



# CITY OF MENDOTA

*“Cantaloupe Center Of The World”*

ROLANDO CASTRO  
Mayor

VICTOR MARTINEZ  
Mayor Pro Tempore

JESSE MENDOZA

OSCAR ROSALES

ROBERT SILVA

## AGENDA MENDOTA CITY COUNCIL

Regular City Council Meeting  
CITY COUNCIL CHAMBERS

643 QUINCE STREET

October 23, 2018

6:00 PM

CRISTIAN GONZALEZ  
Interim 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, those requiring special assistance to participate at this meeting please contact the City Clerk at (559) 655-3291. Notification of at least forty-eight hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to the meeting.

### CALL TO ORDER

### ROLL CALL

### FLAG SALUTE

### FINALIZE THE AGENDA

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

### PRESENTATION

1. Sonia Hall with Granted Solutions to provide a grant update.

### 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 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, state their names and addresses for the record. Please watch the time.

## APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of October 9, 2018.
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. OCTOBER 09, 2018 THROUGH OCTOBER 19, 2018  
WARRANT LIST CHECKS NO. 44544 THRU 44590  
TOTAL FOR COUNCIL APPROVAL = \$274,579.24
2. Proposed adoption of **Resolution No. 18-72**, cancelling the November 27<sup>th</sup> and December 25<sup>th</sup> regular City Council meetings and authorizing the City Manager to execute any necessary warrants.
3. Proposed adoption of **Resolution No. 18-73**, approving the submittal of the Active Transportation Program grant application and authorizing the City Manager to execute related agreements.

## BUSINESS

1. Council discussion and consideration of **Resolution No. 18-74**, authorizing staff to publish a Request for Proposals for the lease of City property for industrial use along Naples on 3<sup>rd</sup> Street.
  - a. *Receive report from Economic Development Manager Flood*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council consider the adoption of Resolution No. 18-74*
2. Council discussion and consideration of **Resolution No. 18-75**, approving and authorizing the execution of a services contract for the installation and maintenance of a Department of Motor Vehicles kiosk at City Hall.
  - a. *Receive report from Interim City Manager Gonzalez*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council consider the adoption of Resolution No. 18-75*

**PUBLIC HEARING**

1. Second reading and proposed adoption of **Ordinance No. 18-06**, approving an addendum to the Development Agreement by and between the City of Mendota and KSA Homes, Inc., relating to the development of the property commonly known as the La Colonia property.
  - a. *Receive report from Interim City Manager Gonzalez*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens the public hearing, accepting comments from the public*
  - d. *Mayor closes the public hearing*
  - e. *Council provide any input, waive second reading, and adopt Ordinance No. 18-06*

**DEPARTMENT REPORTS AND INFORMATIONAL ITEMS**

1. Administrative Services
  - a) Monthly Report
2. Public Works
  - a) Monthly Report
3. City Attorney
  - a) Update
4. City Manager

**CLOSED SESSION**

1. CONFERENCE WITH LABOR NEGOTIATORS  
CA Government Code § 54957.6  
Agency Designated Representatives: Cristian Gonzalez, Interim City Manager and Jennifer Lekumberry, Administrative Services Director Employee  
Organization: American Federation of State, County and Municipal Employees
2. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
CA Government Code § 54957(b)  
Title: Interim City Manager

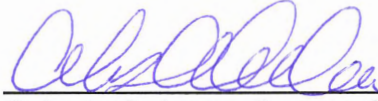
**MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS**

1. Council Member(s)
2. Mayor

**ADJOURNMENT**

**CERTIFICATION OF POSTING**

I, Celeste Cabrera, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of October 23, 2018, was posted on the outside bulletin board located at City Hall, 643 Quince Street Friday, October 19, 2018 at 4:15 p.m.



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Celeste Cabrera, Deputy City Clerk



## MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

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**Regular Meeting**

**October 9, 2018**

**Meeting called to order by Mayor Castro at 6:00 p.m.**

### **Roll Call**

**Council Members Present:** Mayor Rolando Castro, Mayor Pro Tem Victor Martinez, Councilors Jesse Mendoza, and Robert Silva

**Council Members Absent:** Councilor Oscar Rosales

**Flag salute led by Mayor Castro**

### **FINALIZE THE AGENDA**

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

Interim City Manager Gonzalez requested that Business Item 4 be removed from the agenda for further analysis by staff.

A motion was made by Councilor Silva to adopt the agenda as requested by staff, seconded by Councilor Mendoza; unanimously approved (4 ayes, absent: Rosales).

### **CITIZENS ORAL AND WRITTEN PRESENTATIONS**

**Sergio Valdez and Corina Banuelos (Mendota Youth Recreation [MYR])** - shared information on the MYR participants that want to participate in the Open Goal Project, a program that takes young soccer prospects to international clinics; shared information on the upcoming Annual Red Ribbon Carnival that they sponsor; and reported on other upcoming events.

Discussion was held on the interest in building an indoor soccer facility.

## APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of September 25, 2018.
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 Mayor Pro Tem Martinez to approve items 1 and 2, seconded by Councilor Mendoza; unanimously approved (4 ayes, absent: Rosales).

## CONSENT CALENDAR

1. SEPTEMBER 25, 2018 THROUGH OCTOBER 04, 2018  
WARRANT LIST CHECKS NO. 44481 THRU 44543  
TOTAL FOR COUNCIL APPROVAL = \$278,014.55
2. Proposed adoption of **Resolution No. 18-69**, authorizing the placement of special assessment/direct charges on the tax roll for the Community Facilities District 2006-1 for Fiscal Year 2018-2019.
3. Proposed adoption of **Resolution No. 18-70**, approving the application for clean air vehicles via the Public Benefit Grant Program administered by the San Joaquin Valley Air Pollution Control District.
4. Proposed adoption of **Resolution No. 18-71**, approving the submission of grant applications for the Remove II Grant Program, and naming the City Manager as the signing authority, to the San Joaquin Valley Air Pollution Control District.

A request was made to pull item 1 for discussion.

A motion was made by Councilor Silva to adopt items 2 through 4 of the Consent Calendar, seconded by Mayor Pro Tem Martinez; unanimously approved (4 ayes, absent: Rosales).

1. SEPTEMBER 25, 2018 THROUGH OCTOBER 04, 2018  
WARRANT LIST CHECKS NO. 44481 THRU 44543  
TOTAL FOR COUNCIL APPROVAL = \$278,014.55

Councilor Mendoza referred to warrant item 44510 and stated that he was glad that Interim City Manager Gonzalez is okay.

A motion was made by Councilor Mendoza to adopt item 1 of the Consent Calendar, seconded by Mayor Pro Tem Martinez; unanimously approved (4 ayes, absent: Rosales).

## **BUSINESS**

1. Council discussion on options for assisting Non-Profit Corporations in the City of Mendota.

Mayor Castro introduced the item and City Attorney Kinsey provided his report including a summary of what transpired at the September 11<sup>th</sup> City Council meeting regarding this issue; the law's constrictions related to the giving of funds; the exceptions and rules related to the giving of that class; the different recommendations from staff in which the Council could take including taking no action at this time, providing fee discounts to non-profit corporations for the use of City facilities, the City identifying a specific need or service that a non-profit could fulfill (via an RFP), or a combination of these options; and staff's recommendation being to choose to do nothing at this time and revisit the issue when the ballot measure result is known.

Discussion was held on the efforts the City has made in the past to assist non-profit corporations; the need to avoid gifting public funds; opposition to becoming too dependent on the proposed increased sales tax revenues; the need to have effective grant writers that acquire funds for various public projects; the options that are available to the Council; and the importance of keeping the City safe while ensuring the City does not expose itself to liability claims.

**Sergio Valdez (325 Pucheu Street)** - stated that he agrees with choosing the option to wait and see if the ballot measure passes; and spoke in support of creating gang intervention programs in the future.

A motion was made to take no action at the present time and revisit the issue following the vote on the City's proposed sales and use tax, seconded by Mayor Pro Tem Martinez; unanimously approved (4 ayes, absent: Rosales).

2. Introduction and first reading of **Ordinance No. 18-06**, approving an addendum to the Development Agreement by and between the City of Mendota and KSA Homes, Inc., relating to the development of the property commonly known as the La Colonia property.

Mayor Castro introduced the item and Interim City Manager Gonzalez provided his report including the previous execution of a development agreement with this developer; the specific change that needs to be made to the agreement relative to soccer field improvements; the proposed amendment allowing for the construction of a new soccer field; and grading where the current soccer field in preparation for the construction of a new baseball field.

**Sergio Valdez (325 Pucheu Street)** - inquired as to whether the facilities would include a separate concessions stand and restroom facility, and if there will be a practice field.

Discussion was held on what the cost of those facilities would be; and the problems that arise when community members do not treat the fields appropriately.

A motion was made by Councilor Silva to perform the first reading of Ordinance No. 18-06, and set the public hearing for the October 23<sup>rd</sup> City Council meeting, seconded by Mayor Pro Tem Martinez; unanimously approved (4 ayes, absent: Rosales).

3. Council discussion on modifying the original Request for Proposals for the lease and development of the City's property located at the Waste Water Treatment Plant.

Mayor Castro introduced the item and Interim City Manager Gonzalez provided his report including the City's acquisition of the land decades ago; the land being purchased with sewer funds, indicating that any revenue from the sale of that land would have to return to the Sewer Fund; and the recommendation to explore selling the land to allow for the development of it.

Discussion was held on ensuring that the City maximizes its revenues if the land is used for a development related commercial cannabis; the risk of selling the land if it is contaminated; the zoning limitations; and the recommendation that the City put the responsibility on the applicant to perform any necessary tests of the land.

**Jose Gutierrez (647 Perez Street)** - supported the diversification of industries and giving back to the community.

A motion was made by Councilor Mendoza to direct staff to look into modifying the original RFP for the lease and development of the City's property located at the Waste Water Treatment Plant, seconded by Mayor Pro Tem Martinez; unanimously approved (4 ayes, absent: Rosales).

4. Council receive report on discontinuing health coverage for City Council Members.

*Removed from the agenda.*

## **DEPARTMENT REPORTS AND INFORMATIONAL ITEMS**

1. Code Enforcement & Police Department
  - a) Monthly Report

Chief of Police Andreotti summarized the report for the Code Enforcement department report including recent significant cases related to illegal vendors.

Chief Andreotti summarized the report for the Police Department including significant cases such as a suspicious man inappropriately interacting with members of the opposite sex, and a stolen vehicle case; reported on an active shooter training in



partnership with the Mendota Unified School District; the department's participation in the recent Driver Awareness event; and some intervention that the officers had with youth that were illegally riding ATV's.

Discussion was held on how the Code Enforcement department and the Police Department deals with notices regarding illegally parked cars.

2. Economic Development
  - a) Monthly Report

Economic Development Manager Flood reported that he is working with the Economic Development Corporation to conduct a regional opportunity analysis in conjunction together with other communities; and working on developing vacant commercial properties.

Discussion was held on attracting different types of businesses into the community; and the potential impacts that the Safe Sidewalk Vending Act will have on the business community.

3. City Attorney
  - a) Update

City Attorney Kinsey thanked the Council for the opportunity to serve and help the community.

4. City Manager
  - a) Insurance

Interim City Manager Gonzalez reported on some future items that will be on the agenda, including a bond counselor that will provide a presentation on how the City can save money, and a solar company that is interested in doing business with the City.

Discussion was held on the road construction that is taking place on 2<sup>nd</sup> Street; and the need to follow up on the goals that were set by the Council.

## **MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS**

1. Council Member(s)

Councilor Mendoza thanked the public and staff for attending the meeting.

Mayor Pro Tem Martinez announced the visit of the Salvadoran Consulate on November 4<sup>th</sup> starting at 7 a.m.

Councilor Silva reported on a LAFCo retreat he attended; and on the Driver Awareness program that Council and staff attended.

2. Mayor

*Nothing to report.*

**CLOSED SESSION**

1. CONFERENCE WITH LABOR NEGOTIATORS  
CA Government Code § 54957.6  
Agency Designated Representatives: Cristian Gonzalez, Interim City Manager  
and Jennifer Lekumberry, Administrative Services Director  
Employee Organization: American Federation of State, County and Municipal  
Employees

At 7:10 p.m. the Council moved into closed session.

At 7:41 p.m. the Council reconvened in open session and City Attorney Kinsey stated that in regards to item 1 of the closed session, there was no reportable action.

**ADJOURNMENT**

With no more business to be brought before the Council, a motion for adjournment was made at 7:41 p.m. by Councilor Silva, seconded by Councilor Mendoza; unanimously approved (4 ayes, absent: Rosales).

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Rolando Castro, Mayor

ATTEST:

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Matt Flood, City Clerk

CITY OF MENDOTA  
 CASH DISBURSEMENTS  
 10/9/2018 - 10/19/2018  
 Check# 44544 - 44590

Date	Check #	Amount	Vendor	Department	Description
October 9, 2018	44544	\$19,146.15	PROVOST & PRITCHARD	GENERAL	PROFESSIONAL SERVICES AUGUST 2018 - PASSTHRU LAS PALMAS, 1269 MARIE ST, STATE LANDS COMMISSION MOWRY, AND RETAINER
October 9, 2018	44545	\$2,040.50	THE BANK OF NEW YORK MELLON	SEWER	MENDOTA JPFA WASTEWATER SYSTEM REVENUE BOND 10/1/18 - 9/30/19
October 9, 2018	44546	\$4,635.05	AMERITAS GROUP	GENERAL	VISION & DENTAL INSURANCE FOR NOVEMBER 2018
October 9, 2018	44547	\$1,328.16	COMCAST	GENERAL-WATER-SEWER	CITYWIDE XFINITY SERVICES 10/6/2018 - 11/5/2018
October 15, 2018	44548	\$3,190.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	(6) HRA ADMINISTRATION - OCTOBER 2018, (20) MONTHLY MEDICAL ADMINISTRATION FEE- OCTOBER 2018, & MEDICAL CHECK RUN 10/2/2018
October 15, 2018	44549	\$28.95	AIRGAS USA, LLC	WATER	(1) RENT CYL IND SMALL CARBON DIOXIDE
October 15, 2018	44550	\$1,560.31	ALLIED ELECTRIC	WATER	(1) POWER SUPPLY 10A AT 5VDC FOR SLC 500 AB, (2) FUSE GDG5 250V TD FUSE - WTP
October 15, 2018	44551	\$18.50	JERONIMO ANGEL	WATER-SEWER	EXPENSE REIMBURSEMENT - LCW WORKSHOP TRAINING FRESNO: LUNCH & PARKING
October 15, 2018	44552	\$45.92	AUTOZONE, INC	GENERAL	VEH#84 - USED BATTERY SALES CODE ENFORCEMENT
October 15, 2018	44553	\$744.00	BC LABORATORIES INC	WATER	(31) LEAD/COPPER WATER TESTING
October 15, 2018	44554	\$141.76	BSK ASSOCIATES	WATER-SEWER	MONTHLY WASTEWATER WW MONTHLY (WEEK 2-5)
October 15, 2018	44555	\$310.90	CORELOGIC INFORMATION	GENERAL-WATER-SEWER	REALQUEST SERVICES FOR AUGUST AND SEPTEMBER
October 15, 2018	44556	\$337.19	CROWN SERVICES CO	GENERAL-SEWER	(5) TOILET 1XWK & W/ SINK FOR AIRPORT BLVD (PD), 1300 2ND ST, BASS AVE, & LINDGREN PARK
October 15, 2018	44557	\$32.00	DEPARTMENT OF JUSTICE	GENERAL	(1) FINGERPRINT APPS FOR SEPTEMBER 2018 (PD)
October 15, 2018	44558	\$1,149.00	BARTLEY WAYNE FIELDER	GENERAL-WATER-SEWER	(40) SPAM FILTER (2) COMPUTER SUPPORT (3)NEW CERTIFICATES FOR SERVER (2.5) TECHNOLOGY SERVICES PERFORMED
October 15, 2018	44559	\$137.99	FRESNO COUNTY SHERIFF	GENERAL	RMS JMS ACCESS FEE - SEPTEMBER 2018 (PD)
October 15, 2018	44560	\$2,720.97	SIMPLOT GROWER SOLUTIONS	WATER-SEWER	(24) GOAL TENDER (1G)
October 15, 2018	44561	\$1,060.32	KOPPEL & GRUBER	MENDOTA CFD	CFD NO. 2006-1 POLICE & FIRE SERVICES ANNUAL ADMINISTRATION SERVICES JULY & SEPTEMBER 2018
October 15, 2018	44562	\$100.00	JENNIFER LEKUMBERRY	GENERAL	EDUCATION REIMBURSEMENT PROGRAM SUMMER 2018 (REQUEST 1 OF 3 FY 18/19)
October 15, 2018	44563	\$300.00	LEXIS NEXIS	GENERAL-WATER-SEWER	SUBSCRIPTION SERVICES 9/1/18 - 9/30/18
October 15, 2018	44564	\$2,265.25	METRO UNIFORM	GENERAL	(1) 24/7 PC R/S PT, (2) RAZOR BODY ARMOR EXPRESS, (3)RIDE LEVEL III RETENTION GLOCK RIGHT: 69 (CREDIT - 1 RETURNED)
October 15, 2018	44565	\$54,107.92	MID VALLEY DISPOSAL, INC	REFUSE	SANITATION CONTRACT SERVICES FOR SEPTEMBER 2018
October 15, 2018	44566	\$1,483.63	NORTHSTAR CHEMICAL	WATER	(705 GAL) SODIUM HYPOCHLORITE - 12.5 % MILL A
October 15, 2018	44567	\$258.19	OFFICE DEPOT	GENERAL-WATER-SEWER	MULTIPLE DEPARTMENT OFFICE SUPPLIES
October 15, 2018	44568	\$253.96	AT&T	GENERAL-WATER-SEWER	MONTHLY SERVICES 9/26/18 - 10/25/18
October 15, 2018	44569	\$4,206.59	PAPER MACHINERY	WATER-SEWER-STREETS	JD 544J REPAIR HYDRAULIC FUNCTION LABOR, SERVICES, & LABOR

