORTH HALF OF SECTION 32
 TOWNSHIP 13 SOUTH, RANGE 15 EAST, M.D.B.&M.

CITY OF MENDOTA
EXHIBIT B

LAND SURVEYOR:
 T. ODOM, PLS 8468
 DATE: 1/29/2021
 JOB NO: 333620013
 SHEET 1 OF 1

EXHIBIT "C"

Legal Description

OAH Parcel:

That portion of the North half of Section 32, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, according to the official plat thereof, in the City of Mendota, County of Fresno, State of California, described as follows:

Commencing for reference at the Northwest corner of said Section 32; thence

South 1°30'52" West, along the West line of said Section 32, a distance of 736.94 feet; thence

South 89°00'35" East, 135.56 feet to the Northwest corner of that parcel described in the Grant Deed recorded as Document 2009-0093031, Official Records of Fresno County; thence

South 89°00'35" East, along the North line of said parcel, 1401.95 feet to the Northeast corner of said parcel and the TRUE POINT OF BEGINNING; thence

South 89°00'35" East, along the easterly prolongation of said North line, 973.67 feet; thence

South 1°30'46" West, parallel with the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet, more or less, to the South line of that parcel conveyed to the City of Mendota by the Grant Deed recorded as Document 2007-0027736, Official Records of Fresno County; thence

North 89°00'35" West, along the South line of last said parcel, 973.67 feet, more or less, to the Southeast corner of said parcel described in Document 2009-0093031; thence

North 1°30'46" East, along the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

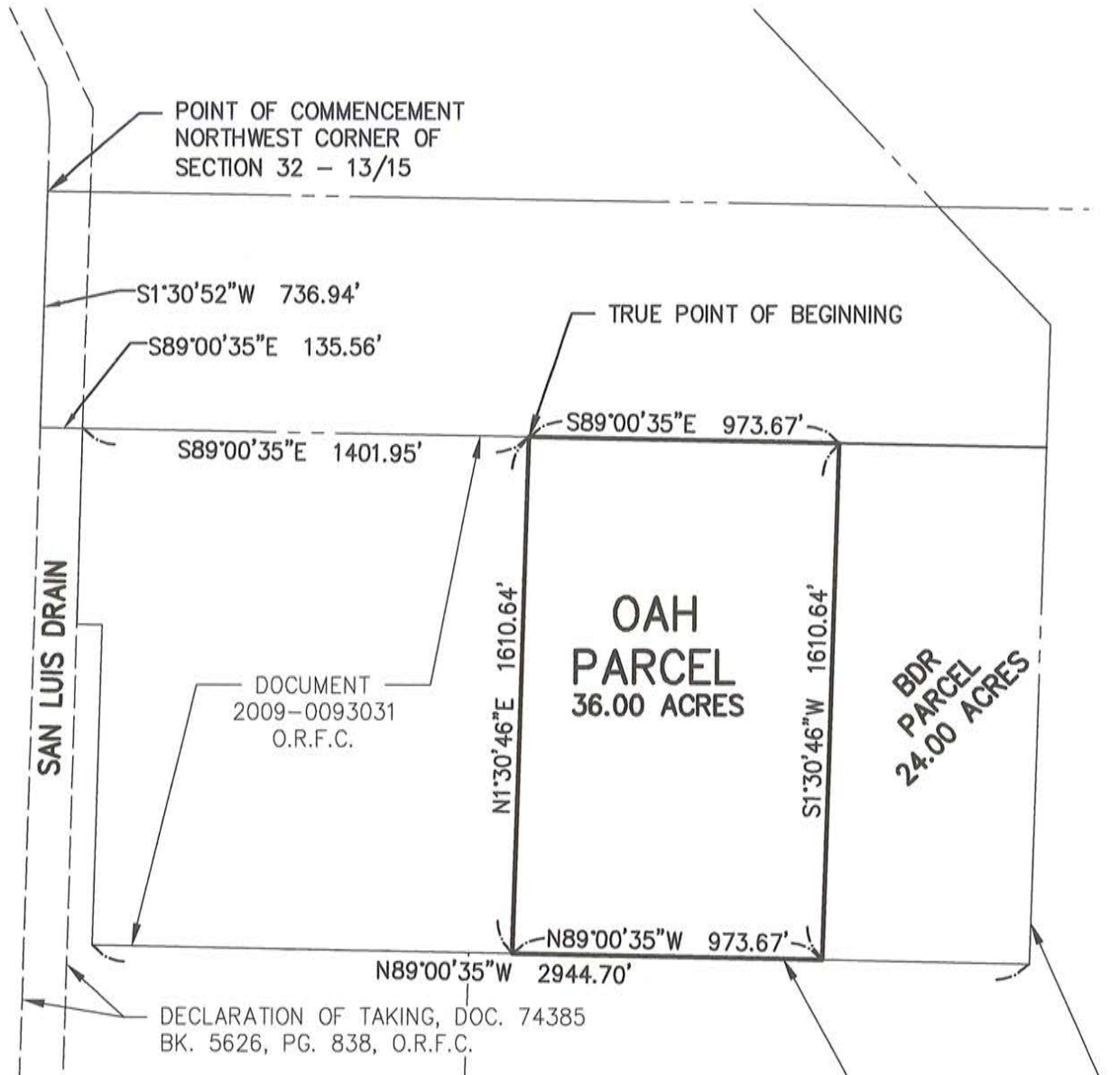
Containing an area of 36.00 acres, more or less.

