



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

ROBERT SILVA  
Mayor  
ROLANDO CASTRO  
Mayor Pro Tem  
VICTOR MARTINEZ  
JESSE MENDOZA  
OSCAR ROSALES

**AGENDA**  
**MENDOTA CITY COUNCIL**  
Regular City Council Meeting  
**CITY COUNCIL CHAMBERS**  
643 QUINCE STREET  
February 12, 2019  
6:00 PM

CRISTIAN GONZALEZ  
City Manager  
JOHN KINSEY  
City Attorney

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

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

In compliance with the Americans with Disabilities Act, 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

## **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 January 22, 2019.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

## CONSENT CALENDAR

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

1. JANUARY 22, 2019 THROUGH FEBRUARY 06, 2019  
WARRANT LIST CHECKS NO. 44909 THRU 44981  
TOTAL FOR COUNCIL APPROVAL = \$482,852.78
2. Proposed adoption of an agreement with KSA Homes, Inc. authorizing the sale of real property located at 607 De La Cruz Street.
3. Council authorize Mayor to sign letter in support of proposed Solar Project in the Mendota Area.

## BUSINESS

1. Council discussion and consideration of the proposals received in response to the Request for Proposals for the sale and potential development of City Surplus Real Property.
  - a. *Receive report from City Manager Gonzalez*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council takes action as appropriate*
2. Council discussion and consideration of the appointment of a community representative on the Public Safety Sub-Committee.
  - a. *Receive report from Mayor Silva*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council takes action as appropriate*
3. Council discussion and consideration of **Resolution No. 19-08**, approving Final Map 18-01, La Colonia and accepting all associated road rights-of-way, public parcels, and public utility easements.
  - a. *Receive report from City Manager Gonzalez*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council consider adoption of Resolution No. 19-08*

4. Introduction and first reading of **Ordinance No. 19-01**, approving an amendment 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 City Manager Gonzalez*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council provide any input and waive the first reading of Ordinance No. 19-01, and sets the public hearing for the February 26<sup>th</sup> City Council Meeting*

### **PUBLIC HEARING**

1. Public hearing to consider **Resolution No. 19-09**, approving an energy services contract with ENGIE Services U.S. Inc.; and **Resolution No. 19-10**, approving a facility funding contract with Signature Public Funding Corporation.
  - a. *Receive report from 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 consider adoption of Resolution No. 19-09*
  - f. *Council consider adoption of Resolution No. 19-10*

### **DEPARTMENT REPORTS AND INFORMATIONAL ITEMS**

1. Code Enforcement & Police Department
  - a) Monthly Report
2. Economic Development
  - a) Monthly Report
3. City Attorney
  - a) Update
4. City Manager

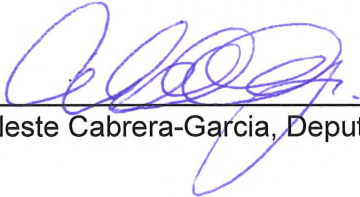
### **MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS**

1. Council Member(s)
2. Mayor

### **ADJOURNMENT**

## CERTIFICATION OF POSTING

I, Celeste Cabrera-Garcia, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of February 12, 2019, was posted on the outside bulletin board located at City Hall, 643 Quince Street Friday, February 8, 2019 at 4:55 p.m.

  
\_\_\_\_\_  
Celeste Cabrera-Garcia, Deputy City Clerk



## MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

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**Regular Meeting**

**January 22, 2019**

**Meeting called to order by Mayor Silva at 5:58 p.m.**

### **Roll Call**

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

**Council Members Absent:** None

**Flag salute led by Mayor Silva**

### **FINALIZE THE AGENDA**

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

City Manager Gonzalez requested that Consent Calendar item 5 be pulled from the agenda and considered at a future meeting.

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

### **PRESENTATION**

1. Public Works Superintendent Bautista to present the Mendota Public Works Department's 2018 Employee of the Year award to Armando Sandoval.

Public Works Superintendent Bautista presented the Mendota Public Works Department's 2018 Employee of the Year award to Armando Sandoval.

The Council congratulated Mr. Sandoval.

Mr. Sandoval thanked the staff and Council.

2. Chief of Police Andreotti to present the Mendota Police Department's 2018 Employee of the Year award to Lieutenant Kevin Smith.

Chief of Police Andreotti presented the Mendota Police Department's 2018 Employee of the Year award to Lieutenant Kevin Smith and read the commendation into the record.

The Council congratulated Lt. Smith; thanked both Mr. Sandoval and Lt. Smith for their work; and inquired on the possibility of provided both award recipients a gift on behalf of the City.

Lt. Smith thanked the staff and Council.

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

None offered.

### **APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING**

1. Minutes of the regular City Council meeting of January 9, 2019.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

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

### **CONSENT CALENDAR**

1. DECEMBER 27, 2018 THROUGH JANUARY 16, 2019  
WARRANT LIST CHECKS NO. 44833 THRU 44908  
TOTAL FOR COUNCIL APPROVAL = \$503,473.45
2. Proposed adoption of **Resolution No. 19-03**, authorizing contracting with Provost & Pritchard Consulting Group for final design and construction services related to the reconstruction of the Mowry Bridge.
3. Proposed adoption of **Resolution No. 19-04**, approving and accepting the public improvements constructed for Tract No. 6111 and Tract No. 6146 of the Las Palmas Estates subdivision.
4. Proposed adoption of **Resolution No. 19-05**, authorizing contracting with Provost & Pritchard Consulting Group for design and construction of City Well No. 10 and the extension of the raw water transmission main.

5. *Proposed adoption of an agreement with KSA Homes, Inc. authorizing the sale of real property located at 607 De La Cruz Street.  
(Tabled to a future meeting)*

Discussion was held on warrant 44879 of item 1 of the Consent Calendar.

A motion was made by Councilor Martinez to adopt items 1 through 4 of the Consent Calendar, seconded by Councilor Rosales; unanimously approved (5 ayes).

## **BUSINESS**

1. Appointment of Mendota residents to the Mendota Recreation and Planning Commissions.

Mayor Silva introduced the item and Deputy City Clerk Cabrera-Garcia summarized the report including the process to appoint commission members; the current vacancies, terms of offices, and residents that submitted applications for the Planning Commission; the two delegated positions on the Recreation Commission for representatives of the City Council and Planning Commission; the vacancies that will remain open until filled on the Recreation Commission; and the staff recommendation to appoint members to the commissions.

Discussion was held on the current vacant positions on the Planning Commission.

Mayor Silva requested to appoint Jose Gutierrez and Juan Luna to the Planning Commission.

**Jose Gutierrez (647 Perez Street)** – stated that he would like to continue to serve as a Planning Commissioner.

A motion was made by Councilor Martinez to approve the mayoral appointment of Jose Gutierrez and Juan Luna to the Planning Commission, seconded by Councilor Mendoza; unanimously approved (5 ayes).

Discussion was held on appointing a member of the City Council and a member of the Planning Commission to serve as representatives on the Recreation Commission; and Mr. Silva's current involvement with the Recreation Commission.

A motion was made by Councilor Rosales to appoint Mayor Silva and Planning Commissioner Alonso to the Recreation Commission, seconded by Councilor Martinez; unanimously approved (5 ayes).

Discussion was held on appointing an alternate Planning Commissioner.

A motion was made by Councilor Mendoza to appoint Jose Alonso as the alternate Planning Commissioner, seconded by Councilor Rosales; unanimously approved (5 ayes).

2. Council discussion and consideration of the proposals received in response to the Request for Proposals for the sale and potential development of City Surplus Real Property.

Mayor Silva introduced the item and City Manager Gonzalez summarized the report including the background of the Request for Proposals (RFP) that was issued; that staff reviewed and scored each proposal that was received; staff's recommendation for the Council authorize staff to commence negotiations with the Axiom Group; and invited all RFP respondents to provide a presentation.

Michael Muhawi with Higher Plane Cultivation summarized the goals of the company including developing the property for cannabis cultivation and distribution; hiring local residents for its labor workforce; the amount of revenue that the City would receive; and assured the company's commitment is to have a lasting positive impact on the community.

Discussion was held on ways that the City can request that the chosen business must commit to hire local residents as part of its workforce; the amount of residents that Higher Plane Cultivation is committed to hiring for its workforce; working with local organizations to promote employment opportunities; the types of operations that the business proposes to conduct; the company's timeline of developing the property; ways that business will contribute to the community; ensuring that the business makes a long-term commitment to the community; the amount of the property that the business wants to develop; and the amount of jobs that the business will create (at 6:33 p.m. Councilor Martinez left the Council Chambers).

George Boyadjian with Mendota Development Corporation provided a history of the subsidiary 420 College, Inc.; the vision of the proposed corporation being to bring a stable business to the community for long term success; the proposal to develop the entire property for cannabis cultivation, manufacturing, and distribution operations; the timeline of developing the various phases of the project; the qualifications of the company; (at 6:39 p.m. Councilor Martinez returned to the Council Chambers); the project's security plan; the company's commitment to job creation and hiring local individuals; and the company's goal to support community endeavors.

Discussion was held on the company's timeline for developing the property; the various issues that influence the timeline, including acquiring entitlements and permits; the company's ability to work with other cultivators, manufacturers, and distributors throughout the state; and the company's commitment to provide a positive, long-lasting impact to the community.



Jared Ficker with Axiom Group provided the background of the group; summarized the proposals to purchase the property; the amount of annual revenue that the City would receive from the business; the group's commitment to acquire a local workforce and promote management from within; the amount of jobs that will be created; the importance of security measures and transparency; the proposed plan to develop the property; the timeline of the development; and the operations that will be housed on the property.

Discussion was held on how the City would receive the revenue; and the letters of recommendation that were submitted on behalf of the Axiom Group; the home building operations that the Axiom Group conducts; the letters of recommendation that were submitted on behalf of the group; the group's commitment to support non-profit organizations; and the "signing bonus" that the group is offering upon close of sale.

City Manager Gonzalez reported on the criteria that was considered when reviewing the proposals.

City Attorney Kinsey commended all of the respondents for their work in preparing and submitting the proposals; and that the Council's motion would consist of delegating staff to commence negotiations with the selected RFP; and requested that the Council take staff's recommendation when making their decision.

Discussion was held on accepting public comment.

**Joseph Amador (1890 7th Street)** – inquired on the property's full appraised value; commented on the importance of respondents being prepared for their presentations; and the importance of security for these projects.

**Sergio Valdez (325 Pucheu Street)** – commented on the need for businesses to take into consideration the amount of water consumption that the operations will require; the need for a water recycling mechanism; the importance of a complete security plan; and the timeline for promoting job opportunities.

Discussion was held on the need for the businesses to have a comprehensive water recycling plan; and the timeline of promoting job opportunities.

**Gabriel Llanos (605 Lozano Street)** – inquired as to whether individuals who have been convicted of a crime will be eligible for a job within these types of businesses.

Discussion was held on the required background checks for employees; and working with local workforce agencies;

**Jose Barajas (261 Pucheu Street)** - spoke on the importance of company recognition and recommended that the Council select the Mendota Development Corporation.

Discussion was held on the importance of hiring local residents; and requiring that the selected RFP conduct a water supply assessment.

City Manager Gonzalez reported that upon reviewing and scoring all proposals, staff's recommended that the Council select to commence negotiations with Axiom Group.

Councilor Rosales requested that the item be tabled for the next meeting so that the Council may review the proposals thoroughly.

Discussion was held on tabling the item to the February 12<sup>th</sup> City Council meeting.

A motion was made by Mayor Silva to table the item to the February 12<sup>th</sup> City Council meeting, seconded by Councilor Rosales; unanimously approved (5 ayes).

*At 7:23 p.m. Mayor Pro Tem Castro left the Council Chambers.*

### **PUBLIC HEARING**

1. Council hold a public hearing to consider **Resolution No. 19-07**, adopting the Community Development Block Grant Program Income Reuse Agreement.

Mayor Silva introduced the item and City Manager Gonzalez summarized the report including that the City of Mendota previously received program income funds from activities funded by the CDBG Program; the City wishing to use these funds to supplement the construction of an expansion of Rojas-Pierce Park facilities; such an action requiring a public hearing; and the timeframe in which the Program Income waiver will be considered.

Discussion was held on the need to extend Smoot Street and Amador Street.

At 7:28 p.m. Mayor Silva opened the hearing to the public and, seeing no one present willing to comment, closed it in that same minute.

A motion was made by Councilor Martinez to adopt Resolution No. 19-07, seconded by Councilor Mendoza; unanimously approved (5 ayes).

Discussion was held on the timeline for the Rojas-Pierce Park expansion project.

### **DEPARTMENT REPORTS AND INFORMATIONAL ITEMS**

1. Administrative Services
  - a) Monthly Report

Director of Administrative Services Lekumberry summarized her report including recruitment efforts; a dog bite hearing that took place in December; the average number of Senior Center attendees; and special projects.

2. City Attorney  
a) Update

City Attorney Kinsey reported on the upcoming Ethics (AB1234) and Sexual harassment trainings.

3. City Manager

City Manager Gonzalez reported on the upcoming Mowry Bridge reconstruction project kick-off meeting that will be held on January 30<sup>th</sup>; provided an update on the pilot training project; and stated that staff is working on setting a date for the joint meeting with the Mendota Unified School District Board of Trustees.

Discussion was held on the status of the AMOR project; and an update on the efforts in attracting a pharmacy to the City.

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

1. Council Member(s)

Councilor Martinez thanked staff for their work.

Councilor Mendoza thanked the staff, fire department, and the public for their work and attendance; and expressed his hope for upcoming projects to come to fruition.

Councilor Rosales thanked the staff for their work and the public for their attendance; and reported that he has received complaints from residents regarding their vehicles being towed.

2. Mayor

Mayor Silva requested that the Council consider appointing a community representative to the Public Safety Sub-Committee; and reported on the Cresco job fair that was held recently.

### **ADJOURNMENT**

With no more business to be brought before the Council, a motion for adjournment was made at 7:43 p.m. by Councilor Rosales, seconded by Councilor Martinez; unanimously approved (5 ayes).

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Robert Silva, Mayor

ATTEST:

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Matt Flood, City Clerk

CITY OF MENDOTA  
CASH DISBURSEMENTS  
1/22/2019 - 2/6/2019  
Check# 44909 - 44981

Date	Check #	Amount	Vendor	Department	Description
January 22, 2019	44909	\$660.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	(17) MONTHLY MEDICAL FEES - JANUARY 2019, (1) MERP ANNUAL FEE 2019
January 22, 2019	44910	\$54.13	ADT SECURITY SERVICES	GENERAL	SECURITY SERVICES - COMMUNITY CENTER 2/3/19 - 3/2/19
January 22, 2019	44911	\$21,894.38	BLUE SHIELD OF CALIFORNIA	GENERAL	MEDICAL INSURANCE FOR FEBRUARY 2019
January 22, 2019	44912	\$38,268.97	PG&E	GENERAL-WATER-SEWER-STREETS-AVIATION	WATER DEPARTMENT UTILITIES 12/14/18 - 1/14/19 AND CITYWIDE UTILITY SERVICES 12/17/18 - 1/15/19
January 22, 2019	44913	\$991.99	PURCHASE POWER	GENERAL-WATER-SEWER	POSTAGE METER REFILL 1/11/19
January 22, 2019	44914	\$912.34	HOME DEPOT CREDIT SERVICES	GENERAL-WATER-SEWER	EVAPSTATION - RATCHET TIE-DOWN & SHEET METAL, (12) CAM LOCKS, (1) BRUSHLESS COMPACT DRILL 2 PC, STORAGE ROOM DOOR AND HINGES
January 22, 2019	44915	\$3,027.55	VERIZON WIRELESS	GENERAL-WATER-SEWER	CITYWIDE CELLPHONE SERVICES 12/7/18 - 1/6/19
January 22, 2019	44916	\$97,410.00	WESTAMERICA BANK	GENERAL	PAYROLL TRANSFER 1/7/19 - 1/20/19
January 25, 2019	44917	\$49,692.80	ELK GROVE AUTO GROUP, INC.	GENERAL	(2) 2019 DODGE CHARGER VIN# 2C3CDXG9KH570250 & VIN# 2C3CDXAG0KH570251
January 31, 2019	44918	\$60.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	(4) HRA ADMINISTRATION - JANUARY 2019 (PD)
January 31, 2019	44919	\$802.92	AFLAC INSURANCE	GENERAL	AFLAC INSURANCE FOR JANUARY 2019
January 31, 2019	44920	\$559.71	ALERT-O-LITE	GENERAL-STREETS	CONCRETE SAW MAINTENANCE, STIHL CHAINSAW - INDUSTRIAL REPAIR TO STAY RUNNING, DIAMOND BLADE 14" PB10 RED PRO
January 31, 2019	44921	\$263.46	ALL - PHASE MEDALLION SUPPLY	STREETS	(20) 120/277V 1000-2300 W TWIST LOCK PC PHOTO CELLS
January 31, 2019	44922	\$377.37	AQUA NATURAL SOLUTIONS	SEWER	(2) MICROBE LIFT IND 5 GAL - WWTP
January 31, 2019	44923	\$1,015.21	AT&T	GENERAL-WATER-SEWER	CITYWIDE TELEPHONE SERVICES 12/25/18 - 1/24/19
January 31, 2019	44924	\$254.29	BATTERIES PLUS BLUBS	WATER	(4) ENV FEE (4) SLAA12-18NB 12V LEAD DURA 12-18NB
January 31, 2019	44925	\$1,446.11	COOK'S COMMUNICATIONS CORP.	GENERAL	VEH#90 - FED SIGNAL SIREN CONT, 6 LED MNT, ANTENNA (PD)
January 31, 2019	44926	\$645.32	CORBIN WILLITS SYS INC.	GENERAL-WATER-SEWER	ENHANCEMENT & SERVICES FEES FOR MOM SYSTEM FOR FEBRUARY 2019
January 31, 2019	44927	\$820.61	CROWN SHORTLAND CONCRETE	STREETS	(2) YD CONCRETE (B6) SACK MIX RIGHT-OF-WAY 823 LOLITA ST, (3) YD CONCRETE B6 SACK MIX 9TH STREET & PUCHEU ST
January 31, 2019	44928	\$200.00	DATA TICKET, INC.	GENERAL	DAILY CITATION PROCESSING, NOTICES, & APPEALS DECEMBER 2018 (PD)
January 31, 2019	44929	\$175.00	DEPARTMENT OF JUSTICE	GENERAL	(5) BLOOD ALCOHOL ANALYSIS DECEMBER 2018 (PD)
January 31, 2019	44930	\$140.00	CITY OF FRESNO-POLICE DEPARTMENT REGIONAL TRAINING CENTER	GENERAL	POST REIMBURSEABLE - DETECTIVE SCHOOL - JANUARY 30TH, 2019 THRU FEBRUARY 1ST, 2019 (PD)
January 31, 2019	44931	\$150.00	FRESNO MADERA COUNTIES POLICE CHIEF'S ASSOCIATION	GENERAL	YEARLY MEMBERSHIP DUES (INCLUDES 2 MEMBERS) (PD)
January 31, 2019	44932	\$947.50	GIERSCH & ASSOCIATES INC	SEWER	LOZANO LIFT STATION - PROFESSIONAL SERVICES 12/17/18 - 1/1/19
January 31, 2019	44933	\$280.00	KERWEST NEWSPAPER	GENERAL	(14) CDBG PI WAIVER REQUEST & REUSE PLAN AGR AD
January 31, 2019	44934	\$114.05	LEAGUE OF CALIFORNIA CITIES	GENERAL	MEMBERSHIP DUES FOR S. SAN JOAQUIN VALLEY DIVISION 2019

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January 31, 2019	44935	\$63,988.23	LIGHTHOUSE ELECTRICAL INC	WATER-SEWER	WASTEWATER TREAT FACILITY - (7.5 HR) & TRAVEL TROUBLE SHOOTING, SEWER- (10HR) SERVICE & TRAVEL-MEGS MOTOR REP L5614 LOZANO LIFT
January 31, 2019	44936	\$165.00	MARLON RIVAS	GENERAL	REFUND OF CITY TOW FEE FOR NOT TAKING POSS OF VEHICLE (PD)
January 31, 2019	44937	\$1,116.22	METRO UNIFORM	GENERAL	(1)MENS TACTICAL PANT I.C.E MENS POLO (1) SHIRT SLEEVE, LNG SLEEVE, (2) PANTS, PATCH (1) WEATHER TECH JKT (2) PATCH, (1) EMBROIDERY (PD)
January 31, 2019	44938	\$1,627.75	MUTUAL OF OMAHA	GENERAL	LIFE, AD&D, LTD, & STD INSURANCE FOR FEBRUARY 2019
January 31, 2019	44939	\$738.68	NORTHSTAR CHEMICAL	WATER	(350 GAL) SODIUM HYPOCHLORITE - 12.5% MILL A
January 31, 2019	44940	\$22,634.69	PROVOST & PRITCHARD	WATER-SEWER-STORM DRAIN IMPACT	PROFESSIONAL SERVICES - MENDOTA STANDARDS DECEMBER 2018, STORM DRAIN MASTER PLAN DECEMBER 2018, WASTEWATER MASTER PLAN
January 31, 2019	44941	\$1,224.60	RAIN FOR RENT WESTSIDE PUMP	SEWER	LOZANO LIFT STATION - EMERGENCY BYPASS RENTAL FEE - DECEMBER 2018
January 31, 2019	44942	\$435.61	STATE OF CALIFORNIA DEPT OF TRANS	STREETS	SIGNALS & LIGHTING BILLING OCTOBER 2018 THRU DECEMBER 2018
January 31, 2019	44943	\$820.51	BANKCARD CENTER	GENERAL-WATER-SEWER	CREDIT CARD EXPENSES 12/30/18 - 1/22/19 -
January 31, 2019	44944	\$500.00	TECH MASTER PEST MANAGEMENT	GENERAL-WATER-SEWER	PEST CONTROL SERVICES - ROJAS PIERCE PARK, CITYHALL, EDD, DMV, WATER DEPARTMENT, PUBLIC WORKS, POLICE DEPARTMENT, & AMBULANCE ROOM
January 31, 2019	44945	\$1,235.45	VULCAN MATERIALS COMPANY	STREETS	HYBRID HMA 64-10 ASPHALT STREET PATCHING PUCHEU STREET, TULE STREET, & GUILLEN PARKWAY, COLD MIX 3/8 SC8 ASPHALT (QTY 5.26)
February 5, 2019	44946	\$96,113.00	WESTAMERICA BANK	GENERAL	PAYROLL TRANSFER 1/21/2019 - 2/3/2019
February 6, 2019	44947	\$285.16	ADT SECURITY SERVICES	GENERAL-WATER-SEWER	SECURITY SERVICES - EDD, DMV, & CITY HALL 2/13/2019 - 3/12/2019
February 6, 2019	44948	\$73.90	ALEX AUTO DIAGNOSTICS	WATER-SEWER	2016 - F-350 MOTOR OIL CHANGE, OIL FILTER AND AIR FILTER
February 6, 2019	44949	\$389.72	AMERIPRIDE SERVICES INC	GENERAL-WATER-SEWER	PUBLIC WORKS UNIFORM WEEK 1/3/2019, 1/10/2019, 1/14/2019, 1/24/2019, & 1/31/2019
February 6, 2019	44950	\$942.79	AUTOMATED OFFICE SYSTEMS	GENERAL-WATER-SEWER	MAINTENANCE CONTRACT FOR COPIER JANUARY 2019 (CITY HALL), MAINTENANCE CONTRACT FOR COPIER JANUARY 2019 (PD)
February 6, 2019	44951	\$13.36	AUTOZONE INC	GENERAL	(1) 32OZ WINDSHIELD WASHER FLUID, (1) AUTO ALARM ENERGIZER BATTERY 2032 (PD)
February 6, 2019	44952	\$1,473.78	BSK ASSOCIATES	WATER-SEWER	MONTHLY WASTEWATER WEEK 2-5, GENERAL EDT WEEKLY TREATMENT & DISTRIBUTION, MONTHLY WASTEWATER - WW MONTHLY (WEEK 1)
February 6, 2019	44953	\$464.32	COLONIAL LIFE	GENERAL	LIFE INSURANCE FOR JANUARY 2019
February 6, 2019	44954	\$247.50	COLLINS & SCHOETTLER PLANNING	GENERAL	PASSTHRU - (2.75 HRS) LOT LINE ADJUSTMENT AMOR PROJECT DECEMBER 2018
February 6, 2019	44955	\$1,474.82	COOK'S COMMUNICATIONS CORP.	GENERAL	2016 FORD FUSION - (1) INSTALLATION RADIO REPAIR (PD)
February 6, 2019	44956	\$154.50	CORELOGIC INFORMATION	GENERAL-WATER-SEWER	REALQUEST SERVICES FOR JANUARY 2019
February 6, 2019	44957	\$1,430.00	CORRPRO WATERWORKS	WATER	WATER TANK (WTP) - 1,000,000 SOUTH & NORTH TANK 3/1/19 - 2/29/2020
February 6, 2019	44958	\$337.19	CROWN SERVICES CO	GENERAL-SEWER	(5) TOILET 1XWK RENTALS FOR DERRICK AVE, BASS AVE, 1300 2ND STREET, & 1000 AIRPORT BLVD BLDG #A
February 6, 2019	44959	\$840.00	D&D DISPOSAL INC	GENERAL	ANIMAL CONTROL DISPOSAL JANUARY 2019