CITY OF MENDOTA  
CASH DISBURSEMENTS  
10/9/2018 - 10/19/2018  
Check# 44544 - 44590

October 15, 2018	44570	\$33.00	PETVETS 24/7	GENERAL	(1) ANIMAL CONTROL EUTHANASIA
October 15, 2018	44571	\$15,300.00	PRICE, PAIGE, & COMPANY	GENERAL-WATER-SEWER-STREETS-REFUSE	PROFESSIONAL SERVICES : WORK IN PROGRESS ON AUDIT CITY'S FINANCIAL STATEMENTS FOR YR END JUNE 30, 2018
October 15, 2018	44572	\$47.02	R.G. EQUIPMENT COMPANY	GENERAL	(1) IDLER-PULLEY FLANGED, (1) WHEEL KIT W/ HDWE FOR EXMARK
October 15, 2018	44573	\$1,367.61	ERNEST PACKING SOLUTIONS	GENERAL-WATER-SEWER	JANITORIAL SUPPLIES - (20)CASE LRG GLOVES (2) PINESOL CLEANER, (4) PAPER TOWEL ROLLS, (2) CASCADES, (1) PUMICE SCOURING STICK, (1)
October 15, 2018	44574	\$189.00	SHRM	GENERAL	PROFESSIONAL MEMBERSHIP 1/1/19 - 12/31/19 (HR)
October 15, 2018	44575	\$812.12	SORENSEN MACHINE WORKS	GENERAL-WATER-SEWER-STREETS	MULTIPLE DEPARTMENT SUPPLIES FOR SEPTEMBER 2018
October 15, 2018	44576	\$176.00	STATE WATER RESOURCES CONTROL BOARD	WATER	WATER SYSTEM ENFORCEMENT FEES 7/1/18 - 6/30/18
October 15, 2018	44577	\$194.85	TCM INVESTMENTS	GENERAL	MPC3503 LEAE PAYMENT FOR COPIER (PD)
October 15, 2018	44578	\$500.00	TECH-MASTER PEST MANAGEMENT	GENERAL-WATER-SEWER	GENERAL PEST CONTROL FOR ROJAS-PIERCE PARK, CITY HALL, DMV, YOUTH CENTER, SENIOR CENTER, COMMUNITY CENTER, PUBLIC WORKS YARD
October 15, 2018	44579	\$1,057.11	TIREHUB, LLC	GENERAL	(7) GY EAGLE POLICE BW GOODYEAR EAGLE (PD)
October 15, 2018	44580	\$1,230.91	TRIANGLE ROCK PRODUCTS, LLC	STREETS	ST 1/2 IN HMA TYPE A (QTY 11.15) 3RD ST & L STREET, ST 3/8 CMSC3000 ASPHALT (QTY 6.98) ALL STREET POTHOLE
October 15, 2018	44581	\$500.00	UNITED HEALTH CENTERS	GENERAL-WATER-SEWER	(5) PRE-EMPLOYMENT SCREEN (2-PD)
October 15, 2018	44582	\$104.18	UNIFIRST CORPORATION	GENERAL-WATER-SEWER	JANITORIAL SERVIES - (4) 4X6 RUGS, (2) 3X5 RUGS, (1) DRY MOP, (1) WET MOP, (100) TERRY CLOTHES
October 15, 2018	44583	\$90.00	VILLAMAR MOTORS & TRANS	GENERAL	VEH#M81 - OIL CHANGE & OIL FILTER CHANGE, & VEH#84 - OIL CHANGE & OIL FILTER CHANGE FOR PD
October 15, 2018	44584	\$687.58	VULCAN MATERIALS COMPANY	STREETS	ST 1/2 IN HMA TYPE A (QTY 10.53) ASPHALT FOR RIOFRIO ST
October 16, 2018	44585	\$104,673.00	WESTAMERICA BANK	GENERAL	PAYROLL TRANSFER 10/1/18 - 10/14/18
October 16, 2018	44586	\$802.92	AFLAC	GENERAL	AFLAC INSURANCE FOR OCTOBER 2018
October 16, 2018	44587	\$1,117.49	VERIZON WIRELESS	GENERAL-WATER-SEWER	CITYWIDE CELL PHONE SERVICES 9/7/18 - 10/6/18
October 18, 2018	44588	\$7,000.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	MEDICAL CHECK RUN 10/12/2018
October 18, 2018	44589	\$31,860.27	DOWNTOWN FORD SALES	GENERAL	COMMUNITY FACILITY GRANT (USDA) - 55% GRANT & 45% CITY MATCH (1) 2018 FORD PD INTERCEPTOR #1FM5K8AR2JGC43535
October 19, 2018	44590	\$5,232.97	MENDOTA SMOG & REPAIR	WATER-SEWER	F-150 SUPER CREW - REPLACE ENGINE, RADIATOR, ADD COOLANT, BELT, WATER PUMP & CHANGE MOTOR OIL
		\$274,579.24			

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CELESTE CABRERA, DEPUTY CITY CLERK  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** CANCELLATION OF THE NOVEMBER 27, 2018 AND DECEMBER 25, 2018 REGULAR CITY COUNCIL MEETINGS  
**DATE:** OCTOBER 23, 2018

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**ISSUE**

Should the City Council cancel the Tuesday, November 27, 2018 and the Tuesday, December 25, 2018 Regular City Council Meetings?

**BACKGROUND**

Staff is requesting that the City Council cancel the Tuesday, November 27, 2018 regularly scheduled City Council Meeting due to the Thanksgiving holiday.

Furthermore, staff is also requesting that the City Council cancel the Tuesday, December 25, 2018 regularly scheduled City Council Meeting due to the Christmas holiday. This is a practice that has been done at the City of Mendota for many years in order to allow Council and staff time to enjoy with family and friends during the holidays.

**ANALYSIS**

The request to cancel the November 27<sup>th</sup> City Council meeting is due to the limited time staff would have to prepare the agenda the week before the meeting. Since the City Hall office will be closed on Thursday and Friday (November 22<sup>nd</sup> and 23<sup>rd</sup>), staff would have a minimal amount of time to prepare the agenda, something that is not optimal. The cancellation of the second meeting in November was also done last year due to a similar schedule. Moreover, the cancellation of the second meeting in December has been the Council's practice for many years.

Aside from the City of Mendota, the cancelling of meetings during the holidays is a common practice followed by other municipalities. This practice is generally due to individuals travelling during these holidays which can result in difficulties in obtaining a quorum at meetings.

In the case that any pressing business was to arise that requires Council action, a special meeting could still be called. Also, the attached resolution will allow the City Manager to approve the necessary warrants for both meetings, which will then be brought to the City

Council for review and approval at the next regular meeting following each cancelled meeting.

**FISCAL IMPACT**

None

**RECOMMENDATION**

Staff recommends that the City Council adopt Resolution No. 18-72 cancelling the November 27<sup>th</sup> and December 25<sup>th</sup> regular City Council meetings and authorizing the City Manager to issue the necessary warrants.

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA CANCELLING  
THE NOVEMBER 27, 2018 AND DECEMBER  
25, 2018 REGULAR CITY COUNCIL MEETINGS  
AND AUTHORIZING THE CITY MANAGER  
TO EXECUTE ANY NECESSARY WARRANTS**

**RESOLUTION NO. 18-72**

**WHEREAS**, the City of Mendota is dedicated to the business of the welfare and safety of its residents; and

**WHEREAS**, an integral part of that business is the management of assets and the care of those that work for the City, including members of the Council and various commissions of the City and its employees; and

**WHEREAS**, the holidays are a time for all individuals to spend with family and friends, providing a much needed respite; and

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Mendota approves the cancellation of the November 27<sup>th</sup> and December 25<sup>th</sup> regular meetings of the City Council; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that the City Council of the City of Mendota authorizes and directs the City Manager to execute all warrants necessary for the operation of the City during that time.

\_\_\_\_\_  
Rolando Castro, Mayor

**ATTEST:**

I, Matt Flood, 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 23<sup>rd</sup> day of October, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Matt Flood, City Clerk

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** SONIA HALL, GRANT CONSULTANT  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** APPLICATION FOR THE ACTIVE TRANSPORTATION PROGRAM  
**DATE:** OCTOBER 23, 2018

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**ISSUE**

Shall the Council approve the grant application for the Active Transportation Program and authorize the Interim City Manager to execute all necessary agreements?

**BACKGROUND**

The Active Transportation Program (ATP) was created by Senate Bill 99 (Chapter 359, Statutes of 2013) and Assembly Bill 101 (Chapter 354, Statutes of 2013) to encourage increased use of active modes of transportation, such as biking and walking. Senate Bill 1 (Chapter 2031, statutes of 2017) stipulates that \$100,000,000 of revenues from the Road Maintenance and Rehabilitation Account will be available annually to the ATP.

Pursuant to the Statute, the purpose of the program is to encourage increased use of active modes of transportation, such as biking and walking. The goals of the ATP are to:

- Increase the proportion of trips accomplished by biking and walking.
- Increase the safety and mobility of non-motorized users.
- Advance the active transportation efforts of regional agencies to achieve greenhouse gas reduction goals as established pursuant to Senate Bill 375 (Chapter 728, Statutes of 2008) and Senate Bill 391 (Chapter 585, Statutes of 2009).
- Enhance public health, including reduction of childhood obesity through the use of programs including, but not limited to, projects eligible for Safe Routes to School Program funding.
- Ensure that disadvantaged communities fully share in the benefits of the program.
- Provide a broad spectrum of projects to benefit many types of active transportation users.

**ANALYSIS**

The City of Mendota submitted through the competitive funding process an application that will fund a Safe Routes to School Plan. The Safe Routes to School Plan will provide the city a study that will list the improvements needed that will provide the youth a safe route to walk or bike to school. The plan will evaluate existing conditions, identify accident “hot spots” and study specific areas of concern. The plan supports the city to



work collaboratively with the school district and community members to complete the plan.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Staff recommends that the City Council authorize the submission of the grant application for the Active Transportation Program, accept the grant award, and authorize the City Manager to execute all agreements with the Fresno Council of Governments for the Active Transportation Program grant.

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
THE SUBMITTAL OF THE ACTIVE  
TRANSPORTATION PROGRAM APPLICATION  
AND AUTHORIZING THE CITY MANAGER  
TO EXECUTE THE AGREEMENTS WITH THE  
FRESNO COUNCIL OF GOVERNMENTS FOR  
THE CITY'S PROJECT**

**RESOLUTION NO. 18-73**

**WHEREAS**, the Active Transportation Program (ATP) was created by Senate Bill 99 (Chapter 359, Statutes of 2013) and Assembly Bill 101 (Chapter 354, Statutes of 2013) to encourage increased use of active modes of transportation, such as biking and walking; and

**WHEREAS**, all project applications that are submitted to Caltrans for consideration in the statewide competition are eligible for the regional competition; and

**WHEREAS**, the City Council of the City of Mendota is eligible to receive Federal and/or State funding for certain transportation planning related plans, through the regional competition; and

**WHEREAS**, a Restricted Grant Agreement is needed to be executed with the Fresno Council of Governments before such funds can be claimed through the Active Transportation Grant Programs; and

**WHEREAS**, the City of Mendota wishes to delegate authorization to execute these agreements and any amendments thereto; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Mendota that the City Council hereby authorizes the City Manager or designee to execute all Restricted Grant Agreements and any amendments thereto with the Fresno Council of Governments.

---

Rolando Castro, Mayor

ATTEST:

I, Matt Flood, 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 23<sup>rd</sup> day of October, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

Matt Flood, City Clerk

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** MATT FLOOD, ECONOMIC DEVELOPMENT MANAGER  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** REQUEST FOR PROPOSALS TO LEASE THE CITY-OWNED NAPLES PROPERTY  
**DATE:** OCTOBER 23, 2018

---

**ISSUE**

Should the Council approve the RFP and direct staff to advertise the Leasing of the Naples Property?

**BACKGROUND**

For decades the City had utilized a Naples property on Third Street for the storage of heavy machinery, vehicles, and other equipment necessary for the operation of the City. Over the years, as new facilities were built, this property became less and less used for that purpose and, at present, is scarcely utilized for any meaningful purpose.

**ANALYSIS**

The lack of meaningful utilization of this property is a missed opportunity to fulfill the need for leasable industrial property in the City Limits, as well as providing revenue to the General Fund.

In order to lease the land, staff is providing an RFP consistent with the requirements of Mendota Municipal Code (MMC) Section 2.48.120, dealing with competitive negotiating, as opposed to a formal bid, due to the impracticality and disadvantageous nature the latter presents when attempting to create a long-term lease for City-owned property.

Staff would post a public notice and would have the option of posting a brief advertisement in the newspaper (not required by the MMC but it would increase the visibility of the RFP) with all of the applicable information as set forth within the RFP. This includes the proposed deadline which, as of now, is Wednesday, November 21, 2018 at 5pm.

The Interim City Manager, Finance Director, and Economic Development Manager would then review the proposals, score them based on the various elements outlined in the RFP, contact the top responders for negotiations, and bring the most advantageous arrangement to the City Council for approval to enter into a Lease Agreement.

**FISCAL IMPACT**

Expenditures related to staff time in negotiating, formulating a legal agreement, and, if desired, advertising the RFP in the local newspaper.

**RECOMMENDATION**

Staff recommends that the City Council adopt Resolution No. 18-74, authorizing staff to issue and advertise the RFP, and bring the top respondents back to a future Council meeting for approval.

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AUTHORIZING  
STAFF TO PUBLISH A REQUEST FOR  
PROPOSALS FOR THE LEASE OF CITY  
PROPERTY FOR INDUSTRIAL USE  
ALONG NAPLES ON THIRD STREET**

**RESOLUTION NO. 18-74**

**WHEREAS**, the City of Mendota has the duty to protect public resources as well as maximize the public's investment in all relevant infrastructure; and

**WHEREAS**, the City of Mendota in recent years has faced an extraordinary increase in demand for properties suitable for the development and operation of businesses;

**WHEREAS**, the City has property located along Naples Street, on Third Street, that has been historically utilized for the use and storage of equipment, but has fallen into purposeful disuse, which property is outlined in blue on the Parcel Map attached hereto as Exhibit "A" ("Property"); and

**WHEREAS**, the City desires to lease the Property, consistent with Mendota Municipal Code Section 2.48.120, to an individual or entity that will develop the land for uses consistent with its zoning and the use of surrounding properties, specifically industrial or otherwise qualifying commercial uses ("Project"); and

**WHEREAS**, a Request for Proposals inviting interested parties to submit proposals regarding the Project has been prepared and is attached hereto as Exhibit "B";

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Mendota hereby resolves the following:

1. That the City Council of the City of Mendota does hereby approve the publication of the attached Request for Proposals for the Lease of City Property for Industrial Uses;
2. That the City Manager or Designee is authorized to execute all additional documentation as may be required to effectuate the issuance of the RFP for the Lease of City Property for Industrial Uses.

\_\_\_\_\_  
Rolando Castro, Mayor

**ATTEST:**

I, Matt Flood, 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 23<sup>rd</sup> day of October, 2018, by the following vote:

**AYES:**

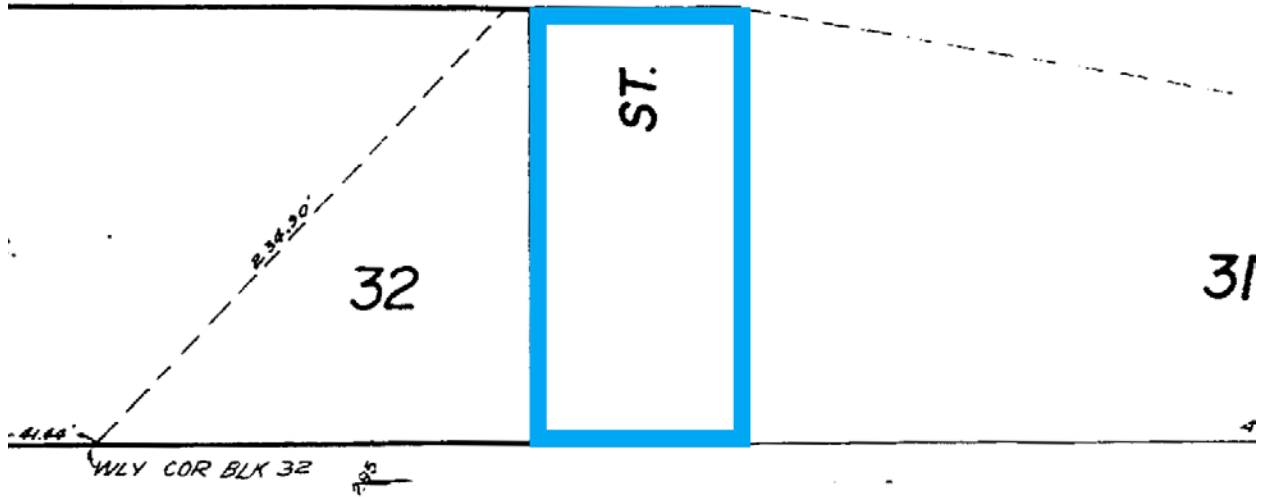
**NOES:**

**ABSENT:**

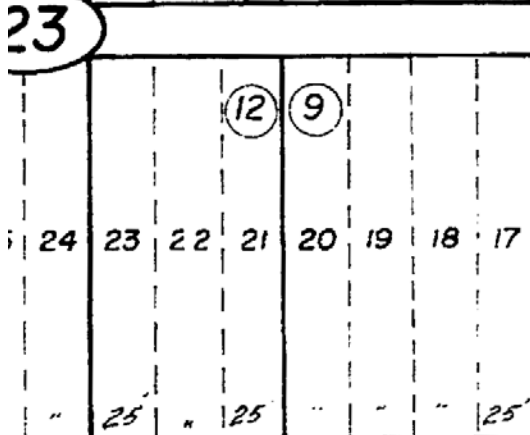
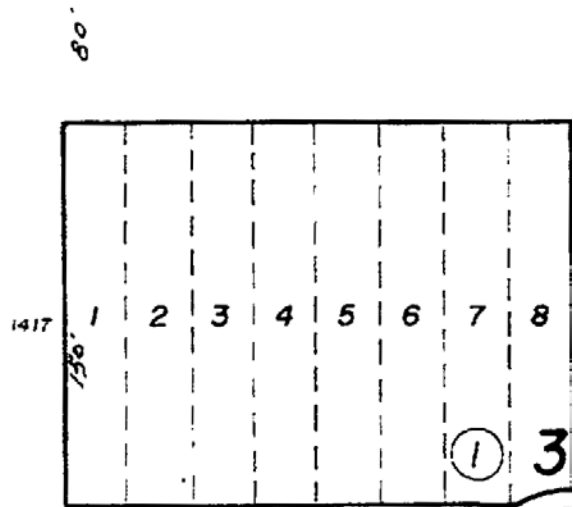
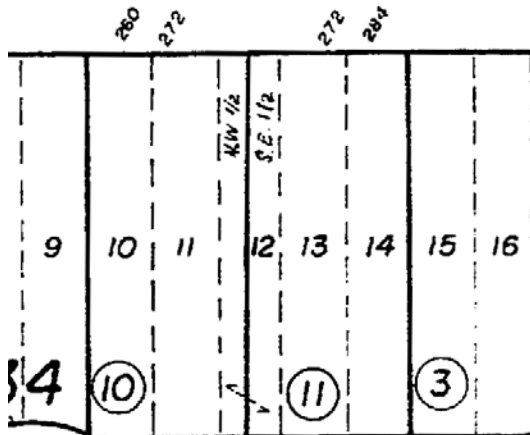
**ABSTAIN:**

\_\_\_\_\_  
Matt Flood, City Clerk

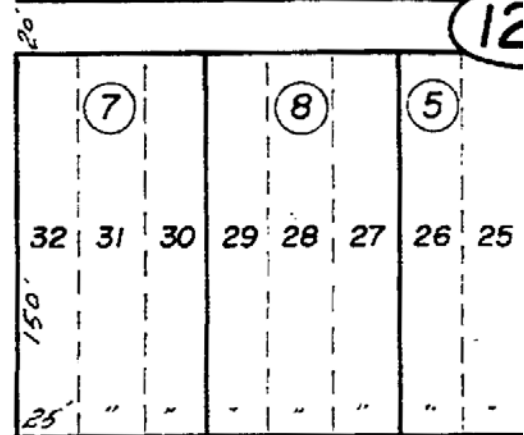
EXHIBIT A



NAPLES



THIRD





**EXHIBIT B**



**CITY OF  
MENDOTA**

**REQUEST FOR PROPOSALS  
FOR THE LEASE OF CITY PROPERTY  
FOR INDUSTRIAL USES**

Dated: October 19, 2018

# TABLE OF CONTENTS

I.	Introduction.....	1
II.	Background.....	1
III.	The Property .....	1
IV.	The Project.....	2
V.	General Proposal Requirements .....	2
VI.	Specific Proposal Requirements .....	2
VII.	Selection Process & Criteria.....	3
VIII.	Proposal Submission .....	4
IX.	Limitations and Conditions.....	4



CITY OF  
**MENDOTA**

## **I. INTRODUCTION**

The City of Mendota is seeking proposals from qualified parties (“Respondents”) to lease certain City property consisting of approximately 13,624 ft<sup>2</sup> (170.3’ x 80’) located along Naples Street (the “Land”), identified below within “Attachment A”, attached hereto, in blue highlight and zoned as M-1 (Light Manufacturing District).