END OF DESCRIPTION



2/4/21

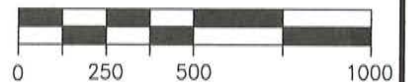
2/4/2021 3:37 PM G:\Mendota_City of Mendota\3336 On-Going Planning Services\City Project Files\333620013-2023 - 20-23 - Valley Ag Holdings (AKOM)\Survey\Background & Working Docs\Exhibit D - Parcel 1 map.dwg -Tim Odom



2/4/21



SCALE IN FEET



EST. 1968
PROVOST & PRITCHARD
CONSULTING GROUP
An Employee Owned Company

A PORTION OF THE NORTH HALF OF SECTION 32
TOWNSHIP 13 SOUTH, RANGE 15 EAST, M.D.B.&M.
ODYSSEY AGRICULTURAL DEVELOPMENT, LLC
CITY OF MENDOTA

EXHIBIT D

LAND SURVEYOR:
T. ODOM, PLS 8468
DATE: 2/4/2021
JOB NO: 333620013
SHEET 1 OF 1

Exhibit E

Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at _____, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA 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, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is _____. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of _____ ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by _____.

City Manager
City of Mendota

Date

Exhibit F

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:**

City of Mendota
643 Quince St, Mendota, CA 93640
Attention: 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 ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at _____, Mendota, California 93640 ("Agreement"), _____ informs _____ that the Agreement is hereby terminated, in accordance with the terms and conditions as stated therein, pursuant to Article ____, Section ____.

In accordance with Article 9, Section 9.1 of the Agreement, City shall record this Notice of Termination.

Title:
Entity:

Date

Exhibit G

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”), and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company (“Developer”), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company (“OAH”), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company (“VA”) (Developer, OAH, and VA collectively, “Assignors”), and _____, a _____ (“Assignee”). City, Assignors, 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 Assignors entered into a development agreement, dated _____, for the development of property located at _____, in the City of Mendota, County of Fresno, State of California, Assessor’s Parcel Number 013-030-68ST (“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, Assignors 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. Assignors desire to transfer to Assignee some or all of Assignors’ 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 Assignors’ 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 Assignors’ 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 Assignors to transfer, and Assignee to assume, some or all of Assignors’ 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. Assignors hereby assign to Assignee (all/some) of Assignors' 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 Assignors' 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 Assignors' 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. Assignors acknowledge and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Development Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.

Section 6. Inconsistency. In the event of any conflict or inconsistency between the terms of the Development Agreement and the terms of this Agreement, the terms of the Development Agreement shall govern.