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Check# 44909 - 44981

February 6, 2019	44960	\$270.26	DATAMATIC, INC	WATER	MONTHLY SOFTWARE LICENSE & SERVICES FEE FOR FEBRUARY 2019
February 6, 2019	44961	\$873.33	ECS HOUSE INDUSTRIES INC	SEWER	(1) BEARING 2-7/16" DODGE, SEAL 2-7/16", PLATE SEAL 2-7/16"
February 6, 2019	44962	\$11,250.00	FIREBAUGH POLICE	GENERAL	POLICE DISPATCH SERVICES FOR JANUARY 2019
February 6, 2019	44963	\$434.00	FRESNO MOBILE RADIO INC	GENERAL	(31) POLICE DEPARTMENT RADIO SERVICES FOR JANUARY 2019
February 6, 2019	44964	\$3,000.00	GRANTED SOLUTIONS	GENERAL-WATER-SEWER	JANUARY GRANT WRITING SERVICES
February 6, 2019	44965	\$39.14	EDWARD JIMENEZ	GENERAL	EXPENSE REIMBURSEMENT - HOLSTER (PD)
February 6, 2019	44966	\$1,000.00	LAW & ASSOCIATES	GENERAL	(1) LAW ENFORCEMENT BACKGROUND INVESTIGATION (PD)
February 6, 2019	44967	\$3,300.00	LEAGUE OF CALIFORNIA CITIES	GENERAL-WATER-SEWER	DISPLAY AS WESTERN CITY MAGAZINE FOR CITY MANAGER POSITION - AUGUST 2018, SEPTEMBER 2018, OCTOBER 2018, AND NOVEMBER 2018
February 6, 2019	44968	\$300.00	LEXIS NEXIS	GENERAL-WATER-SEWER	SUBSCRIPTION FOR PROPERTY INFORMATIONAL SERVICES FOR JANUARY 2019
February 6, 2019	44969	\$650.00	MAACO COLLISION REPAIR	GENERAL	2019 DODGE CHARGER - REFINISH PAINT MASKING & MATERIAL (PD)
February 6, 2019	44970	\$1,284.24	MENDOTA SMOG & REPAIR	GENERAL-WATER-SEWER	(9) SMOG CHECK ON MUTLIPL E DEPARTMENT VEHICLES, (2) MOTOR OIL CHANGE, (1) UPPER/LOWER SHIFT REPAIR (PD), (1) RADIATOR REPAIR
February 6, 2019	44971	\$410.84	OFFICE DEPOT	GENERAL-WATER-SEWER	MULTIPLE DEPARTMENT OFFICE SUPPLIES FOR JANUARY 2019
February 6, 2019	44972	\$244.08	AT&T	GENERAL-WATER-SEWER	MONTHLY SERVICES 559-266-6456 1/26/2019 - 2/25/2019
February 6, 2019	44973	\$32,522.62	PROVOST & PRITCHARD	GENERAL	PASSTHRU SERVICES FOR LA COLONIA NOVEMBER & DECEMBER 2018, PASSTHRU SERVICES FOR LAS PALMAS DECEMBER 2018, LANDSCAPE &
February 6, 2019	44974	\$808.48	QUINN COMPANY	WATER-SEWER	(1) FORKLIFT ALTERNATOR REPAIR AND (1) TROUBLE SHOOT & REPAIR FOR GENERATOR WWTP SHUT OFF VALVE
February 6, 2019	44975	\$19.95	SEBASTIAN	GENERAL	SECURITY SERVICES FOR 1/21/2019 - 2/20/2019 (PD)
February 6, 2019	44976	\$150.00	TRANSUNION RISK AND ALTERATIVE DATA	GENERAL	TRANSUNION RISK & ALTER (PD) JANUARY 2019 - MARCH 2019 FOR CRIMINAL BACKGROUND CHECK
February 6, 2019	44977	\$65.10	WECO	GENERAL-WATER-SEWER	(1) RENT CYL ACETYLENE, OXYGEN D, AND OXYGEN K FOR JANUARY 2019
February 6, 2019	44978	\$150.00	MARIA ALEJANDRE	WATER	MQ CUSTOMER REFUND FOR ALE0020
February 6, 2019	44979	\$50.25	SANTIAGO MARTINEZ RUIZ	WATER	MQ CUSTOMER REFUND FOR RUI0044
February 6, 2019	44980	\$150.00	JANLY YIM	WATER	MQ CUSTOMER REFUND FOR YIM0005
February 6, 2019	44981	\$5,990.00	LEAGUE OF CALIFORNIA CITIES	GENERAL-WATER-SEWER	MEMBERSHIP DUES FOR CALENDAR YEAR 2019
		\$482,852.78			

## **REAL ESTATE PURCHASE AGREEMENT**

**This Real Estate Purchase Agreement** is entered into on \_\_\_\_\_, 2019, by and between, **the City of Mendota**, a municipal corporation, hereinafter referred to as ("Seller") and **KSA Homes, Inc.**, a California Corporation, hereinafter collectively referred to as ("Buyer").

### **Agreement**

1. **Agreement to Buy and Sell.** Seller agrees to sell and Buyer agrees to buy the following described property (the "Real Property") located in the City of Mendota, County of Fresno, California:

Lot 20 of "Tract No. 4230, Hacienda Gardens, Phase II", in the City of Mendota, County of Fresno, State of California, according to the map thereof recorded in Volume 59 of Plats, at Page 25 to 28, inclusive, Fresno County Records.

A.P.N. 013-391-15ST, 607 De La Cruz Street, Mendota, CA 93640

2. **Consideration.** Buyer agrees to pay a total purchase price of **\$40,000.00** to be paid by Buyer to Seller as follows:

- a. Within five (5) days of opening of the escrow described in Paragraph 3 below, Buyer shall deposit **\$4,000.00** with the Escrow Holder.
- b. Before the close of escrow, Buyer shall deposit the remaining **\$36,000** with the Escrow Holder.

3. **Escrow.** An escrow relating to this sale shall be opened within seven (7) days after execution of this Agreement with **Fidelity National Title Company of California** ("Escrow Holder"). Escrow Instructions signed by Buyer and Seller shall be delivered to Escrow Holder no later than ten (10) days after acceptance. Escrow shall close within ten (10) days after Buyer deposits the total purchase price with Escrow Holder.

4. **Condition of Title.** Promptly following the opening of escrow, Escrow Holder shall obtain a preliminary title report on the real property and deliver copies thereof to all parties hereto. Buyer shall have five (5) business days after receipt of said preliminary title report to disapprove of any exceptions to title noted therein. In the event Buyer disapproves of any exceptions to title, Buyer shall communicate such disapproval in writing to Escrow Holder and to Seller within said five (5)



day period. Seller shall have ten (10) business days thereafter to attempt to eliminate any such objected to items. In the event Seller is unable to eliminate such objected to items, Buyer shall then have the option of waiving Buyer's objections or terminating the escrow. In the event Buyer elects to terminate the escrow, this Agreement shall be deemed rescinded by the parties hereto, and Escrow Holder shall return to the parties all sums and documents deposited with Escrow Holder. In the event Escrow Holder does not receive written objection from Buyer to any items of said preliminary title report within the said five (5) day period, then all such exceptions to title noted in said preliminary title report shall be deemed approved by Buyer. As of the close of escrow, the condition of title to the real property shall be free and clear of all liens and encumbrances except those disclosed to Buyer, and general and special taxes or water district assessments for the current fiscal year, a lien not yet due and payable, and shall be as set forth in said preliminary title report, except for items so objected to by Buyer under the foregoing procedure.

5. **Title Insurance.** When Escrow Holder has received all monies and instruments required to be deposited by the parties hereto, and when Escrow Holder is otherwise in position to do so, Escrow Holder shall issue its standard form CLTA Title Insurance Policy with liability equal to the purchase price showing title to the real property vested in Buyer and in the condition of title described in Paragraph 4, above. The close of escrow and the obligations of Seller and Buyer hereunder are expressly conditioned upon Escrow Holder's ability to issue such policy of title insurance.

6. **Vesting Title.** Exact vesting shall be specified in writing by Buyer to Escrow Holder prior to the close of escrow (See Acknowledgements under Paragraph 22).

7. **Escrow Charges, Closing Costs, Cultural Costs and Prorations.** Prorations shall be made in escrow as of the date of recordation of Grant Deed, on the basis of a thirty (30) day month for all real and personal property based on the latest available tax bill applicable to the fiscal year in which the proration date occurs. Seller shall pay costs of documentary transfer tax stamps on Grant Deed, CLTA policy of title insurance, recordation of Grant Deed, and half of Escrow Holder's fees. Buyer shall pay half of Escrow Holder's fees.

8. **Possession.** Possession of the Property shall be delivered to Buyer upon close of escrow.

9. **Agreements Affecting Property.** Seller warrants that there are no leases, co-ownership agreements, crop sale agreements or other contracts, or other rights of possession either oral or written affecting the Property other than those approved by Buyer in writing.

10. **Defaults.** Should Seller materially default under this Agreement, then any monies on deposit with the Broker or in escrow shall, upon demand of Buyer, be returned forthwith to Buyer and the parties shall have no further obligations under this Purchase Agreement. Should Buyer default, both parties agree that it would be extremely difficult and impractical to ascertain the actual damages sustained by the Seller resulting from Buyer's failure to complete the purchase, and it is therefore agreed in the event of Buyer's default, Seller shall be entitled to retain as liquidated damages in full satisfaction of any claim for damages which Seller might otherwise have by reason of Buyer's default, the entire deposit made by Buyer to the Broker or into escrow as hereinabove described in Paragraph 2.a.

11. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto and supersedes any prior agreement respecting the matters covered. No other agreement, statement, or promise made by any party or to any employee, officer, or agent of any party that is not in writing and signed by both Seller and Buyer shall be binding.

12. **Construction of Agreement.** This Agreement shall be construed as a whole and in accordance with its fair meaning. Captions and organization are for convenience only and are not to be used in construing the meaning.

13. **Time of Essence.** Time is of the essence of this Agreement.

14. **Binding on Successors.** Each provision of this Agreement shall be binding upon, and shall inure to the benefit of, the parties to this Agreement and their respective heirs, personal representatives, successors, and assigns.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, and, each counterpart shall be considered an original as to the party whose signature is contained thereon once the Agreement has been executed by all parties.

16. **Attorneys' Fees.** Should any litigation be commenced between the parties concerning the Property, this Agreement or the rights or duties of either party in relation thereto, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for attorneys' fees and costs in litigation as determined by the Court in such litigation or in a separate action brought for that purpose.

17. **Waiver.** The waiver of any breach of any provision of this Agreement by either party hereto shall not constitute a continuing waiver or a waiver of any breach either of the same or another provision of this Agreement.

18. **Notices.** Any notices or other communications permitted or required pursuant to this Agreement shall be made in writing and shall be delivered personally or sent by an overnight delivery or courier service, by certified or registered mail (postage prepaid), by telegraph, by telex or by facsimile transmission to the parties at the addresses set forth below their signatures. Notices shall be deemed given when personally served, telegraphed, telexed or sent by facsimile transmission, or, if sent by overnight delivery or courier service, the day after sent from within the United States, or if mailed, two days after date of deposit in the United States Mail.

19. **Liquidated Damages.** If Buyer defaults upon this Agreement and fails to purchase the Property, Seller will be damaged in an amount which, while substantial, is difficult to determine at this time. The parties agree that a reasonable estimate of such damage is \$4,000.00. In addition, Buyer desires to limit its potential liability to Seller and to induce Seller to waive all remedies it may have in the event of Buyer's default, other than Seller's right to retain such amount as liquidated damages. Therefore, by initialing below, both parties agree that the sum of \$4,000.00, will be paid to, accepted, and retained by Seller as its sole and exclusive remedy in equity and in law for Buyer's default and Escrow Holder is hereby authorized and directed to pay to Seller such liquidated damages, if Buyer breaches its obligation to purchase the Property pursuant to this Agreement.

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SELLER

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BUYER

20. **Offer.** Buyer's signature hereon constitutes an offer to Seller to purchase the Property described above on the terms and conditions herein specified. Unless this Agreement is signed by Seller and a signed copy hereof is delivered to Buyer within five (5) days after the date of Buyer's signature, the offer herein contained shall be deemed revoked.

21. **Seller's Acknowledgments.** Seller does not warrant this Real Property or any structure or improvements thereon as to habitability or suitability for any use, and the Real Property is being sold to Buyer in "as-is-where is" condition. Buyer shall make an independent determination that the Real Property conforms to any and all existing local, state, or federal building codes, requirements, regulations, statutes, ordinances, or other authorities or enactments.

22. **Buyer's Acknowledgement.**

a. Buyer acknowledges for Buyer and Buyer's successors, heirs, and assignees, that Buyer has been given a reasonable opportunity to inspect and investigate the Real Property, either independently or through agents of Buyer's choosing, and that in purchasing the Real Property,

the Buyer is not relying on Seller, or its agents, as to the condition or safety of the Real Property and/or any improvements thereon. Any reports, repairs, or work required by Buyer are to be the sole responsibility of the Buyer.

b. Buyer further states that Buyer is relying solely upon its own inspection of the Real Property and not upon any representation made to Buyer by any person whomsoever and is purchasing said Real Property in the condition in which it now is, without any obligation on the part of the Seller to make any changes, alterations, or repair thereto.

c. Buyer holds Seller and its officers, agents, insurers, heirs, personal representatives, successors, and assigns harmless from fiscal or legal responsibility arising from any defect in this Real Property or structures thereon.

d. Buyer does hereby release Seller, and Seller's officers, agents, insurers, successors and assigns, of and from, any and all manner of action or actions, suits, claims, damages, judgments, or penalties, whether known or unknown, liquidated or unliquidated, fixed, contingent, direct or indirect, against Seller, Seller's officers, agents, insurers, heirs, personal representatives, successors and assigns for, upon or by reason of any death or bodily injury to any person, destruction or damage to any property, contamination or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage was caused by the environmental conditions of the Real Property or the treatment or remediation of the environmental conditions of the Real Property.

23. **Tests and Inspections.** Buyer shall have fifteen (15) days from Seller's acceptance to perform any and all tests or inspections of the Real Property that he deem necessary to ensure that the Real Property is suitable for his intended use. This offer is contingent upon Buyer deeming such tests satisfactory, in Buyer's sole and absolute discretion. Buyer shall bear the costs of performing such tests. In the event Buyer elects to terminate the escrow pursuant to this Section 24, this Agreement shall be deemed rescinded by the parties hereto, and Escrow Holder shall return to the parties all sums and documents deposited with Escrow Holder. In the event Escrow Holder does not receive written notice that Buyer is terminating this Agreement pursuant to this Section 24 within the said fifteen (15) day period, then the condition of the Real Property shall be deemed approved by Buyer.

24. **Hazardous Material.** To the best of Seller's knowledge there are no underground tanks on the Property. Seller has never caused or permitted any Hazardous Material (as hereinafter defined) to be placed, held, located or disposed of on, under or at the Property, and to the best knowledge of Seller, the Property has never been used (whether by Seller or any other person) as a treatment, storage or disposal site (whether permanent or temporary) for any Hazardous Material. For

purposes of this Agreement, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, the Hazardous Waste Control Act, the Carpenter-Presley-Tanner Hazardous Substance Account Act, the Hazardous Materials Release Response Plans and Inventory Law, or any other Federal, state, or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, asbestos, or any other hazardous, toxic, or dangerous, waste, substance or material. Further, Seller will not, between the date hereof and the date of delivery of possession to Buyer, place, locate or dispose of on, under or at the Property any Hazardous Material, nor will Seller knowingly permit or cause any other person to do any of the aforesaid during such period. Notwithstanding the foregoing, Buyer is aware that the Property has been used for many years for agriculture, and further acknowledges that certain chemicals have been applied to the Real Property.

*In Witness Whereof*, the parties hereto have executed this Agreement effective as of the date first written above.

**Seller:**

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Cristian Gonzalez  
City Manager  
City of Mendota

**Buyer:**

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Stephen Hair  
KSA Homes, Inc.

**RECORDING REQUESTED BY**  
City of Mendota

**AND WHEN RECORDED MAIL DOCUMENT  
TO:**

John P. Kinsey  
WANGER JONES HELSLEY PC  
265 E. River Park Circle, Suite 310  
Fresno, CA 93720

Space Above This Line for Recorder's Use Only

A.P.N.: 013-391-15ST

## GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$ -0-; CITY TRANSFER TAX \$**0.00**;

SURVEY MONUMENT FEE \$**0.00**

- computed on the consideration or full value of property conveyed, OR  
 computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
 unincorporated area;  City of **Mendota**, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **THE CITY OF MENDOTA, A MUNICIPAL CORPORATION**

hereby GRANTS to **KSA HOMES INC., A CALIFORNIA CORPORATION**

the following property described in Exhibit "A" in the City of **Mendota**, County of **Fresno**, State of **California** ("Property") subject to the following restriction:

Grantor hereby reserves unto itself a ten (10) foot wide easement along the portion of Property described in Exhibit "B" for access, maintenance, and repair of the water line located thereunder, as well as any and all acts necessary or appropriate to ensure the continued use of the water line for the public's benefit. Grantee shall not permit any temporary or permanent structures to be maintained along the easement area, and shall not otherwise unreasonably interfere with Grantor's use thereof.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Cristian Gonzalez**  
**City Manager**  
**City of Mendota**

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature

\_\_\_\_\_

*This area for official notarial seal*

## **Exhibit A**

Lot 20 of "Tract No. 4230, Hacienda Gardens, Phase II", in the City of Mendota, County of Fresno, State of California, according to the map thereof recorded in Volume 59 of Plats, at Page 25 to 28, inclusive, Fresno County Records.

A.P.N. 013-391-15ST, 607 De La Cruz Street, Mendota, CA 93640



**Exhibit B**

[Legal description of the easement to be added]



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

February 12, 2019

Nathan Magsig, Chairman  
Fresno County Board of Supervisors  
Fresno County Hall of Records  
2281 Tulare Street, Room 301  
Fresno, CA 93721

Honorable Supervisor Magsig,

On behalf of the City Council of the City of Mendota, I am writing to convey our strong support of the Little Bear Solar Project, and to encourage the Fresno County Board of Supervisors to overturn the denial of the Fresno County Planning Commission.

The approval of the Little Bear Solar Project is of utmost importance to the community of Mendota due to the lasting environmental and economic impacts that it will have as a result of its close proximity to the City. The project puts land that has been intermittently used or left fallow for many years to consistent and productive use. Construction on land that, in recent history, has been underused or not utilized at all will minimize the amount of dust, fertilizers, and other pollinary irritants close to our City.

The project will also further support the County's energy policy goal to contribute to California's long-term renewable energy development and greenhouse gas reduction goals. The project will generate renewable solar electricity that will offset the emission of air pollutants that would have resulted from producing an equivalent amount of electricity from fossil fuel-fired generators.

Moreover, the construction of a project this considerable in size will provide a significant economic benefit to Mendota. These benefits include the creation of hundreds of jobs and a stimulation of our local economy through the purchase of needed construction materials and supplies.

It is of concern that it was unclear to both the project's applicant, and to the City, why the project was denied by the Fresno County Planning Commission. In today's political climate it is more important than ever that legislative and advisory bodies avoid creating a perception of decisions being made based on narrow interests. We believe that this project provides benefits to a wide scope of interests, especially for all of the County of Fresno.

We fully support the project and urge the Fresno County Board of Supervisors to approve the appropriate Unclassified Conditional Use Permits.

Respectfully,

Robert Silva  
Mayor  
City of Mendota

CC: Honorable Supervisor Brian Pacheco  
Honorable Supervisor Sal Quintero  
Honorable Supervisor Buddy Mendes

# A G E N D A I T E M – S T A F F R E P O R T

**DATE:** February 12, 2019  
**TO:** Honorable Mayor and City Council Members  
**FROM:** Cristian Gonzalez, City Manager  
John P. Kinsey, City Attorney  
**SUBJECT:** Responses to Requests for Proposal to Purchase City-Owned Real Property

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## **BACKGROUND:**

On November 9, 2018 the City issued a Request for Proposals (“RFP”) for the purchase and development of 114-acre parcel, A.P.N. 013-030-68ST. While the 114-acre parcel is currently zoned Public Facilities, the parcel is also subject to the City’s September 12, 2017, Ordinance No. 17-13, An Ordinance of the Council of the City of Mendota Amending Title 17 of the Mendota Municipal Code Creating a Commercial Cannabis Overlay District and Amending Chapter 8.36 for Consistency Therewith (the “Ordinance”). The Ordinance created an overlay district to facilitate the establishment of commercial cannabis businesses in the City. The Ordinance maintains the Zoning Ordinance’s existing use classifications and development standards within the Commercial Cannabis Overlay District (“Overlay District”). It then permits specified uses within the Overlay District that would otherwise be prohibited by the Zoning Ordinance, but only if a Conditional Use Permit (“CUP”) is first obtained. These uses are: (1) indoor cannabis cultivation, (2) cannabis manufacturing, (3) cannabis testing, and (4) cannabis distribution. Outdoor cannabis cultivation and cannabis dispensaries are not permitted in the Overlay District under any circumstances. As the 114-acre parcel is currently unused, the Overlay District presents an opportunity for developers to develop all or portions of the 114-acre parcel for permitted land uses relating to cannabis, which is an emerging industry in the State of California.