Respondents are encouraged to submit a proposal in accordance with the requirements set forth herein. The City will review all submitted proposals in accordance with the Selection Process & Criteria discussed below. If the City is able to reach an agreement with any of the Respondents, the specific terms and legal considerations of the lease will be documented in a formal Lease Agreement (the “Lease”) to be entered into by the City and the successful Respondent.

## **II. BACKGROUND**

The City of Mendota has control and ownership of the property on Naples Street, constituting the official and technical terminus of Third Street, east of Naples Street. The property in question had been historically used as a storage yard for City equipment, including vehicles and heavy machinery, but has not been in active use for that purpose since the construction and utilization of more secure and appropriate facilities that serve the same purpose.

Due to a growing economy and the consequent demand for suitable industrial land for commercial purposes, the City Council is interested in leasing out this property to the most qualified and reliable Respondent. Therefore, the process will follow the Competitive Negotiation process as contained in Mendota Municipal Code Section 2.48.120.

## **III. THE PROPERTY**

The Property consists of approximately 13,600 ft<sup>2</sup> located in the middle of the industrial section of the City, as depicted in “Attachment A”. It is zoned with the M-1 designation (Light Manufacturing District) and is has the General Plan Land Use Designation of Light Industrial.

The Property is surrounded by industrial, commercial, and high-density residential uses, including vacant land and an apartment complex to its west, a heavy truck parking facility to its northwest, the San Joaquin Valley Railroad to its north, northeast, and east, a petroleum storage and dispensary business to its southeast, and a commercial social hall to its south. All of these properties share the same zoning classification and General Plan Land Use Designation of Light Industrial.

The Land has no permanent buildings on site and will be provided without any improvements, with the exception that the City will waive all City costs related to procurement of the appropriate entitlement for the use of the Land.

#### **IV. THE PROJECT**

The City desires to lease the Property to an individual or entity capable of developing it for use in connection with approved commercial or industrial operations consistent with the surrounding uses and the City's General Plan.

The City envisions a development that is unique or otherwise fulfills a need, thereby diversifying the commercial portfolio of the community and provides residents and surrounding communities with a valuable service. The City desires an arrangement under which the Respondent, or its agent or successor in interest, will establish a use that improves that sector of the City. Special consideration will be given to a proposed project that attracts residents from outside communities to do business in Mendota.

#### **V. GENERAL PROPOSAL REQUIREMENTS**

While attempting to allow potential Respondents the ability to draft responses which meet their individual needs, the City wishes to provide some general guidelines regarding what it is looking for in a successful Respondent.

- The City seeks a responsible entity that will follow through with the entitlement process, development, and establishment of an accepted and successful use of the subject land.
- The City prefers someone that has experiencing developing land, completing projects, and successfully managing a business.

#### **VI. SPECIFIC PROPOSAL REQUIREMENTS**

The City encourages interested and qualified entities to submit proposals in response to this RFP. Multiple proposals of the use for the land from one entity are acceptable within one proposal. Proposals shall include the following:

- The term, in years, for which the Respondent is willing to lease the Land;
- The total amount Respondent is willing to pay, per year, to lease the Land;
- A detailed description of the proposed use, including business type, buildings planned (if any), ground surface to be constructed, fencing, security, and any other details you may deem appropriate for the City to determine the suitability of the use.

- The square footage of the proposed project, including a planned full buildout timeframe;
- The number of individuals the Respondent anticipates to employ including how many of those will be Mendota residents;
- An explanation of how Respondent intends to incorporate local contractors and purchase goods and materials locally;
- An explanation of how Respondent intends to give back to worthwhile and positive community organizations;
- The estimated cost of the project in full buildout;

## **VII. SELECTION PROCESS & CRITERIA**

After the deadline for submission, the City Manager, Finance Director, and Economic Development Manager will evaluate all timely and qualified proposals and score them on a scale of 1 to 100. Upon completion of the evaluation process, the City Manager will present the findings to the City Council at one of its regular or special meetings to select the winning Respondent. The City Council will consider and evaluate the proposals and render a final determination regarding whether to move forward with the lease. If asked to present their proposal to the City Council, Respondents should be prepared to discuss the proposal in detail and to answer questions from the Council and staff.

The following criteria will be used to select the Respondent to which the lease will be granted and will comprise the score that ranges from 1 to 100 for the purposes of qualifying each response:

- 50% of the score will be determined based on the Respondent's proposed cost of the lease and the length of the lease term;
- 30% of the score will be determined based on the suitability of the property for the designed use, the benefits it brings to the area and community, and the quality of the proposed project as a whole;
- 20% of the score will be determined by the quality of the Respondent's written proposal, their disposition towards hiring Mendota residents for construction and long-term operation of the business, and detail related to how their project will provide intangible benefits to the community.

If a Respondent is selected to undertake the project, the Respondent will be expected to:

- Enter into a Lease Agreement that includes, but is not limited to, at least, as a minimum, the term and yearly lease amount contained within their proposal, indemnifies the City to the extent allowable by law, and all other necessary

provisions and stipulations to make said Lease Agreement legally binding and enforceable;

- Work with City Staff to acquire the appropriate entitlements required to operate on the property;
- As part of the Agreement, pay all applicable Development Impact Fees and install pavement or another appropriate and durable material on the totality of the property, with all necessary and required appurtenances.

It is important to note that the successful Respondent will be expected to enter into a long-term Lease Agreement which will contain requirements related to performance and payment expectations. Violations of these are anticipated to be penalized, up to and including cancellation of the lease for actions that are detrimental to the City and its officers or the community as a whole.

## **VIII. PROPOSAL SUBMISSION**

The City will begin accepting proposals when this RFP is issued, and will continue to accept proposals until 5:00pm on Wednesday, November 21, 2018. It is anticipated that the City Council will meet on December 11, 2018 for the purpose of considering the highest scoring proposal(s) submitted.

Proposals must be complete, clear, and concise. Submit the proposal in standard PDF format by e-mail attachment(s) to [matt@cityofmendota.com](mailto:matt@cityofmendota.com), or by mail or delivery to the following address:

Mendota City Hall  
Attn: Matt Flood, City Clerk  
643 Quince St  
Mendota, CA 93640

All proposals shall be sealed and clearly marked: “Proposal for Lease of Naples Property for Industrial Use.” Respondents shall be solely responsible for ensuring its proposal arrives to the City by the deadline set forth above. The City shall not be responsible for any issues arising from mail delivery or circulation.

## **IX. LIMITATIONS AND CONDITIONS**

1. The City reserves the right to reject any and/or all responses, or to withhold the award for any reason. The City may also waive or decline to waive irregularities in any response.
2. The City reserves the right to request additional information from any Respondent.

3. The City reserves the right to extend the deadline for submissions in response to this RFP.

4. The City reserves the right to waive any of the requirements of this RFP.

5. The City may begin negotiations with selected Respondents at the City's discretion. The City anticipates negotiations regarding lease terms to take place after the deadline for proposal submission. If negotiations are successful, the proposed Lease Agreement will be brought to the City Council for its consideration to approve.

6. Upon selection of a Respondent, the City shall provide a Lease and Development Agreement for the parties' execution which will set forth the terms of the lease and development.

7. This RFP and any statements made by City staff or representatives are not a contract or a commitment of any kind by the City and do not commit the City to award an exclusive negotiating agreement or constitute an offer to lease the Property.

8. Potential Respondents are responsible for all costs associated with preparing their submittal. No reimbursement will be made by the City for any cost incurred in preparation of the response to this RFP.

9. The issuance of this RFP does not constitute an agreement by the City that the City Council will approve any contract or that the City will enter into any contract.

10. Respondent's Duty to Investigate:

a. It is the sole responsibility of the Respondent to investigate and determine conditions of the Property, including existing and planned utility connections, the suitability of the conditions for any proposed improvements, the status of any hazardous material remediation, and the need for any additional remediation of the Property.

b. The information presented in this RFP and in any report or other information provided by the City is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that the information contained in this RFP or other documents is accurate and complete. The City and its employees and advisors provide no representations, assurances, or warranties pertaining to the accuracy of the information and no person responding to this RFP is entitled to rely upon any of the information provided.

11. All responses to this RFP shall become the property of the City. The City may use any and all ideas and materials included in any submittals, whether or not the respondent is selected to lease the property.

12. Proposals and all other information and documents submitted in response to this RFP are subject to the California Public Records Act, California Government Code § 6250 *et seq.*, which generally mandates the disclosure of documents in the possession of the City

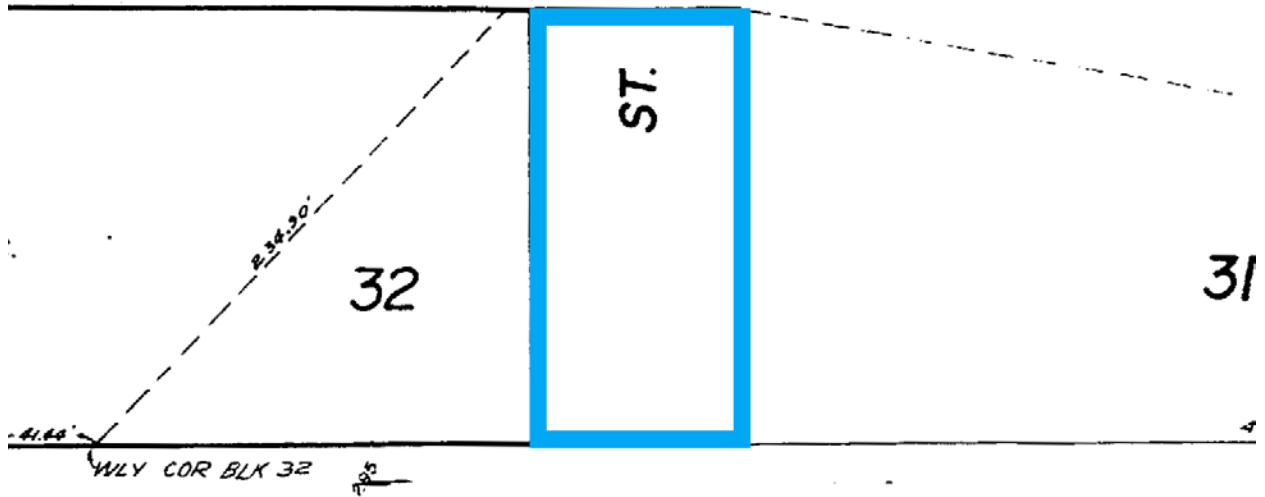
upon the request of any person, unless the content of the document falls within a specific exemption category.

13. “As-Is” Property Condition. The Property will be leased to the successful Respondent in an “as-is” condition, without representation or warranty by the City as to physical or environmental conditions of the land or any existing structures. The City makes no representations regarding the character or extent of soil or subsurface conditions or the conditions and existence of utilities that may be encountered during the course of construction of any work, development, construction, or occupancy of the Property. Respondents will be responsible for independently reviewing all available information that may be available about existing conditions, and undertaking independent analysis of site conditions, including any environmental, health, and/or safety issues.

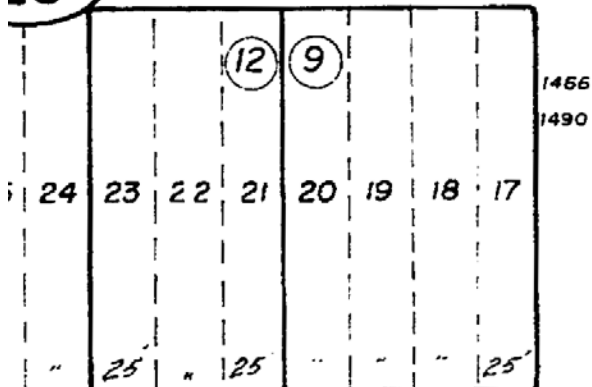
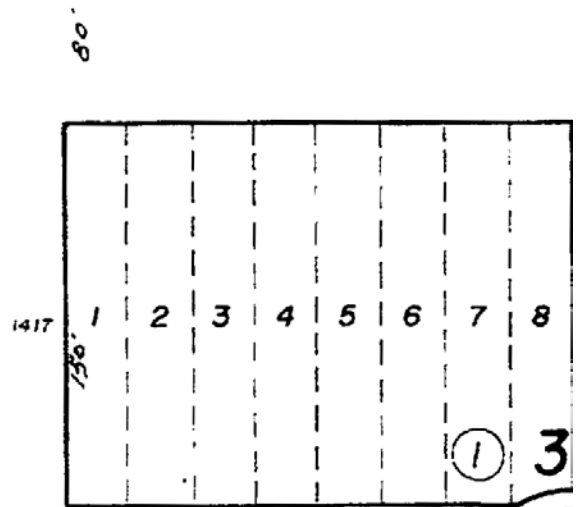
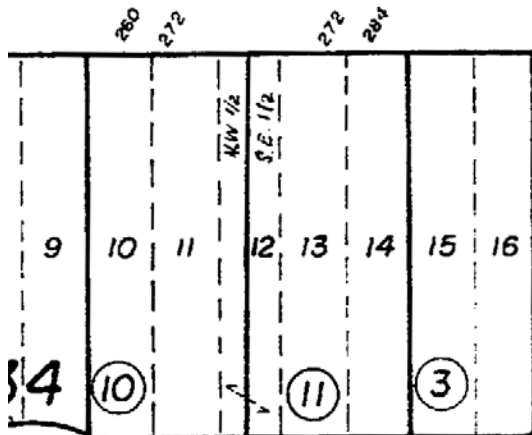
14. The City will not pay for any broker’s commission and/or finder’s fee applicable to the lease of the Property. Therefore, any commission and/or finder’s fee to be paid to any broker or representative of the successful Respondent shall be paid directly by the successful Respondent by a separate arrangement which does not involve the City.



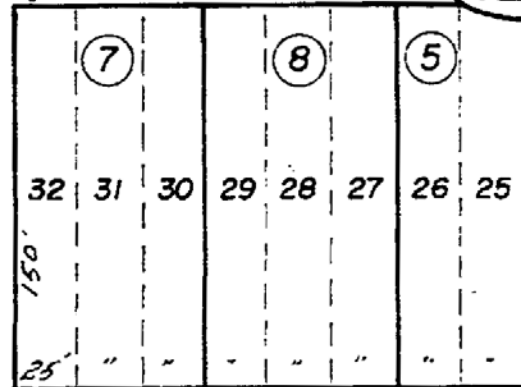
# ATTACHMENT A



## NAPLES



## THIRD



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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** APPROVAL OF AGREEMENT FOR INSTALLATION OF A DMV KIOSK AT CITY HALL  
**DATE:** OCTOBER 23, 2018

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**ISSUE**

Should the City Council adopt Resolution No. 18-75, approving the agreement between ITI Inc. and City of Mendota, for the installation of a DMV services Kiosk to be located at City Hall and authorizing the City Manager to sign all necessary documents?

**BACKGROUND**

Currently, the City leases out a building to the Department of Motor Vehicles (DMV) so that they can provide their services to the community. The DMV is only open Thursdays and Fridays, as such the City Council has instructed staff to work with DMV to expand their services and hours for Mendota. DMV's response was to provide a DMV kiosk in town. They examined various potential locations and selected City Hall as the best suitable location since DMV already provides their services in the City Hall business complex on Thursdays and Fridays.

**ANALYSIS**

Staff has reviewed the proposed contract and believes it is a fair proposal. If approved by the City Council, the kiosk can be installed within 30-60 days. There is compensation for the city in this agreement, but nothing significant. The city will receive a percentage per transaction but not less than a minimum of \$200 per month.

**FISCAL IMPACT**

The compensation for this agreement will cover the cleaning and upkeep of the location.

**RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution which approves the agreement for the installation of a DMV Kiosk by ITI Inc. and authorizes the City Manager to execute all necessary documents.

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AUTHORIZING  
THE CITY MANAGER TO EXECUTE THE  
SERVICES CONTRACT FROM  
INTELLECTUAL TECHNOLOGY, INC  
FOR THE INSTALLATION OF A ITI DMV  
KIOSK AT CITY HALL**

**RESOLUTION NO. 18-75**

**WHEREAS**, the City of Mendota (City) currently leases out a building to the Department of Motor Vehicles (DMV) that provides services for residents on Thursdays and Fridays; and

**WHEREAS**, the City believes there is need for more services and has asked DMV to increase their services for Mendota; and

**WHEREAS**, in response to the City's request for more services, DMV offered to install a DMV kiosk within City Hall building, to be available to the general public during city hall business hours; and

**WHEREAS**, the City requested and received a services contract from ITI Inc, the company that owns and maintains the DMV kiosks, to install and maintain the kiosk and to compensate the city for housing the unit at a minimum of \$200 per month by using a tiered revenue share model on transactional volume levels (Services Contract), attached hereto as Exhibit "A" and incorporated herein by this reference; and

**WHEREAS**, City staff has reviewed the Services Contract and recommends its approval; and

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Mendota hereby approves the Services Contract attached hereto as Exhibit "A" and authorizes the City Manager to execute same.

---

Rolando Castro, Mayor

ATTEST:

I, Matt Flood, 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 23<sup>rd</sup> day of October, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

Matt Flood, City Clerk

## Exhibit A

### ITI SELF-SERVICE TERMINAL SERVICES CONTRACT

This ITI SELF-SERVICE TERMINAL SERVICES CONTRACT ("SST Contract") is entered into this \_\_\_\_ day of October, 2018, by and between City of Mendota (City"), with an office at 643 Quince Street, Mendota, California 93640, and Intellectual Technology, Inc. ("ITI"), a Delaware corporation headquartered at 1901 Camino Vida Roble, Suite 204, Carlsbad, California 92008.

City is willing to place, and ITI is willing to install, one or more self-service Kiosks capable of offering DMV services as more fully described in Schedule A attached hereto, at City location(s) listed defined under Schedule A. ("Locations").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

1. Self-Service Terminal Placement. City and ITI will mutually agree to the number of Kiosks to be placed at the agreed upon Locations. The Kiosk will be available for use only during City's normal business hours.