Section 7. Further Actions. Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other Parties hereto, such further instruments of transfer and assignment and to take such other action as such the other Parties may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

“CITY”

Date: January _____, 2021

CITY OF MENDOTA,
a California Municipal Corporation

By: Cristian Gonzalez
Its: City Manager

Attest:

City Clerk

Date: January _____, 2021

Approved to as Form:

John P. Kinsey
City Attorney

“DEVELOPER”

Date: _____

ODYSSEY AGRICULTURAL
DEVELOPMENT, LLC,
a California limited liability company

By:
Its:

“OAH”

Date: _____

ODYSSEY AGRICULTURAL HOLDINGS,
LLC, a California limited liability company

By:
Its:

“VA”

Date: _____

VALLEY AGRICULTURAL HOLDINGS,
LLC, a California 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 MAYOR AND COUNCILMEMBERS
FROM: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: ADOPTING THE FIRST AMENDED GROUNDWATER SUSTAINABILITY PLAN FOR PORTIONS OF THE DELTA-MENDOTA SUBBASIN
DATE: JULY 12, 2022

ISSUE

Should the City Council adopt Resolution No. 22-43, adopting the First Amended Groundwater Sustainability Plan for portions of the Delta-Mendota subbasin?

BACKGROUND

In accordance with the requirements of the Sustainable Groundwater Management Act (“SGMA”), the city of Mendota elected to become a Groundwater Sustainability Agency for the portions of the Delta-Mendota Subbasin located within its boundaries. In December 2019, the City approved Resolution No. 22-95, adopting the Groundwater Sustainability Plan (“GSP”) for portions of the Delta - Mendota Subbasin subject to its jurisdiction.

The GSP was submitted to the California Department of Water Resources on in January 2021, and in January 2022 the California Department of Water Resources (“DWR”), Sustainable Groundwater Management Office, issued a notice advising the GSP, along with five other GSPs adopted within the basin by other GSAs, was deemed “incomplete” pursuant to SGMA Regulations. DWR identified specific deficiencies that required revisions, and directed those modifications be made to the GSP prior to submitting a modified Groundwater Sustainability Plan to DWR for evaluation by not later than July 20, 2022

ANALYSIS

Staff has reviewed the proposed modifications and has determined that the revisions in the First Amended GSP address the issued identified by DWR. The First Amended GSP can be found on the City’s website homepage at ci.mendota.ca.us.

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 22-43, adopting the First Amended Groundwater Sustainability Plan for portions of the Delta-Mendota subbasin.

Attachment(s):

1. Electronic Link to: First Amended GSP
2. Resolution No. 22-43

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

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA ADOPTING
THE FIRST AMENDED GROUNDWATER
SUSTAINABILITY PLAN FOR PORTIONS
OF THE DELTA-MENDOTA SUBBASIN**

RESOLUTION NO. 22-43

WHEREAS, in accordance with the requirements of the Sustainable Groundwater Management Act, the City of Mendota (“City”) elected to become a GSA for those portions of the Delta – Mendota Subbasin (DWR Bulletin 118 Basin No. 5-22.07) located within its boundaries, and the California Department of Water Resources designated the Delta-Mendota Subbasin a High Priority basin; and

WHEREAS, following full compliance with SGMA requirements, on December 10, 2019, the City approved Resolution No. 22-95, adopting the Groundwater Sustainability Plan for portions of the Delta - Mendota Subbasin subject to its jurisdiction (“2019 SJRECGSA GSP”); and

WHEREAS, the SJRECGSA GSP was submitted to the California Department of Water Resources on January 23, 2020; and

WHEREAS, on January 21, 2022, in accordance with its obligation to issue an assessment of the GSP within two years of submittal, California Department of Water Resources, Sustainable Groundwater Management Office, issued a notice advising the 2019 SJRECGSA GSP, along with five other GSPs adopted within the basin by other GSAs, was deemed “incomplete” pursuant to Section 355.2, Subdivision (e)(2), of SGMA Regulations; and

WHEREAS, the January 21, 2022, DWR Notice identified specific deficiencies that required revision, and directed that necessary modifications be made to the 2019 SJRECGSA GSP (and five other Plans) prior to submitting a modified Groundwater Sustainability Plan to DWR for evaluation by not later than July 20, 2022; and