## **DISCUSSION:**

After publishing the RFP, the City received responses from Higher Plane Cultivation, Mendota Development Corporation, and the Axiom Group. The key features of each response are outlined in Exhibit “A.”

To facilitate the selection of a proposal, staff developed a scoring system based on the City’s objectives and the criteria set forth in the RFP. Each proposal was scored on a scale of 1-5 across 10 categories. Using this system, the Axiom Group received a score of 47, Mendota Development Corporation received a score of 32, and Higher Plane Cultivation received a score

of 14. Based on these results, staff is recommending that the City Council commence negotiations with the Axiom Group. The full results of the scoring are set forth in Exhibit “B.”

**RECOMMENDATION:**

Commence negotiations with the Axiom Group for the purchase and development of A.P.N. 013-030-68ST.

**ATTACHMENTS:**

Exhibit “A” (overview of proposals), Exhibit “B” (scoring of proposals)

**Exhibit A**

<b>PROPOSAL REQUIREMENT REVIEW</b>			
<i>Amount offered to lease Property</i>	Not specified, but offered \$50,000 in addition to asking price	\$10,000 per acre (approx. \$1,140,000)	Full appraised value plus \$200,000 “signing bonus” upon close of sale
<i>Narrative Description</i>	5 greenhouses on 3.5 acres	Have operated in medical cannabis industry since 2009; built and manage a 22,000 sq. ft. cannabis cultivation facility in Atwater and seven retail dispensaries in Los Angeles and one in Fresno; no sales to be conducted within Mendota city limits (facility purely to provide wholesale distribution to retailers across the state)	Manufacturing, testing and distribution facility to service entire California market; will utilize hoop-style greenhouses for cultivation; anticipates being operational by July 2019
<i>Square Footage</i>	3.5 acres (152,460 sq. ft.)	770,000 sq. ft.	830,000 sq. ft. of cultivation; will also have an additional 60,000 sq. ft. of “tilt up structure” to be used for manufacturing, testing, and distribution
<i>Phasing Schedule</i>	None provided	Four phase schedule: 1. One acre development of office buildings within 12 months 2. Four acre development of manufacturing, cultivation and greenhouse facilities within 24 months 3. 10 acre development of greenhouse facilities 4. 25 acre development of greenhouse facilities	Two parallel phases: 1. Immediately develop 47 acres of greenhouses to be operational by July 2019 2. Develop remaining 3 acres with 60,000 sq. ft. of concrete tilt-up structures and lease 5,000 sq. ft. to licensed cannabis testing laboratory; to be completed by Q4 of 2019
<i>Number of Individuals</i>	None provided	During Phases 1 and 2:	40 permanent

<i>Employed</i>		65-95 full time jobs During Phases 3 and 4: Up to 700 jobs	employees, and 60 seasonal employees
<i>Incorporation of Local Contractors and Goods</i>	50% of labor workforces will be from Mendota	Will advertise, interview and select Mendota residents ad employees; will offer preference to local businesses for contracts (electric, HVAC, construction, security, waste management)	All employees will be local, with the exception of the executive team and subject matter experts; will contract with local businesses for every service practicable, including for ancillary events (catering, purchasing supplies)
<i>Community Outreach</i>	None provided	Will make charitable contributions to local organizations and civic-minded projects; goal is to transition away from facilities in Atwater and make Mendota the centerpiece	Will host and Open House prior to opening to help residents understand safeguards; provide a site tour for local regulators and City leaders; will donate at least \$120,000 to local charities and nonprofits in addition to nearly \$3,000,000 in annual voluntary revenue sharing payments
<i>Wages</i>	None provided, but states that it will “pay for all training and offer benefits.”	Living wage (200% prevailing minimum wage)	Permanent employees will be paid between \$125,000 and 36,000 per year; seasonal employees will be paid \$15/hour
<i>Estimated Cost</i>	None provided	None provided	\$14,249,050 (not including appraisal price)
<i>Security Plan</i>	Outsourced to Police Science Institute – no plans yet available	Perimeter fencing; controlled gate; biometric technology; Knox-box technology; employee access log; separate employee parking; surveillance system; alarm system; track and trace software/equipment; inventory control protocols; hire security firm	Extensive security plan provided with crime prevention through natural design; access control; intrusion detection system; surveillance system; security training for employees; employee protection; utility controls, electronic information security; internal theft

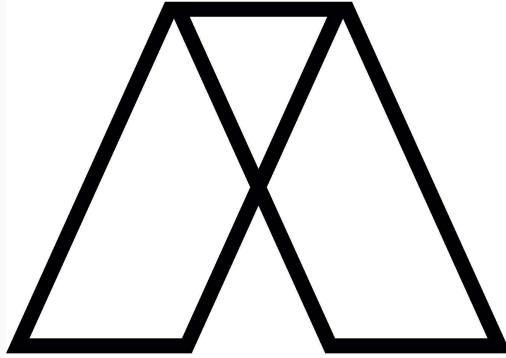
			protection; private security service contracting
<i>Principals and Investors</i>	None provided	Subsidiary of Emerald Spectrum Holdings Inc.	DC Airway Properties, LLC
<i>Project Pro-Forma Demonstrating Due Diligence</i>	None provided	Use a min. of 50% solar energy on-site; sealed greenhouse system with advanced climate control and ventilation; automatic watering system; rain-catcher system; will comply with "Organic" certification requirements; use of compost brewers and recycled materials	Provides three year profit/loss projection accounting for operating expenses, taxes, and anticipated profits; proposes revenue sharing as either a \$3.50/sq. ft. or 2% share of annual revenue
<i>Type of Investment</i>	None provided	None provided	DC Airway Properties, LLC have provided Industrial Integrity Solutions, LLC (contract developer) with \$20,000,000 line for acquisition and development of projects in Southern California
<i>Proposal for Quarterly Cannabis Cultivation Tax</i>	Offer 2.5% of gross sales revenue	Offer \$5.00 per sq. ft. of cultivated cannabis canopy, per year (estimated \$110,000 per year in tax revenue)	Will be responsible for all tax payments to City
<i>References</i>	None provided	None provided	Development Services Director for City of Adelanto; Economic Development Manager for City of Colton; Interim Deputy Director of Community & Economic Development for City of Riverside
<i>Licenses</i>	"Several state and county licenses still required." No currently held licenses identified	None currently held, but specifically identified types and number of permits/licenses sought	Currently holds: 1. Medical cultivation specialty indoor permit 2. Adult-use cultivation



			<p>specialty indoor permit</p> <p>3. Medical distributor permit</p> <p>4. Adult-use distributor permit</p> <p>5. Medical retail permit</p> <p>6. Adult-use retail permit</p> <p>7. Medical manufacturer level 1 permit</p> <p>8. Adult-use manufacturer level 1 permit</p> <p>9. Temporary adult-use cannabis cultivation license</p> <p>10. Medicinal and adult use distributor and retailer temporary licenses</p> <p>Permits issued by Cities of Los Angeles, Adelanto, Perris; Licenses issued by California Dept. of Food and Agriculture, Bureau of Cannabis Control, and CA Dept. of Public Health</p>
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**Exhibit B**

Criteria	RESPONDENTS		
	Higher Plane Cultivation	Mendota Development Corporation	Axiom Group
<b>SELECTION CRITERIA (1-5)</b>			
<i>Consistency of Development with City Objectives</i>	2	4	5
<i>Design Quality of Prior Similar Projects</i>	1	3	3
<i>Feasibility of Proposal</i>	1	3	5
<i>Experience of Respondent</i>	2	4	5
<i>Financial Capacity</i>	1	3	5
<i>Commitment to Sustainability</i>	1	4	4
<i>Community Engagement</i>	1	3	5
<i>Evaluation of References</i>	1	1	5
<i>Lease Price</i>	3	4	5
<i>Completeness of Response</i>	1	3	5
<b>TOTAL</b>	<b>14</b>	<b>32</b>	<b>47</b>



# **THE AXIOM GROUP**

Response to Request for Proposal  
Sale & Potential Development of City Surplus Real Property  
City of Mendota

January 4, 2018

Mr. Matt Flood, City Clerk  
City of Mendota  
643 Quince Street  
Mendota, CA 93640



RE: Request for Proposal for The Sale and Potential Development of City Surplus Real Property

Dear Mr. Flood:

The Axiom Group is pleased to present to the City of Mendota the attached response to your request seeking a proposal for the sale and potential development of surplus real property in Mendota.

The Axiom Group and its strategic partners, Industrial Integrity Solutions, DC Airway Properties and our best of breed operators have the required credentials, experience, and capacity to survey, entitle, design, construct, finance and operate a state-of-the-art cannabis cultivation, manufacturing, testing and distribution facility as detailed in the enclosed bid package.

In addition to meeting the City of Mendota's goals of selecting a responsible, experienced developer capable of overseeing and implementing all phases of planning and development of the project that would maximize the benefit to the City from a financial perspective, we offer a proposal that will bring immediate revenue and local jobs to the City while maximizing public health and safety.

The enclosed materials demonstrate the breadth of our experience as well as our ability to meet the City's priorities for the redevelopment. Our principals have a long history of successes in developing projects. Key strengths of our team include:

- Entitling and developing over 3 million square feet of cannabis cultivation in California;
- Constructing over 240,000 feet of concrete tilt up infrastructure for cannabis manufacturing, testing and distribution in California;
- Operating numerous cannabis businesses throughout all verticals in the cannabis supply chain; and
- Decades of experience completing projects on time and on budget.

As one of the premier cannabis developers in California, we are proud to be a part of this City's plan to develop a financially viable cannabis project and are committed to helping make this a reality for the City of Mendota. Our extensive knowledge of cannabis assets and compliance measures is unparalleled and our network of connections throughout the business, community, and local government will aid us in the success of this project.

The Axiom Group and its development partners have extensive experience in collaborating with cities and completing complex, desirable development projects such as we are proposing here. We are excited at the prospect of partnering with the City of Mendota.

Our proposal represents the opportunity to generate nearly \$3 million in annual tax revenues – or a 38% increase in City revenues based on the 2016 budget. Additionally, the project will create at least 40 permanent jobs with full benefits that pay a living wage and an additional 60 seasonal jobs.

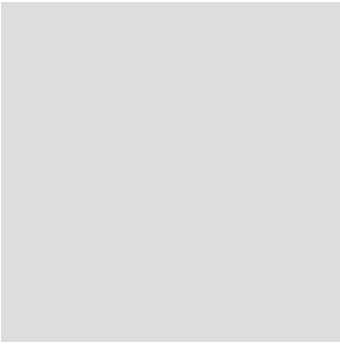
Thank you for the opportunity to submit this proposal. We look forward to continuing to collaborate with you on this important redevelopment.

Should you have any questions regarding this proposal, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin Moore". The signature is fluid and cursive, with the first letter of each word being significantly larger and more prominent.

Dustin Moore  
The Axiom Group  
831.917.2533



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# Meet Our Team



Our team represents the coming together of top executive level leadership with over 100 years of combined experience at the highest levels in cannabis, real estate development and other highly regulated industries. We will operate a world class cultivation, manufacturing, testing and distribution facility with core values rooted in our deep respect for the community.

Our team exemplifies the City's desired qualities – a developer who is responsible, experienced, capable of overseeing and implementing all phases of planning and development, and has significant experience developing property for cannabis cultivation and related uses, or for functionally similar purposes. Additionally, our proposal will maximize the benefit to the City from a financial perspective by adding nearly \$3 million in annual revenue as well as creating 40 permanent jobs and 60 seasonal jobs.

We have assembled a world class leadership team that ranges from Fortune 500 executives, proven cannabis operators and seasoned real estate developers that have experience in highly regulated industries. In addition to extensive real estate development experience, the team boasts leading experts in the cannabis compliance field that are actively engaged at both at the State and local level to ensure regulations are developed and implemented that provide for the highest level of public health and safety.

*The overall depth and breadth of our team as well as our knowledge and experience mean we will operate a compliant business with strict adherence to regulations, industry standards and best practices. For these reasons, we are the best fit for the Mendota Community.*

## **To demonstrate our experience, abilities, knowledge and overall qualifications through factual information, our team:**

- Acquired and developed real estate assets valued in excess of \$2.2 Billion.
- Assisted in the drafting and day to day management of Proposition 64, The Adult Use of Marijuana Act, which legalized cannabis in California.
- Shaped the regulations and laws that regulate cannabis in California.
- Worked with then Lieutenant Governor Gavin Newsom to conduct a Blue Ribbon Commission, which led to Proposition 64.
- Currently operate one of the leading cannabis distribution companies in California.
- Responsible for operating over 2 million square feet of cannabis cultivation.
- Successfully operating cannabis businesses in all vertical segments of the supply chain.



## **Overall Qualifications and Breadth of Knowledge**

Our business plan is designed to comply with the Mendota Municipal Code, all applicable rules and regulations and all State laws. It is a realistic model of operations developed through a collaborative process that leverages the expertise of our seasoned leadership team and industry specialists.

Our team brings the most extensive experience managing operational and regulatory compliance plans in the cannabis industry, and over a century of combined expertise in real estate development, business development, operations, and management. This breadth of experience and knowledge uniquely equips our team to fastidiously implement our startup plan, and to begin operations sooner than any other applicant.

We have secured strategic capital substantially beyond necessary, giving our team the ability to focus our time, resources and personnel on facility construction and staffing rather than fundraising.

### *Background information on Respondent's principals and investors*

#### The Axiom Group

Axiom is the applicant and lead consultant for the project. Axiom understands the policy and political landscape of cannabis policy in California because we helped create it. Our principals have extensive experience working on cannabis regulation in California, including our work at the State Capitol and our day-to-day management of the Proposition 64 campaign. We navigate California's complex political, regulatory and business landscape by utilizing our diverse experience and extensive network to deliver winning outcomes.

Axiom specializes in developing licensed businesses and commercial real estate projects for California's emerging cannabis industry. Our broad experience in business development, public policy, government affairs and political campaigns allows us to develop and implement a broad range of solutions to meet the needs of local jurisdictions.

Key individuals:

- *Dustin Moore, Partner*  
Dustin Moore is a trusted consultant and advisor with more than a decade of experience in business development, political strategy, public policy, and government and public affairs. He specializes in the strategic development and implementation of policies at the State and local level including ordinance and revenue measure development, public affairs and legislative efforts.

Dustin provides strategic consulting services to professional cannabis associations, cannabis manufacturers, distributors, testing labs and retailers. Dustin has managed state and local campaigns in California on issues





including cannabis, taxation, education, and healthcare.

Prior to joining Axiom, Dustin was a principal at Main Street Strategies, a legislative and public affairs firm specializing in emerging issues, including cannabis. Dustin served as the Deputy Campaign Manager for the Yes on Proposition 64 campaign – the 2016 ballot measure that legalized the adult use of marijuana in California.

Dustin previously consulted on/managed several successful campaigns at one of the state's leading campaign management firms and served as a Senior Consultant for the Speaker of the California State Assembly.

Prior to his work in the political and cannabis arenas, Dustin owned and operated businesses in California and Colorado.

Dustin graduated from the University of California, Santa Cruz with a degree in political science. He splits his time between Sacramento and Manhattan Beach with his wife, Lauren.

- *Jared Ficker, Partner*

Jared is one of the state's best at bridging the gap between science, policy and politics. His clients benefit from his exceptionally high level of public policy expertise, government and public relations skill and strategic business advice.

Prior to The Axiom Group, Jared led California Strategies' extensive environmental and energy practice for more than fifteen years. His strategies and client services led to Capitol Weekly identifying him as "one to watch" in public affairs, citing his work in developing the firm's renewable energy portfolio. His expertise is deep, with a focus on issues affecting land use, environmental policy, renewable energy, climate change, alternative fuels, development, mitigation, water supply, water quality, and local, state and federal permitting.

By employing his knowledge of government and an understanding of stakeholders' perspectives, Jared is able to consistently guide clients towards successful solutions, including:

- Managing financing and strategic efforts within the energy sector, particularly renewable energy
- Working with the venture capital and private equity community to help realize value and align public policy with company growth
- Attaining critical permits for energy and land development projects
- Assisting emerging technology companies with environmental policy, permitting and business development



Jared previously served in both terms of the Clinton Administration at the Department of the Interior and National Park Service and received numerous recognitions and awards for his work on new wilderness designations and the creation of new national parks and monuments, endangered-species issues, historic preservation and conservation easements, and tax incentives legislation.

Specifically, he worked to pass the California Desert Protection Act and defended Congressional scrutiny of the reintroduction of wolves in Yellowstone National Park, a heralded endangered species recovery.

Jared previously worked with the Conservation Land Group, where he developed support within state and federal agencies and the legislature for conservation acquisitions. Working with local land trusts and conservation organizations, he facilitated a number of conservation easement transactions. Jared also worked on a number of large acquisitions in California, including the Stornetta Ranch on the northern California Coast.

Jared has extensive campaign and political experience that allowed him to tour the state and better understand its issues and policies. He previously ran the California 12th Senate District campaign, where he managed day-to-day activities, including strategy, research, scheduling, and candidate preparation.

His political work includes and number of success state and local efforts on behalf of presidential and gubernatorial campaigns and key roles on statewide and local ballot initiatives.

Jared completed coursework for a doctorate at the University of California, Davis and has a B.A. in both Political Science and Environmental Studies from the University of California, Santa Barbara, where he was recognized as one of the Environmental Studies Program's outstanding students.

Jared lives in Santa Barbara with his wife and three children. He has offices in both Santa Barbara and Sacramento and works on projects throughout the State of California.

- *Kevin Schmidt, Partner*

Kevin is a partner with The Axiom Group based in Sacramento. Kevin has a multidimensional background in statewide policy and politics. As a fourth generation public servant to California, he has the institutional knowledge needed to navigate the complex political landscape of this state.

Beginning his public service career with the California Senate Majority Leader, Kevin worked on a broad array of topics including agriculture, water, and energy. He provided support for oversight and investigative hearings involving complex policy issues.



Prior to joining Axiom, Kevin spent three years at California Strategies, where he focused on renewable energy and environmental projects. Before joining California Strategies, Kevin spent five years serving as Policy Director for Lieutenant Governor (now Governor-elect) Gavin Newsom, focusing on energy, natural resources, economic development, higher education, and other policy issues.

Kevin also represented Lt. Governor Newsom on the California Coastal Commission, the California State Lands Commission, and the Ocean Protection Council, and in those positions was responsible for decision-making on important statewide policies and multibillion-dollar State Budgets.

A native Californian, Kevin earned a Bachelor's of Science degree in business management from Santa Clara University, and a Master's in Public Administration from the University of Southern California.

### Industrial Integrity Solutions

Industrial Integrity Solutions will be the contract developer for the project. Industrial Integrity Solutions is a Southern California based development firm specializing in the development of real estate specifically for cannabis use. Industrial Integrity Solutions is a subsidiary of Frontier Enterprises. Industrial Integrity Solutions also has subsidiaries that are specific to retail sales, cultivation and processing of cannabis products.

Since it was founded in 2002, Frontier Enterprises/Industrial Integrity Solutions has built homes in Southern California. By 2004, Frontier became the fastest company to reach Builder 100 status in the history of the Professional Builder Magazine. From inception through 2008, Frontier built approximately 3,000 new homes. In 2009, Frontier transitioned from new homebuilding to purchasing distressed assets to help restore communities across Southern California and the nation by transforming vacant and foreclosed properties that attracted crime and blight into beautifully restored owner-occupied homes for families and first-time buyers.

Since its launch into purchasing distressed assets, Frontier has acquired, repaired and sold more than 2,000 previously foreclosed homes valued at more than \$500 million across Southern California, Arizona, Texas and Georgia. When foreclosures began slowing down in late 2012, Frontier quickly shifted back into purchasing land for new homebuilding once again. Again, Frontier became the largest private homebuilding company in the Inland Empire in 2014 and has continued that success through 2018 by delivering approximately 1,600 houses with revenues approaching \$650 million. Since the company's inception in 2002, Frontier has acquired and re-sold more than 6,700 homes valued in excess of \$2.2 Billion.

Frontier is continually focused on providing affordable homes for first-time and first-time move-up buyers. Frontier also looks to align themselves with strategic partners in order to create efficiencies and a win-win scenario. Frontier Enterprises' entrepreneurial spirit



has led them to also own and develop commercial, multi-family and industrial properties throughout southern California. The company owns in excess of 75,000 square feet of office property, currently is building over 150 apartment units, 3 dispensary retail centers and is completing the development of over 630,000 square feet of industrial buildings. Frontier was able to re-zone a 30-acre site within the cannabis designation, develop and build 21-30,000 square foot buildings within a 24-month period.

Frontier Enterprises was originally established in 2003 and has since grown to be the largest private homebuilder in the Inland Empire. In addition to homebuilding, the company also has projects specific to retail development and multi-family development. As developers, Frontier prides itself on specializing in every aspect of the trade.

While many homebuilders of this size focus on acquiring finished lots, which already have been entitled and developed with all the infrastructure in place, Frontier prefers purchasing raw land with no entitlements in place.

#### Key Individuals:

- *James L. Previti, President and CEO*  
James started his first homebuilding company in 2002, Frontier Homes, which was named as one of America's top 100 builders in Professional Builder Magazine's May 2005 edition. A prestigious award based upon revenues for 2004, with Frontier Homes making the list in its second full year of business, showing revenues of almost \$300 million from nearly 800 deliveries.

The Company was the leading homebuilder in the burgeoning High Desert market, with a dominant market share, and one of the top builders in California's Inland Empire. Frontier Homes also enjoyed a position among the top builders in the high-growth Antelope Valley market, the last bastion of affordability in Los Angeles County as well as Phoenix, Arizona.

A veteran of the homebuilding industry and a second-generation homebuilder, Mr. Previti began his career as a construction superintendent, directly supervising new home construction. After honing his skills and expanding his practical knowledge in the field, he moved to other disciplines within the company, including purchasing and entitlements, rapidly progressing to management.

Before founding Frontier Homes in 2002, Mr. Previti was an Area President for one of the nation's top public builders, with full profit-and-loss responsibility for multiple land development, construction and sales for single-family and multi-family projects.

In 2009, Previti established Frontier Enterprises to help restore communities across Southern California and the nation by turning vacant and foreclosed properties that attract crime and blight into beautifully restored homes for families



and first-time buyers. Since its launch, Frontier Enterprises has bought and repaired more than \$500 million in previously foreclosed houses and transformed them into almost 2,000 owner-occupied homes.