2. Term. The initial term of this SST Contract shall be through June 31, 2022. Notwithstanding the forgoing, either ITI or City may terminate this SST Contract at any time and for any reason with sixty (60) days written notice.

3. Kiosk Services and Functionality. The Kiosk will provide DMV transactions on accounts linked real-time to the DMV. All services provided by ITI under this SST Contract shall be referred to herein as the "Services".

4. Installation and Setup. ITI shall be responsible for the cost of installing the data and power connections including moving, relocating, or pulling wires or data lines within each Location in order to make data and/or electricity accessible.

5. Information Security. City will not have access to any confidential or personally identifiable information generated by the Kiosk transactions. ITI shall be responsible for all data integrity, data transmission and security of all confidential and personal information.

6. Servicing of Kiosk. ITI shall service the Kiosk and related equipment as often as is necessary to keep the Kiosk properly supplied and in good working order. ITI will provide City with either a local telephone number or an 800 toll free number for service calls. In the event of any SST failure, damage or other problem requiring repairs, replacement, adjustment or maintenance, City shall notify ITI within a reasonable period of time after first becoming aware of such failure or problem. City will use commercially reasonable efforts to prevent anyone, other than an authorized representative of ITI or person designated by ITI, from performing any service or repair work on the SST without ITI's prior written approval.

7. Independent Contractor. ITI and any and all of ITI's agents and employees shall act as independent contractors and not as agents or employees of City. Nothing herein contained shall be construed as constituting the parties hereto as partners, agents of one another or in a joint venture.

8. Confidentiality. The parties understand and acknowledge that in connection with the Services to be performed by ITI and the obligations of City under this SST Contract, from time to time either or both (the "Disclosing Party") may disclose to the other (the "Receiving Party"), either in writing or orally, information relating to the Disclosing Party's businesses, operations, organizations, financial conditions, plans, designs,

marketing strategies and other confidential or proprietary information ("Confidential Information"). The Receiving Party will use such Disclosing Party's Confidential Information solely for the purpose of performing its obligations under this SST Contract unless otherwise agreed in writing between the parties. The parties agree that all Disclosing Party Confidential Information shall be and remain the exclusive property of the Disclosing Party, and that the Receiving Party will take, or cause to be taken, all reasonable steps to safeguard Disclosing Party's Confidential Information against unauthorized disclosure, using procedures and standards no less comprehensive than those used to protect Receiving Party's own Confidential Information. Notwithstanding anything set forth herein to the contrary, no information shall be considered Confidential Information, which (i) is or becomes publicly known through no wrongful act of Receiving Party, (ii) is received by the Receiving Party from a third party without similar restriction and without breach of this SST Contract, (iii) is independently developed by Receiving Party and Receiving Party can reasonably substantiate that the development occurred before disclosure, (iv) is required to be disclosed by law, or (v) is approved for release by the written consent of the Disclosing Party.

9. Consumer Credit Card Confidential Information. ITI shall comply with the Payment Card Industry ("PCI") Data Security Standard, as promulgated and amended by the PCI Security Standards Council, and other applicable payment card industry security requirements with respect to consumer credit card information that is accessed, received or maintained by ITI. If ITI is required to maintain certification pursuant to the PCI Data Security Standard, ITI shall maintain such certification throughout the term of this SST Contract.

10. Indemnification. This SST Contract is being entered into with the express understanding that City is not liable for damages or injury to any person or persons, including ITI's agents and employees, or property damage of any kind whatsoever and to whomever belonging, while in, upon or in any way connected with the SST and/or the use or operations of the SST, arising out of the negligence or other act(s) of ITI or its officers, agents and employees. ITI shall indemnify, defend and hold harmless City from and against all claims, demands, suits, causes of action, awards, judgments and liabilities, including reasonable attorneys' fees and costs (collectively "Claims") arising out of or alleged to have arisen out of:

- a) The failure to observe or perform any duties or obligations of ITI under this SST Contract;
- b) Infringement or violation of the patent, copyright, license, trademark, trade name or other proprietary right of a third party by its employees, agents or other person operating on its behalf; and
- c) Acts or omissions of ITI, its employees, contractors, agents, or other persons acting on its behalf, resulting in Claims arising out of:
  - (i) Death or injury to persons (including, but not limited to claims related to discrimination, slander or libel, or sexual harassment); and
  - (ii) Damage to or loss or destruction of any real or tangible personal property.

11. Insurance. ITI shall maintain during the term of this SST Contract, at its sole cost and expense, the following minimum valid, effective and collectible types of insurance:

- (a) Workers' compensation or qualified self-insurance in compliance with California law.
- (b) Employers' liability insurance with a limit of not less than \$1 million for bodily injury by accident, \$1 million for bodily injury by disease and \$1 million for policy limits.

- (c) Commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than \$2 million each occurrence for bodily injury and property damage and personal and advertising injury, and \$2 million in products and completed operations annual aggregate. Commercial General Liability policy or policies will: (i) provide that the insurance company has the duty to defend all insured's under the policy; and (ii) provide that defense costs are paid in addition to and do not deplete any of the policy limits.
- (d) Business Auto Coverage with a limit of liability of not less than \$1 million for any one accident or loss for bodily injury and property damage and affording coverage for Owned, Hired, Rented and Non-Owned vehicles.
- (e) Professional Liability coverage with a limit of liability of not less than \$1 million for loss due to error, omission, or negligence of ITI, its contractor or its employees.
- (f) ITI shall furnish City with proof of insurance required hereunder prior to installation of the SST.

12. Termination. After the six-month period following the initial installation date of all Kiosks, either party may terminate this Agreement at any time for any reason or no reason with sixty (60) days' notice to the other. This Agreement shall terminate immediately with respect to any locations that are sold, closed, transferred or otherwise disposed of. This Agreement may be terminated for a breach which remains uncured after thirty (30) days' notice from the non-breaching party and by either party in the event of the insolvency, bankruptcy or receivership petition of the other.

13. Obligations. Upon expiration or termination of this SST Contract for any reason, ITI will, at ITI's cost and expense, promptly remove and disconnect the SST (including all manuals, plugs, cables, and associated paraphernalia) after the termination of this SST Contract in a way that is least disruptive to City's business and within thirty (30) days after expiration or termination of this SST Contract. The termination of this SST Contract will not affect the rights of any party with respect to any damages it has suffered as a result of any breach of this SST Contract, nor will it affect the rights or obligations of each party with respect to liabilities or claims that have accrued as a result of such breach including, without limitation, the foregoing obligations.

14. Repairs; Damage and Destruction. City will have no obligation at any time during the term of this SST Contract to make any changes or repairs or improvements to the Location and ITI will accept the Location "as is". If the Location is damaged or destroyed by condemnation or other event, City will have no obligation to repair or restore the same unless it elects to do so in its sole discretion. City will make reasonable efforts to relocate the SST to another appropriate location within the building. If City does not elect or is unable to repair or restore the location or relocate the SST, this SST Contract will immediately be deemed to have terminated without further liability of either party to the other.

15. Notices. All notices provided under this SST Contract shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified, postage prepaid, or by an express delivery service (such as UPS), and addressed to such party at its address set forth below. The address to which notices may be given as aforesaid to either party may be changed by written notice given by one party to the other as hereinabove provided.

Notice shall be sent to the following addresses:

(a) If to ITI:

Intellectual Technology, Inc.  
1901 Camino Vida Roble, Suite 204  
Carlsbad, CA 92008  
Attn: Chief Financial Officer  
Tel: (760) 476-9100  
Fax: (760) 476-9150  
Email: [jlow@iti4dmv.com](mailto:jlow@iti4dmv.com)

(b) If to City:

Mendota City Hall  
643 Quince St.  
Mendota, CA 93640  
Attn: City Manager  
Tel: (559) 655-3291

16. Service Marks and Trademarks. ITI shall not, without City' prior written consent, use the name, service marks of City or the service marks or trademarks used by City.

17. Publicity. All media releases, public announcements and public disclosures by either party relating to this SST Contract or the subject matter of this SST Contract, including promotional or marketing material or signs or posters posted on the SST or elsewhere, but not including announcements intended solely for internal distribution or disclosures to the extent required to meet legal or regulatory requirements beyond the reasonable control of the disclosing party, will be coordinated with and approved by the other party prior to release, which approval such party may withhold in its sole discretion. ITI will ensure that any approved publicity materials referring to City remain current and accurate, and City reserves the right to withdraw a previously granted approval and ITI will cease use of City's name pending ITI's correction of any inaccurate materials.

18. Compliance with Law; Permits; Taxes. ITI shall comply with all applicable laws, rules and regulations with respect to the operation, maintenance and use of the SST and the utility hook-ups including any rules and regulations and other terms or conditions provided with respect to this Agreement, that City has given ITI copies of the same. ITI will obtain, maintain in effect and pay the cost of all licenses or permits required for the operation, use and/or maintenance of the SST. ITI will pay all taxes and other payments required to be paid by ITI as a result of the SST transactions and the presence of the Kiosks in the Locations.

19. Entire Agreement; Amendment. This SST Contract, constitutes the entire agreement between the parties with respect to the subject matter contained in this SST Contract, and supersedes all prior agreements, whether written or oral, with respect to such subject matter. No modification, waiver, or discharge hereof will be valid unless in writing and signed by an authorized representative of the party against which such change, waiver or discharge is sought to be enforced.

20. Successors and Assigns. The terms of this SST Contract and the covenants and agreements herein contained shall apply to and bind and inure to the benefits of the permitted heirs, representatives, assigns and successors in interest of the parties hereto.



21. Severability. The invalidity of any provision of this SST Contract will not affect the validity and binding effect of any other provision and any invalid provision will be severed from this SST Contract and the remainder of the SST Contract will be enforced to the maximum extent permitted by applicable law and in keeping with the original intention of the parties.

22. ADA Compliance. ITI represents and warrants to City that the Kiosk (including utility hook-ups) is, and during the term of this SST Contract will continue to be, compliant with the Americans with Disabilities Act and any similar state laws, rules and regulations.

23. Relocation. City may, from time to time, request that the Kiosk be relocated within the Location temporarily or permanently. If requested, ITI shall relocate the SST within thirty (30) days of written request by City. City shall pay any costs associated with the relocation.

24. Signs. Notwithstanding anything herein to the contrary, ITI shall not have the right to install any interior or exterior signs unless ITI first obtains (a) City' prior consent, and (b) prior consent of any third parties or governmental approvals that have rights over the same.

25. Waiver. The failure of a party to insist upon strict performance of any of the covenants or restrictions contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the covenants or obligations contained herein by the same or any other party.

26. Governing Law; Jurisdiction. This SST Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of California, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction.

27. Counterparts/Electronic Signatures. This SST Contract may be executed in counterparts and which counterparts shall be deemed an original and all of which together shall constitute a single instrument, and shall be effective upon execution and delivery of one or more of such counterparts by each of the parties hereto. Electronic signatures (copied, facsimile or PDF) shall be deemed originals for all purposes.

IN WITNESS WHEREOF, this SST Contract has been executed by the parties hereto as of the date first written above.

CITY

INTELLECTUAL TECHNOLOGY, INC.

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name: John W. Low

Title: Chief Financial Officer

## **SCHEDULE A – Store Locations and Addresses**

<b><u>Location</u></b>	<b><u>Street</u></b>	<b><u>City</u></b>	<b><u>State</u></b>	<b><u>Zip</u></b>
Mendota City Hall	643 Quince Street	Mendota	CA	93640

Additional store locations can be added by mutual written agreement between ITI and City at any time.

### **Kiosk Services and Functionality**

Kiosks will accept payment via cash, credit cards and debit cards, and electronic checks. ITI will supply the Kiosks with all consumables and supplies at ITI's expense. The Kiosk shall not be used for the sale or distribution of merchandise or coupons without City' prior written consent.

### **Maintenance of Kiosk**

ITI is responsible for the maintenance and repair of the Kiosk and its utility hookups and shall keep the Kiosk and its utility hookups in good repair. ITI will be responsible for all supply costs. ITI shall have sole responsibility for paying all costs for operating, servicing and replacing the Kiosk and any necessary related equipment. City shall furnish ITI with electrical energy for the operation of the Kiosk at no charge.

### **Minimum Self-Service Terminal Requirements**

In exchange for ITI installing the Self-Service Terminals and covering costs of equipment, software, service support and supplies, there is a requirement to maintain minimum transaction volume levels each month. If ninety (90) days after initial installation there is any full month period where any Self-Service Terminal is not meeting at least monthly minimum volumes of 800 transactions per month, then ITI has the right remove the Self-Service Terminal, at ITI's own expense, from the Location after a thirty (30) day notice.

### **Coordination of Service**

1. City' Responsibilities.
  - (i) Provide access to business and technical documentation as necessary for ITI to complete the tasks identified under the Kiosk Contract to which this Schedule A is attached.
  - (ii) Use its best efforts to provide data and electrical outlets at the Location, if required.
  - (iii) Provide access to City' staff, management, officers and operation areas as required, to complete the tasks and activities defined under the Kiosk Contract to which this Schedule A is attached.

### **Financial Consideration**

1. City acknowledges that Self-Service Terminals are installed to provide a value-added service for their customers. In consideration for use of the space and assistance with advertising initiatives, ITI will provide City monetary compensation for Self-Service Terminals installed in their Location(s).
2. ITI will provide a tiered revenue share model based on transactional volume levels with a monthly

minimum of \$200 per kiosk.

- (i) 12.5% Up to 1,500 transactions per kiosk per month
  - (ii) 15% 1,501 – 2,500 transactions per kiosk per month
  - (iii) 18% 2,501 – 5,000 transactions per kiosk per month
  - (iv) 20% Over 5,000 transactions per kiosk per month
3. The percentage will be calculated using a predetermined base rate (normally \$3.00 per transaction)
  4. City will provide a grace period consisting of the month of install plus the following month. Thus, if a kiosk is installed any day in March, extremes 1<sup>st</sup> or 30<sup>th</sup>, the revenue share program would start May 1<sup>st</sup> for that kiosk location.

### **Advertising Initiatives**

1. Advertising Initiatives:

The parties shall conduct advertising initiatives that have been mutually agreed upon between the City and ITI. On a quarterly basis ITI and City will jointly review the initiatives to determine effectiveness and modify if necessary. At all times there will be two initiatives implemented to assist with program awareness. These advertising initiatives may include, but will not be limited to:

- (i) Display of ITI provided window clings on exterior windows at entrance doors of City Hall with kiosk and/or ironman/sandwich board signs.
- (ii) Share posts created by State DMV/ITI personnel for Facebook and Twitter mentioning kiosks.
- (iii) Include kiosk information on City website banner, redirecting people to state's kiosk webpage, and/or list under services offered at City locations with kiosks.
- (iv) Include notice of DMV kiosk availability on city billings..
- (v) Distribute ITI provided handouts while providing other City Hall services.

### **Construction**

ITI agrees to coordinate with City regarding any construction work by ITI which would affect City' premises or the building. If possible ITI will utilize City's preferred vendor for construction/installation services.

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** FIRST ADDENDUM TO THE LA COLONIA SUBDIVISION DEVELOPMENT AGREEMENT FOR PARK IMPROVEMENTS  
**DATE:** OCTOBER 23, 2018

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**ISSUE**

Shall the City Council conduct the second reading, hold the public hearing of, and adopt Ordinance No. 18-06, an addendum to the La Colonia Subdivision Development Agreement, changing the location of the soccer field improvements?

**BACKGROUND**

Back in August the City Council approved a Development Agreement for the La Colonia Subdivision. Part of the agreement required that the developer reconstruct the existing soccer field at Rojas Pierce Park. Recently, the City Council directed staff to bring forth an addendum to the agreement that would require that the developer construct a completely new soccer field adjacent to the existing soccer field. This would allow for a future baseball diamond to be built at the existing soccer field site.

The City Council conducted the first reading of the proposed ordinance at its October 9<sup>th</sup> regular meeting.

**ANALYSIS**

If the Council so desires to change the location of the soccer field and approve the addendum, this will delay the project a few months, but the end result would be a new soccer field, not a remodeled one. This would also allow room for construction of a new baseball diamond directly next to the existing diamond.

**FISCAL IMPACT**

This addendum will require some additional grading costs, but it appears that there is sufficient in lieu fees to support the additional fees.

**RECOMMENDATION**

Staff recommends that the Mayor perform the public hearing, that the Council conduct the second reading, and that the Council adopt Ordinance No. 18-06.

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

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
AN ADDENDUM TO THE DEVELOPMENT  
AGREEMENT BY AND BETWEEN THE  
CITY OF MENDOTA AND KSA HOMES,  
INC., RELATING TO THE DEVELOPMENT  
OF THE PROPERTY COMMONLY KNOWN  
AS THE LA COLONIA PROPERTY**

**ORDINANCE NO. 18-06**

**WHEREAS**, on August 28, 2018 the City Council of the City of Mendota (“City”) adopted Ordinance No. 18-04, approving a development agreement by and between the City and KSA Homes, Inc. (“Developer”), attached hereto as Exhibit “A” and incorporated herein by this reference (“Development Agreement”);

**WHEREAS**, Exhibit “H” to the Development Agreement provides, among other things, that Developer shall reconstruct the existing soccer field at Rojas Pierce Park by April 30, 2019;

**WHEREAS**, the City and Developer desire that, rather than requiring Developer to reconstruct an existing soccer field at Rojas Pierce Park by April 30, 2019, Exhibit “H” to the Development Agreement require Developer to construct a new soccer field at Rojas Pierce Park by May 30, 2019.

**WHEREAS**, staff has prepared an addendum to the Development Agreement modifying Exhibit “H” thereto in accordance with the intentions of City and Developer, which is attached hereto as Exhibit “B” and incorporated herein by this reference (“Addendum”);

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement attached hereto as Exhibit “A” and the Addendum to the Development Agreement attached hereto as Exhibit “B.”

**SECTION 2.** This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to “Development Agreement Regulations.”

**SECTION 3.** In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

1. The Development Agreement, as modified by the Addendum, is consistent with the objectives, policies, general land uses and programs specified in the

General Plan, as amended, in that it establishes certain development rights, obligations and conditions for the implementation of the La Colonia Property;

2. The Development Agreement, as modified by the Addendum, is compatible with the uses authorized in, and the regulations prescribed for, the general plan designations which will apply to the La Colonia Property;
3. The Development Agreement, as modified by the Addendum, is in conformity with public convenience, general welfare and good land use practice;
4. The Development Agreement, as modified by the Addendum, will not be detrimental to the public health, safety and general welfare;
5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and

**SECTION 4.** The foregoing findings and determinations are based upon the following:

1. The Recitals set forth in this Ordinance, which are deemed true and correct;
2. Ordinance No. 18-04, adopted by the City Council on August 28, 2018, approving the Development Agreement by and between City and Developer, and the Recitals therein, which are deemed true and correct;
3. Resolution No. 18-61, adopted by the City Council on August 14, 2018, making findings as to the Mitigated Negative Declaration for the La Colonia Project, approved by and incorporated in said Resolutions, which Resolutions and exhibits are incorporated herein by reference as if set forth in full;
4. The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. 18-62 prior to adoption of this Ordinance;
5. All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the Mitigated Negative Declaration, the General Plan Amendment, zone change, Vesting Tentative Subdivision Map, the Development Agreement, and other actions relating to the Property;
6. All documentary and oral evidence received at public hearings or submitted to the Planning Commission, or City during the comment period relating to the Mitigated Negative Declaration, the General Plan Amendment, zone change, Vesting Tentative Subdivision Map, the Development Agreement, and other actions relating to the Property; and
7. All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City general ordinances, policies and regulations.