WHEREAS, the City Council of the City and its staff have reviewed proposed revisions and determined the proposed revisions address the issues identified in DWR’s January 21, 2022, Notice (“First Amended SJRECGSA GSP”); and

WHEREAS, consistent with DWR guidance, the City, with this action, will adopt the First Amended SJRECGSA GSP which shall, for all purposes, supersede and replace the 2019 SJRECGSA GSP; and

WHEREAS, in accordance with the requirements of Water Code section 10728.4, the City Council of the City convened a public hearing prior to considering this

Resolution and adopting the First Amended SJRECGSA GSP, and the City Council received and considered all written and oral comments made; and

WHEREAS, pursuant to Water Code section 10728.6, adoption of the First Amended Groundwater Sustainability Plan is not subject to the requirements of the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED, as follows:

1. The City Council of the City of Mendota adopts the First Amended SJRECGSA GSP. A copy of the First Amended SJRECGSA GSP and supporting documentation shall be maintained in the offices of the City.
2. The First Amended SJRECGSA GSP shall replace and supersede for all purposes the 2019 SJRECGSA GSP as the operative document for SGMA compliance within the jurisdiction of the City. The 2019 SJRECGSA GSP is hereby rescinded for all purposes and that document shall have no further force or effect.
3. The City shall exercise or cause to be exercised through its staff, the authorities, including without limitation, the 'Powers and Authorities' described in California Water Code section 10725 et seq., necessary to implement the First Amended SJRECGSA GSP within its territory.
4. By not later than July 20, 2022, the City shall submit or cause to be submitted the First Amended SJRECGSA GSP and all necessary supporting documentation to the Department of Water Resources.
5. The City and its staff shall be authorized to do all things necessary to comply with Water Code sections 10728 and 10728.2 regarding annual reports on plan implementation and plan evaluation.

Rolando Castro, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 12th day of July, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: NANCY BANDA, FINANCE DIRECTOR
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: GRANTS UPDATE
DATE: JULY 12, 2022

GRANTS UPDATE

- **Senator Anna M. Caballero Budget for FY 2022-2023** – The City of Mendota was approved for \$1.5 million for a new Police Station and City Council Chambers.
- **County of Fresno Subrecipient for State Local Fiscal Recovery Funds** – The City of Mendota was approved for \$2.9 million for a new Water Storage and Booster Pump Station.
- **T-Mobile Hometown Grant Program** – Staff submitted an application to the T-Mobile Hometown Grant Program for \$46,141.92 for thirty-two (32) Christmas Ornaments for Oller Street.
- **FEMA-4482-DR-CA California Covid-19 Pandemic** – Staff is in the process of submitting for reimbursement.
- **COPS Hiring Program (2022)** – Staff submitted an application to the next cycle of the COPS Hiring Program for one (1) Officer.
- **Office of Traffic Safety** – Staff submitted an application for the *Westside DUI Taskforce* for approximately \$550,000.00. However, we received an email from the Office of Traffic Safety that our application has tentatively been approved for \$35,000.00. The Mendota Police Department will receive funding to hold DUI Suppressions from October, 2022 through September 2023. Staff will be working on the next round to get funding for the *Westside DUI Taskforce*.
- **Adelante Mendota** – *Movies in the Park* will start July 8th with Encanto. The schedule will include three (3) Fridays in July. The showing for Friday, July 15th will be Tom and Jerry and for Friday, July 22nd, Clifford the Big Red Dog. This is a free event, popcorn and drinks included.
- **Tire-Derived Product** – Staff planned to have an agenda item for the tire-derived product (mulch) but will plan to have on July 26th City Council to discuss color options.
- **Safe Streets and Roads for All (SS4A) Grant Program** – The Safe Streets and Roads for All (SS4A) is a discretionary program with \$5 billion in appropriated funds over the next five years. In fiscal year 2022, there is up to \$1 billion in funding available. This grant initiative is to prevent roadway deaths and serious injuries. The eligible activities for this program are: 1) Develop or update a comprehensive safety action plan (Action Plan); 2) Conduct planning, design, and development activities in support of an Action Plan; and 3) Carry out projects and strategies identified in an Action Plan. There is

funding available for Implementation Grant activities. However, the applying agency needs to have an Action Plan with identifying activities within.