In 2013, Previti formed Frontier Communities to re-establish his roots as a new homebuilding company and is once again aiming to become recognized as one of America's leading new homebuilders. Since 2014, Frontier Communities has been the largest private homebuilding company in the Inland Empire.

His vision was to create a company that prided itself in quality-built, affordable entry-level and "move-up" housing in the Inland Empire and other affordable market areas and to lead the company into not only a market position as a premier homebuilder, but as a premier employer as well. Previti and his management team pledge true compassion for each individual and focus on creating a positive work environment with the best employee benefits in the industry, as well as ample opportunity for professional growth.

In addition to homebuilding, Previti has also diversified his portfolio by investing and developing commercial, multi-family and industrial properties.

- *Rich Munkvold, Chief Financial Officer*

Rich joined the Company in May 2005 and oversees all financial functions of the Frontier Enterprises, its affiliates and joint ventures. He is responsible for accounting and related activities, including internal and external financial reporting, capital procurement and lending relationships, as well as the information technology department. Mr. Munkvold is also a member of the executive planning committee. As such, he is intimately involved in the Company's organizational structure as well as all acquisitions.

Prior to joining Frontier, Mr. Munkvold was Chief Financial Officer of the K. Hovnanian Homes Ontario Group, where he provided management and oversight for financial operations for the Southwestern States. His purview included three operating regions producing more than 3,500 deliveries and \$1 billion in annual revenues. He also led due diligence teams during consideration and consummation of a number of corporate acquisitions.

From 1995, Mr. Munkvold was Chief Financial Officer for The Forecast Group, a Builder 100 company, leading that firm's financial and information technology operations until Forecast's acquisition by Hovnanian. He entered the homebuilding industry with Ryland Homes in 1989, where he held several accounting and finance positions, including that of western region financial analyst.

While in his senior management positions, he has been one of the key leaders of overseeing in excess of 25,000 deliveries and \$6 billion in revenue in addition to



the acquisition, development and disposition of commercial, multi-family and industrial properties.

### DC Airway Properties

DC Airway Properties will be the capital source for the project and has been an intuitional lender for decades. DC Airway has committed \$20 million dollars to the project. Please see the enclosed commitment letter.

### Key Individual:

- *Donald D. Christy, President and CEO*  
Mr. Don Christy, Jr. has been President and Chief Executive Officer of NADAguides.com since 1991. Mr. Christy serves as the visionary leader of NADAguides's traditional and online operations. He has nearly 30 years of publishing and business management experience. Prior to studies, he closely worked with his father, the founder of NADAguides and helped to develop the NADAguides's traditional brand, N.A.D.A. Appraisal Guides and its online entity, NADAguides.com, into the unified publishing powerhouse.

After attending college, Mr. Christy joined the NADAguides, where he began his career by assisting in the distribution of hundreds of thousands of vehicle appraisal guidebooks each year. In 1976, Mr. Christy was promoted to the sales department, managing the strategic development of new business alliances in the banking, insurance and automotive industries. Additionally, he established relationships with government regulatory agencies and finance professionals, helping to establish the NADAguides as the respected leader in vehicle valuation information.

In 1980, Mr. Christy transitioned to the editorial department and in 1984, accepted the position of Managing Editor. Four years later, he was appointed to the position of General Manager and Marketing Director. In this role he was responsible for overseeing all daily operations as well as maintaining profitability with the NADAguides's comprehensive client roster.

In total, Mr. Christy's hands on management approach, his intrinsic understanding of traditional business initiatives and his in-depth understanding of technology has helped him steer NADAguides.com to the forefront of the vehicle information publishing marketplace. Under his direction, NADAguides.com has grown from a relatively unknown automotive information website in 2000 to one of the Top 10 Automotive Websites in the U.S. today. In July 2017, NADAguides was sold to JD Power & Company.

For the past two decades, Mr. Christy and his entities, NADAguides and DC Airway Properties, LLC, have been capital providers for the acquisition and development of real estate projects throughout southern California.



## Operations Team

We have assembled a best of breed operations team that includes the CEO of the nation's largest natural foods distributor, a former law enforcement officer and current security consultant for a number of jurisdictions throughout the state, a cannabis manufacturing expert and a master grower with significant cultivation experience.

### Key Individuals:

- *Mike Beaudry, Distribution Advisor*

Mike brings with him extensive distribution experience, having spent most of the past 20+ years achieving the highest-level of understanding in the perishable distribution business, including natural, organic and specialty foods. While President of UNFI, America's leading distributor of Natural and Organic foods, Mike led teams of up to 5,000 members while managing more than \$2 billion dollars in annual revenue. Prior to his role as President, Mike led the operations nationally for UNFI's highly complicated perishable distribution business, with more than 3M sq. ft. of warehouses and 1,000+ trucks across the US.

- *Casey Fenwick, Chief Manufacturing Consultant*

Casey Fenwick is the President of Lifestyle Delivery Systems Inc. Lifestyle Delivery Systems is a state licensed cannabis manufacturer, cultivator, seed genetics lab, and distributor. Casey's background within the cannabis space has primarily been in manufacturing for the last 5 years. In the early stages, Casey has helped build two manufacturing companies from start up to be two of the largest licensed operations in the state – turning over \$8 million dollars in sales in one quarter.

He is a hands-on leader and is involved in the day to day management of the business, from the type of equipment to purchase to streamlining processes to meet state regulations to procuring certain types of manufacturing material needed to make the right product at the right price. All while factoring in the market sale price, and using his long-standing industry relationships to find buyers for the end product. In his spare time, he enjoys outdoor activities with his wife and 3-year old daughter.

- *Matt Ferguson, Chief Cultivation Consultant*

Matt joins the team with nearly a decade of experience in legal cannabis cultivation, site design and operational history. Matt is solely responsible for developing over 2 million square feet of cultivation in Colorado, South Dakota, Washington, Nevada and California.

Matt specializes in designing cultivation sites that maximize production while minimizing costs and inputs.



- *Matt Carroll, Chief Security Consultant*

Matt Carroll holds an A.A. in the Administration of Justice, a B.S. in Criminal Justice, is a practitioner of Crime Prevention Through Environment Design (CPTED) certified through the National Institute of Crime Prevention, is a Tactical Communication Instructor certified through the Verbal Judo Institute, and has worked in both the public law enforcement and private security fields consistently since 1995.

Matt completed three reserve law enforcement training programs in conjunction with the Shasta County Sheriff's Department and Shasta College before attending and graduating from the Sacramento County Sheriff's Department POST Academy in 1998. Matt worked for the Sacramento County Sheriff's Department for four years before changing course and joining the Sacramento-Yolo Port District Police Department in 2001.

Following the terrorist attacks of 9/11, Matt's role with the Port Police Department transitioned from patrol work to compliance and planning relative to the post-9/11 maritime security mandates imposed under 33CFR. Matt's work in developing standards and practices at the Port of Sacramento garnered the attention of the Coast Guard, who ultimately used Matt's plans as templates for other west coast port facility security plans.

In 2003, Matt co-founded Paladin Private Security; an organization widely recognized as northern California's leader in private patrol and response services. Through his work at Paladin, Matt designs and maintains security programs for over 450 customers including Sacramento Regional Transit, the City of Sacramento, public school districts, recreation and park districts, property and business improvement districts and an array of residential and commercial communities throughout the Greater Sacramento Area.

In 2013, Matt Co-Founded Platinum-Archer Holdings, LLC, a commercial real estate holding company and purveyor of compressed natural gas fueling resources for light and heavy-duty fleets. In 2015, Matt co-founded the Sacramento Security Training Center – a state licensed training center providing industry training including first aid, CPR/AED, guard licensing coursework, baton licensing, and firearms training for both the security industry and concealed carriers. In 2017, Matt co-founded Emissary Secure Transport – a DMV/CHP licensed armored carrier created to provide for safe transportation of cannabis-sourced currency.

As the City of Sacramento's cannabis industry took form, Matt worked closely with the Sacramento Police Department to assist them in developing ordinances, standards and practices that would serve to protect the interests of cannabis business operations as well as the general public. To date, Matt has authored over 85% of the security plans relative to Sacramento-based cannabis





businesses. Matt's reputation spread throughout the industry, leading to plan development in over twenty additional cities and across three states.

In late 2017, Matt began providing cannabis security consulting services for municipalities. Matt is currently under contract with the City of Dixon Police Department and the City of Benicia Police Department. Through these consulting contracts, Matt trains City staff including police and code enforcement personnel on the ever-changing cannabis regulations, crime prevention strategies, CPTED strategies, and assists with facility design review, security plan review, site inspections and compliance inspections.

### **Applicant Certification**

Neither the applicant nor the investor has a criminal record of a conviction or no contest plea to a misdemeanor or felony, and has never declared bankruptcy, either in their personal capacity or in connection with their business operations.

## **Our Proposal**

*The total amount Respondent is willing to pay to purchase Property*

Our team is prepared to purchase the property at the full appraised value as soon as the City has completed the appraisal. In addition, we are willing to contribute \$200,000 upon close of the sale to the City above and beyond the purchase price as a signing bonus.

*A narrative description of the proposed project*

The following section details the narrative for the project, the square footage of the proposed project, including a phasing schedule, a planned full buildout timeframe, a description of how the project will comply with local and state laws and use advanced seed to sale compliance software, and a timeline for obtaining state licenses from the California Department of Food and Agriculture, California Department of Public Health and the Bureau of Cannabis Control for all of the necessary licenses to operate the facility.

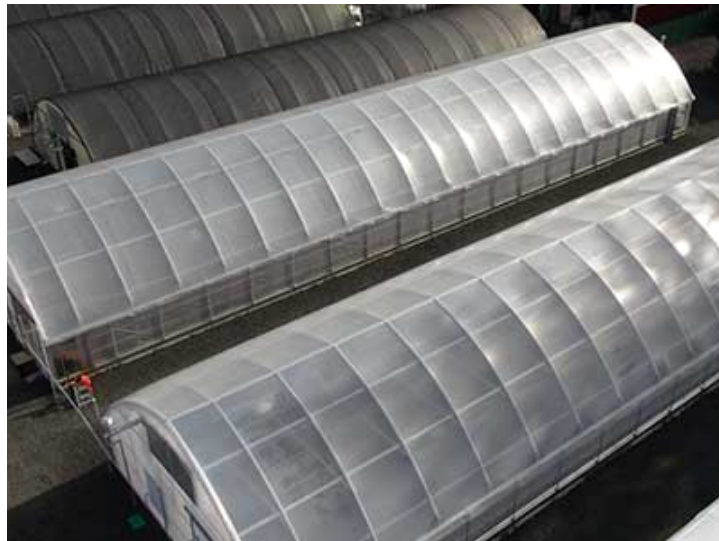
**Of note, the facility will not store any cash on site. All transactions will be bankable and conducted using checks or wire transfers. Additionally, no transactions will occur at the facility. All distribution loads that originate at the facility will be transferred directly to licensed retail dispensaries throughout the state.**



The project will be a vertically integrated and self-contained cannabis cultivation, manufacturing, testing and distribution facility strategically located in the City of Mendota for logistical efficiencies. The project will service the entire California market, which is anticipated to exceed \$25 billion dollars within 5 years.

After extensive market research, we have determined the most efficient and only financially viable cannabis production method is to harness the sun's energy rather than high intensity discharge lighting. Therefore, we are proposing to develop hoop style greenhouses for cultivation. Other methods of cultivation will not remain viable for the production of cannabis derived products which are the fastest growing consumer product good.

This decision is based on empirical evidence from states such as Colorado, Washington and Oregon as well as market data that substantiates the average price of a pound of cannabis is dropping below \$800 in legal markets. For context, after the cost of electricity for high intensity lighting, HVAC and other infrastructure costs, it costs no less than \$500 to produce a pound of indoor cannabis versus \$150 for cannabis grown in greenhouses.



Additionally, with the modular nature and ease of installation, this plan to use hoop style greenhouses (pictured) will allow us to be operational by July of 2019.

The project will permanently employ 40 Mendotans, will seasonally hire up to 60 additional Mendotans, and will create a substantial financial stimulus for the City both directly and indirectly from ongoing tax revenue as well as economic stimulation from the tangential services the project will require from local contractors and businesses.

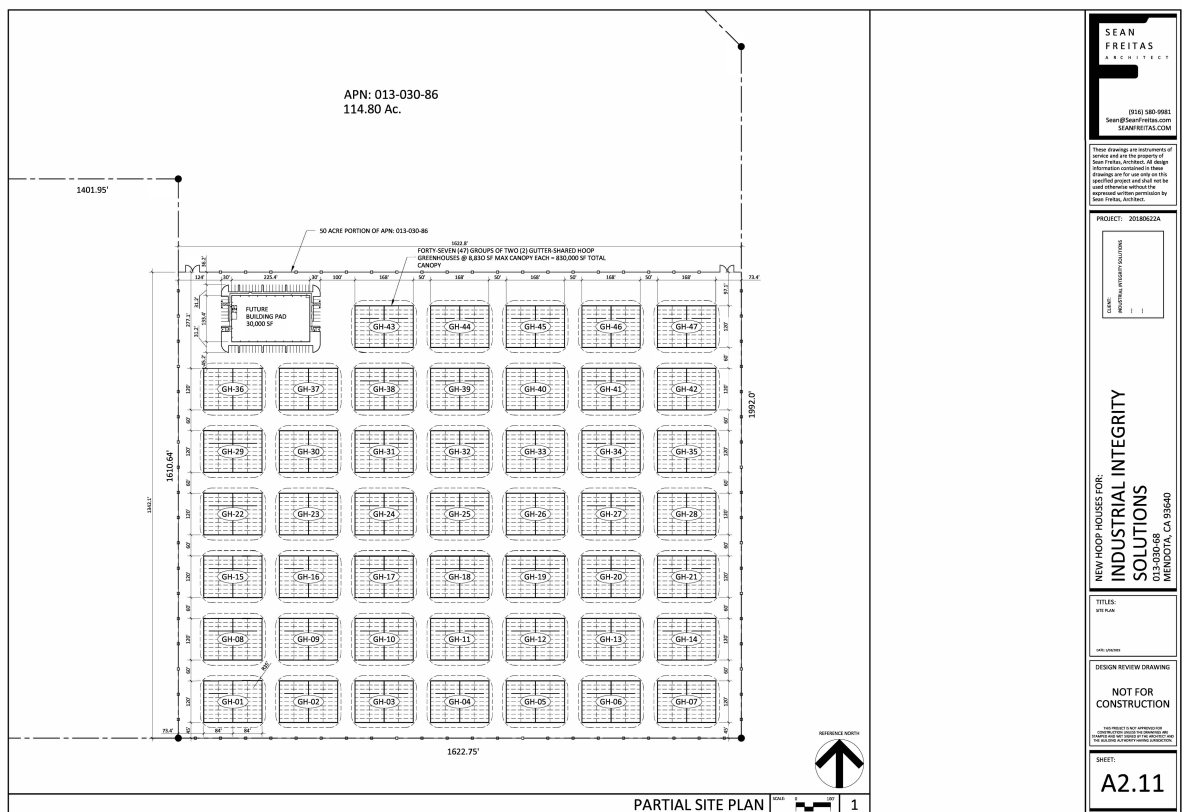
Following the proposed business plan, the project will begin operations by the summer of 2019. This will allow for immediate revenue to the City as well as jobs that pay a living wage.



## The square footage of the proposed project, including a phasing schedule and a planned full buildout timeframe

The proposed site plan allows for a total of 47 double greenhouse structures that will each be capable of 8,830 square feet of cultivation, making for a total of 830,000 square feet of cultivation at the site. Additionally, the site will have 1 pad that will accommodate a total of 60,000 square feet of concrete tilt up structure that will be used for the manufacturing, testing and distribution of cannabis goods throughout the State.

## Proposed Site Plan



## Phases

We are seeking to develop the entire 50-acre parcel in 2 parallel phases:

1. Immediately develop 47 acres of cultivation in greenhouses to be operational by July 2019 to allow for one full harvest. This date had been determined based on pre-development study which includes diligence on the availability of water and sewage. Additionally, for storm drainage, we plan to retain on site.

To initiate this process, we will engage several consultants to proceed with all of the required environmental studies needed to successfully address CEQA requirements. In



an effort to proceed in the quickest manner possible, we will concurrently engage a Civil Engineer to begin all the necessary studies (Preliminary grading, Prelim WQMP, Water / Sewer Feasibility studies, Hydrology, etc.) and plans for our initial entitlements that include rezoning the property.

During this process and as we get closer to finalizing our entitlement, we will generally, in a continued effort to proceed at the quickest rate possible, instruct our civil engineer to begin the improvement plans (grading, water, sewer, storm drain & street improvements plans). During this time, we will also engage our utility consultant to begin working with the applicable utility providers for the design of all of the dry utilities. Our utility consultant will work hand in hand with our civil engineer to be sure the gas, electric, cable, etc. has been designed in a fashion not to conflict with any of the wet utilities.

Upon approval of the final improvement drawings and dry utility plans, we will then begin the land development which will simply require the fencing and security measures for the perimeter and access points and the installation of the modular greenhouse structures.

2. Develop the remaining 3 acres with approximately 60,000 square feet of concrete tilt-up structures to house our manufacturing and distribution operations as well as to lease approximately 5,000 square feet to a state licensed cannabis testing laboratory.

The second phase of the project will run parallel and be designed and entitled during phase 1. Phase 2 will be completed by Q4 of 2019 in order to process, manufacture and distribute the first crop that will be ready for harvest in November 2019.

### **Timeline**

Upon confirmation that we are the selected developer by the City and are approved to proceed, we will follow the preliminary timeline below that assumes a negative declaration under CEQA:

<b>Milestone</b>	<b>Month</b>	<b>Year</b>
RFP Due	January	2019
Council Reviews Submissions	January	2019
Respondent Selected	January	2019
Exclusive Negotiating Rights Agreement	February	2019
Remit Performance Payment and begin Entitlement Process	February	2019
Fully Executed Purchase and Sale Agreement Completed	February	2019
Plans	March	2019
Submit State Licensing Applications	April	2019
Phase 1 Construction Start	April	2019
Phase 2 Construction Start	April	2019
Conduct Local Job Fair	May	2019
Approval of State Licenses	June	2019



Phase 1 Construction Complete	July	2019
Plant First Crop	July	2019
Harvest	October	2019
Phase 2 Construction Complete	October	2019
Remit 1 <sup>st</sup> Quarterly Revenue Sharing Payment	December	2019
Manufacturing and Distribution Operations Commence	February	2020
Remit 2 <sup>nd</sup> Quarterly Revenue Sharing Payment	March	2020
Testing Operations Commence	May	2020
Remit 3 <sup>rd</sup> Quarterly Revenue Sharing Payment	June	2020

## Compliance

If we are selected to undertake the project, we are prepared to enter into an Exclusive Negotiating Rights Agreement (“ENRA”) that will provide a timeline and process for the negotiation of the Purchase and Development Agreement.

Additionally, we are fully prepared to remit a performance payment, and compensate the City for staff, consultant(s), and legal counsel costs, commence the entitlement and environmental review process for the development, including the payment of all applicable fees, and agree in the PSA to certain pre-sale requirements, including the receipt of permits and approvals, financing conditions, terms of the PSA, and conditions for development of the project.

We are prepared to enter into development agreement with the City, which is consistent with the provisions of the Mendota cannabis ordinance, promotes the purposes and intent of the Commercial Cannabis Overlay District, and ensures that the property will be used for commercial cannabis activity only. The project will be fully compliant with State and local regulations and:

- Will ensure cannabis odors will not be detectable from the property boundary or public right-of-way.
- All commercial cannabis activities will occur within an enclosed structure and will not be visible from the property boundary or public right-of-way.
- No light will be visible through the roof and windows of grow areas from dusk to dawn.
- All pesticide use will comply with the State Department of Pesticide Regulations.
- A water recycling management plan will be prepared and implemented that will demonstrate sufficient water supply for the proposed use, including a certification that we may use that water legally under state law, and, if water is used for irrigation purposes, that irrigation water will be recycled to the maximum extent feasible using best management practices.



- A site security plan will be prepared and implemented that will demonstrate sufficient site security measures to prevent all unauthorized access to the site.
- A power use plan will be prepared and implemented demonstrating sufficient powersupply for the proposed use.
- We will obtain all necessary state permits and authorizations to engage in the proposed use.
- We will provide to the City all information required by state authorities pursuant to Business and Professions Code Section 26050 *et seq.*
- We will provide to the City all information required by the state for any renewal of a state license related to commercial cannabis activity as well as the state licensing authority's decision on any such renewal.
- We will consent to the City's inspection, without notice, of any and all records required to be maintained under any local, state, or federal law.
- We will immediately provide notice to the City of any suspension or revocation of any state license issued pursuant to Business and Professions Code Section 26050 *et seq.*

Additionally, the conditions of development will include the following provisions for the development agreement required pursuant to Section 17.99.060(8)(1) of the City of Mendota municipal code and shall include the following terms:

- An agreement to pay an annual \$3.50 per square foot fee based on the total square footage of the developed portions of the property.
- The fee will be paid in quarterly installments at times and locations specified by the City, and will not be paid in cash.
- As the applicant, we have the explicit responsibility for paying the fee required for all developed portions of the property regardless of whether portions of the developed property are leased or otherwise conveyed to third parties. Additionally, any transfer of interest in the developed property shall not affect the obligation to pay the fee unless the recipient assumes the applicant's obligation to pay the fee for all developed portions of the property.



## Licensing

*To the extent Applicant seeks to develop under the Ordinance, a narrative description of whether the Respondent has applied and/or received any state license for commercial cannabis operations, and, if not, the steps Respondent has taken, or intends to take, to obtain such license, including an estimated timeframe for the receipt of a state license and whether the Respondent is eligible for priority status pursuant to Business and Professions Code, Section 26054.2(a)*

The process to obtain an annual license takes approximately three months. As such, we would immediately initiate the state licensing process for this project. Our team has processed hundreds of successful applications throughout the State and we are confident that we will be issued our licenses to operate prior to our proposed July 2019 start date.