**SECTION 5.** The City Council hereby approves the Addendum, attached hereto as Exhibit "B," subject to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, as

approved by the City Council.

**SECTION 6.** Upon the effective date of this Ordinance as provided in Section 8 hereof, the Mayor and City Clerk are hereby authorized and directed to execute the Addendum on behalf of the City of Mendota.

**SECTION 7.** The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

**SECTION 8.** This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

\* \* \* \* \*

The foregoing ordinance was introduced on the 9<sup>th</sup> day of October, 2018 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 23<sup>rd</sup> day of October, 2018 by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Rolando Castro, Mayor

ATTEST:

\_\_\_\_\_  
Matt Flood, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John Kinsey, City Attorney

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

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
AN AGREEMENT BY AND BETWEEN THE  
CITY OF MENDOTA AND KSA HOMES,  
INC., RELATING TO THE DEVELOPMENT  
OF THE PROPERTY COMMONLY KNOWN  
AS THE LA COLONIA PROPERTY**

**ORDINANCE NO. 18-04**

**WHEREAS**, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

**WHEREAS**, in accordance with the Development Agreement Statute, the City of Mendota (the "City") has enacted regulations (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

**WHEREAS**, the La Colonia Property is owned by KSA Homes, Inc., a California Limited Liability Corporation ("Developer"); and

**WHEREAS**, on August 14, 2018, the City certified the Mitigated Negative Declaration for the La Colonia Project; and

**WHEREAS**, prior to adopting this Ordinance, the City Council, on August 14, 2018, adopted Resolution No. 18-61, finding that, where feasible, mitigation measures have been imposed and modifications incorporated into the Project which avoid or substantially lessen all significant adverse environmental impacts; and

**WHEREAS**, the City Council of the City of Mendota adopted Resolution No. 18-62, which approved a general plan amendment for the La Colonia Property; and

**WHEREAS**, the City Council of the City of Mendota adopted No. 18-03, which approved a zone change for the La Colonia Property; and

**WHEREAS**, Developer desires to carry out the development of the La Colonia Property consistent with the General Plan, as amended, zone change and the Development Agreement and the vested entitlements referenced therein; and



**WHEREAS**, the Development Agreement will assure the City and its residents and the Developer that the Development will proceed as proposed and that the public improvements and other amenities and funding obligations, will be accomplished as proposed; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on June 19, 2018, on the Mitigated Negative Declaration, the General Plan Amendment, zone change and project entitlements, during which public hearing the Planning Commission received comments from the Developer, City staff, public agencies and members of the general public; and

**WHEREAS**, following the public hearing, the Planning Commission made a recommendation to the City Council on the Mitigated Negative Declaration, the General Plan Amendment, zone change, Vesting Tentative Subdivision Map and the Development Agreement; and

**WHEREAS**, pursuant to Section 65867 of the Government Code, the City Council, on August 14, 2018, held a duly noticed public hearing on the Mitigated Negative Declaration, the General Plan Amendment, zone change, project entitlements, and the Development Agreement, during which public hearing, the City Council received comments from the Developer, City staff, public agencies and members of the general public; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement attached hereto as Exhibit A.

**SECTION 2.** This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to "Development Agreement Regulations".

**SECTION 3.** In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, in that it establishes certain development rights, obligations and conditions for the implementation of the La Colonia Property;
2. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the general plan designations which will apply to the La Colonia Property;
3. The Development Agreement is in conformity with public convenience, general welfare and good land use practice;
4. The Development Agreement will not be detrimental to the public health, safety and general welfare;

5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and

**SECTION 4.** The foregoing findings and determinations are based upon the following:

1. The Recitals set forth in this Ordinance, which are deemed true and correct;
2. Resolution No. 18-61, adopted by the City Council on August 14, 2018, making findings as to the Mitigated Negative Declaration for the La Colonia Project, approved by and incorporated in said Resolutions, which Resolutions and exhibits are incorporated herein by reference as if set forth in full;
3. The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. 18-62 prior to adoption of this Ordinance;
4. All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the Mitigated Negative Declaration, the General Plan Amendment, zone change, Vesting Tentative Subdivision Map, the Development Agreement, and other actions relating to the Property;
5. All documentary and oral evidence received at public hearings or submitted to the Planning Commission, or City during the comment period relating to the Mitigated Negative Declaration, the General Plan Amendment, zone change, Vesting Tentative Subdivision Map, the Development Agreement, and other actions relating to the Property; and
6. All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City general ordinances, policies and regulations.

**SECTION 5.** The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, as approved by the City Council.

**SECTION 6.** Upon the effective date of this Ordinance as provided in Section 8 hereof, the Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City of Mendota.

**SECTION 7.** The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

**SECTION 8.** This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

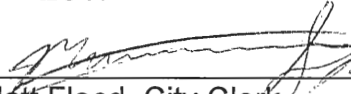
\* \* \* \* \*

The foregoing ordinance was introduced on the 14<sup>th</sup> day of August, 2018 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 28<sup>th</sup> day of August, 2018 by the following vote:

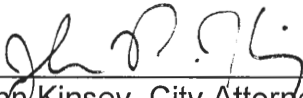
**AYES: 4 – Mayor Pro Tem Martinez, Councilors Mendoza, Rosales, and Silva**  
**NOES: 0**  
**ABSENT: 1 – Mayor Castro**  
**ABSTAIN: 0**

  
\_\_\_\_\_  
Victor Martinez, Mayor Pro Tem

ATTEST:

  
\_\_\_\_\_  
Matt Flood, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
John Kinsey, City Attorney



## DEVELOPMENT AGREEMENT

By and Between  
THE CITY OF MENDOTA  
and  
KSA HOMES, INC.

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this 28<sup>th</sup> day of August, 2018 (the “**Effective Date**”) by and between the City of Mendota, a municipal corporation (the “**City**”), and **KSA Homes, Inc., a California corporation (“Developer”)**, pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California. City or Developer may be referred to herein individually as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

### RECITALS

**A. Legal Authority.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 et seq. of the Government Code (“**Development Agreement Law**”) authorizing any city, county or city and county to enter into a binding development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject of the development project application.

**B. Project Description.** On August 14, 2018, the City adopted the Mitigated Negative Declaration for the La Colonia Project (Resolution No. 18-61). The La Colonia Project includes two parcels containing approximately 18.7 acres on the south side of Bass Avenue, east of State Highway 33 in the City of Mendota, bearing Fresno County Assessor’s Parcel Numbers of 013-061-015 and 012-160-039 (the “Subject Property”). The La Colonia Project includes 86 lots for single family homes, a lot for a mini park, and a 1.65-acre lot for future commercial development. Attached hereto as **Exhibit B** and incorporated herein by this reference is a map depicting the location of the La Colonia Project that is governed by this Agreement.

**C. Developer’s Interest in Land.** California Government Code section 65865 requires an applicant for a development agreement to hold a legal or equitable interest in the real property that is the subject of the development agreement. Developer is the fee simple owner or has an equitable interest in the Subject Property, more particularly described in the legal description attached hereto as **Exhibit A** and the Site Map attached hereto as **Exhibit B**. Developer seeks to develop the Subject Property consistent with the 2025 Mendota General Plan (“**General Plan**”).

**D. Development Approvals.** The following development approvals (“**Development Approvals**”) affecting the Subject Property have been previously approved by the City or will be approved concurrently with this Agreement:

1. A Mitigated Negative Declaration (“MND”), including project-specific mitigation measures adopted by the City.
2. General Plan Amendment 2018-01, amending the Land Use Map of the General Plan to change the land use designation of the project site from “Community Commercial” and “High Density Residential” to “Medium Density Residential” and a smaller area of “Community Commercial” and “Recreational” approved by the City Council. (Resolution No. 18-62).
3. Zone Change 2018-01, changing the zoning of the Site, adopted by the City Council. (Ordinance No. 18-03).
4. This Development Agreement approved by the City Council (Ordinance No. 18-04, adopted on August 28, 2018).
5. Tentative Subdivision Map No. 2018-01, creating 86 single family lots, a lot for commercial development, and a lot for a mini park, approved by the Planning Commission on June 19, 2018 (“Tentative Map”) (**Exhibit C**).

**E. Certainty Desired.** Developer desires to carry out the development of the Subject Property as a mixed use development consistent with the General Plan, the Development Approvals, and this Agreement. The complexity, magnitude and long term build-out of the Subject Property would be difficult for Developer to undertake if the City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with the development of the Subject Property. In order to obtain the housing, tax and other benefits the development of the Subject Property will provide and to assure that the impacts of the La Colonia Project will be adequately addressed, City desires certainty as to the scope of development, and in particular that needed infrastructure, facilities and services related to the La Colonia Project will be provided in a timely fashion. Developer desires certainty regarding the type and amount of development fees and exactions that it will be charged by the City and to define the design review and permitting process. As a result of the execution of this Agreement, both Parties can be assured that the development of the Subject Property can proceed without disruption caused by a change in City planning and development policies and requirements.

**F. Subsequent Development Approvals.** In addition to the Development Approvals, the development of the Subject Property will require various additional future land use and construction approvals from the City to implement the Development Approvals (“**Subsequent Development Approvals**”). Subsequent Development Approvals may include but are not limited to: parcel maps (vesting or otherwise), conditional use permits, site plans and building permits.

**G. Consistent with General Plan.** The City hereby finds and determines that the execution of this Agreement is in the best interests of the public health, safety and general welfare and is consistent with the General Plan.

**H. Voluntary Agreement.** This Agreement is voluntarily entered into by the Developer in order to implement the General Plan and in consideration of the rights conferred and the procedures specified herein for the development of the Subject Property. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion in order to implement the General Plan and in consideration of the agreements and undertakings of the Developer hereunder.

**I. Project Provides Substantial Benefits.** This Agreement furthers the public health, safety and general welfare, and the provisions of this Agreement are consistent with the General Plan. For the reasons recited herein, the City and Developer have determined that the La Colonia Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Development Approvals and Subsequent Development Approvals, thereby encouraging planning for, investment in and commitment to use and develop the Subject Property. Continued use and development of the Subject Property is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Law was enacted:

1. Provide for the development of unused agricultural land.
2. Provide increased tax revenues for the City.
3. Provide for jobs and economic development in the City.
4. Provide infrastructure improvements that can be utilized by regional users and future users.

**J. CEQA.** The City Planning Commission, in its independent judgment, on the basis of an initial environmental assessment and findings of no significance, found that the La

Colonia Project will not have a significant impact on the environment and adopted a Mitigated Negative Declaration on June 19, 2018.

**K.** This Agreement was reviewed at a duly noticed public hearing before the City Council of the City.

**L.** The City Council, after a duly noticed public hearing, found that the provisions of this Agreement are consistent with the General Plan and other applicable plans and policies of the City.

**M.** On August 28, 2018, the City Council adopted **Ordinance** No. 18-04 approving this Agreement. A copy of the Ordinance is attached hereto as **Exhibit D** and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer (each herein sometimes called a “**Party**” and jointly the “**Parties**”) hereby agree as follows:

## **AGREEMENT**

### **ARTICLE 1**

#### **GENERAL PROVISIONS**

**100. Property Description and Binding Covenants.** The Subject Property is that property described in **Exhibit A**. The Developer represents that it has a legal or equitable interest in the Subject Property and that all other persons holding legal or equitable interests in the Subject Property (excepting owners or claimants in easements) are bound by this Agreement. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Subject Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties. The Developer hereby warrants that any and all parties having record title interest at the time of execution of this Agreement in the Subject Property which may ripen into a fee have subordinated to this Agreement and that all such instruments of subordination, if any, are attached hereto and made a part of this Agreement. To the extent there exists any area of the Subject Property have has not yet been annexed to the City, said property shall be so annexed prior to expiration of the term of this Agreement as the same may be amended and the duration extended pursuant to the terms of Section 700.

**101. Vested Rights.** Developer shall have a vested right to develop the Subject Property for the period this Agreement is in effect in accordance with the Development Approvals,

Subsequent Development approvals, the provisions of this Agreement and Applicable Rules (as defined in Section 102.1). The Parties have negotiated and agreed upon the development impact fees, dedications, and exactions that will be required in connection with the development of the Subject Property. The off-site improvements, dedications and exactions applicable to the Subject Property are set forth in **Exhibit E** (Storm Drain), **Exhibit F** (Traffic Signal), **Exhibit G** (Well), and **Exhibit H** (Soccer Field). The Parties intend that these shall be the only off-site improvements, dedications, and exactions applicable to the development of the Subject Property during the period this Agreement is in effect. In lieu of portions of the development impact fees applicable to the development of the Subject Property, Developer shall be required to construct the off-site improvements as further described in **Exhibit E** (Storm Drain), **Exhibit F** (Traffic Signal), **Exhibit G** (Well), and **Exhibit H** (Soccer Field) (collectively, the “**In Lieu Improvements**”).

As set forth in **Exhibit E**, **Exhibit F**, **Exhibit G**, and **Exhibit H**, Developer shall be eligible for partial reimbursement of the subject off-site improvements. Portions of the reimbursements, as specified in each of these Exhibits, shall be payable as acceptable progress is made and upon timely completion of the enumerated improvements and acceptance thereof by the City. The remaining portions of the reimbursements shall be repaid as credits against the cumulative Development Impact Fees that would otherwise be assessed to the development. These fees are set forth in **Exhibit I**. No reimbursement will be made for any costs for the improvements in **Exhibit E**, **Exhibit F**, **Exhibit G**, and **Exhibit H** which are in excess of the total Development Impact Fees which would be assessed to the development.

To the extent that the City’s regular Development Impact Fees for the development exceed the reimbursable portions of the offsite improvements set forth in **Exhibit E**, **Exhibit F**, **Exhibit G**, and **Exhibit H**, the remaining amounts shall be paid by the Developer to the City. The City shall divide the funds between its several Development Impact accounts in proportion to the total overall fee that would have been charged to the development in the absence of this Development Agreement.

After the first eight (8) years of this Agreement, the development impact fees applicable to the development of the Subject Property shall be **all** applicable fees, as reasonably determined by the City, adopted by the City and in effect at the time payment of the fees is required, including any new fees the City adopted at any time the Agreement is in effect. The amount of the fees applicable to the development of the Subject Property after the first eight (8) years the agreement is in effect shall be as set forth in the most current adopted Master Fee schedule at the time payment is required.

The amounts of permit processing fees shall be in accordance with City standard practice and regulation at the time of this Agreement. Nothing provided in this Agreement shall limit the



Developer from exercising vesting rights obtained before or after execution of this Agreement through other means.

To the extent not otherwise provided in this Agreement, the conditions of approval and mitigation measures in the Development Approvals related to dedications and reservation of easements are intended to meet the requirements of Government Code section 65865.2 related to a development agreement providing a provision for the reservation or dedication of land for a public purpose.

## **102. Rules, Regulations and Official Policies.**

**102.1 Applicable Rules, Regulations and Official Policies.** For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, density, design, improvement and construction standards and specifications applicable to the development of the Subject Property shall be the Applicable Rules as defined in this Section 102.1. The Applicable Rules are defined as those rules, regulations, and official policies set forth in (i) the Development Approvals; (ii) this Agreement (including Exhibits); and (iii) with respect to matters not addressed by these documents, those rules regulations, official policies, standards and specifications in force on the date of this Agreement, to the extent not inconsistent with the Development Approvals and this Agreement. The Applicable Rules shall also include, any changes in the General Plan, City of Mendota Zoning Ordinance (“**Zoning Ordinance**”) or any future rules, ordinances, regulations or policies adopted by the City which are made applicable by the provisions of Section 102.2.

Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, Zoning Ordinance or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the development of the Subject Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the parties mutually agree to amend or modify this Agreement pursuant to Section 700.

To the extent not otherwise provided in this Agreement, the requirements of the Applicable Rules shall fulfill the requirements of Government Code section 65865.2 related to the agreement specifying allowed uses, allowed density and intensity of uses and maximum height and size of proposed buildings.

**102.2 Changes in State or Federal Law.** This Section shall not preclude the application to the development of the Subject Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the date of this Agreement, or action by any governmental jurisdiction other than the City required

by state or federal laws, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, then the Parties shall meet and confer in good faith to determine the feasibility of modifying, extending or suspending one or more provisions of this Agreement as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction required by state or federal laws. The Developer shall provide a reasonable number of options to the City and demonstrate the feasibility of modifying, extending or suspending the Agreement in part. Developer is required to provide all engineering and analysis (which shall meet industry and City standards) to support its position.

To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including the City, required by federal or state laws) have the effect of preventing, delaying or modifying development of the Subject Property, the City shall not in any manner be liable for any such prevention, delay or modification of said development. The Developer is required, at its cost and without cost to or obligation on the part of the City, to participate in such regional or local programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of federal or state agencies required by federal or state laws (or such actions of regional and local agencies, including the City, required by federal or state laws).

**103. City's Reservation of Authority.** The Parties acknowledge that the intent of the Parties is that this Agreement be construed in a manner that protects the vested rights granted to Developer herein to the maximum extent allowed by law. The Parties further acknowledge and agree, however, that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to the City all of its police power and/or statutory or other legal powers or responsibilities that cannot be so limited. This Agreement shall be construed to reserve to the City all such power and authority which cannot be restricted by contract, including compliance with the California Environmental Quality Act (CEQA). Nor shall this Agreement be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit the discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by the City or any of its officers or officials.

**104. Term; Recordation.** The term of this Agreement shall commence upon the recordation of this Agreement with the County Recorder and shall extend for a period of twenty (20) years. Thereafter, unless said term is modified or extended by mutual consent of the Parties, subject to the provisions of Section 700 hereof, upon expiration of said term, this Agreement shall be deemed terminated and of no further force and effect and the Parties shall, upon request of the City, execute an appropriate certificate of termination which shall be recorded in the official

records of the County, subject, however, to the provisions of Section 307 hereof. The City Planning Director shall record the Agreement within 10 days of final approval by Council.

**105. Sale or Assignment; Release.** This Agreement, its rights, duties or obligations may be assigned, sold, exchanged or transferred, in whole or in part, in connection with a transfer by Developer of all or a portion of its interests in the Subject Property, subject to the terms of this Section.