In – Progress Grants:

- **Rojas-Pierce Park Expansion Project** – County of Fresno, Urban Community Development Block Grant (CDBG) Program
- **Rojas-Pierce Park Expansion Project** – Per Capita Program
- **Rojas-Pierce Park Expansion Project** – CDBG-CV
- **COPS Hiring Program** – Department of Justice
- **Proposition 64** – Board of State and Community Corrections
- **Urban Flood Protection Grant** – California Natural Resources Agency
- **Automatic Meter Read Project** – State Water Board

Attachment(s):

1. Grants Spreadsheet

Grant Name	Application Due Date	Award Date	Agency: Federal/State/County/ Private	Pass-thru	Matching	Award Amount	Purpose of Grant	Notes
T-Mobile	6/30/2022	6/30/2022	Private	N	N	\$ 46,141.92	(32) Christmas Ornaments for Oller Street	
CA WA & WWA Arrearages Payment	4/1/2022	TBD	State	N	N	\$ 30,065.39	Financial assistance for customers' accounts 60 days+ for wastewater only	
County of Fresno Subrecipient Grant	3/9/2022	6/21/2022	County	Y	N	\$ 2,906,593.00	Water Storage Tank and Booster Pump Station	
Senator Anna Caballero Budget Request	2/25/2022	6/30/2022	State	Y	N	\$ 1,500,000.00	Police Department and City Council Chambers	
CalRecycle SB 1383 Grant	2/1/2022	TBD	State	N	N	\$ 20,000.00	Implementation program for SB 1383. Staff will conduct educational presentations, site visits, and enforcement activities.	
Clean California Local Grant Program	2/1/2022	3/1/2022	State	N	N	\$ 5,000,000.00	(4) Projects: 1-Pocket Park at Bass Avenue and 2nd Street; 2-Art Sculpture at Bass Avenue Roundabout; 3-Trail to Pool Park; 4-Trails in Pool Park	DENIED
Outdoor Equity Grant Program	10/8/2021	3/1/2022	State	N	N	\$ 154,861.00	Outdoor activities in the community and traveling inside of California	DENIED
Office of Traffic Safety Grants	1/31/2021	3/1/2022	State	N	N	\$ 550,000.00	DUI Checkpoints with partnering cities in the Westside	Mendota will be the lead agency
CA WA & WWA Arrearages Payment	12/6/2021	3/15/2022	State	N	N	\$ 70,743.47	Financial assistance for customers' accounts 60 days+ for water only	
Wonderful Community Grants	8/31/2021	9/30/2021	Private	N	N	\$ 50,000.00	(30) Rental Assistance (Continuing) (135) Utility Assistance (100) Dental Care	DENIED
Tire-Derived Product Grant	6/1/2021	8/31/2021	State	N	N	\$ 149,995.02	Install rubber mulch at (7) project sites citywide for landscape purposes.	
New Alternative Fuel Vehicle Purchase	TBD	TBD	Local	N	N	Up to \$20,000 per vehicle	Purchase (2) electric "Zero" motorcycles for the Police Department and (3) vehicles for Public Works & Public Utilities	
Statewide Park Development and Community Revitalization Program (SPP)	3/12/2021	August/September	State	N	N	Maximum \$8,500,000	1) Community Center - Rojas-Pierce Park; 2) Fitness Court - Veterans Park; 3) Renovation - Pool Park	DENIED
Proposition 64 Public Health and Safety Grant Program	1/29/2021	5/1/2021	State	N	N	\$452,509.75	(2) Community Resource Officers, (2) Administrative Assistants, (1) K-9, (1) vehicle	Partnership with City of Fresno (Lead Applicant), Fresno EOC, The Boys & Girls Clubs of Fresno County
Good Neighbor Citizenship Company Grants	10/31/2020	4/30/2021	Private	N	N	\$ 198,825.00	Pocket Park at Bass Avenue and I Street	DENIED
CARES County of Fresno	10/1/2020	12/31/2020	County	N	N	\$ 229,732.87	COVID-19 relief funds: Non-profit organizations: Message Trailers: Overtime	
Coronavirus Relief Funds (CRF)	10/1/2020	7/1/2020	State	N	N	\$ 154,512.00	Expenditures incurred for COVID-19 - Use funds for Police Department MDT's	
FEMA-4482-DR-CA	TBD	TBD	State	N	Y	TBD	Expenditures incurred for COVID-19	25% match