### **The Developer currently holds all of the following licenses:**

#### California Organic Treatment Center, Inc. (COTC)

Local Permits Issued by the City of Los Angeles (COTC's Account Number: 0002205101-0001-8)

1. Medical Cultivation Specialty Indoor – Fund/Class: J062
2. Adult-Use Cultivation Specialty Indoor – Fund/Class: J072
3. Medical Distributor – Fund/Class: J080
4. Adult-Use Distributor – Fund/Class: J090
5. Medical Retail – Fund/Class: J010
6. Adult-Use Retail – Fund/Class: J020
7. Medical Manufacturer Level 1 – Fund/Class: J083
8. Adult-Use Manufacturer Level 1 – Fund/Class: J093

State Licenses Issued by the California Department of Food and Agriculture (CDFA)

1. Temporary Adult-Use Cannabis Cultivation – TCA18-0007456

State Licenses Issued by the Bureau of Cannabis Control (BCC)

1. Medicinal and Adult-Use Distributor Temporary License – C11-18-0000243-TEMP
2. Medicinal and Adult-Use Retailer Temporary License – C10-18-0000096-TEMP

State Licenses Issued by the California Department of Public Health (CDPH)



1. Medicinal and Adult-Use Manufacturing Temporary License – CDPH-T00001730

Adelanto Air Expressway, Inc. (AAE)

Local Permits Issued by the City of Adelanto

1. Medical Retail – MMDP 17-06
2. Adult-Use Retail – MAUD 18-17

Local Permits Issued by the City of Perris

1. Medical and Adult-Use Retail – PLN17-05228

State Licenses Issued by the Bureau of Cannabis Control (BCC)

1. Adelanto Medicinal and Adult-Use Retailer Temporary License – M10-18-0000353-TEMP
2. Perris Medicinal and Adult-Use Retailer Temporary License – C10-18-0000125-TEMP

Muskrat Distributors, Inc. (MDI)

Local Permits Issued by the City of Adelanto

1. Medical Cultivation – MMC 17-15
2. Adult-Use Cultivation – AUCC 18-53
3. Medical Distributor – MCDT 17-37
4. Adult-Use Distributor – AUCDT 18-54

State Licenses Applied for and Under Administrative Review by the California Department of Food and Agriculture (CDFA)

1. Temporary Adult-Use Cannabis Cultivation – TCA18-0011016

State Licenses Issued by the Bureau of Cannabis Control (BCC)

1. Medicinal and Adult-Use Distributor Temporary License – C11-18-0000291-TEMP

Adelanto Botanical Company, Inc. (ABC)

Local Permits Issued by the City of Adelanto

1. Adult-Use Cultivation – AUCC 18-52
2. Adult-Use Manufacturing – AUCM 18-51

State Licenses Issued by the California Department of Food and Agriculture (CDFA)

1. Temporary Adult-Use Cannabis Cultivation – TAL18-0011148

State Licenses Issued by the California Department of Public Health (CDPH)





## 1. Medicinal and Adult-Use Manufacturing Temporary License – CDPH-T1731

### Track and Trace Compliance Software

In addition to the compliance articulated above, we will utilize a proven software-based track and trace software program that assures cannabis is accounted for at every step in the supply chain from seed to sale.



We have selected Trellis as our software provider. Trellis software was incubated inside of a cultivation facility just outside of Toronto where cultivators were dissatisfied with the tools available to manage their operations. The Trellis team observed all aspects of the cultivation process first hand and combined previous inventory management experience to design an intuitive system from the operators' perspective.

After building an early prototype, Trellis expanded to California and launched a full seed-to-sale platform. Since then the company has continued to work closely with existing clients and international partners to solve the constantly developing pain points of the cannabis industry. Trellis aims to provide a hands-on customer experience while continuously gathering feedback to improve the platform.

Trellis will:

- Seamlessly track all activity among users with an auditable and time-stamped activity log
- Manage every plant and batch throughout cultivation, including propagation, vegetation and flowering stages, with Trellis' customizable framework
- Track wet, dry and trim yields to generate harvest batch manifests with precise moisture and yield loss data
- Manage cannabis inventory from cultivation to extraction and distribution in a single, easy to use platform
- Maintain chain of custody records from seed-to-sale with two-factor authorizations and permission driven user profiles
- Manage each stage of the manufacturing process from extraction and refinement to finished product
- Automatically generate purchase orders, invoices, and manifests



Additionally, if desired by the City, we will utilize a secondary 3<sup>rd</sup> party software provider that will provide a real time dashboard for the City to track all of the revenue at the facility. This software also minimizes the need for audits and the data collected assists if and when an audit is necessary.



*The number of individuals employed by Respondent, including whether the project will employ, or make a best effort at employing, Mendota residents for 50% or more of its employees*

The project will permanently employ 40 Mendotans and another 60 Mendotans will be needed on a seasonal basis. All permanent employees will be offered full benefits including health, vision, dental and a matching 401k program. This ensures all employees have an ownership stake in the company.

To further exhibit our understanding and commitment to the community we will be hiring 100% locally with the exception of our executive team and subject matter experts who will be brought in to train the local workforce. Our local hiring plan is built upon the fundamental value of recruiting from local job fairs that we will host as well as working with the Fresno Regional Workforce Development Board.

Outreach will occur through multiple platforms, including each organization's existing outreach methods as well as job postings across different channels. Because we know a significant portion of job seekers access the Internet on their cellphones rather than with a computer, all application materials will be made as user-friendly as possible and be mobile optimized to ensure ease of application.

Our organization is committed to promoting from within and we will strive to matriculate all of our employees. This commitment is real, with a clearly articulated pathway that includes ongoing training for all employees, quarterly performance reviews to provide constructive feedback on job performance and opportunities for advancement, and an annual planning meeting for all employees. The goal of this annual all staff meeting is two-fold: (1) to ensure all employees understand the clear job pathways within the company; and (2) to boost motivation and morale by providing them an opportunity to contribute to the process.

*The wages for all levels of Respondent's employees, including office staff, cultivation staff, etc.*

The 40 permanent employees will breakdown as follows:

<b>Job Title</b>	<b>Number of Positions</b>	<b>Wage</b>
General Manager	1	\$120,000/ year
Assistant Manager	2	\$70,000/ year
Shift Leads	4	\$55,000/ year
Manufacturing Associate	11	\$36,000/ year
Distribution Associate	11	\$36,000/ year
Cultivation Associate	11	\$36,000/ year



The 60 seasonal employees will breakdown as follows:

<b>Job Title</b>	<b>Number of Positions</b>	<b>Wage</b>
Harvester	40	\$15/hour
Processor	20	\$15/hour

A \$15/hour wage surpasses the State of California's current state minimum wage.

*An explanation of how Respondent intends to incorporate local contractors and purchase goods and materials locally*

We will contract with local businesses for every service practicable. We will keep our dollars local and support Mendota in every possible way. This includes, but is not limited to, goods and services related to the operation of the business as well as ancillary needs such as catering for company events and purchasing supplies.

We have found in other jurisdictions that these ancillary needs are not insignificant. For example, in some jurisdictions we have developed close relationships with local restaurateurs because of the frequency of employee patronage. These benefits transcend cannabis and are instead the indirect amplification of the proposed project that will translate into real economic impact for local businesses.

*An explanation of how Respondent intends to engage meaningful, impactful outreach to the community*

Our team has unparalleled experience with community engagement both during the entitlement process and on an ongoing basis as operators. proposed process

Running a successful regulated business only works if there are open doors and regular lines of communication between regulators, the community and the business. That is why we will host an Open House prior to opening to help local residents understand the safeguards on our operations. An Open House is also helpful in allowing us to develop community contacts and to clearly articulate points of contact for the community.

We will also engage in other community outreach and education, as desired and appropriate. For example, we will provide a site tour for local regulators and City Leaders to provide an opportunity to answer questions. We will also conduct a tour for members of the Police Department where we will educate them on the facility, its purpose, and the regulations in action. We have found that this outreach is helpful in



creating open lines of communication and helps to destigmatize what can be a polarizing business type.

Additionally, as detailed in the budgets below, we will donate at least \$120,000 to local charities and nonprofits in addition to the nearly \$3,000,000 in annual voluntary revenue sharing payments.

## Financial Projections

The revenue estimates for the project are based on standardized industry data that allow a developer to project total revenue based on average production amounts as well as market pricing for cannabis as a commodity. The following narrative provides an explanation as to how total revenue has been calculated.

The industry standard for greenhouse production is 1 ounce of cannabis per square foot of cultivation per harvest. Given the proposed site plan calls for 830,000 square feet of cultivation, the total production per harvest will be 830,000 ounces. The site will produce two harvests per year for a total of 1,660,000 ounces or 103,750 pounds.

All of the cannabis will be manufactured into concentrated oil to create manufactured cannabis goods. The raw cannabis should have an approximate potency of 10% THC. When one pound of cannabis is manufactured from raw plant form into oil the following equation is used to determine the overall annual volume of concentrated oil as well as the total revenue derived:

- 1 pound of cannabis = 453.6 grams so at 10% potency the pound yields approximately 45 grams of crude cannabis oil
- The crude cannabis oil is then refined through winterization to create the final product, which is cannabis distillate. Through the winterization process, approximately 50% of the total volume is captured.
- This means that for each pound of cannabis, approximately 22.5 grams of distillate is created.

Since the annual production for the facility is 103,750 pounds the facility will yield approximately 5,187.5 pounds of distillate.

- 50% of this distillate will be used to make edible goods that each contain 100mg per package and wholesale for \$5 per unit.
- 30% of the distillate will be used for cannabis vaporizer cartridges that are 500mg each and will retail for \$15.
- 20% of the distillate will be used for topical products as well as tinctures that will wholesale for \$10 per unit.



Below is a chart that breaks down the total revenue of the facility based on the calculations above:

Type	%	Total Volume	Volume Per Unit	Total Units	Price per unit	Total
Edibles	50%	1,176,525 grams	100mg	11,765,250 units	\$5	\$58,826,250
Cartridges	30%	705,915 grams	500mg	1,411,830	\$15	\$21,177,450
Topicals	20%	470,610 grams	100mg	4,706,100	\$10	\$47,061,000
						\$127,064,700

*The estimated cost of the project in all phases and full buildout*

<b>STARTUP BUDGET</b>	
<b><u>Application and Related Expenses</u></b>	
Local Application Fees	\$20,000
Local Consultant	\$30,000
State Application Fees	\$300,000
<b><i>Total Application and Related Expenses</i></b>	<b><i>\$350,000</i></b>
<b><u>Land Purchase</u></b>	
Purchase Price *	
Signing Bonus	\$200,000
<b><i>Total Land Purchase</i></b>	<b><i>\$200,000</i></b>
<b><u>Planning and Development</u></b>	
Due Diligence	\$30,000
EIR	\$100,000
Impact Fees (Wet and Dry)	\$500,000
Architect and Design Fee	\$200,000
Permits and Fees	\$150,000
<b><i>Total Planning and Development</i></b>	<b><i>\$980,000</i></b>
<b><u>Build-out Costs</u></b>	
Phase 1 Construction Cost	\$3,640,000
Infrastructure (Road, Wet and Dry connections)	\$500,000
47 Hoop Greenhouse Structures	\$2,490,000
Fencing	\$200,000
Irrigation	\$300,000
Security Infrastructure	\$150,000
Phase 2 Construction Cost	\$4,450,000
Infrastructure	\$250,000



60000 square feet concrete tilt up structure	\$4,200,000
<b>Total Build-out Costs</b>	<b>\$8,090,000</b>
<b><u>Equipment Costs</u></b>	
Manufacturing and Distribution Equipment	\$3,000,000
Furniture and Fixtures	\$5,000
Security Equipment	\$100,000
Computers and IT Equipment	\$64,050
<b>Total Equipment Costs</b>	<b>\$3,169,050</b>
<b><u>Preopening Expenses (6 months)</u></b>	
Insurance	\$60,000
Supplies	\$250,000
Preopening Utilities	\$30,000
Other General and Administrative	\$60,000
Professional Services	\$60,000
Staff Salaries and Benefits (12 months reserve)	\$1,000,000
<b>Total Preopening Expenses</b>	<b>\$1,460,000</b>
<b>Total Startup Capital Required</b>	<b>\$14,249,050</b>

\*Applicant to pay 100% of appraised value

*Information on the type of investment used to capitalize the project (e.g., venture capital, equity, angel, institutional), including the amount of the commitment from each source*

The entire project will be funded by DC Airway Properties, an institutional lender. Attached is a copy of the commitment letter provided by the lender.

*A project pro-forma demonstrating that due diligence has occurred and questions such as the availability and source of water, power grid interconnectivity costs, and improvement costs related to water, sewer, drainage, and roads have been accounted for*

The startup budget and pro forma below includes conservative expenditures associated with the entitlement process, construction, start up and the first three (3) years of operation. The budget was developed and reviewed with input from a licensed CPA that specializes in assisting businesses with development of sound business practices and financial controls.

The pro-forma demonstrates that due diligence has occurred and questions such as the availability and source of water, power grid interconnectivity costs, and improvement costs related to water, sewer, drainage, and roads are accounted for.



	Year 1	Year 2	Year 3
Revenue	\$63,532,350.00	\$127,064,700.00	\$127,064,700.00
City Tax	\$2,178,749.97	\$2,904,999.96	\$2,904,999.96
Non Profit Contributions	\$90,000.00	\$120,000.00	\$120,000.00
Raw materials and supplies	\$25,862,940.00	\$50,825,880.00	\$50,825,880.00
Utilities (Electricity Phone, Internet, etc.)	\$105,000.00	\$240,000.00	\$240,000.00
Professional Fees (CPA, Legal)	\$60,000.00	\$60,000.00	\$60,000.00
Revenue Tracking Software/ Track & Trace	\$36,000.00	\$36,000.00	\$36,000.00
Security - Guard & Patrols	\$91,800.00	\$91,800.00	\$91,800.00
Office / Cleaning Supplies	\$6,300.00	\$8,400.00	\$8,400.00
Labor	\$3,600,000.00	\$4,800,000.00	\$4,800,000.00
Employee Training	\$60,000.00	\$60,000.00	\$60,000.00
Repairs & Maintenance (0.5% of revenue)	\$317,661.75	\$635,323.50	\$635,323.50
Insurance	\$120,000.00	\$240,000.00	\$240,000.00
Employer's Expense & Employee Benefits (21%)	\$756,000.00	\$1,008,000.00	\$1,008,000.00
Total Operating Expense	\$31,015,701.75	\$58,005,403.50	\$58,005,403.50
Gross Profit	\$30,247,898.28	\$66,034,296.54	\$66,034,296.54
State and Federal Taxes	\$13,545,259.31	\$26,413,718.62	\$26,413,718.62
Profit / Loss	\$16,702,638.97	\$39,620,577.92	\$39,620,577.92

### Revenue Sharing Proposal

Since this project will be developed under the ordinance it will carry a revenue sharing component. Given the size of the cultivation area, each square foot would carry a \$3.50 annual voluntary revenue sharing component per the ordinance. Under this scenario, as the market consolidates, the square footage of the site could potentially be adjusted down.

Conversely, as we are seeing and have advised a number of jurisdictions, a voluntary gross receipts sharing agreement tends to financially align the jurisdiction and the developer so the developer is incented to increase production which thereby increases revenue to the City.

Here is a comparison of both models:

	Annual Revenue (15% CAG)	\$3.5/ square foot	2% share of revenue
Y1	\$65,532,350	\$2,178,750	\$1,310,647
Y2	\$127,064,700	\$2,905,000	\$2,541,294
Y3	\$127,064,700	\$2,905,000	\$2,541,294



We are amenable to both options but wanted to provide value in identifying multiple revenue sharing models for the Council to consider. The Pro Forma was developed based upon the square footage model.

## Security Plan

*To the extent the Applicant seeks to develop under the Ordinance, a description of comprehensive security plans that will be implemented at the Property*

We understand that there are considerable risks in operating a cannabis-related business. Those risks include burglary, robbery, internal theft and theft by outside parties, product diversion by employees, risk of minors accessing product, and risk to the safety of employees. We are committed to ensuring a safe environment that mitigates as much risk as possible. Risk mitigation includes, but is not limited to, implementing the security requirements as mandated by all state and local laws. In addition to ensuring the safety and security of our employees, we understand it is our responsibility to ensure safe operations for the entire Mendota community.

The security plan will be tailored to the final site plan and will align with and in many cases exceed the requirements of local and state laws. The plan will be implemented by the Security Director once appointed, as well as other key members of our team.

The plan will also be reviewed by a third-party security professional prior to implementation, at least once per year, and after any security related incident, to ensure that the plan is current and that areas needing improvement are addressed as they are discovered.

The plan will remain available for review by regulatory agencies (including local law enforcement) and will be updated as any changes to its infrastructure, security systems, policies or practices are made. We will work closely with local law enforcement and regulatory agencies to ensure that the plan meets or exceeds all minimum security requirements imposed by regulatory agencies.

The plan is intended to serve as a living document governing the facility's security during its design, and throughout its years of operation. The plan shall be amended by the Security Director over time to address equipment or policy changes and shall include specific details relating to installed security equipment, contracts, maintenance schedules and logs and evidence of compliance with the routine security auditing aspects that will be part of the plan. The plan shall be maintained in a manner that ensures sufficient detail is available to future managers or owners who may be required to assume responsibilities as the Security Director. The plan shall be held in





confidence, stored in a secure location and accessible only to managers and owners of the facility.

Security policies, procedures and practices that are relevant to non-managerial employees, vendors and visitors will be parsed from the plan and provided to such persons in a format appropriate for their training, testing and accountability with respect to the plan.

### **Crime Prevention Through Environmental Design (CPTED)**

The physical design of the premises, its security strategies, and policies governing the day to day operations of this facility have been incorporated using CPTED strategies including, but not limited to, natural surveillance, territorial reinforcement and target hardening. Research into criminal behavior demonstrates that the decision to offend or not to offend is more influenced by cues to the perceived risk of being caught than by cues to reward or ease of entry. Consistent with this research CPTED based strategies emphasize enhancing the perceived risk of detection and apprehension.

#### *Natural Surveillance*

Natural surveillance limits the opportunity for crime by taking steps to increase the perception that people can be seen. Natural surveillance occurs by designing the placement of physical features, activities and people in such a way as to maximize visibility. Potential offenders feel increased scrutiny and perceive few ways to avoid detection.

Methods employed at this facility to enhance natural surveillance include low landscaping, effective, uniform and consistent lighting, removal of hiding, and placing high risk targets, such as currency or cannabis, in view of only those parties with legitimate access purposes. In order to maintain strong natural surveillance, the facility will maintain the following policies:

- No materials, containers or vehicles shall be stored outside on the premises.
- Parking on the premises will be strictly governed by policies limiting vehicles to customers, and only during business hours. Any vehicles unlawfully parked on the premises will be towed without unnecessary delay and in accordance with 22658 of the California Vehicle Code.
- Tree canopies, if present, shall be maintained above 8 feet to enhance line of sight into and throughout the premises.
- Ground shrubbery, if present, shall be limited to a maximum height of 24 inches.
- Exterior landscaping within 10 feet of the facility shall be free of locations which could reasonably be considered places that a person could conceal themselves considering natural or artificial illumination.



### *Territorial Reinforcement*

Territorial reinforcement promotes social control through increased definition of space and improved proprietary concern. An environment designed to clearly delineate private space does two things. First, it creates a sense of ownership.

Owners have a vested interest and are more likely to challenge intruders or report them to security or law enforcement personnel. Second, the sense of owned space creates an environment where "strangers" or "intruders" stand out and are more easily identified. By using buildings, fences, pavement, signs, lighting and landscape to express ownership and define public, semi-public and private space, territorial reinforcement occurs. In order to enhance territorial reinforcement, the facility will maintain the following policies:

- The parking lot and perimeter landscape of the parcel will be meticulously maintained in order to communicate an alert and active presence occupying the space.
- Private areas (all areas of the structure and its access points) will be posted with signage (described later in this plan) and equipped with overt security features.
- Uniformed security officers assigned to the premises will perform frequent patrols of the parking lot, structure and parcel perimeters, providing an overt security presence.

### *Target Hardening*

Target hardening is a term used in security, law enforcement and military services and refers to the strengthening of a building in order to protect it in the event of attack, or to reduce the risk of theft. It is believed that a strong, visible defense will deter or delay most opportunistic offenders. Methods for target hardening that are incorporated into the security plan for this facility include:

- Ensuring all doors and windows are sourced and fitted in such a way that they can resist forcible and surreptitious intruder attack
- Adding hard barriers that resist vehicle and pedestrian intrusion
- Separating the public/lobby aspect from the product room with door-redundancies to heighten access control.
- Maintaining landscape to remove opportunities for concealment.
- Maintaining a robust indoor and outdoor surveillance system.
- Maintaining a robust UL rated intrusion detection system.
- Maintaining a state-of-the-art electronic access control system.
- Maintaining a uniformed security presence during all hours.
- Maintaining stringent hiring and training standards including continuing education.

### **Visibility of Cannabis & Signage**

Cannabis or cannabis products or graphics depicting cannabis or cannabis products within the facility, or being delivered to the facility, shall not be visible with the naked



eye from the perspective of a pedestrian immediately outside the property line of the facility.

The facility will limit business identification signage to a single wall-mounted sign. Such signage shall be limited to the identification of the licensed business' name and shall contain no advertising of symbols, language, music, gestures, cartoon characters or other content elements known to appeal primarily to persons below the legal consumption age. The sign will not extend above the highest point of a parapet wall or the lowest point of a sloping roof.

Upon or adjacent to each door accessing the structure, the business will post a sign, not less than 12 inches wide and 12 inches long, composed of letters not less than one inch in height, stating "All Activities Monitored and Recorded by Video Camera", advising all persons entering the premises that a video surveillance and camera recording system is in operation at the facility and recording all activity.

The business will post a sign in a conspicuous place on the outside of the building, near the entry to the premises clearly and legibly posted indicating that the following are prohibited upon the premises:

- Smoking, ingesting, or consuming cannabis, marijuana, alcohol, or deadly weapons
- Persons under the age of 21 (medical patients 18 or older excepted)
- Visitor wearing of hats, sunglasses, hoodies or other accessories that obscure identity
- Personal bags, backpacks, duffel bags, large purses, or other containers

### **Access Control, General Provisions**

The applicant acknowledges that it is responsible for the security of all cannabis items on the premises, including its responsibility to ensure adequate safeguards against theft or diversion of cannabis items and required records.

The Security Director will designate internal managers and may utilize licensed security contractors to accomplish these goals. Any contracted security services and their agents will be duly licensed and insured per the requirements of the California Private Security Services Act and in compliance with local regulations of private security services where applicable.

The Security Director will ensure that all doors of the premise include commercial-grade door locks and that each interior and exterior door of the facility maintains an appropriate level of access control relative to the hierarchy of risk and access restrictions relative to each area of the facility. The applicant may incorporate a variety of access control measures as warranted by the contents of each area. Access control measures may include keys marked as "Do Not Duplicate", electronic access control systems (cards/fobs), coded doors or biometric security measures.



All facility access keys or cards/fobs issued to employees will be managed through a written or digital sign-in/sign-out log and audited daily by the Security Director or its designee. Only managers designated by the Security Director will be permitted to take keys, access cards or fobs off-site.

The Security Director shall ensure all locks and security equipment remain in good working order through daily auditing at the close of business.

Employees are responsible for security and must secure keys, access control cards and security codes at all times. Employees may not provide access through any means to any other person. Only managers may grant temporary access to any employee, vendor, contractor, or visitor (regulatory inspectors).

All exterior entry points will be maintained in a closed and locked state at all times and attended by a manager or security officer during all operating hours of the business. All interior doors designated as high security areas (product and currency storage vault) will remain closed and locked at all times.

At any time when the business is not operating, all interior and exterior doors will be closed, locked and alarmed.

All rooms that contain cannabis products, currency and security system infrastructure shall be equipped with a door that contains an automated re-locking device to prevent inadvertent exposure upon vacating.

All finished product and/or currency kept on the premises will be secured in the vault or safe. Any safe on the premises will be of commercial grade, made of metal, and of a size that is capable of storing all of the cannabis items anticipated to be on the premises. The safe will be securely anchored to a permanent structure, and will meet or exceed Underwriters' Laboratory (UL) rating based on the value of its contents.