**105.1** A sale, transfer or assignment of all or a portion of Developer's interest in this Agreement shall not require the approval of the City if:

- a. All processing fees then due have been paid as required by the terms of this Agreement, and all In Lieu Improvements required in **Exhibit E** (Storm Drain), **Exhibit F** (Traffic Signal), **Exhibit G** (Well), and **Exhibit H** (Soccer Field) and any other public improvements and facilities required to be constructed or installed by Developer in connection with the development of the Subject Property, or applicable portion thereof, have been constructed and installed, or Developer or the proposed assignee have provided security adequate, in the reasonable discretion of the City, to assure construction and installation of any and all such public improvements and facilities and the City receives a copy of the assignment that meets the requirements of Section 105.3; or
- b. The sale, transfer or assignment is to an entity controlled by or in common control with Developer; or
- c. The transfer or assignments results from the death or mental or physical incapacity of an individual who is a controlling member of the Developer corporation; or
- d. The transfer or assignment is in trust for the benefit of a spouse, children, grandchildren or other family members of a controlling member of the Developer corporation; or
- e. The transfer or assignment consists of the granting of a security interest in this Agreement and the enforcement or use of such security interest in accordance with the remedies available thereunder.

**105.2** Any other sale, transfer or assignment of all or a portion of Developer's interest in this Agreement shall require the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed.

**105.3** Any proposed assignee or transferee shall agree to assume and be bound by all applicable duties, obligations and covenants of the Developer under this Agreement. The assumption must be set forth in an assumption agreement in a form reasonably acceptable to and approved in writing by the City. Any assumption agreement shall include a Notice to the assignee that they may be subject to fees for development of the property, as limited by the terms of this Agreement.

**105.4** If the Developer transfers the Subject Property and assigns this Agreement in violation of the terms of this Section, the City may terminate the Agreement at its discretion with fifteen (15) days' written notice.

**105.5** The Developer acknowledges that the City has formed a community facilities district (the "CFD") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act") to finance all or a portion of the cost of providing police, fire and paramedic services, as well any other services determined by the City which are allowed to be financed pursuant to the Act, that are in addition to those provided in the territory within the CFD prior to the formation of the CFD and do not supplant services already available within the territory proposed to be included in the CFD and to levy a special tax to pay for such services. The Developer agrees to include Tract No. 6218 in the CFD or annex Tract No. 6218 into the CFD, and the Developer shall cooperate with the City and take any necessary actions in order to assist the City in annexing Tract No. 6218 into the CFD. In furtherance of the foregoing, the Developer agrees to approve the levy of a special tax on any residential dwelling unit in the amount that is no less than \$855.43 per year but not greater than \$855.43 per year, which shall be subject to an annual escalation factor of no less than 2% but no greater than the rate of increase in the Consumer Price Index published by the U.S. Department of Labor for the County of Fresno.

**105.6** Because of the extensive landscaping Developer will be constructing along the Bass Avenue frontage of the Project, and the landscaping improvements required for the pocket park proposed within the development, the City intends to form a Landscape and Lighting District (LLD) under the Landscape and Lighting of 1972 (Street & Highways Section 22500, et seq.) to finance the ongoing maintenance, irrigation and repair costs for those areas, which will all be the responsibility of the City. The Developer agrees to annex Tract No. 6218 into the LLD, and the Developer shall cooperate with the City and take any necessary actions in order to assist the City in annexing Tract No. 6218 into the LLD. In furtherance of the foregoing, the Developer agrees to approve the levy of an assessment on any residential dwelling unit in the amount that is no less than \$242.00 per year but not greater than \$242.00 per year, which shall be subject to an

annual escalation factor of no less than 2% but no greater than the rate of increase in the Consumer Price Index published by the U.S. Department of Labor for the County of Fresno.

**ARTICLE 2**  
**DEVELOPMENT OF THE SUBJECT PROPERTY**

**200. Permitted Uses and Development Standards.** In accordance with and subject to the terms and conditions of this Agreement, the Developer may develop the Subject Property for the uses and in accordance with the Applicable Rules, including the standards, uses and processes contained in the Development Approvals, Subsequent Development Approvals, and this Agreement.

**201. Approvals.**

**201.1. Processing Subsequent Development Approvals.**

**201.1.1 Timely Submittals By Developer.** Developer acknowledges that City cannot begin processing Subsequent Development Approvals until Developer submits complete applications. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other required materials as set forth in the Applicable Rules. Developer shall use all reasonable efforts to submit or cause to be submitted documents, applications, plans and other information necessary for City to carry out its obligations hereunder that are in a final form, not subject to unreasonable changes by the Developer and that comply with this Agreement and all Applicable Rules. Plan changes made after submittal pursuant to this Section will be subject to such additional charges as provided in **Exhibit I**. The City reserves the right to reject any incomplete or non-conforming submittals.

**201.1.2 Timely Processing By City.** Upon submission by Developer of all appropriate applications and applicable processing fees for any Subsequent Development Approvals, City shall promptly and diligently, subject to the reasonable availability of City resources and City's procedural requirements, commence and complete all steps necessary to act on Developer's Subsequent Development Approval applications. Upon Developer's request and at the City's discretion, the City may provide, at Developer's expense, additional staff and/or staff consultants for concurrent, expedited planning and processing of each Subsequent Development Approval application.

**201.1.3 Effect of Legal Proceedings.** Notwithstanding any pending administrative or judicial proceedings, initiative or referendum concerning the Development Approvals or Subsequent Development Approvals, and provided that such actions by City or Developer are not proscribed by law or court order, City shall process the Developer's applications for Subsequent Development Approvals as provided for herein to the fullest extent allowed by law and Developer may proceed with development pursuant to the Development Approvals or Subsequent Development Approvals to the fullest extent allowed by law.

**201.2. Certificate of Occupancy.** Subject to any requirements in this Agreement for issuance of certificates of occupancy, the City shall use all reasonable efforts to diligently and promptly provide a certificate of occupancy for any portion of the Subject Property when applied for by the Developer and upon completion of all necessary requirements to obtain a certificate of occupancy.

**201.3. Non-Development Entitlement Plan Review.** Nothing provided in this Section 201 is intended to include the submission and review by the City of plans for off-site improvement (as required under Exhibit E, Exhibit F, Exhibit G, and Exhibit H), including but not limited to, construction plans for traffic signals, storm drains, and public water systems or well sites. Procedures to be used for review of off-site improvements shall be pursuant to then existing City policies, ordinances and standards. Plan submittals for off-site improvements will not be given priority status over any other submittals but will be reviewed on a "first in first out" basis.

## **202. Public Facilities.**

**202.1. Financing and Construction.** Developer is responsible for financing and constructing the following public facilities in conjunction with the development of the Subject Property, all as set forth in the Development Approvals:

**202.1.1 On-Site Improvements.** Developer shall construct the On-Site Improvements as provided in the Conditions of Approval for the subdivision.

**202.1.2 Off-Site Improvements.** Developer will construct all Off-Site Improvements as provided in Exhibit E, Exhibit F, Exhibit G, and Exhibit H pursuant to the description and timing provided in those exhibits.

**202.1.3 Financing of Off-Site Improvements.** Developer is responsible for financing the construction of the Off-Site Improvements described in Exhibit E, Exhibit F, Exhibit G, and Exhibit H. Partial reimbursement of these costs will be made, in accordance

with the provisions of Paragraph 101 of this Agreement and Exhibit E, Exhibit F, Exhibit G, and Exhibit H.

**202.2. Public Works Development Standards; Specifications.** In completing the construction of the On-Site and Off-Site Improvements described in Exhibit E, Exhibit F, Exhibit G, and Exhibit H, Developer shall comply with (a) the conditions and terms of the Development Approvals and Subsequent Development Approvals, (b) all approved construction plans, (c) all applicable laws, ordinances, and resolutions in effect at the time of construction not inconsistent with this Agreement, and (d) the construction standards contained in the City's Standard Specifications in effect at the time of construction. If the City does not have standard specifications for any construction to be performed, the Developer will complete construction in accordance with the standards and specification of the State of California, Department of Transportation. Developer shall complete all construction to the satisfaction of, and use materials satisfactory to, the City Engineer and the City. The City Engineer and/or the City may inspect all construction and materials.

**202.3. Acceptance and Warranty of Public Facilities.** The City's final written acceptance of any Off-Site Improvements will constitute a finding that it complies with the plans and specifications required above. The City may not unreasonably condition, delay or withhold acceptance of Off-Site Improvements. The Off-Site Improvements shall be owned by the City upon their completion and acceptance. Developer shall provide a warranty for any defects (whether latent or patent) in work or material or design in the Off-Site Improvements that occur or appear within one year after the date of written acceptance. The warranty shall provide that the City may give written notice to repair or correct any defect within seven (7) calendar days of notice, occurring or appearing within one year, and Developer and/or its warrantor will repair or correct the defect without additional cost to the City. After a failure of the Off-Site Improvements requiring an emergency repair by City crews, the Developer or its warrantor shall reimburse all reasonable costs for labor and materials within forty-five (45) days of invoice. Failure to repair or correct any defect may result in an offset to, or suspension of, reimbursements, if any, or may be considered a default of this Agreement, until the repair or correction is completed to the reasonable satisfaction of the City. Developer shall include the City as a named beneficiary to any subcontract for or warranty of the public facilities. This subsection will survive termination of this Agreement.

**202.4. Prevailing Wages.** As the Off-Site Improvements identified in Exhibit E, Exhibit F, Exhibit G, and Exhibit H constitute public works, under State law, Developer is required to pay and to cause its contractor and subcontractors to pay prevailing wages for the construction of the Off-Site Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 et seq.

and implementing regulations of the Department of Industrial Relations. Developer shall or shall cause its contactor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. During the construction of the Off-Site Improvements, Developer shall or shall cause its contractor to post at the La Colonia Project the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the Off-Site Improvements as being subject to Prevailing Wages.

**203. Reimbursements and Credits.** For the first eight (8) years this Agreement is in effect, Developer shall be responsible for paying only those fees identified herein. Notwithstanding the above, Developer shall be responsible for paying any fees the City collects for other agencies pursuant to (i) state or federal law or (ii) any City agreement or City ordinance adopted or entered into to comply with state or federal law or judgment of a court of law, provided that Developer does not hereby waive any right it may have to contest the validity or amount of any such fee.

**204. Conditions to and Formula for Reimbursement for Off-Site Improvements.** Based on the credit applicable to the development fees for construction of the Off-Site Improvements as set forth in Paragraph 101 above and in Exhibit E, Exhibit F, Exhibit G, and Exhibit H, Developer shall not be entitled to any other reimbursement and/or credits pursuant to any fee programs as provided in the Mendota Municipal Code and/or adopted City policies for those fee programs.

**205. Amendments to Development Approvals.** Given the potential for a long-term build-out of the La Colonia Project, the Parties acknowledge that development of the Subject Property may require amendments to Development Approvals or Subsequent Development Approvals. Amendments to the Development Approvals or Subsequent Development Approvals shall be processed as follows:

**205.1. Administrative Amendments.** Upon the written request of Developer for an amendment or modification to a Development Approval or Subsequent Development Approval, the Planning Director or his/her designee shall determine: (i) whether the requested amendment or modification is minor; and (ii) whether the requested amendment or modification is consistent with the Applicable Rules. If the Planning Director or his/her designee finds that the proposed amendment or modification is minor, consistent with the Applicable Rules, and is not subject to



further environmental review under CEQA (See CEQA Guidelines §§ 15162, 15163), the amendment shall be determined to be an “**Administrative Amendment**” and the Planning Director or his/her designee may approve, or may approve with appropriate conditions, the Administrative Amendment. The determination of whether a requested amendment or modification is an Administrative Amendment shall be within the reasonable discretion of the Planning Director.

Examples of amendments or modifications which may, depending on particular circumstances, be treated as Administrative Amendments, include, but are not limited to, the following: (1) lot line adjustments that do not alter the concepts of the project design; (2) alterations in vehicle circulation patterns or vehicle access points which do not adversely affect capacity or service levels; (3) changes in trail alignments; (4) substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan; (5) variations in the location of structures that do not substantially alter the design concepts of the project; (6) variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the project; (7) minor alterations in design or configuration of buildings that are consistent with development standards for the La Colonia Project; and (8) minor adjustments to the Subject Property legal description. Administrative Amendments are subject to the City’s normal processing fees at the time the Administrative Amendment is considered for approval. In no event shall an Administrative Amendment be deemed a new entitlement or otherwise subject the development of the Subject Property to any new or increased fees or exactions, any provisions of the Mendota Municipal Code or City policies or procedures to the contrary notwithstanding.

**205.2 Material Amendments.** Any request of Developer for an amendment or modification to a Development Approval or Subsequent Development Approval that is reasonably determined by the Planning Director or his/her designee to be a material amendment (“**Material Amendment**”), as opposed to an Administrative Amendment, shall be subject to review, consideration and action pursuant to the laws in effect at the time the Material Amendment is considered for approval. Notwithstanding any provision in the Agreement to the contrary, the City may impose mitigation measures necessary to comply with CEQA for Material Amendments. Material Amendments are subject to processing fees in effect at the time the Material Amendment is considered for approval.

**205.3 Future Amendments.** Any future amendment or modification to a Development Approval or Subsequent Development Approval shall be incorporated in this Agreement without the need to amend this Agreement.

**209. Encumbrances and Lender's Rights.**

**209.1 Permitted Encumbrances.** This Agreement shall be superior and senior to any lien placed upon the Subject Property. The Parties agree that this Agreement shall not prevent or limit any owner of an interest in the Subject Property from encumbering the Subject Property with any deed of trust or other security device securing financing with respect to the Subject Property.

**209.2 Lender's Rights.** The holder of any mortgage, deed of trust, or other security arrangement ("**Lender**") with respect to the Subject Property, or any portion thereof, that has requested, in writing, receipt of notice of any event of default under this Agreement shall be entitled to receive a copy of any notice of default and shall be allowed an opportunity to cure such default. The Lender shall receive a second default notice thirty (30) days before the City institutes legal proceedings and the Lender shall again be allowed an opportunity to cure such default.

The holder of any mortgage, deed of trust, or other security arrangement with respect to the Subject Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Subject Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

**ARTICLE 3**

**DEFAULT, REMEDIES, TERMINATION**

**300. General Provisions.** Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or provision of this Agreement shall constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the Party charged with being in default shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may at its option:

1. Terminate this Agreement, in which event neither Party shall have any further rights against or liability to the other with respect to this Agreement or the Subject Property; provided, however, if portions of the Subject Property are held in separate ownership at the time such event of default occurs and such event of default is related only to one portion, this Agreement may be terminated only as to such portion and no such termination shall impair the continuing applicability of this Agreement to the remainder of the Subject Property; or

2. Institute legal or equitable action to cure, correct or remedy any default, including, but not limited to, an action for specific performance of the terms of this Agreement; provided, however, that in no event shall either party be liable to the other for money damages for any default or breach of this Agreement.

**301. Developer Default; Enforcement.** No building permit shall be issued or building permit application accepted for the building shell of any structure on any portion of the Subject Property if the permit applicant owns or controls such portion of the Subject Property and if such applicant or any entity or person controlling such applicant has been found to be in default as to such portion of the Subject Property by the City Council of the City of Mendota under the terms and conditions of this Agreement, unless such default is cured or this Agreement is terminated. A default as to an owner of any portion of the Subject Property shall have no impact on any portion of the Subject Property not owned by such defaulting owner. The Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Subject Property, lessee or City, acting separately or jointly, to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

**302. Annual Review.** The City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by the Developer with the terms and conditions of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section 302 shall be borne by the Developer.

The City Manager shall provide thirty (30) days prior written notice of such periodic review to the Developer. Such notice shall require the Developer to demonstrate good faith compliance with the terms and conditions of this Agreement and to provide such other information as may be

reasonably requested by the City Manager and deemed by him to be required in order to ascertain compliance with this Agreement. If, following such review, the City Manager is not satisfied that the Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, the City Manager may refer the matter, along with his recommendations, to the City Council.

Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement; nor shall the Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

**303. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities' enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation or similar grounds for excused performance. If written notice of such delay is given within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon. In particular, a shutdown of the Federal government, whether ordered by the Executive or caused by the actions of the Congress, which affects disbursement of funds to the Applicant from any Federal agency, time of performance shall be extended three (3) days for every one (1) day for which the Federal government shutdown is in effect.

**304. Limitation of Legal Acts.** In no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

**305. Applicable Law and Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

**306. Invalidity of Agreement.**

**306.1** If this Agreement is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment.

**306.2** If any provision of this Agreement is determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any law which becomes effective after the date of this Agreement and either party in good faith determines that such provision is material to its entering into this Agreement, either party may elect to terminate this Agreement as to all obligations then remaining unperformed in accordance with the procedures set forth in Section 300, subject, however, to the provisions of Section 307 hereof.

**307. Effect of Termination on Developer's Obligations.** Termination of this Agreement shall not affect the Developer's obligations to comply with the General Plan and the terms and conditions of any and all land use entitlements approved with respect to the Subject Property prior to such termination, nor shall it affect any other covenants of the Developer specified in this Agreement to continue after the termination of this Agreement. If portions of the Subject Property are held in separate ownership at the time of such termination, this Agreement may be terminated only as to such portion and no such termination shall impair the continuing applicability of this Agreement to the remainder of the Subject Property.

**ARTICLE 4**  
**INDEMNITY; INSURANCE**

**400. Indemnity/Insurance.**

**400.1. Indemnification.** To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorneys' fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done on on-site or off site public or private improvements pursuant to this Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance unless and until the facility is dedicated to and officially accepted by the City). Developer's obligations under the preceding sentence shall apply regardless of whether Developer or any of its officers, officials, employees or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs

or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. The Developer further agrees that the use for any purpose and by any person of any and all of the streets and improvements required under this Agreement, shall be at the sole and exclusive risk of the Developer at all times prior to final acceptance by the City of the completed street and other improvements. This section shall survive termination or expiration of this Agreement.

**400.2. Insurance.** Throughout the life of this Agreement, Developer shall pay for and maintain in full force and effect all policies of insurance described in this section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated by not less than “A- VII” in Best’s Insurance Rating Guide, or (ii) authorized by CITY’s Risk Manager. The following policies of insurance are required:

a. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury and \$5,000,000 aggregate for products and completed operations.

b. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and no-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

c. WORKERS’ COMPENSATION insurance as required under the California Labor Code. Developer shall file with the City pursuant to Section 3800 of the Labor Code, a Certificate of Workers’ Compensation.

d. EMPLOYERS' LIABILITY with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Developer shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to start of construction of any phase of development. Developer shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the life of the Agreement or any extension, Developer fails to maintain the required insurance in full force and effect, the Planning Director, or his/her designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to provide insurance protection in favor

of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the subcontractor.

**401. Notice to Developer.** The City shall promptly give notice to Developer in accordance with Section 600 of this Agreement of any case, action or proceeding brought against the City concerning this Agreement or the Subject Property.

## **ARTICLE 5**

### **PROJECT AS A PRIVATE UNDERTAKING**

**500. Project as a Private Undertaking.** It is specifically understood and agreed by and between the Parties hereto that the development of the Subject Property is a separately undertaken private development and that the contractual relationship created hereunder between the City and Developer is such that Developer is an independent contractor and is not an agent of the City. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between the City and Developer or to provide third party beneficiary rights to any person or entity not a Party hereto. The only relationship between the City and the Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

## **ARTICLE 6**

### **NOTICES**

**600. Notices.** All formal notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the principal offices of the City and the Developer with copies sent as set forth below. The addresses of the parties as of the date hereof are as set forth below. Such written notices, demands, correspondence and communication may be directed in the same manner to such other persons and addresses as either party may from time to time designate in writing. The Developer shall give written notice to the City, within ten (10) days after the close of escrow, of any sale or transfer of any portion of the Subject Property and any assignment or partial assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the legal description of the land sold or transferred, and the name and address of any person or entity to whom any notice relating to this Agreement shall be given with respect to such transferred portion of the Subject Property.