CDGB -Coronavirus and Other	TBD	7/1/2020	County	N	N	\$ 104,796.00	Fire Department Equipment & Broadband Assistance for Mendota Residents	
Wonderful Community Grants	8/31/2020	9/15/2020	Private	N	N	\$ 50,000.00	COVID-19 relief funds	Mendota Community Corporation Administering
Tobacco Grant Program	8/7/2020	TBD	State	N	N	TBD	Add new tobacco language to our municipal code for enforcement: overtime for educational awareness to local vendors.	DENIED
California Aid to Airports Program	7/9/2020	3/31/2021	State	N	N	\$ 10,000.00	Annual credit grant to fund operational costs at the airport.	
Community Facilities Grant	7/1/2020	8/1/2020	Federal	N	Y	\$ 50,000.00	Purchase (2) Police Ford Explorers, upfit and equipment. This grant is in conjunction with the New Alternative Fuel Vehicle Purchase Grant.	USDA
New Alternative Fuel Vehicle Purchase	6/22/2020	10/31/2020	Local	N	N	Up to \$20,000 per vehicle	Purchase (1) Police Ford Explorer and (1) Ford F-250 Truck	
CARES Act Airport Grant	6/18/2020	TBD	Federal	N	N	\$ 1,000.00	Reimburse operational and maintenance expenses or debt service payments for the William Robert Johnston Municipal Airport	
Urban Flood Protection Grant Program	6/15/2020	TBD	State	N	N	\$ 4,500,000.00	Removal and replacement of undersized and critically damaged storm drain from 8th Street southeasterly past 10th Street to an existing ditch.	
COPS Hiring Program	3/11/2020	10/1/2020	Federal	N	Y	\$ 125,000.00	Hire (1) Full-time Police Officer for 3 years.	25% match
Office of Traffic Safety Grants	1/30/2020	10/1/2020	State	N	N	\$ 81,527.00	DUI Saturations, Traffic Enforcements, Car Seat Installation/Giveaway Event, Emergency Medical Services for the Fire Department	We received 2/3 grants applied. Car Seat Installation was not approved.
Fresno COG 2019-2020 CMAQ	1/1/2020	5/1/2020	Federal	Y	Y	\$ 458,304.00	Alley Paving Project for 7U & 7U1 (near Unida/Belmont/Derrick) and about 1/3 of the alleys on the eastside.	11.47% match
SB 2 Planning Grant Program	12/20/2019	6/1/2020	State	N	N	up to \$160,000	Update planning documents and processes of housing approvals/production	
New Alternative Fuel Vehicle Purchase	12/20/2019	6/1/2020	Local	N	N	Up to \$20,000 per vehicle	Purchase (1) Public Works/Utilities Trades Vehicle & (2) Police Explorers Interceptors Vehicles	(2) Police Explorers Vehicles to be paid with funding from USDA
Beverage Container Recycling City/County Payment Program	12/17/2019	2/28/2020	State	N	N	\$ 5,000.00	Billboard Advertisement and Radio Advertisement to promote beverage container recycling.	If you don't expend the full \$5,000.00, you must repay CalRecycle.
Automatic Meter Read Construction		10/21/2019	State	N	Y	\$ 3,074,561.00	Install City-wide Automatic Meter Reading Meters	Grant Component \$2,724,912.00
Access to Historical Records: Archival Projects	10/3/2019	7/1/2020	Federal	N	Y	\$ 95,907.00	Digitize public records and make freely available online.	DENIED
National Fitness Campaign 2020	8/1/2019	10/1/2020	Private	N	Y	\$ 30,000.00	Outdoor Fitness Court	If the City wishes to pursue this grant, we would need to match \$100,000.00.
Urban Community Development Block	7/31/2019	7/1/2020	County	N	N	\$ 575,222.00	Phase II Rojas-Pierce Park Expansion Project	For Fiscal Years 2019/2020: 2020/2021 & 2021/2022
California Aid to Airports Program	7/31/2019	10/31/2019	State	N	N	\$ 10,000.00	Annual credit grant to fund operational costs at the airport.	
Urban County Per Capita Grant Program	6/3/2019	2020	State	N	N	\$ 6,969.92	Rojas-Pierce Park Expansion	One-time basis
Per Capita Grant Program	6/3/2019	2020	State	N	N	\$ 177,952.00	Rojas-Pierce Park Expansion	One-time basis