For the purposes of this plan, "vault" means an enclosed area or room that is constructed of steel-reinforced or block concrete walls, has a door that contains a relocking device, and a door and frame comprised of steel construction.

In the event that the facility maintains cannabis items that require refrigeration on the premises, those items will be securely enclosed in a refrigerator or freezer capable of being locked and which has been securely anchored to a permanent structure of an enclosed area equipped as a vault (as described above). The model type and weight of any safe or storage refrigerator, will be documented in these procedures upon implementation.

Employees shall wear employer-issued identification card in a conspicuous manner at all times while within the facility. Identification cards shall be controlled by the facility manager, issued and collected daily to prevent unlawful duplication, replication or counterfeiting. Identification badges shall:



- Be laminated or plastic coated
- Include the “doing business as” name and license number of the licensee
- Include the first and last name of the employee
- Include a unique employee number assigned by the licensee
- Include a color photograph of the employee. The image shall:
  - Clearly display the full front of the employee’s face
  - Be at least 1 inch in width and 1.5 inches in height

Any solid core exterior doors shall be equipped with a 180 degree viewing device to screen persons before allowing entry.

#### *Access Control Policies*

During all hours when the facility is not in operation, the Security Director or his representative will ensure that all entrances to and exits from the premises are securely locked and any keys or key codes to the enclosed area remain in the possession of designated managers, the Security Director, or other authorized personnel designated by the Security Director. The Security Director shall maintain an accurate and current written or electronic log identifying those parties in possession of access keys, cards/fobs or codes.

Access to areas containing cannabis, currency or security infrastructure will be limited to individuals where a business need for access is demonstrated. The Security Director has ultimate responsibility for issuing access. Issuance must be recorded by the issuing individual, including documentation of any facility keys, alarm codes, electronic access codes, passwords, or combination codes.

All entrances to areas of a cannabis facility where cannabis products are stored shall require a key, access card/fob or code to access. All access points to such areas will be equipped with video surveillance.

Access control logs generated in accordance with this policy or through employment of digital access control systems shall be retained for no less than 90 days.

Keys and electronic access codes must be protected. They may not be loaned and shall not be left unattended. All keys and access cards issued to employees shall be retained in the possession of the employee to whom issued and may not be transferred directly from one employee to another.

Employees must report any lost keys or access cards to his or her manager immediately. The Security Director will make a determination as to whether the system has been compromised and whether re-keying will be necessary. It is against company policy to duplicate keys, share passwords, or share access codes.



### *Key/Access Card Issuance Procedures*

Authorized individuals including employees, authorized contractors and authorized vendors may be permitted to check out a key or access card/fob for use during their assigned work. The issuance will be for a specified period of time consistent with the authorized purposes for access.

Keys or access cards shall be issued and collected daily to employees for the purpose of allowing the employee to access the areas in which they are regularly assigned duties. A log of all issuance must be maintained by the Security Director. The record shall include: Employee name and identifier; date issued; term of issuance if applicable; date to be returned; if applicable, and signature of the key holder and key issuer.

When employment has been terminated, all keys will be returned and recorded by the Security Director or assignee. Failure to recover keys upon a termination of employment shall require a key core change at all locations where the unreturned key is designed to provide for access.

### **Intrusion Detection System**

The licensed premises will engage the services of a licensed alarm company operator (ACO) who is listed with Underwriters' Laboratory (UL) to install, maintain, and monitor an alarm system that is activated at all times when the business is closed. The system will detect unauthorized entrance at all entry or exit points, and all exterior windows of the premises. It will also detect movement in the licensed premise when the premises are vacant of employees.

The monitoring center will be instructed to notify a contracted and duly licensed private patrol operator who will be responsible for providing a timely response, no greater than 20 minutes. The private patrol operator will be instructed and equipped to notify the Security Director in the event of a breach in security (open door). The Security Director or its designee shall be able to respond to assist in evaluating the activation within one hour.

Where evidence of criminal activity is discovered by the private patrol operator or the responding Security Manager (or designee), those responding shall retreat to a position of safety and observation, shall alert local law enforcement and shall assist law enforcement with all necessary access to and within the facility as is needed to investigate.

The alarm system will be comprised of but not limited to components including keypads, perimeter sensors (used to secure doors, windows, bay doors, roof hatches, or any other means of entry), motion detectors, glass break sensors, panic buttons, and audible sirens within the limitations imposed by ordinance.



The Security Director will be responsible for ensuring the alarm system and all components are in proper working order, and the system will be tested periodically, as recommended by the Security Director.

Upon request, the applicant shall make all information related to security alarm systems, monitoring and alarm activity available to regulatory agencies and local law enforcement.

The Security Director or its designee shall be the last person leaving the facility at the end of business each day. There will be notifications established to notify the Security Director and the contracted private patrol operator if the alarm is not armed after a specific time. As a fail-safe measure, the alarm system will be programmed to automatically arm at a designated end-of-business time.

In the event that any element of the monitored alarm system becomes inoperable or faulty, the Security Director shall ensure that the facility is staffed on a 24-hour basis by a designated manager or a licensed private patrol operator until such time as the alarm system is verified as fully operational and functional. Bypassing of faulty components while the facility is unmanned shall be prohibited.

A silent robbery alarm monitored by a UL listed central station shall be installed near or within the lobby, point of sale counters and near or within the vault/safe room(s).

The facility alarm system shall be equipped with battery back-up providing for at least 24-hours of continued operation in the event of a power failure.

The Security Manager or its designee shall be able to respond to the location within one hour of a system activation to assist the contracted private patrol operator or law enforcement.

The facility alarm shall be equipped with cellular back-up to ensure continued notifications in the event of a facility phone line disruption.

The facility alarm system shall be equipped with “non-emergency notification” technology that allows administrators and/or security contractors to be notified of any unwanted activity in any part of the facility. These notifications are considered “non-emergency” because they can be sent when the system is disarmed (i.e.: power outage, sensor malfunction, etc.).

The facility alarm system shall be equipped with an audit feature that allows the Security Director to review all system activity for up to no less than 90 days.

Employees whose work requires issuance of alarm codes will be issued an individual user code to ensure codes to prevent the sharing of alarm panel codes. An audit trail will provide detail of which user codes are used and when they are used. The Security



Director shall audit this log for suspicious activity on a monthly basis and shall maintain a log of auditing activities. Any suspicious activity discovered during the audit process shall be immediately investigated.

### **Surveillance System**

In compliance with local and state regulation, the applicant shall utilize a digital video surveillance system that will be installed by a licensed third party surveillance solution installer. The surveillance system will meet or exceed the following standards and shall abide by the policies and practices described below:

The surveillance system shall be capable of recording all pre-determined surveillance areas in any lighting conditions (day/night cameras). Cameras shall be equipped with low light capability, auto iris and auto focus. Cameras shall record at high resolution providing resolution of no less than 2 megapixels. The DVR shall be set to the highest quality setting available.

The video surveillance system shall be transmission controlled protocol (TCP) enabled capable of access over the Internet.

The surveillance system shall be operational at all times, both during and after business hours. In the event that any element of the surveillance system becomes inoperable, the Security Director shall ensure that the facility is staffed by a designated manager or by a licensed private patrol operator until such time as the surveillance system is restored to full functionality.

Sufficient cameras, angles of observation and lighting to allow facial feature identification of persons in interior and exterior areas where cannabis or cannabis products is present at any time.

Each camera shall be permanently mounted and in a fixed location. Each camera shall be placed in a location that allows the camera to clearly record activity occurring within 20-feet of all points of entry and exit of the premises, and allows for the clear and certain identification of any person and activities in all areas recorded, which shall include at minimum the following:

- Areas where cannabis is stored, loaded, unloaded, prepared, dispensed, ingested or moved within the premises.
- Limited/restricted access areas
- Rooms containing security infrastructure
- Rooms containing video storage systems and access points thereto
- Interior and Exterior vantage points relative to all premises access points.

All surveillance recordings shall be accessible to law or code enforcement officers at all times during operating hours and otherwise upon reasonable request. All surveillance recording systems shall have the capability of producing DVDs or other removable media of recordings made by the surveillance system, including still





photograph images. Output shall be of standard format (e.g. MPEG, JPG) and shall not require proprietary software to open/transfer/view.

All surveillance recordings or still frames produced by the surveillance system shall be accurately date and time stamped in accordance with measurements from the United States National Institute Standards and Technology standards. The Security Director shall be responsible for updating or verifying accuracy of date and time stamping on a monthly basis, and as daylight savings time begins and ends.

The surveillance equipment and recordings shall be stored in a locked secure area that is accessible only to the management/ownership team, Security Director, or other authorized personnel designated by the Security Director.

Surveillance recordings shall be subject to inspection by regulatory agencies and shall be kept in a manner that allows regulators to view and obtain copies of the recordings at the licensed premises immediately upon request.

The physical media on which video recordings are stored shall be stored in a secure manner sufficient to protect the recordings from tampering or theft.

Upon request from regulatory agencies, the licensee shall send or provide copies of specified recordings to regulatory agencies within the time specified by the regulatory agency.

The surveillance system shall be equipped with a failure notification system that provides, within fifteen minutes, notification to the Security Director of any prolonged surveillance interruption or failure.

The surveillance system shall be equipped with sufficient battery backup or automatically starting generator to support a minimum of 24-hours of recording time in the event of a power outage.

The surveillance system shall record at no less than 20 frames per second.

The surveillance system shall provide for on-site storage of consistent recordings and cloud-based storage of motion-activated recordings for a period of no less than 90 days.

Access to surveillance infrastructure and recordings shall be limited to facility managers.

Surveillance displays including sensitive areas (product/currency storage and loading areas) shall be maintained in areas limited to management viewing.



Surveillance displays providing visibility of the employee parking areas and property perimeters shall be provided at location(s) that employees will depart from, providing employees the ability to monitor the outside environment prior to departing the facility.

The Security Director or a designated manager with access to video storage shall be able to respond to the facility within one hour of summoning by the contracted private patrol operator or law enforcement.

The facility shall maintain a surveillance viewing area in an office that may be accessed only by the management/ownership team, the Security Director, or their licensed assignees as needed. Assignees may include state or local law enforcement agencies, licensed private patrol operators, governing bodies' employees, and authorized service personnel or contractors. The entrance to this office shall be locked whenever the office is not in use, and accessible by a key or electronic keying system.

The Security Director will maintain a current list of all authorized employees and service personnel who have access to the surveillance system and surveillance room on the premises.

The Security Director will keep a surveillance equipment maintenance activity log on the premises to record all service activity including the identity of any individual performing the service, the service date and time and the reason for service to the surveillance system.

Surveillance system installation shall be performed professionally, ensuring that placements and associated wiring are protected against intentional or unintentional damage. Cameras shall be placed in a manner that avoids intentional or unintentional obscurity.

### **Security Plan Oversight and Training**

The applicant acknowledges that its management/ownership team bears the ultimate responsibility for security of the premises. The management/ownership team will delegate security duties to a Security Director. Additional information on duties associated with the Security Director are outlined below.

The Security Director is responsible for all aspects of this security plan, including management of all security technology, transportation security, access control to facilities, training of employees, tenants and visitors and for the contracting and supervising of licensed security officers. The Security Director will be responsible for theft prevention, plan auditing, systems testing and for ensuring that minors do not enter the premises.

The applicant will provide regulatory agencies with the name, telephone number, and e-mail address of the Security Director who will serve as the security liaison with whom regulators or inspectors can provide notice if there are security concerns associated with the facility, or to whom regulators may refer members of the public who may have



any concerns or complaints regarding the security of the cannabis facility. The applicant will provide contact information for the Security Director to all businesses and residents located within a 100-foot radius of the facility.

The Security Director shall be reasonably available to meet with regulators or their designees regarding any security related concerns or operational matters.

Staff must understand their respective security roles and responsibilities including the chain of command (in the event of any security breach). Employees at all levels will be trained by the management/ownership team and Security Director in order to identify threats and vulnerabilities, devise mitigating strategies and contingencies; when and why they could be targets of threats and how to respond accordingly.

Staff will be tested semi-annually regarding their knowledge of the cultivating facility's security strategies and systems and how to utilize them. Development of policies and procedures will be on-going during and after the security planning process. The facility will determine critical control points where security knowledge will be required when handling cannabis products, currency, personnel, visitors and more.

Training all employees on security procedures will ensure the dispensary facility remains a safe place for employees and visitors alike. To demonstrate that the employee understands and has successfully completed training, all employees will be required to undergo an assessment. Assessments shall include, at minimum, a hands-on demonstration by the employee as it relates to security measures and policies included in the training.

The applicant will conduct a variety of quarterly drills at the facility to ensure that all employees understand how to respond to various emergencies or threats at the facility. Fire drills, armed robbery and burglary discovery drills are examples of drills that may be conducted on the premises as part of comprehensive security training.

#### *Mandatory Training of Personnel on Security Plan*

All employees working in the facility shall complete introductory training relating to facility security prior to engaging in any occupancy or work on the premises. Training shall include, at minimum, the following:

- Operation of security equipment within the scope of role(s);
- Inspecting and monitoring security equipment within the scope of role;
- Emergency Notifications, Response and Reporting procedures;
- Effective patrolling of the facility;
- Identifying opportunities for diversion;
- Securing of the premises and assigned work areas;
- Critical incidents, situational policies and procedures;
- Proper method for securing cannabis at the end of each work day.



## *Robbery Prevention Training*

### Prevention:

- Robberies most often occur at opening and closing times. Be especially vigilant on arrival and departure. Do not justify-away unusual observations. If something seems awkward, it probably is. Report any suspicious activity before proceeding in or out of the facility any further.
- Never handle product or currency in view of the public or in uncontrolled areas.
- Maintain natural surveillance at all times; keep areas clear of obstructions.
- Keep doors locked at all times; even if only stepping away momentarily.
- Maintain lighting, alarm and surveillance systems in operable and reliable order.

### During a robbery:

- Remain calm to reduce the likelihood of violence and to allow focus on robber details.
- Do not resist or attack the robber; additional provocation can increase danger.
- Cooperate, but avoid giving assistance or offering more than is demanded.
- Activate the panic alarm if this can be accomplished safely, in secret.
- If ungloved, watch the robber's hands and make mental note of what is touched.
- Be systematic in mentally documenting the robber's description: head to toe.
- If a weapon is present, briefly study its description, then focus on the robber.
- If safe to do so, monitor the robber's departure (direction, vehicle, accomplices).

### After a robbery:

- Notify police immediately by 911 or cellular equivalent.
- Lock the doors. Do not let anyone into the crime scene until police arrive.
- Don't talk to others about what just happened. Keep observations unique and pure.
- While awaiting police, make notes while your memory is fresh. Clothing, weapon, etc.
- Do not disrupt the crime scene. Leave everything as it was.

### *Managing Unusual Occurrences*

Decoys are common tactics of those wishing to commit burglaries or robberies. Traffic collisions, vehicle fires, dumpster fires, domestic quarrels and other measures to distract occupants may be deployed by criminals to overcome facility security. Upon the occurrence of any significant event on or immediately about the property, the first to observe the occurrence shall notify the on-duty manager. The manager will be responsible for activating a facility lock down. An emergency lock-down incorporates the following measures:

- Immediate notification of emergency services (911 or cellular equivalent).
- Immediate closure and locking of facility doors.



- Immediate directive to all persons on premises to shelter in place and remain inside.
- No persons shall be permitted to open any door until police have arrived or the unusual occurrence has been otherwise eliminated.

### *Burglary/Theft Prevention Training*

#### Systems Awareness:

- This facility maintains an array of security devices including contacts, motion sensors, cameras and related hardware. These devices are critical to the overall security of the facility and caution must be exercised by all occupants to ensure their continued effectiveness.
- Report any damage to a security component immediately.
- Do not tamper with any security component.
- Do not block or cover any security component.
- Do not block access to security panels.

#### Perimeter Security:

- All doors are to remain secure at all times when not in active use.
- Do not prop any exterior door open for any reason at any time.
- Do not open any exterior door unnecessarily.

#### Internal Security:

- Photography/Videography on the premises is strictly prohibited.
- Security procedures are confidential. Never discuss with third parties.
- Report any unusual behaviors or activities of others to the on-duty manager.

#### Managing Burglaries:

- If evidence of a burglary is encountered (damaged door/window, evidence of ransacking), immediately notify the on-duty manager.
- Do not touch or move anything. Preserve the crime scene.
- Immediately secure all relevant areas and prevent anyone from entering.
- Notify police via the non-emergency number:

#### **Employee Protection**

In order to reduce take-over robbery attempts by way of employee ambush on arrival, facility security policy requires that employees arriving for work:

- Park only in designated staff parking areas.
- Park in the nearest available space to the staff entrance at their time of arrival.
- Arrive no earlier than ten (10) minutes prior to their scheduled start time.
- Retreat to a safe location and telephone the facility if upon their arrival they observe any suspicious persons or vehicles at or immediately about the facility.



In order to reduce take-over robbery attempts by way of employee ambush on departure, facility security policy requires that employees departing from work:

- Depart in pairs or groups.
- Depart only through the lobby doors, and only upon reviewing external camera views to ensure that no suspicious persons or activity are afoot nearby.
- Immediately depart the premises and adhere to a strict prohibition of loitering on or about the premises.

### **Signage**

Each face of the structure and vehicle access point shall maintain prominently displayed metal signs prohibiting trespass (citing California Penal Code 602K) and establishing parking by permit only (citing California Vehicle Code 22658). Additional prominent signage shall indicate prohibitions against possession of alcoholic beverages, weapons and illegal drugs on the premises.

No more than 33 percent of the square footage of the windows and clear doors shall be blocked by advertising, signs, shelves or anything else. All advertising, signs, and shelving shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises from the exterior public sidewalk or entrance to the premises. All signs shall comply with the City Code.

### **Utility Controls**

The facility transformer shall be secured by padlocks maintained by the utility provider. Externally accessible house power shall be contained in padlocked panels. Internally accessible breaker boxes shall remain secured with padlocks at all times. Only the owner and managers shall have access to keys relevant to power infrastructure. The facility's surveillance, IP network and alarm systems maintain emergency backup power supplies sufficient to maintain system operability in a power outage event for over 24 hours.

### **Information Security**

The applicant acknowledges that it is responsible for the security of all cannabis items on the premises, including providing adequate safeguards against theft or diversion of cannabis items and records that are required to be kept.

The applicant recognizes that cyber threats may exist that could impact the facility. The applicant will take precautions to ensure consumer privacy, protection of sensitive financial records, and to minimize the potential of unauthorized access or intrusion.

As appropriate, the facility's network infrastructure will be encrypted and password protected. Only authorized personnel who have been trained in secure records management procedures will have access to facility data. Users of the system will have role-based authentication. Sharing of logins shall be strictly prohibited. Software will require security measures such as password lockouts, login timeouts, use of



strong passwords, periodic required password changes, prohibitions of repeated use of a password, and the ability for administrators to disable user access.

The applicant will, as needed, hire a third-party Information Technology company to ensure that digital record keeping systems employed by the facility are secure.

All electronic records will be stored both onsite in short-term storage, and off-site, in long-term backup storage.

Onsite back-up records storage may include electronic media that is backed up on a daily basis on a secure server. The secure server will be physically located in a secure room on the premises. Offsite secure data storage will be managed by a third-party data storage provider. In general, onsite backup storage will include at least one year of historical data. Remote data storage will include all data records that are at least 7 days and older, and will be stored in perpetuity. Data older than 3 years may be purged from storage.

All archived required records not stored electronically will be stored in a locked storage area limited to managers/owners of the facility with a legitimate business need for access.

Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the business is operating.

Sensitive files shall be password protected, or stored in a password protected file storage system. No files shall ever be stored in public Internet spaces, including un-secured file storage sites.

E-mailing sensitive data files to anyone outside the applicant's organization is strictly prohibited without the permission of ownership. Customer-specific transaction data and contact information, including e-mail addresses, will not be shared with any third party without permission of the customer.

Records relative to this section include those records mandated by the California Code of Regulations, Title 16, Division 42, Section 5037, incorporating those items that follow:

- Financial records including, but not limited to, bank statements, sales invoices, receipts, tax records, and all records required by the California Department of Tax and Fee Administration (formerly Board of Equalization) under title 18, California Code of Regulations, sections 1698 and 4901.
- Personnel records, including each employee's full name, social security or individual tax payer identification number, date employment begins, and date of termination of employment if applicable.
- Training records including, but not limited to, the content of the training provided and the names of the employees that received the training.



- Contracts with other licensees regarding commercial cannabis activity.
- Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity.
- Security records.
- Records relating to the composting or destruction of cannabis goods.
- Documentation for data or information entered into the track and trace system.
- All other documents prepared or executed by an owner or his/her employees or assignees in connection with the licensed commercial cannabis business.

The applicant acknowledges that the Bureau of Cannabis Control and the Mendota Police Department may make any examination of the books and records of any licensee as it deems necessary to perform its duties under the Cannabis Control Act.

The applicant acknowledges that records shall be kept in a manner that allows the records to be produced for the Bureau of Cannabis Control and the law enforcement agency of jurisdiction at the licensed premises in either hard copy or electronic form, whichever the requesting agency requests.

The applicant acknowledges that while it may contract with a third party to provide custodial or management services of the records, doing so does not relieve the applicant of its responsibilities as outlined above.

### **Internal Theft Prevention**

Strategies maintained toward the prevention of internal theft include:

- Pre-Employment Background Checks conducted by an accredited member organization of the National Association of Professional Background Screeners ([www.napbs.com](http://www.napbs.com)). Disqualifying history will include:
  - Current probation, parole status or history of gang affiliation
  - Controlled substances trafficking convictions
  - Convictions relating to theft, fraud or conspiracy
  - Convictions related to violent crime
- Annual background checks of existing employees (same standards as above)
- Prohibiting visitors
- Prohibiting outside tools/supplies
- Employees to sign consent to search policy as condition of employment (including their person, possessions and vehicles while on the premises).
- Employee tracking will be performed (time clock, sign in/out or similar).
- Employee internal movements will be monitored by video surveillance.
- Only owner and managers will have access to bulk product (vault room).
- Vendors performing work on site shall be under manager escort at all times.

### *Notification of Convictions*

The applicant shall ensure that the Bureau of Cannabis Control and the Mendota Police Department is notified in writing of a criminal conviction of any owner, either by mail or electronic mail, within 48 hours of the conviction. The written notification to the Bureau shall include the date of conviction, the court docket number, the name of the





court in which the licensee was convicted, and the specific offense(s) for which the licensee was convicted.

The applicant shall ensure that the Bureau of Cannabis Control and the Mendota Police Department is notified in writing of a civil penalty or judgment rendered against the licensee or any owner in their individual capacity, either by mail or electronic mail, within 48 hours of delivery of the verdict or entry of judgment, whichever is sooner. The written notification shall include the date of verdict or entry of judgment, the court docket number, the name of the court in which the matter was adjudicated, and a description of the civil penalty or judgment rendered against the licensee.