Notices required to be given to the City shall be addressed as follows:

City of Mendota  
Planning Department  
643 Quince Street  
Mendota, CA 93640  
Attention: Planning Director

with a copy to:

Wanger Jones Helsley PC  
265 E. River Park Circle, Suite 310  
Fresno, CA 93720  
Attention: J. Kinsey

Notice required to be given to the Developer shall be addressed as follows:

Steve Hair  
KSA Homes, Inc.  
3401 Office Park Drive, Suite 115  
Bakersfield, CA 93309

with a copy to:

Karol Adams  
10784 Deep Cliff Drive  
Cupertino, CA 95014

**ARTICLE 7**  
**MISCELLANEOUS**

**700. Amendment of Agreement.** This Agreement may be amended from time to time with respect to any portion of the Subject Property by mutual consent of the City and Developer (to the extent that it continues to own any portion of the Subject Property) and of the then-current owner(s) of the portions of the Subject Property affected by such amendment, with City costs payable by the amendment applicant, in accordance with the provisions of Government Code Sections 65867 and 65868.

**701. Waiver of Provisions.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom

enforcement of a waiver is sought. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any other occurrence or event.

**702. Time of Essence.** Time is of the essence of each provision of this Agreement of which time is an element.

**703. Entire Agreement.** This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of twenty-one (21) pages and **Exhibits A through H**, which constitute the entire understanding and agreement of the Parties. Said exhibits are identified as follows:

- Exhibit A:** Legal Description of the Subject Property
- Exhibit B:** Site Map
- Exhibit C:** Tentative Subdivision Map
- Exhibit D:** Ordinance Adopting Development Agreement
- Exhibit E:** Exaction: Off-Site Improvement (Storm Drain)
- Exhibit F:** Exaction: Off-Site Improvement (Traffic Signal)
- Exhibit G:** Exaction: Off-Site Improvement (Well Improvement)
- Exhibit H:** Exaction: Off-Site Improvement (Soccer Field and Pocket Park Improvements)
- Exhibit I:** Development Impact and Processing Fees

Exhibits A through I are incorporated into the Agreement. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 7, the provisions of Articles 1 through 7 shall prevail.

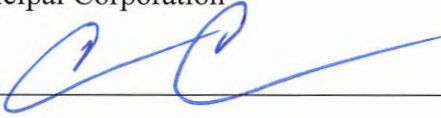
IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first set forth above.


**CITY:**

**DEVELOPER:**

CITY OF MENDOTA,  
a Municipal Corporation

KSA HOMES, INC.,  
a California corporation

By: 

By: 

Name: STEPHEN W. HAIR

Its: President

**ATTEST:**

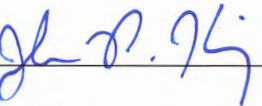
MATT FLOOD  
City Clerk

By: 



**APPROVED AS TO FORM:**

JOHN KINSEY  
City Attorney

By: 

Date: 9/25/18

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 013-061-15 and 012-160-39**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MENDOTA, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

PARCEL 1 OF PARCEL MAP NO. 90-01, IN THE CITY OF MENDOTA, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 51, PAGE 26 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 013-061-15

**PARCEL 2:**

ALL THAT PROPERTY LOCATED IN THE CITY OF MENDOTA, COUNTY OF FRESNO, STATE OF CALIFORNIA, IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 13 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE, SOUTH 88°15' WEST, A DISTANCE OF 75.52 FEET; THENCE, ALONG THE EASTERLY RIGHT OF WAY LINE OF COUNTY ROAD, AS FOLLOWS:

NORTH 44°17' WEST, A DISTANCE OF 2.62 FEET; THENCE, ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 5619.65 FEET, A DISTANCE OF 844.32 FEET; THENCE NORTH 35°36' WEST, A DISTANCE OF 1717.29 FEET; THENCE LEAVING SAID COUNTY ROAD, NORTH 64°58' EAST, A DISTANCE OF 1784 FEET; THENCE SOUTH 0°07' EAST, A DISTANCE OF 2804.22 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THE FOLLOWING PARCEL OF LAND DEED TO THE STATE OF CALIFORNIA BY GRANT DEED RECORDED JANUARY 25, 1967, IN BOOK 5400 AT PAGE 663, AS DOCUMENT NO. 5458, O.R.F.C., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF SAID SECTION, SAID POINT BEARS SOUTH 90°14'55" WEST, 75.20 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION, THENCE, ALONG A LINE PARALLEL WITH AND 60 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE NORTHEASTERLY BOUNDARY OF THE SOUTHERN PACIFIC COMPANY'S RAILROAD RIGHT OF WAY, 100 FEET WIDE, THE FOLLOWING COURSES: (1) NORTH 43°17'15" WEST A DISTANCE OF 2.52 FEET AND (2) NORTHWESTERLY ALONG A TANGENT CURVE CONCAVE NORTHEASTERLY, WITH A RADIUS OF 5619.65 FEET, THROUGH AN ANGLE OF 1° 24'07", AND ARC DISTANCE OF 137.50 FEET; THENCE, ALONG A LINE PARALLEL WITH AND 50 FEET SOUTHWESTERLY, MEASURED RADIALLY AND AT RIGHT ANGLES FROM THE CENTERLINE OF THE DEPARTMENT OF PUBLIC WORKS SURVEY FROM MENDOTA TO OUTSIDE CANAL, ROAD 06-FRE-33. THE FOLLOWING COURSES: (3), FROM THE TANGENT WHICH BEARS NORTH 14°19'31" WEST, NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 1850 FEET, THROUGH AN ANGLE OF 34°09", AND ARC DISTANCE OF 1116.19 FEET AND (4), NORTH 48°53'40" WEST, A DISTANCE OF 416.24 FEET TO THE FIRST SAID PARALLEL LINE; THENCE (5), ALONG FIRST SAID PARALLEL LINE, NORTH 34°36'15" WEST, A DISTANCE OF 574.66 FEET; THENCE (6), AT RIGHT ANGLES, NORTH 55°23'45" EAST, A DISTANCE OF 19.60 FEET; THENCE (7) FROM A TANGENT WHICH BEARS SOUTH 34°32'44" EAST, SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY, WITH A RADIUS OF 1950 FEET, THROUGH AN ANGLE OF 14°20'56", AND ARC DISTANCE OF 488.35 FEET; THENCE, ALONG A LINE PARALLEL WITH AND 100 FEET NORTHEASTERLY AND EASTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM THE

**EXHIBIT "A"**

**Legal Description  
(continued)**

ABOVE DESCRIBED COURSES (4) AND (3), THE FOLLOWING COURSES (8) SOUTH 48°53'40" EAST, A DISTANCE OF 485.00 FEET AND (9) SOUTHEASTERLY ALONG A TANGENT CURVE CONCAVE SOUTHWESTERLY WITH A RADIUS OF 1950 FEET, THROUGH AN ANGLE OF 37°53'18", AND ARC DISTANCE OF 1289.49 FEET; THENCE (10), ALONG A NON-TANGENT LINE, SOUTH 66°30'00" EAST, 27.00 FEET; THENCE (11) SOUTHEASTERLY ALONG A TANGENT CURVE CONCAVE SOUTHEASTERLY WITH A RADIUS OF 90 FEET, THROUGH AN ANGLE OF 8°15'58", AN ARC DISTANCE OF 12.98 FEET TO SAID SOUTH LINE; THENCE (1), ALONG SAID SOUTH LINE, SOUTH 89°14'55" WEST, A DISTANCE OF 63.14 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THE FOLLOWING PARCEL OF LAND DEED TO FLOYD C. WILLIAMS, ET AL, BY GRANT DEED RECORDED ON DECEMBER 16, 1977, IN BOOK 6934 AT PAGE 668, AS DOCUMENT NO. 134508, O.R.F.C., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 25; THENCE, NORTH 0°52'38" EAST ALONG THE EAST LINE OF SAID SECTION 25, A DISTANCE OF 372.18 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY LINE OF BASS AVENUE; THENCE, ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 80°22'10" WEST, A DISTANCE OF 138.39 FEET; THENCE NORTH 29°16'35" WEST, A DISTANCE OF 108.33 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 33, SAID POINT BEING ON A CURVE TO THE LEFT, WITH A RADIUS OF 1950 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 65°48'25" WEST; THENCE, ALONG SAID SURVEY TO THE LEFT, THROUGH A CENTRAL ANGLE OF 24°42'05", AN ARC LENGTH OF 840.69 FEET; THENCE, NORTH 48°53'40" WEST, 485 FEET TO A POINT OF TANGENCY WITH A CURVE TO THE RIGHT WITH A RADIUS OF 1950.00 FEET; THENCE, ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 14°20'56", AN ARC LENGTH OF 488.35 FEET; THENCE SOUTH 55°23'45" WEST, A DISTANCE OF 19.60 FEET; THENCE NORTH 34°31'44" WEST, A DISTANCE OF 353.68 FEET; THENCE LEAVING SAID EASTERLY RIGHT OF WAY LINE OF HIGHWAY 33 AND RUNNING ALONG THE SOUTHERLY RIGHT OF WAY LINE OF THE INTAKE CANAL, NORTH 65°57'45" EAST, A DISTANCE OF 1784 FEET MORE OR LESS TO A POINT ON THE EAST LINE OF SAID SECTION 25; THENCE ALONG SAID EAST LINE, SOUTH 0°52'38" WEST, A DISTANCE OF 2432.04 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION OF LAND LYING IN THE EAST HALF OF SECTION 25, TOWNSHIP 13 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN AS DESCRIBED IN A GRANT DEED FROM NORMA LINDGREN, ET AL, TO THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AS RECORDED IN BOOK 5772 AT PAGE 419 AND 420, AS DOCUMENT NO. 20692, O.R.F.C. ON MARCH 24, 1970

ALSO EXCEPTING THEREFROM, THAT PORTION OF LAND LYING IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 13 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, AS DESCRIBED IN A GRANT DEED FROM NORMA LINDGREN, ET AL TO THE CITY OF MENDOTA, STATE OF CALIFORNIA, AS RECORDED ON JANUARY 13, 1988 AS DOCUMENT NO. 4208, O.R.F.C.

ALSO EXCEPTING THEREFROM THAT PORTION IN THE GRANT DEED TO THE CITY OF MENDOTA, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, RECORDED NOVEMBER 3, 2010, INSTRUMENT NO. 2010-0147303, OFFICIAL RECORDS.

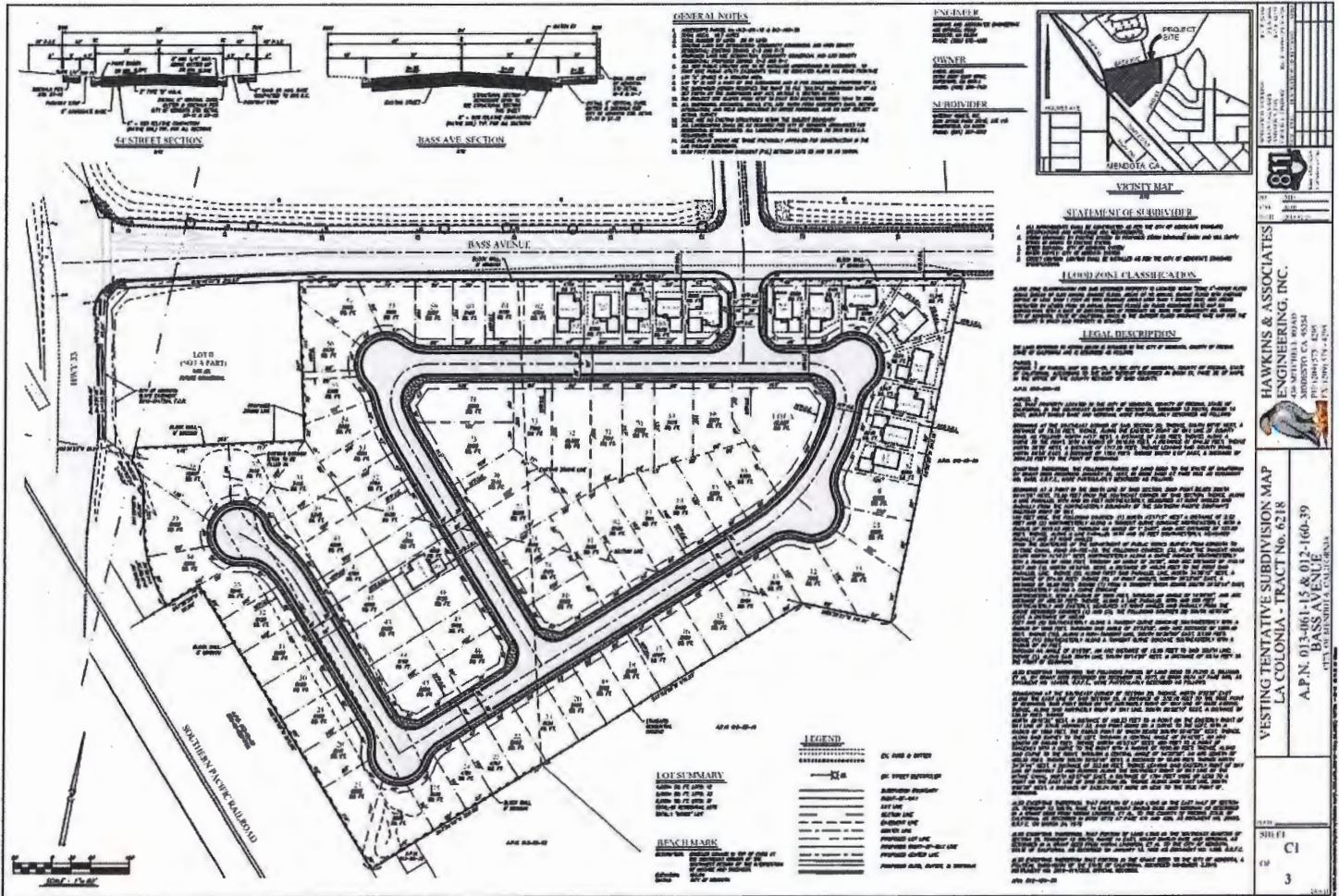
APN: 012-160-39

# EXHIBIT "B"



**Location of the La Colonia Subdivision.**

# EXHIBIT "C"



La Colonia Tentative Subdivision Map

**EXHIBIT "D"**

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

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
AN AGREEMENT BY AND BETWEEN THE  
CITY OF MENDOTA AND KSA HOMES,  
INC., RELATING TO THE DEVELOPMENT  
OF THE PROPERTY COMMONLY KNOWN  
AS THE LA COLONIA PROPERTY**

**ORDINANCE NO. 18-04**

**WHEREAS**, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

**WHEREAS**, in accordance with the Development Agreement Statute, the City of Mendota (the "City") has enacted regulations (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

**WHEREAS**, the La Colonia Property is owned by KSA Homes, Inc., a California Limited Liability Corporation ("Developer"); and

**WHEREAS**, on August 14, 2018, the City certified the Mitigated Negative Declaration for the La Colonia Project; and

**WHEREAS**, prior to adopting this Ordinance, the City Council, on August 14, 2018, adopted Resolution No. 18-61, finding that, where feasible, mitigation measures have been imposed and modifications incorporated into the Project which avoid or substantially lessen all significant adverse environmental impacts; and

**WHEREAS**, the City Council of the City of Mendota adopted Resolution No. 18-62, which approved a general plan amendment for the La Colonia Property; and

**WHEREAS**, the City Council of the City of Mendota adopted No. 18-03, which approved a zone change for the La Colonia Property; and

**WHEREAS**, Developer desires to carry out the development of the La Colonia Property consistent with the General Plan, as amended, zone change and the Development Agreement and the vested entitlements referenced therein; and



**WHEREAS**, the Development Agreement will assure the City and its residents and the Developer that the Development will proceed as proposed and that the public improvements and other amenities and funding obligations, will be accomplished as proposed; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on June 19, 2018, on the Mitigated Negative Declaration, the General Plan Amendment, zone change and project entitlements, during which public hearing the Planning Commission received comments from the Developer, City staff, public agencies and members of the general public; and

**WHEREAS**, following the public hearing, the Planning Commission made a recommendation to the City Council on the Mitigated Negative Declaration, the General Plan Amendment, zone change, Vesting Tentative Subdivision Map and the Development Agreement; and

**WHEREAS**, pursuant to Section 65867 of the Government Code, the City Council, on August 14, 2018, held a duly noticed public hearing on the Mitigated Negative Declaration, the General Plan Amendment, zone change, project entitlements, and the Development Agreement, during which public hearing, the City Council received comments from the Developer, City staff, public agencies and members of the general public; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement attached hereto as Exhibit A.

**SECTION 2.** This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to "Development Agreement Regulations".

**SECTION 3.** In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, in that it establishes certain development rights, obligations and conditions for the implementation of the La Colonia Property;
2. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the general plan designations which will apply to the La Colonia Property;
3. The Development Agreement is in conformity with public convenience, general welfare and good land use practice;
4. The Development Agreement will not be detrimental to the public health, safety and general welfare;

5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and

**SECTION 4.** The foregoing findings and determinations are based upon the following:

1. The Recitals set forth in this Ordinance, which are deemed true and correct;
2. Resolution No. 18-61, adopted by the City Council on August 14, 2018, making findings as to the Mitigated Negative Declaration for the La Colonia Project, approved by and incorporated in said Resolutions, which Resolutions and exhibits are incorporated herein by reference as if set forth in full;
3. The City's General Plan, as amended by the General Plan Amendment adopted by the City Council by Resolution No. 18-62 prior to adoption of this Ordinance;
4. All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to the Mitigated Negative Declaration, the General Plan Amendment, zone change, Vesting Tentative Subdivision Map, the Development Agreement, and other actions relating to the Property;
5. All documentary and oral evidence received at public hearings or submitted to the Planning Commission, or City during the comment period relating to the Mitigated Negative Declaration, the General Plan Amendment, zone change, Vesting Tentative Subdivision Map, the Development Agreement, and other actions relating to the Property; and
6. All other matters of common knowledge to the City Council, including, but not limited to the City's fiscal and financial status; City general ordinances, policies and regulations.

**SECTION 5.** The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, as approved by the City Council.

**SECTION 6.** Upon the effective date of this Ordinance as provided in Section 8 hereof, the Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City of Mendota.