Key: Applied for Grants

In process

Approved

Denied

Closed

Memorandum

To: City Council via Cristian Gonzalez, City Manager

From: Michael Osborn, City Engineer
Jeff O'Neal, City Planner

Subject: City Engineer's Report to City Council

Date: July 6, 2022

Engineering Projects:

1. Rojas Pierce Park:
 - Phase 2 expansion project in progress with construction of lighting in Fall 2022
2. Well 10 and Water Main Relocation
 - On hold; pending coordination with USBR and BB Limited
3. Mendota Meter Reading Project
 - Construction is in progress with Waterboard funding
 - It looks like they will be complete in early August 2022
4. Citywide RRXG Improvements:
 - Coordinating crossing improvements at SR 33 with Railroad, Caltrans & private business owner
5. MJHS Safe Routes to School Project
 - ATP funded: Construction in Fall 2022
6. 2022 Local Street Reconstruction Project
 - SB1 funded: Design in progress; Construction in late Summer 2022
7. Backwash Reclaim Project
 - Design is underway; looking for funding opportunities for construction
8. Mendota Stormwater Improvement Project
 - Prop 68 UFGP funded: Final design in progress; Construction in Spring/Summer 2023
9. Derrick & Oller Roundabout
 - Design & CEQA preparation in progress; Construction in Fall 2023

Planning/Development Projects

1. Rojas Pierce Park Annexation
 - Continuing discussions with USBR about whether and how the WWD land retirement program affects the project.
2. Regional Housing Needs Allocation
 - Participating in Fresno COG meetings for 6th Cycle multijurisdictional Housing Element
3. New City Hall & Police Station
 - Continuing work on CEQA document
4. Safe Routes to School Master Plan
 - ATP funded: Workshops and School Sites Audit in progress

5. Parcel Maps

- Currently processing three parcel maps for residential lot splits and one for industrial lot split

6. Reviewing proposed mixed-use development at Bass and 33

Grant Applications:

1. 5th Street & Quince Street Reconstruction:

- \$706,251 in STBG funding AWARDED; Construction authorization in FFY 23/24

2. Amador & Smoot Extension:

- \$874,000 in STBG & CMAQ TPP funds; Construction authorization in FFY 23/24

On-going (this month):

1. Representation of the City at FCOG TTC
2. Discussion of road projects with Caltrans
3. Assistance to Finance Director for grant opportunities

Overall P&P Staff engaged (month of June):

- Engineers: 8
- Planners: 2
- Surveyors: 1
- Environmental Specialist: 4
- GIS/CAD Specialists: 1
- Construction Manager: 0
- Project Administrator: 3

Abbreviations:

EOPCC – Engineer's Opinion of Probable Construction Cost
NTP – Notice to Proceed
CUCCAC – California Uniform Construction Cost Accounting Commission
STBG – Surface Transportation Block Grant
CMAQ – Congestion Mitigation and Air Quality (grant)
ATP – Active Transportation Plan (grant)
RFP – Request for Proposal

RFA- Request for Authorization (for grant funding)
FCOG – Fresno Council of Governments
ADA – Americans with Disabilities Act
DBE – Disadvantaged Business Enterprise
TTC – Technical Transportation Committee (through FCOG)
RTP/SCS – Regional Transportation Plan, Sustainable Communities Strategies