The applicant shall ensure that the Bureau of Cannabis Control and the Mendota Police Department is notified in writing of the revocation of a local license, permit, or other authorization, either by mail or electronic mail within 48 hours of receiving notice of the revocation. The written notification shall include the name of the local agency involved, a written explanation of the proceeding or enforcement action, and the specific violation(s) that led to revocation.

### **Private Security Services**

Facility will maintain at all times a contract with a state-licensed private patrol operator approved to conduct business in the City of Mendota. Services contracted will include, at minimum:

- Intrusion alarm response with a guaranteed response time of 20 minutes or better.
- Armed security officer to provide delivery stand-by services and to escort deliveries from adjacent street parking into the vendor delivery room.
- Random patrol services during non-operational hours incorporating, at minimum, one facility patrol for every three hours of facility vacancy in order to verify the welfare of the assigned security officer (below) and to provide for a second layer of facility security oversight.
- Uniformed security officer on site performing staff escorts, access control, live video monitoring and crime deterrence on a 24-hour basis.

### **Currency Security**

No currency will be transacted or stored on site at the facility.

### **Security Plan Maintenance**

Any effective security plan requires ongoing maintenance and the assignment of related responsibilities. The facility owner/operator will appoint a member of the management team as the facility's "Security Director". The security manager will be responsible for the implementation, supervision and compliance with all aspects of the security plan on a day to day basis. In addition, the security manager shall perform the following tasks as or more frequently as indicated below, immediately implementing corrective actions where warranted:



#### Daily:

- Physical and digital inventory of products.
- Physical and digital accounting of currency.
- Inspect visitor badges and log sheet, account for all passes.
- Inspect employee badges and log sheet, account for all badges.
- At close of business, physically clears each room of the facility of employees and hazards, ensures all interior doors of significance are closed and locked.
- At close of business, arms alarm system, ensuring all zones arm successfully.

#### Weekly:

- Inspect perimeter fences and doors for operability and security.
- Inspect exterior and interior doors for proper function and security.
- Inspect exterior lighting for outages or impositions by vegetation/debris.
- Inspect intrusion detection system, test monitoring communications.
- Inspect surveillance system: firmware, software and operating system.
- Inspect surveillance system: viewing angles, cleanliness, operability.
- Inspect key control logs for anomalies/missing keys.
- Inspect property for impositions to natural surveillance (abandoned cars).
- Inspect signage to ensure it remains posted in accordance with plan.
- Test battery backup systems relied upon by alarms and surveillance.

#### Monthly:

- Inspect vegetation, ensuring 24-inch shrub limits and 6-foot canopy limits.
- Audit employee files, determine those due for background investigations.

#### Quarterly:

- Verify license & insurance status of contracted third party service providers.
- Host team meeting specific to security protocols, test the staff.

#### Annual:

- Review security plan in its entirety and update with applicable changes.

*To the extent the Applicant seeks to develop under the Ordinance, a proposal for the payment of the City's quarterly cannabis cultivation taxes, including whether the Respondent will be responsible for all tax payments from tenants or whether Respondent's tenants will be responsible for individually paying their taxes directly to the City*

The project will develop under the Ordinance so therefore a quarterly cannabis tax payment will be applicable and the applicant will be responsible for all tax payments to the City. All payments will be made with check or wire transfer and no cash will be transacted.



In fact, no cash will be stored at the facility as all transactions will occur at state licensed dispensaries where we will require payments to be made by check or wire transfer.

## References

*References for at least three prior projects. References shall include the reference's name, title, affiliation, contact information, and a brief description of the relevant project*

### Reference 1 – City of Adelanto

Charles Rangel  
Development Services Director  
11600 Air Expressway  
Adelanto, CA 92301  
(760) 246-2300 Ext. 11176

There are several past and current projects built out or under construction by entities associated with Frontier Enterprises. There are single family residential projects by Frontier Communities and industrial projects constructed by Industrial Integrity Solutions. The residential projects include communities called Stone Briar and Stone Briar II, which equal 181 detached new homes coming to the City that we are pleased to have worked with Frontier on. The industrial projects include a 30-acre project being developed with building envelopes totaling over 630,000 square feet with recently Planning Commission approved expansions leading to over 1,000,000 square feet of industrial space.

Please see the attached letter of recommendation

### Reference 2 – City of Colton

Arthur W. Morgan  
Economic Development Manager  
Office of the City Manager  
(909) 370-6170

Frontier Communities has successfully obtained approval for, and is currently in the process of constructing a 110-unit planned development in the City of Colton's Hub City Centre Specific Plan area with another 77-unit project following. Their housing product is of the highest quality.

Please see attached letter of recommendation



### **Reference 3 – City of Riverside**

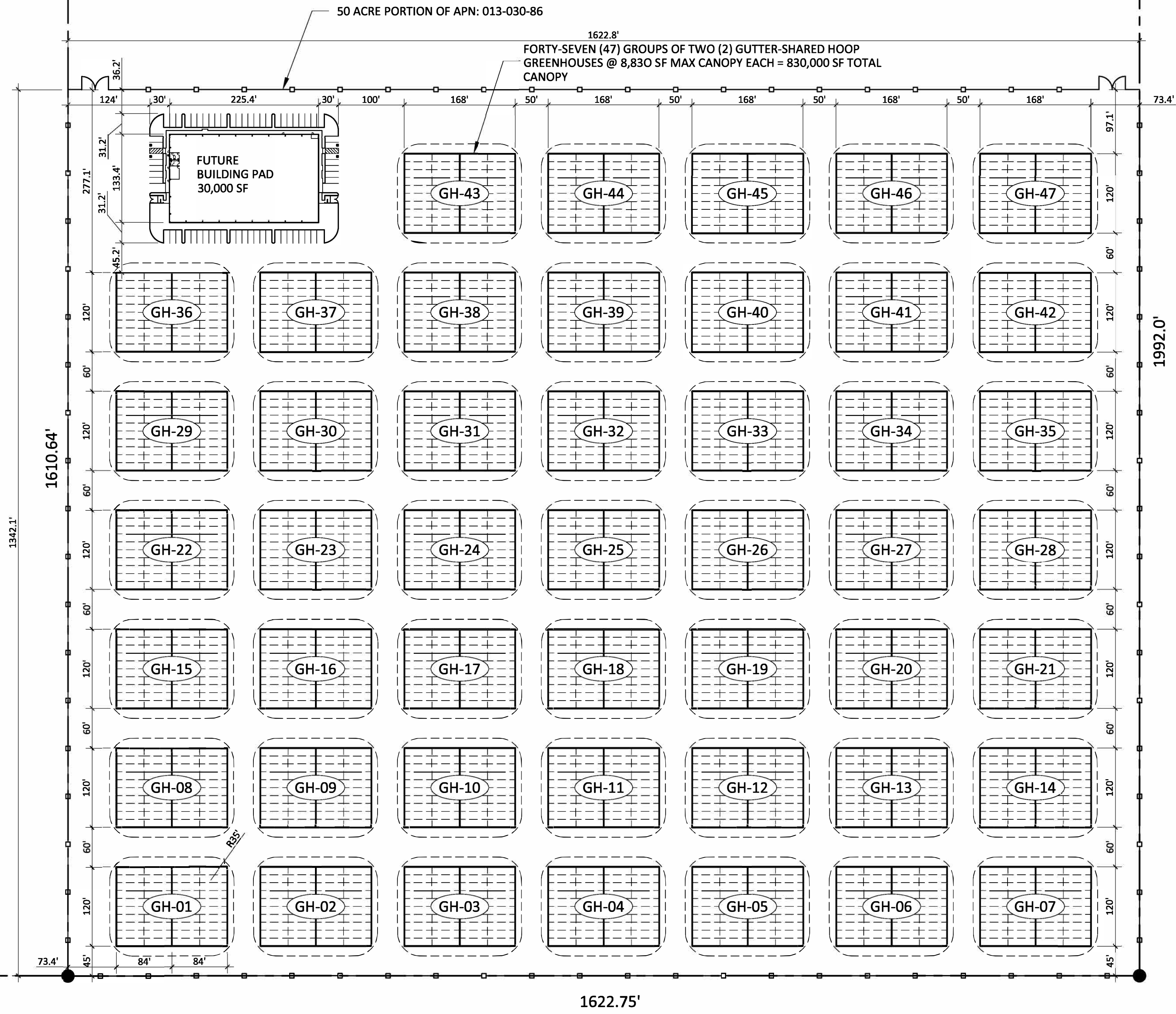
David Welch  
Interim Deputy Director  
Community & Economic Development Department  
(951) 826-5371

In 2018, Frontier Communities successfully obtained approval of a 210 unit condominium development.

Please see attached letter of recommendation

APN: 013-030-86  
114.80 Ac.

1401.95'



PARTIAL SITE PLAN

SCALE: 0 100' 1

SEAN  
FREITAS  
ARCHITECT

(916) 580-9981  
Sean@SeanFreitas.com  
SEANFREITAS.COM

These drawings are instruments of service and are the property of Sean Freitas, Architect. All design information contained in these drawings are for use only on this specified project and shall not be used otherwise without the expressed written permission by Sean Freitas, Architect.

PROJECT: 20180622A

CLIENT:  
INDUSTRIAL INTEGRITY SOLUTIONS

NEW HOOP HOUSES FOR:  
**INDUSTRIAL INTEGRITY SOLUTIONS**  
013-030-68  
MENDOTA, CA 93640

TITLES:  
SITE PLAN

DATE: 1/03/2019

DESIGN REVIEW DRAWING

**NOT FOR CONSTRUCTION**

THIS PROJECT IS NOT APPROVED FOR CONSTRUCTION UNLESS THE DRAWINGS ARE STAMPED AND WET SIGNED BY THE ARCHITECT AND THE BUILDING AUTHORITY HAVING JURISDICTION.

SHEET:  
**A2.11**

# DC AIRWAY PROPERTIES, LLC

January 2, 2019

To whom it may concern,

DC Airway Properties, LLC and Donald D. Christy have been providing capital to Industrial Integrity Solutions, LLC and its' owner, James L. Previti, since 2015 for the acquisition and development of homebuilding, mutli-family and industrial projects in southern California.

We are highly confident in their ability to execute on the plans that they develop and have provided them with a facility line of up to \$20,000,000 for the acquisition and development of projects in southern California based upon normal and customary lender underwriting.

Please feel free to contact me if you have any questions regarding this proof of capital source. My direct dial number is (714) 393-2963.

Sincerely,



Donald D. Christy



---

Development Services:  
Planning Division

January 3, 2019  
Charles Rangel  
Development Services Director  
11600 Air Expressway  
Adelanto, CA 92301  
760.246.2300 Ext. 11176

**RE: Letter of Reference**

To whom it may concern,

The City of Adelanto has several past and current projects built out or under construction by entities associated with Frontier Enterprises. There are single family residential projects by Frontier Communities and industrial projects constructed by Industrial Integrity Solutions. The residential projects include communities called Stone Briar and Stone Briar II, which equal 181 detached new homes coming to the City that we are pleased to have worked with Frontier on. The industrial projects include a 30-acre project being developed with building envelopes totaling over 630,000 square feet with recently Planning Commission approved expansions leading to over 1,000,000 square feet of industrial space. The working relationship between these entities and the City has been great. We are pleased to have their investments in our community and continue to work through any challenges that arise to the benefit of everyone. I would give a strong recommendation that the ownership, leadership and management of Frontier Enterprises be a preferred developer to have operating within your jurisdiction.

Sincerely,

A handwritten signature in blue ink that reads "Charles Rangel".

Charles Rangel  
Development Services Director



January 2, 2019

**RE: Letter of Reference**

To Whom It May Concern:

It is my pleasure to provide this letter of reference for Frontier Communities.

Frontier Communities has successfully obtained approval for, and is currently in the process of constructing a 110-unit planned development in the City of Colton's Hub City Centre Specific Plan area with another 77-unit project following. Their housing product is of the highest quality.

Frontier Communities has been a very good partner with the City with its development, responsibilities and relationships. They have exhibited a true "public-private partnership" with local government.

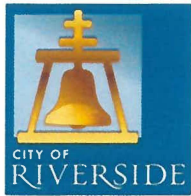
Because of the positive relationship that the City of Colton has experienced with Frontier Communities, the City welcomes continued future development by them in our community.

Should you have any questions, please feel free to reach me at (909) 370-6170 or via email at [amorgan@coltonca.gov](mailto:amorgan@coltonca.gov).

Sincerely,

Arthur W. Morgan  
Economic Development Manager  
Office of the City Manager  
City of Colton





Community and Economic Development  
Department

*City of Arts & Innovation*

January 2, 2019

SUBJECT: Frontier Communities Letter of Reference

To Whom It May Concern:

It is my pleasure to provide this letter of reference for Frontier Communities.

In 2018, Frontier Communities successfully obtained approval of a 210 unit condominium development. Frontier Communities willingness to work with City staff resulted in a notable win-win for both the community and proposed development project by providing a pedestrian connection between Villegas Park and the Staff Sergeant Salvador J. Lara Casa Blanca Library through their site.

Should you have any questions, please feel free to contact Sean Kelleher at (951) 826-5712 or by e-mail at [skelleher@riversideca.gov](mailto:skelleher@riversideca.gov).

Sincerely,

David Welch  
Interim Deputy Director

## **Mendota Development Corporation**

a subsidiary of Emerald Spectrum Holdings Inc.

November 26, 2018

Rolando Castro, Mayor  
Members of the City Council  
Mendota City Hall  
643 Quince St.  
Mendota, CA 93640

Gentlemen:

We are pleased to offer the attached Proposal under which the Mendota Development Corporation has outlined its plan to purchase, develop, build and operate a cannabis cultivation, manufacturing and distribution complex on the fifty-acre ( $\pm 50$  acres) parcel of real property located at (A.P.N 013-030-68ST). We propose to purchase the above referenced property at \$10,000 per acre.

We also propose that the City of Mendota assess a local tax of five dollars (\$5.00) per square foot on the cultivated cannabis canopy, per year. We propose to develop the equivalent of up to thirty-five, 22,000 sq. ft. cultivation operations on the property. Each such operation would generate \$110,000 per year in tax revenue to the City of Mendota.

Our proposal entails a multiphase development schedule which creates employment for members of the local community of between 65 and 95 jobs per phase. It also creates significant revenue-generating opportunities for local companies and residents that are willing to work in the development. Furthermore, we will be using utilities linked to the City of Mendota by using city water and electricity.

Under Phase One, we propose to immediately develop a five-acre parcel upon which we will build and operate a Distribution facility. After initial construction is completed, we will move to Phase Two where we build and operate 2-22,000 sq. ft. cultivation operations and one manufacturing facility.

In Phases Three and Four, we will further develop the property for both internal and third-party distribution, manufacturing and cultivation operations, and for a leased, third party testing laboratory.

Rolando Castro, Mayor  
Members of the City Council  
Mendota City Hall

Page Two

Timeline:

1. Complete initial development within 9-12 months of licensure;
2. Phase One - build one-acre Office and Distribution facility;
3. Phase Two – build four-acre Manufacturing, Greenhouse and Indoor Cultivation facilities;
4. Phase Three – build out ten acres - multi-use facilities;
5. Phase Four – build out twenty-five acres - multi-use facilities;
6. The remaining property to be used for water runoff and solar panels.

We are excited about the opportunity to work closely with the City of Mendota to build a state-of-the-art facility that will bring both significant economic development to the citizens of the community and a source of quality medical cannabis to patients across the Central Valley.

We stand ready to work closely with you and your representatives in building a strong relationship and a dynamic and vibrant development in your community.

Members of my team and I are ready to meet with and collaborate with you to work out the details of this Proposal at your earliest convenience.

Sincerely,

George Boyadjian  
President and Chairman of the Board of Directors  
Emerald Spectrum Holdings Inc.  
Parent Company of  
Mendota Development Corporation



# PROPOSAL

City of Mendota, California

Cultivation, Manufacturing and Distribution

Mendota Development Corporation  
November 22, 2018

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# INTRODUCTION

## Background

Mendota Development Corporation, (hereinafter referred to as the “Company” or “MDC”) is a pending California corporation that is a wholly-owned subsidiary of Emerald Spectrum Holdings Inc., a diversified corporation with interests in cannabis education, consulting, management and operations.

We have operated in the regulated California medical cannabis industry through our subsidiary 420 College Inc. since 2009. Our original subsidiary has educated thousands of people on cannabis regulations and operations, and represented dozens of businesses in civic affairs, local permitting and state licensing. Our founder and Chief Executive, George Boyadjian has been involved in the cannabis industry since 2005, and operated medical cannabis cultivation and retail facilities from 2008 to 2016.

Today we operate under agreements with investors to build and manage a 22,000 sq. ft. cannabis cultivation facility in Atwater, CA and seven retail dispensaries in Los Angeles, CA. We also lease a dispensary site in Fresno, CA that we wholly own and operate. Currently, each of these operations are awaiting permitting in their respective municipalities and all are expected to initiate commercial operations in early 2019.

Mendota Development Corporation is a California “C” Corporation that has filed for registration with the California Secretary of State. We have also filed with the Internal Revenue Service for an Employer Identification Number and with the California Department of Tax and Fee Administration for a Resale Certificate. MDC will file for a City of Mendota Business License upon assignment of a registration number from the California Secretary of State.

Our principal executive is an educated applicant who has deep community roots in the City of Mendota, desires to benefit his community and is an experienced business person. He contributes a unique set of skills and qualifications: including solid capitalization, a complete business and operational plan, knowledge of the industry and an unparalleled desire to benefit the City of Mendota.

## Summary

We propose to build and operate a fully-compliant cannabis cultivation, manufacturing and distribution complex on property (A.P.N. 013-030-68ST) to be purchased from the City of Mendota, California, (hereinafter referred to as “the Property”). The intent and purpose of this proposal is to act within the provisions set forth by the City of Mendota as a licensed medical and adult use cannabis operations and production operation.

The Property is properly zoned for multiple licenses under the State of California’s Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The Property is appropriately located, distanced from residential and commercial neighborhoods.

MDC will operate a state-of-the-art facility that utilizes environmentally sensitive advances in technology to produce high-quality cannabis products on the property. We will also engage in wholesale distribution of the products produced at the facility to both internally managed and third party, licensed retailers across the State of California. We do not propose to market or sell any cannabis products at the retail level, and no wholesale sales will be conducted within the city limits.

## Licenses

In connection with this proposed operation, we seek the following Cannabis operating permits from the City of Mendota:

1. Twenty-five (25), up to 22,000 sq. ft. Greenhouse Cultivation Permits
2. Ten (10), up to 22,000 sq. ft. Indoor Cultivation Permits
3. Twenty (20) Manufacturing Permits
4. Ten (10) Distribution Permits
5. One (1) Testing Lab Permit

After receipt of such permits from the City of Mendota, we will apply for and operate at the Property under the following MAUCRSA licenses issued by the State of California:

1. Type 3A – Cultivation; Indoor; Medium – 10,0001 to 22,000 sq. ft.
2. Type 3B – Cultivation; Mixed Light; Medium – 10,001 to 22,000 sq. ft.
3. Type 6 – Manufacturing; Non-Volatile
4. Type 11 - Distributor

## Community Benefit

MDC desires to present an enhanced economic environment for the City of Mendota. In that interest, efforts will be made to source employees and contractors from the local employment market. MDC will advertise, interview and select employees from residents of the City of Mendota, and will offer preference to local businesses for contracts including: electrical services, HVAC, construction for build-out, security services, waste management, and maintenance thereby contributing tens of thousands of dollars in revenue per year to local enterprise.

During Phases One and Two, MDC presents Mendota with approximately twenty full-time job opportunities for each approved facility, and if approved for all of the four initially proposed sites, will generate between sixty-five and ninety-five jobs for local residents at living wages. As the complex expands through Phases Three and Four, the proposed operations could generate as many as seven hundred new employment opportunities.

Additionally, the proposed cultivation facilities will generate substantial tax benefits for the City of Mendota. Each cultivation facility will contain 22,000 sq. ft. of cannabis canopy, which will generate \$110,000 per year for the City.

## Our Vision

Our vision is to set the standard in the City of Mendota for cannabis-based business enterprises as a safe, stable and profitable operator. We wish to have a long-term and successful partnership with the City of Mendota and expect to generate significant tax revenue for the City of Mendota, while broadly benefiting the community through charitable contributions and a proactive approach to important social causes. MDC will not be only a local business, but a proud member of the community and will discretely contribute to local charity organizations and civic-minded projects.

The proposed Mendota complex will supply the demand we generate at our eight retail locations and in future locations that are planned for the Los Angeles and San Luis Obispo county areas in 2019 and beyond. We expect our internally generated demand for cannabis flower and trim to be in excess of 59,000 lbs., or the capacity of 9-22,000 sq. ft. plots, per year by 2021.

We intend to make Mendota the centerpiece of our organization. Our goal is to transition away from operating managed production facilities such as the Atwater location, and to focus on producing all of our products at the Mendota location.



## THE LOCATION

For the convenience of the reviewing committee, the Applicant herein provides a current picture and specifications of the location:

### Zoning

In compliance with City of Mendota code, the proposed cannabis production facility is located within the Industrial zoning designation as outlined in the code. The property is located on APN (013-030-68ST) in Mendota, CA. MDC seeks ± 50 acres and can provide the level of security and environmental stewardship required by the City of Mendota provisions.

The site is presently an empty lot. Neighboring properties are in use by River Ranch, and therefore, development of the property as proposed will not pose any conflict with the existing use of surrounding parcels of land.

### Advantages of the Location

The City of Mendota is expected to experience minimally a 5% population growth between 2018 and 2022. This location has been selected to serve not only the City of Mendota itself by and through tax revenue but also to provide a convenient supply of consistent and high demand cannabis to the surrounding areas of Fresno and Modesto through MDC's sister-company The Central Valley Greenhouse, a pending, licensed medical dispensary in Fresno. In addition, MDC anticipates serving the larger area of Central and Southern California.

### Site Composition

MDC proposes a professional use of the parcel located at APN 013-030-68ST to include properly licensed indoor cultivation, greenhouse cultivation, manufacturing and distribution facilities.

This property will offer a central location for a cannabis operations site within the constraints of California law, and as permitted by the City of Mendota regulations, providing not only ample distance from sensitive areas, but also ease of access for inspection, enforcement, provision of services, delivery of supplies to and product transportation from the site to licensed retail facilities.

The presently vacant acreage provides for site design in consideration of environmental, resource, and space conservation. Site design for the facilities will include thoughtful setbacks providing maximum distance from neighboring parcels zoned for prospective residential use.

## THE FACILITIES

We propose to develop the property in four phases.

1. Phase One – Company-owned and operated, Office and Distribution facility;
2. Phase Two – Company-owned and operated, Manufacturing, Greenhouse and Indoor Cultivation facilities;
3. Phase Three – Company owned and operated/leased, multi-use facilities;
4. Phase Four – Company owned and operated/leased, multi-use facilities;

### Phase One

One Acre development.

Operational within 12 months from licensure.

#### **Permanent Office Building**

Administration Area featuring: Offices, restrooms, employee meal break area, secure document and digital record storage, and training room.