**SECTION 7.** The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

**SECTION 8.** This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

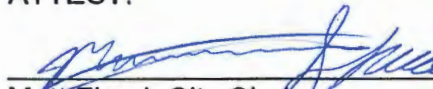
\*\*\*\*\*

The foregoing ordinance was introduced on the 14<sup>th</sup> day of August, 2018 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 28<sup>th</sup> day of August, 2018 by the following vote:

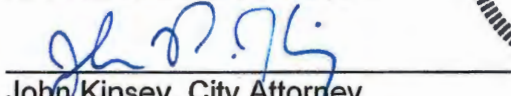
**AYES:** 4 – Mayor Pro Tem Martinez, Councilors Mendoza, Rosales, and Silva  
**NOES:** 0  
**ABSENT:** 1 – Mayor Castro  
**ABSTAIN:** 0

  
\_\_\_\_\_  
Victor Martinez, Mayor Pro Tem

ATTEST:

  
\_\_\_\_\_  
Matt Flood, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
John Kinsey, City Attorney



## **EXHIBIT "E"**

### **Exaction: Off-Site Improvement (Storm Drain System)**

The applicant proposes to connect to the City's existing storm drain system near 2nd Street and Bass Avenue. Storm water would flow into or be pumped into the existing ditch and would be conveyed to the the City's wastewater treatment plant (WWTP) where it would be discharged into a retention pond.

The applicant proposes to connect the drainage system within the proposed development to the City's existing storm drain system near 2nd Street and Bass Avenue via a system of catch basins, manholes and underground pipes and potentially a pump station, as approved by the City Engineer. The applicant shall improve the ditch to achieve the capacity needed to convey all current and proposed storm water that is tributary to the ditch, and shall construct a new basin at the WWTP, in a location specified by the City and to the capacity required by the City Standards.

The Applicant will be obliged to pay 1/3 of the total cost of this work as a condition of approval of the subdivision. As to the remaining 2/3 of the cost, the applicant will be eligible for reimbursement from the City. The City is able to pay up to \$121,000 toward this reimbursement directly to the Applicant upon completion of the improvements to the satisfaction of the City, which shall be prior to the City's acceptance of the public improvements for Phase 1 of the subject development. This amount will be reimbursed in progress payments, to be made not more often than monthly, based on invoices submitted by the Applicant for progress work and materials which have been accepted by the City.

Any portion of the amount eligible for reimbursement that exceeds \$121,000 will be credited toward the total Development Impact Fees that will be due from this project. The total fees that will be due are summarized in **Exhibit I** of this Agreement.

## **EXHIBIT "F"**

### **Exaction: Off-Site Improvement (Traffic Signal Installation)**

The applicant will be required to construct a traffic signal at the intersection of Bass Avenue and Barboza Street. The signal shall provide for through and protected left-turn phases for each direction, and shall be designed by a qualified civil or traffic engineer licensed to practice in the State of California. Plans shall be submitted to the City for review along with the other improvement plans for Phase 1 of the development, and prior to start of construction.

The traffic signal may be completed in two parts. The first part, the underground work for the traffic signal, including conduits, pedestals and detector loops, must be done together with the Bass Avenue improvements and shall be completed prior to acceptance by the City of the public infrastructure improvements for the first Final Map phase of the development. The entire traffic signal must be in place, operational, and accepted by the City before a 60th building permit in the overall development will be released.

Upon completion and acceptance by the City of each of the two parts of the traffic signal work, the City will reimburse the Applicant for the actual documented cost of each part completed, up to a total of \$288,000. This amount will be reimbursed in progress payments, to be made not more often than monthly, based on invoices submitted by the Applicant for progress work and materials which have been accepted by the City.

Documented construction costs in excess of that amount shall be borne by the Applicant, but will be credited toward the total Development Impact Fees that will be due from this project. The total fees that will be due are summarized in Exhibit I of this Agreement.

## **EXHIBIT "G"**

**Exaction: Off-Site Improvement (Well Improvements)** The City will be required by the Division of Drinking Water (DDW) to increase its reliable water supply capacity in order to serve this development. The City has wells in addition to the three currently in service, but none are considered "active."

Applicant shall work with the City and DDW to design and construct improvements that may be necessary to bring one of the inactive wells, of City's choice, back to active status. This may include, but is not limited to, replacement of pumps, impeller, discharge piping, electrical service, control electronics and chlorination equipment.

Upon completion and acceptance by the City of the necessary work, the City will reimburse the Applicant for the actual documented cost of the improvements, up to a total of \$25,000. This amount will be reimbursed in progress payments, to be made not more often than monthly, based on invoices submitted by the Applicant for progress work and materials which have been accepted by the City.

Documented construction costs in excess of \$25,000 shall be borne by the Applicant, but will be credited toward the total Development Impact Fees that will be due from this project. The total fees that will be due are summarized in Exhibit I of this Agreement. The work must be completed, and the well certified for active service by DDW, prior to the City issuing a Certificate of Occupancy for any home in the development.

## EXHIBIT "H"

### Exaction: Off-Site Improvements (Soccer Field and Pocket Park Improvements)

1. Applicant shall reconstruct and improve the existing soccer field at Rojas Pierce Park to include:
  - Removal of existing turf and grading of the playfield surface to achieve a flat field without dips, rises or holes, and with sufficient slope to achieve drainage.
  - Furnish and install materials and equipment necessary to effect improvements and repairs to the irrigation system to achieve complete and even watering without dry spots over the entire turf area of the playfield.
  - Plant new hybrid Bermuda grass turf using hydroseed method.
  - Furnish and install new LED playfield lighting to provide vendor-recommended level of luminance in all areas of the field. New lighting can be powered from the existing 200-amp panel located adjacent to the field.
  - Furnish and install new metal bleachers on concrete pads, with metal shade structures (4 each). Each of the bleacher and shade structures shall be approximately 30 feet long. Two shall be installed on each side of the field, centered on the mid-field line.
  - Provide one modular restroom structure with two unisex restrooms. Connect to City sanitary sewer to the satisfaction of the City.
  - Provide new electronic scoreboard with sideline controls near mid-field. Scoreboard shall be designed for scoring soccer games, and shall be installed near the southwest corner of the existing soccer field. Scoreboard shall be Daktronics SO-2918 or equivalent. Colors and other options shall be selected by the City. An example scoreboard is illustrated below.
2. Applicant is required by the Conditions of Approval for the development to construct certain improvements to the pocket park within the development.
3. The field leveling, irrigation system, and hydro seeding of new grass shall be completed by February 28, 2019.
4. All remaining improvements at the Rojas Pierce Park and all pocket park improvements must be completed prior to the city releasing the 60th building permit for the project.

Cost of the Rojas-Pierce Park pocket park improvements shall be borne by the Applicant but shall be credited toward the total Development Impact Fees that become due from this project, including an allowance of \$12,903 for the land donated for the pocket park. The total Development Impact Fees that will be due are summarized in **Exhibit I** of this Agreement.



## EXHIBIT "I"

### Exaction: Development Impact and Processing Fees

The project will be subject to two types of City-imposed fees during construction:

**1. Processing fees, including application, plan and map checking and inspection fees shall be per the City's standard development fee schedule.**

In particular, plan checking and inspection fees are cost recovery for the City and are not fixed amounts.

**2. Development Impact Fees, per the City's adopted schedule**

These fees are assessed per unit, per acre or per the unit specified in the fee schedule. The costs of some of the items of off-site infrastructure, as set forth in Exhibit E, Exhibit F and Exhibit H, will be creditable against the Development Impact Fees otherwise owed by the Project, and will therefore serve as reimbursement for those costs.

The Development Impact Fees charged to the project under the adopted schedule are in the table below. Credits will be applied to these fees in accordance with the Development Agreement and Exhibit E, Exhibit F and Exhibit H.

La Colonia Development Impact Fees

Fee	Unit Type	Units	Fee per Unit	Subtotal
City Management and General Services	EDU	86	\$218.81	\$18,817.66
Law Enforcement	EDU	86	\$591.49	\$50,868.14
Fire Protection	EDU	86	\$714.10	\$61,412.60
Storm Drainage	AC	17.00	\$5,169.45	\$87,880.65
Water Supply & Treatment	EDU	86	\$2,350.30	\$202,125.80
Wastewater & Treatment	EDU	86	\$1,947.56	\$167,490.16
Traffic Impact	EDU	86	\$690.05	\$59,344.30
Recreational Facilities	EDU	86	\$1,364.51	\$117,347.86
Water Connection Charges	Connection	86	\$420.77	\$36,186.22
Sewer Connection Charges	Connection	86	\$480.88	\$41,355.68
<b>Total</b>				<b>\$842,829.07</b>



## **Exhibit B**

### **ADDENDUM TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MENDOTA AND KSA HOMES, INC.**

This Addendum to the Development Agreement by and between the City of Mendota and KSA Homes, Inc. (“**Addendum**”) is made this \_\_\_\_ day of October, 2018 (the “**Effective Date**”), by and between the City of Mendota (“**City**”), a municipal corporation, and KSA Homes, Inc. (“**Developer**”), a California corporation. City and Developer are sometimes collectively referred to herein as the “**Parties**” or individuals as “**Party.**”

#### **RECITALS**

A. On August 28, 2018, City and Developer entered into a development agreement (“**Development Agreement**”), attached hereto as Exhibit “A” and incorporated herein by this reference.

B. Exhibit “H” to the Development Agreement provides, among other things, that Developer shall reconstruct the existing soccer field at Rojas Pierce Park by April 30, 2019.

C. The Parties desire that, rather than requiring Developer to reconstruct an existing soccer field at Rojas Pierce Park by April 30, 2019, Exhibit “H” to the Development Agreement require Developer to construct a new soccer field at Rojas Pierce Park by May 30, 2019.

#### **ADDENDUM**

In this context, the Parties hereby agree that the Development Agreement shall be modified as follows:

- A. Exhibit “H” is replaced in its entirety with the following:
1. Applicant shall construct a new soccer field at Rojas Pierce Park to include:
    - Grading of the playfield surface to achieve a flat field without dips, rises or holes, and with sufficient slope to achieve drainage.
    - Furnish and install materials and equipment necessary for a new irrigation system to achieve complete and even watering without dry spots over the entire turf area of the playfield.
    - Plant new hybrid Bermuda grass turf using hydroseed method.
    - Furnish and install new LED playfield lighting to provide vendor-recommended level of luminance in all areas of the field. New lighting can be powered from the existing 200-amp panel located adjacent to the field.
    - Furnish and install new metal bleachers on concrete pads, with metal shade structures (4 each). Each of the bleacher and shade structures shall be

approximately 30 feet long. Two shall be installed on each side of the field, centered on the mid-field line.

- Provide one modular restroom structure with two unisex restrooms. Connect to City sanitary sewer to the satisfaction of the City.
  - Provide new electronic scoreboard with sideline controls near mid-field. Scoreboard shall be designed for scoring soccer games, and shall be installed near the southwest corner of the existing soccer field. Scoreboard shall be Daktronics SO-2918 or equivalent. Colors and other options shall be selected by City. An example scoreboard is illustrated below.
2. Applicant is required by the Conditions of Approval for the development to construct certain improvements to the pocket park within the development.
  3. The field leveling, irrigation system, and hydro seeding of new grass shall be completed by May 30, 2019.
  4. All remaining improvements at the Rojas Pierce Park and all pocket park improvements must be completed prior to the city releasing the 60th building permit for the project.

Cost of the Rojas-Pierce Park pocket park improvements shall be borne by the Applicant but shall be credited toward the total Development Impact Fees that become due from this project, including an allowance of \$12,903 for the land donated for the pocket park. The total Development Impact Fees that will be due are summarized in **Exhibit I** of this Agreement.



B. The Development Agreement, as modified by this Addendum, shall remain in full force and effect in all other respects.

C. This instrument reflects the entire agreement of the Parties regarding the Addendum to the Development Agreement and supersedes all previous agreements or understandings regarding the Development Agreement. No other modification or amendment of the Development Agreement will be effective unless in writing executed by the Parties.

**IN WITNESS WHEREOF**, the Parties have executed this Addendum to the Development Agreement by and between the City of Mendota and KSA Homes, Inc. as of the Effective Date set forth above.

**CITY:**

CITY OF MENDOTA,  
a municipal corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: \_\_\_\_\_

**DEVELOPER:**

KSA HOMES, INC.,  
a California corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Matt Flood  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John Kinsey  
City Attorney

Date: \_\_\_\_\_

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## **ADMINISTRATIVE SERVICES DEPARTMENT REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** JENNIFER LEKUMBERRY, DIRECTOR OF ADMINISTRATIVE SERVICES  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** MONTHLY REPORT (SEPTEMBER 2018)  
**DATE:** OCTOBER 23, 2018

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### **HUMAN RESOURCES**

- **Recruitment**
  - City Manager
- **Labor Relations**
  - Met with AFSCME members
  - Met with MPOA member

### **RISK MANAGEMENT**

- There was one vehicle accident in which the city's vehicle was deemed totaled. The employee did not suffer major injuries and has returned to work.
- **Claims**
  - There were no new claims against the city in the month of September.
- **Worker's Compensation Claims**
  - There was no new worker's compensation claims in the month of September.

### **SENIOR CENTER**

- For the month of September, there was a daily average of 9 attendees at the senior center.

### **SPECIAL PROJECTS**

- Started assisting the Finance Department with submission of CalPERS payments, payroll transfers, bank deposits and mail.

- Completed Annual Exposure Survey (RMA).
- Submitted Notice of Proposed Construction to FAA for hangars.
- Obtained and submitted proof of insurance required for USDA grant.
- Worked on personnel and grant related items requested from the Auditor.

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## **PUBLIC WORKS REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** CRISTIAN GONZALEZ, PUBLIC WORKS AND PLANNING DIRECTOR

**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER

**SUBJECT:** PUBLIC WORKS MONTHLY REPORT

**DATE:** OCTOBER 23, 2018

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### **STREETS AND ROADS**

- Staff received official confirmation from Fresno COG (Council of Governments) that they are providing full funding for the railroad crossings improvements' project. Originally, Fresno COG only awarded partial funding, but they made an amendment to provide full funding adding an additional four hundred thousand to the project. This project is scheduled to take place in summer of 2020 and includes improvements to the three crossings in town (HWY 33, Belmont and 9th Street).
- Street sweeping continues as usual.
- Crews continue to work on patching potholes and replacing faded street signs.

### **PARKS AND PUBLIC BUILDINGS**

- Public Works continues to maintain the parks for the community.
- Crews re-routed the storm drain system at Rojas Pierce Park to allow for work on the new soccer field to begin.

### **DRINKING WATER**

- Meter reads are complete.
- The city's bridge reconstruction grant was denied. However a new funding structure has been discovered that appears to be a path with the least resistance.

### **WASTE WATER**

- Monthly samples have been submitted.

- Construction is near completion for the Lozano Lift Station. The pumps and wet-well are installed.

### **ANIMAL CONTROL**

- Animals impounded: 13
- Animals euthanized: 8
- Animals adopted: 10 dogs
- Animals redeemed by owner: 3
- Citations issued: 0

### **ADULT OFFENDER WORK PROGRAM**

- AOWP continue working on public right of ways and alley weed abatement.
- AOWP assist at the pool park, and airport.

### **BUILDING PERMITS ISSUED**

- A list of new permits is attached to the report.

### **PLANNING**

- The Planning Department approved a site plan review for a recycling center on Naples. This is the relocation of an existing center.
- Staff continues to work with a developer proposing to annex property into the city limits. Staff is reviewing the proposed conceptual layout and working to find mitigation measures for storm drain, water and sewer for the project.

### **STAFFING FOR PUBLIC WORKS**

- 15 full time employees
- 2 part time employees

### **FUEL STOCK**

- Unleaded: 3,150 gallons
- Diesel: 1,700 gallons

## Permits Issued

Report Date Range : 09/19/2018 to 10/17/2018

Permit #	Type of Permit	Date Issued	Job Address
20180166	105 NEW 2 STORY APARTMENT BUILDING 4 UNITS APARTMENTS 2675 SQFT CARPORTS 969 SQFT PER APPROVED PLAN	9/19/2018	607 Rio Frio St
20180167	329(b) SOLAR ROOF MOUNT 12.16 KW 1381 PANELS PER APPROVED PLAN	9/20/2018	1105 6th St
20180168	101 NEW CONSTRUCTION SFR 1095 SQFT & 400 SQFT GARAGE PER APPROVED PLAN	9/20/2018	39 VERA CIR
20180169	101 NEW CONSTRUCTION SFR 1275 SQFT & 400 SQFT GARAGE PER APPROVED PLAN	9/21/2018	340 GONZALEZ ST
20180170	434(a) RE-ROOF TEAR OFF 2135 SQFT EXISTING SHINGLES PROPOSING SHINGLES 4/12 PITCH PER APPROVED PLAN	9/25/2018	798 Lolita St
20180171	101 NEW CONSTRUCTION SFR 1831 SQFT & 400 SQFT GARAGE PER APPROVED PLAN	10/1/2018	37 VERA CIR
20180172	437(a) LANDLORD WORK TO PROVIDE FUTURE INFRASTRUCTURE FOR FUTURE TENANTS PER APPROVED PLAN	10/3/2018	1269 Marie St
20180173	434(b) MAINSERVICE UPGRADE TO EATON 125/100A BOTTOM FED MSP	10/3/2018	1016 Quince St
20180174	434(a) RE-ROOF OVERLAY 1008 SQFT EXISTING SHINGLES PROPOSING SHINGLES PER APPROVED PLAN	10/3/2018	1833 9th St
20180175	434(a) NEW PATIO ADDITION 504 SQ FT PER APPROVED PLAN	10/3/2018	608 De La Cruz St
20180176	329(b) PV SOLAR ROOF MOUNT 3.05 KW PER APPROVED PLAN	10/5/2018	701 H St
20180177	434(a) REMOVE AND INSTALL NEW ABS PIPE DUE TO TREE ROOT INSTRUSION	10/5/2018	754 Quince St
20180178	434(a) NEW PATIO ADDITION PER APPROVED PLAN	10/5/2018	61 DIAZ ST
20180179	101 NEW CONSTRUCTION SFR 1275 SQFT & 400 SQFT GARAGE PER APPROVED PLAN	10/9/2018	320 GONZALEZ ST
20180180	101 NEW CONSTRUCTION SFR 1831 SQFT & 400 SQFT GARAGE PER APPROVED PLAN	10/9/2018	43 VERA CIR
20180181	434(a) RE-ROOF TEAR OFF 2459 SQFT EXISTING SHINGLES PROPOSING 30YR SHINGLES 4/12 PITCH PER APPROVED PLAN	10/9/2018	431 Quince St
20180182	329(b) SOLAR INSTALLATION 4.8 KW	10/11/2018	609 De La Cruz St
20180183	101 NEW CONSTRUCTION SFR 1435 SQFT & 400 SQFT GARAGE PER APPROVED PLAN	10/11/2018	47 VERA CIRC
20180184	434(b) AIRCONDITIONING AND DUCTING INSTALLATION	10/16/2018	1190 Pucheu St
20180185	101 NEW CONSTRUCTION SFR 1275 SQFT & 400 SQFT GARAGE PER APPROVED PLAN	10/16/2018	330 GONZALEZ ST



**Permits Issued**

Report Date Range : 09/19/2018 to 10/17/2018

<b>Permit #</b>	<b>Type of Permit</b>	<b>Date Issued</b>	<b>Job Address</b>
20180186	434(a) NEW PATIO ADDITION 280 SQ FT PER APPROVED PLAN	10/16/2018	513 CANTU ST
20180187	437(a) TENANT IMPROVEMENT WITHIN EXISITING STRUCTURE	10/16/2018	1269 Marie St SUITE #2

**Total Number of Permits List** 22