#### **Permanent Distribution Building**

Distribution Center with Storage, Processing, Packaging and Transportation operations.

### Phase Two

Adjoining Four Acre development.

Operational within 24 months from licensure.

#### **Permanent Manufacturing Building**

Non-volatile Chemical Manufacturing facility.

#### **Permanent Indoor Cultivation Building**

Indoor Cultivation facility, maximum allowable canopy of 22,000 sq. ft. with Nursery Facility

#### **State-of-the-Art Greenhouse**

Greenhouse Cultivation facility, maximum allowable canopy of 22,000 sq. ft. with Nursery facility

### Phase Three

Ten Acre development.

We expect that this development can contain up to eight Indoor and Greenhouse Cultivation facilities, each with the maximum allowable canopy of 22,000 sq. ft.

### Phase Four

Twenty-Five Acre development.

We expect that this development can contain up to twenty Indoor and Greenhouse Cultivation facilities, each with the maximum allowable canopy of 22,000 sq. ft.

All facilities will feature:

- **Security Conscious Design** featuring: pre-fabricated steel building with allowing a central location for sensitive areas, insulated steel doors; bio-metric limited access points; ample buffer space between flower area and walls with wide walkways between crop lots for ease of maneuverability and emergency service access;
- **Environmentally Friendly Design** including: fine-tuned irrigation system with mechanized control; insulated end walls; high efficiency temperature control units, and renewable solar energy sources;
- **Advanced Technologies** includes Industry best HVAC equipment for ventilation and temperature regulation;
- **Maximum Security** level bio-metric scanners at ingress points; solar energy provisions; innovative work station designs to facilitate employee ergonomic functioning and minimize waste; maximum level storage safes with limited access afforded by bio-metric access technology.
- **Centralized Location** for ready access by emergency and law enforcement services;
- **Efficient Utility Systems** for water and electric utility services;
- **Top to Bottom Compliance** with proposed state regulations including, Article 3, §8206, regarding multiple tenant cultivation operations including: unique entrance for the licensed premises and immovable physical barriers between uniquely licensed premises.

## Operational Best Practices to Insure Non-Diversion

All operations are designed to ensure operational best practices, prevent diversion of cannabis to unauthorized individuals, and provide a robust infrastructure of organizational productivity and efficiency. Operational infrastructure is detailed in such a way that an individual can enter the facility and identify the purpose or intent behind the activities taking place on site in relation of cultivation operations. The operational plan reflects the robust policies, procedures, protocols and adherence to regulatory guidelines so as to release potential liabilities for operations that are not in compliance with the local and state regulations on the production of medical cannabis.

## SECURITY AND SAFETY

The proposed cultivation site will adhere to state and local guidelines for security and safety. The objectives and measures within the security and safety plan will focus on: Employee health, safety, and welfare; non-diversion of product; and cooperation with law enforcement and emergency services.

### Access Restriction for Security, Safety and Non-Diversion

- **8ft Perimeter fencing:** around the entire perimeter of the site with security cameras at regular intervals. Video recording capability will have a full view of the entire fence at all times;
- **Controlled Security Gate/Sally Port** featuring: bio-metric/key-card scanner and ample space for emergency service vehicles; passage through the secure perimeter by an interlocked, single-vehicle sally port with two locked gates. The first gate is unlocked, allowing the vehicle to enter the controlled space, and the first gate is closed. After the first gate is locked, approval to enter is verified, and the second door is unlocked for the vehicle proceeds through the second gate. The second gate is then closed and locked.
- **Bio-metric Technology with Duress features** limiting access to: Product areas, storage areas, site entry and exit, inventory control, and all sensitive areas;
- **Knox-Box Technology:** will facilitate access to emergency and inspection personnel. Access will be afforded at all times to public safety officers from City of Mendota Fire and Sheriff's Departments, as well as any necessary state personnel. Each of these entities shall be provided with a site plan upon request.
- **General and Emergency Access to Site:** shall be strictly limited to: employees, verified licensees and contractors for utility and waste services, authorized transportation providers, emergency services, and government personnel. Access to the site will be granted to City of Mendota representatives, agents and employees with valid identification of their credentials. Unauthorized guests will be not be allowed to gain entrance.
- **Employee Access/Log:** Access to cultivation, processing, and storage areas will be limited further based on job requirements. Each area will require bio-metric access. The access system will keep a log showing employee access history and whereabouts, including entry and exits from site and sensitive areas. Electronic logs will be maintained for at least ninety (90) days.
- **Separate Employee Parking:** will be in an area which is *not* adjacent to the Warehouse or Greenhouse buildings on the site. Employees will pass through the controlled sally port gate to enter the property. Security cameras with recording capabilities will have a full view of employee parking area.

## Comprehensive Site Security and Safety Equipment

- **Fully-integrated Surveillance System** featuring: IP-based cameras with 90-day recording capability, complete 360° monitoring of site including ingress and egress, perimeter fence, and all indoor/outdoor product-holding and sensitive areas. All entry and exit doors, areas where human traffic may occur (Excluding restrooms and dressing areas), and any area with cannabis product at any time shall be recorded continuously by cameras with a 360° view.
- **State of the Art Alarm System** featuring: registration with City of Mendota Police Department, Direct notification and dispatch capability; battery back-up and reserve power generator.
- **Contact Information:** shall be provided to the City of Mendota Police Department via alarm registration and will include: Names, Addresses, Phone Numbers, Cell Phone Numbers, and the make, model, and color of the vehicles they will be driving when responding to alarm calls at the site.
- **Fire Safety:** shall be planned by a fire safety consultant and include at a minimum: emergency evacuation plan, integrated fire safety alarms and sprinkler system, appropriate fire extinguishers accessible to all personnel at multiple points on the site. All employees shall receive emergency preparedness training at orientation.
- **Pro-active Approach:** Backup generators with shall be placed on the site to ensure seamless production of the necessary utilities to continue operations in the event of loss of power. The generators shall be adequate to supply all security features with adequate service in the event of utility loss. As such, there will be no lapse of security cameras, bio-metric lock features, and gate security.

## Employee Standards and Compliance

- **Full Background and Eligibility Analysis:** as required by City of Mendota and the State of California shall be conducted for each employment candidate prior to employment.
- **Live-Scan Fingerprint Submission and Analysis:** with the highest level allowed by the Department of Justice Standards including FBI and CA DOJ submissions will be conducted at the soonest available time for each proposed employee. MDC will inquire at frequent intervals for availability of Live-Scan services through City of Mendota Police Department and will facilitate Live-Scan participation for all principals and employees prior to operations and/or any cannabis product on site.
- **Disqualification of Employment Candidates:** will occur where candidates background reveals any disqualifying conviction as outlined in City of Mendota Municipal Code for Medical Cannabis Business Activity or California state standards for Cannabis Business Operations. Disqualifying convictions are noted to include serious violent crime convictions such as: robbery, arson, rape, assault with a deadly weapon, attempted murder, murder, manslaughter, assault with great bodily injury, sex offenses relating to minors, stalking, threats, elder abuse and domestic violence. Non-Violent convictions warranting disqualification are noted to include serious property or dishonesty crimes such as: embezzlement, burglary, grand theft, or multiple petty theft convictions, and fraud-related offenses.
- **Employee Identification:** All employees will wear ID badges at chest height, which shall be visible to other persons and within clear view of cameras at all times. ID badges shall include employee photo, name, and position within the facility. ID badges shall be worn on breakaway lanyards at all times for employee safety, and may be placed in a clear, transparent, colorless plastic holder. No objects or paper may be placed in holder in such a way as to cover any part of the issued badges. Employees will not gain access to the site property without ID badge.
- **Employee Training:** All employees shall receive orientation, training, and supplemental education relative to relevant laws, regulations, company policies, and job procedures as well as general safety, human resource, and emergency protocols. Records of employee training shall be maintained with confidential employee records in physical and digital forms. All employee training shall meet or exceed the standards of all applicable jurisdictions for operational site.

## Inventory Control and Track and Trace Compliance

- **Track & Trace Software and Equipment:** will be used throughout the MDC cultivation site for comprehensive inventory control and product trace-ability in conformity with City of Mendota requirements and mandated California state participation. Track and Trace Equipment and full compliance shall be implemented prior to commencement of operations or arrival of any cannabis product on site. MDC proposes use of “Web Joint” as a provider for software, support and equipment.
- **Inventory Control Protocols** shall include the following for all grow rooms, manufacturing areas, storage areas, and warehouses:
  - Number of actively growing plants with a Unique Digital Identifier;
  - Number of deceased plants along with disposal record;
  - Total weight of harvested products and accurate location of where product is stored;
  - Shipping manifest detailing:
    - transporting company and personnel involved;
    - quantity of each strain in pound and ounces form;
    - signature of transportation personnel delivering/personnel receiving product with bio metric verification;
    - time log for deliveries;
    - GPS tracking on delivery vehicles,
    - company name, address, phone number, and state license number of companies receiving product all must be included on bill of lading.



## Security Services and Patrol Provisions

- **Site Security:** will be provided by a state licensed Security Firm;
- **Minimum Security Personnel:** while any cannabis is on site, there must be a minimum of one security officer roaming the premises;
- **Security Posts:** while any cannabis product is on site, at least one security officer will be positioned at the following locations: Main access gate, any Door that is not 24/7 alarmed as a fire-escape type door and where employees may leave the premises without activating an alarm.
- **Security Personnel Requirements:** all security personnel must be able to show evidence of: DOJ and FBI Live-scan clearance within past ninety (90) days; Appropriate Training Records; Certificates related to firearm eligibility; Current state guard card (or PC 832 Card if applicable); Current first aid/CPR certification.
- **Security Roster:** The Security Contractor shall provide a full roster to include scheduling of and dates and times worked by each officer. This roster shall include updated information at all hours of all days during the year without exception and shall be producible for review at all times.
- **Security Logs:** shall be recorded each day and be updated each security working shift. Each log shall include, at a minimum: Employee name, Identification number, date and times worked, and all areas patrolled or monitored during the shift.
- **Security Reporting:** Security personnel shall report all issues pertaining to the health and or safety of persons present on the site or the public, safety of the facility, and all acts or omissions which may be considered criminal nature to site management, City of Mendota Police and Fire Departments, Fresno County Sheriff's Department, and any agency or person mandated by state or local law.

## Compliance Statement for Non-Diversion of Cannabis and Cannabis Products

- **Regulatory Compliance:** All activities will be in full compliance with California State Law, City of Mendota Ordinances, and with the general guidelines set forth by the Attorney General with respect to the purposeful non-diversion of medical cannabis and/or any affiliated product, derivative, or waste material;
- **Affirmative Mitigation:** MDC will conduct all permitted cultivation and manufacturing with the utmost stewardship of the health, safety and welfare of the community and will take all steps necessary to mitigate any potential negative impacts that may occur.
- **Prevention:** All necessary action will be taken to avoid diversion of product or derivatives thereof. MDC will diligently work to: control and track inventory, maintain equipment and thorough records, supply adequate qualified personnel, communicate and cooperate with law enforcement and compliance professionals, and work only with other verified licensed entities.
- **Transparency and Cooperation:** MDC will at all times allow both announced and unannounced entry of the Planning Director or his/her designee(s) to inspect the location and any recordings or records held on site or digitally and MDC and/or its representatives will not unlawfully impede, obstruct, interfere with, or otherwise not allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a medical marijuana business under this ordinance or under state or local law. MDC and/or its employees or representatives will not conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a medical cannabis business.
- **Limited Scope of Operation:** In compliance with all CA Health and Safety Code and Business and Professions Code provisions, as well as City of Mendota regulations, MDC will cultivate exclusively products intended for registered, qualified, and compliant medical cannabis users as defined by law. Cultivation will be limited to medical provisions and will not attempt to circumvent any laws or seek availability to recreational users without substantial change in local legal framework and appropriate amendments.
- **Illicit Market Aversion:** MDC is organized with sufficient structure to ensure the anticipated security and non-diversion of cannabis to illicit markets, and compliance with all state and local laws. In accordance with CA laws and local ordinances, will conduct business only with other valid and licensed entities, and will conclusively evidence such limitations through careful documentation, strict maintenance of records, and consistent use of the track-and-trace program as outlined in this application packet. All transactions between licensed entities and MDC are subject to sales taxation in compliance with the expectations of California Department of Tax and Fee Administration and will be reported appropriately.

## ADMINISTRATION

All operations are designed to ensure operational best practices, prevent diversion of cannabis to unauthorized individuals, and provide a robust infrastructure of organizational productivity and efficiency. The operational plan reflects the robust policies, procedures, protocols and adherence to regulatory guidelines so as to avoid potential liabilities for operations that are not in compliance with the local and state regulations on the production of medical cannabis and Adult- Use cannabis.

### Administrative and Contractor Roles

The facility will contract on-site security guards, janitorial services, maintenance, skilled trades persons, human resources consultants, CPA, attorney and others providing essential services who will have access to the facility but will not be granted access to the production floor unless extenuating circumstances require the need for the individual to enter the production floor. For nearly all external business contractors, there will be no reason to enter the production floor at any time but MDC reserves the right to allow access to authorized individuals under the supervision of security and/or facility staff on an as-needed basis. These contractors will provide essential contract services for the organization so as to ensure transparency in operations and to allow for a bidding process to identify firms, consultants and individual contractors who best fit the needs and culture of the Company.

## Personnel Expectations

As the operation grows and expands, we expect to increase total personnel from 65 to 98 employees, with job descriptions as follows:

### **Distribution:**

- One (1) on-site manager working a full-time schedule to ensure proper management of all aspects of the business;
- (2) Sales Representatives to market and sell the products to Retail and Wholesale customers;
- Two (2) stock clerks/warehouse employees working a full-time schedule to stock shelves, pull orders and package products for shipment.
- One (1) Packaging Manager to supervise packaging operations;
- Six (6) Packaging Assemblers to package products for Wholesale and Retail Customers;
- (Two (2) Truckdrivers to transport products to retailers in Central and Southern California.
- One (1) Security Manager to oversee all security issues outside and within the facilities, as well as directing the uniform security services.

**Indoor Cultivation:** As the proposed cannabis facility for MDC is a largely automated facility, the demand for physical labor is significantly lower than a more hands-on, traditional agricultural operation. The projected permanent staff to be employed in the proposed cannabis cultivation facility for MDC will include:

- One (1) on-site Manager working a full-time schedule to ensure proper management of all aspects of the business;
- One (1) Master Grower with knowledge, experience or relevant skills related to mixed light cultivation, nutrients, plant management, cultivation systems and techniques, water management and efficiency, and other aspects of agricultural and horticultural best practices;
- One (1) Assistant Grower to manage systems and practices;
- One (1) Inventory and Compliance Specialist to monitor and track all production;
- Up to six (6) Farm Hands/Garden Assistants garden assistants that may vary by the demands of managing a commercial medical cannabis production facility.
- Up to eleven (11) Trimmers to manicure the cannabis into a finished product;
- One (1) Security Manager to oversee all security issues outside and within the facilities, as well as directing the uniform security services.

**Greenhouse Cultivation:** As the proposed cannabis facility for MDC is a largely automated facility, the demand for physical labor is significantly lower than a more hands-on, traditional agricultural operation. The projected permanent staff to be employed in the proposed medical cannabis cultivation facility for MDC will include:

- One (1) on-site Manager working a full-time schedule to ensure proper management of all aspects of the business;
- One (1) Master Grower with knowledge, experience or relevant skills related to mixed light cultivation, nutrients, plant management, cultivation systems and techniques, water management and efficiency, and other aspects of agricultural and horticultural best practices;
- One (1) Assistant Grower to manage systems and practices;
- One (1) Inventory and Compliance Specialist to monitor and track all production;
- Up to six (6) Farm Hands/Garden Assistants garden assistants that may vary by the demands of managing a commercial medical cannabis production facility.
- Up to eleven (11) Trimmers to manicure the cannabis into a finished product;
- One (1) Security Manager to oversee all security issues outside and within the facilities, as well as directing the uniform security services.

**Manufacturing:** The projected permanent staff to be employed in the proposed manufacturing facility for MDC will include:

- One (1) Plant Manager who shall oversee all production, compliance requirements of all facilities.
- One (1) Assistant Plant Manager who will oversee all systems and quality;
- Up to sixteen (16) Manufacturing technicians to operate the equipment and produce the products;
- One (1) Security Manager to oversee all security issues outside and within the facilities, as well as directing the uniform security services.

A thorough job description of each position detailing required experience, knowledge and relevant skills will be provided to applicants upon notice of position availability.

A current register of active permanent employees will be made available to representatives and agents of the Mendota at any time, including but not limited to the Fresno County Sheriff's Department, and all employees will meet strict background check standards that ensure an individual employed within the facility does not pose a health, safety or welfare risk to the organization, the production facility and/or the community.

## Employee Standards and Compliance

**Full Background and Eligibility Analysis:** as required by Mendota and the State of California shall be conducted for each employment candidate prior to employment.

**Live-Scan Fingerprint Submission and Analysis:** with the highest level allowed by the Department of Justice Standards including FBI and CA DOJ submissions will be conducted at the soonest available time for each proposed employee. MDC will inquire at frequent intervals for availability of Live-Scan services through Mendota Police Department and will facilitate Live-Scan participation for all principals and employees prior to operations and/or any marijuana product on site.

**Disqualification of Employment Candidates:** will occur where candidates background reveals any disqualifying conviction as outlined in state of California for Medical cannabis and Adult-Use Business Activity or California state standards for Medical/Adult-Use Cannabis Business Operations. Disqualifying convictions are noted to include serious violent crime convictions such as: robbery, arson, rape, assault with a deadly weapon, attempted murder, murder, manslaughter, assault with great bodily injury, sex offenses relating to minors, stalking, threats, elder abuse and domestic violence. Non-Violent convictions warranting disqualification are noted to include serious property or dishonesty crimes such as: embezzlement, burglary, grand theft, or multiple petty theft convictions, and fraud-related offenses.

**Employee Identification:** All employees will wear ID badges at chest height, which shall be visible to other persons and within clear view of cameras at all times. ID badges shall include employee photo, name, and position within the facility. ID badges shall be worn on breakaway lanyards at all times for employee safety, and may be placed in a clear, transparent, colorless plastic holder. No objects or paper may be placed in holder in such a way as to cover any part of the issued badges. Employees will not gain access to the site property without ID badge.

**Universal Requirements:** Personnel must show proficiency or an ability to be trained in the usage of technology including computers, tablets, mobile devices, bar code scanners, system monitoring interfaces, software and cloud-based trace-ability platforms and other unnamed or unspecified technologies that may be employed within the facility to ensure greater automation of processes in the cultivation cycle. Drivers and/or contracted transportation firms shall meet and exceed all state road requirements.

**Employee Training:** All employees shall receive orientation, training, and supplemental education relative to relevant laws, regulations, company policies, and job procedures as well as general safety, human resource, and emergency protocols. Records of employee training shall be maintained with confidential employee records in physical and digital forms. All employee training shall meet or exceed the standards of all applicable jurisdictions for operational site.

**Wages:** The company believes that a well-paid employee is a motivated employee. The company proposes to pay a “living wage” i.e. 200% of the prevailing minimum wage.

**Benefits and Training:** MDC will offer benefits in compliance with all federal and state regulations. Full-time employees will have the opportunity to participate in health care insurance programs with employer contribution. MDC will offer employee training in not only hard-skill areas directly related to the cultivation process, but also in the legal aspects of the business, safety, and standards in support of a positive work environment.

## Policies, Procedures and Protocols

**Direct Contact with Cannabis:** The daily operations within the facility being proposed by MDC entails a number of duties to be performed outlined within the job descriptions of the various personnel positions. To expand on this, the processes, procedures and protocols to be enacted within the facility will enhance employee health, safety and welfare, and will contribute to the efficient and streamlined operations occurring on site.

Additional contracted labor in the form of janitorial, maintenance, repair or other unanticipated individual contractors or consultants needed to perform tasks to maintain the facility will be prohibited access to sensitive areas of the facility unless under the direct supervision of staff or security.

**Equal Opportunity:** The company welcomes diversity and inclusiveness. Accordingly, an effort will be made to provide equal opportunity in our employment practices to people of color, females, and seniors. Residents of City of Mendota will be favored at all times in an effort to provide further economic stimulus through gainful employment for community members. In the event that qualified employees cannot be sourced from the City of Mendota, the company will find workers from outside the county and pay to relocate them to the county.

**Hours of Operation:** Anticipated location business hours for MDC will operate only between Monday and Sunday from 7:00am to 8:00pm, and any access that otherwise occurs beyond these hours is subject to the scrutiny and authorization of principals, managers, master gardeners and/or security. The hours for operation of the distribution center may be amended to adhere to best practices and regulations set forth by the applicable state agencies.

**Scheduled Access Only:** At no time should any unscheduled employee, contractor, or guest on site without proper clearance, permission and authorization for the guest to tour the premises away from sensitive production areas. The policies, procedures and protocols to follow will elaborate on the expectations for proper operations in compliance with all applicable state laws.

**Quality Control.** MDC will employ separate employees for quality control in its cultivation and manufacturing facilities in order to insure quality control through equipment inspection, maintenance, and strict adherence to internal controls for each step in the manufacturing/cultivation process. In addition to state required testing, MDC will perform internal batch sampling and testing

**Written Security Protocol.** Subsequent to licensing and prior to any employees working within the facility, MDC will develop and implement a total facilities safety and emergency handbook, including but not limited to all employees' completion of OSHA materials and classes offered by the state of California. The MDC Safety Protocol Handbook will include mandatory weekly safety meetings, fire prevention, individual work-area safety, reporting and ongoing education and certification.

**Security - Storage.** All finished medical marijuana products will be secured and locked in a room, safe, or vault, within limited and controlled access areas. All storage areas shall be monitored by video and by security personnel, as discussed above. Should MDC be awarded a distributor permit, cannabis products from the cultivation and manufacturing sites can easily and securely, after testing, be transferred to the distribution holding center, as indicated on the site plan.

**Security Responsiveness.** MDC shall appoint an individual to be immediately responsive to the city and/or any law enforcement or community concerns.

**Transparency with Government:** The Company places great emphasis on quality and a safe product, free from pesticides and other chemicals. To this end, a tracking system will contain a unique identifier for each plant which will provide a detailed system of accountability. In order to comply with state of California regulations, this information will be transmitted to the state government in Sacramento. As a part of this attention to enhanced consumer safety, batch testing will be routinely performed in order to adhere to state regulations.

**Product Handling:** MDC will possess, process, handle, trim, cure, manufacture and distribute cannabis in compliance with all legal guidelines of the State of California, Fresno County, and Mendota. To help prevent diversion of medical marijuana to non-medical markets, MDC and the Principals will document the interaction of each principal and employee with all products and with the track-and-trace system. Further, to maintain security, prevent fraud, and deter robberies, MDC will keep accurate physical and digital records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a robust accounting of all cash transactions that occur within cultivation environment.



## MANUFACTURING

We intend to manufacture cannabis concentrates which will be used for vaping, or for baking into food products. Eventually, MDC would like to expand to a state health department licensed MMB baking facility. MDC anticipates obtaining and utilizing the non-volatile, Supercritical CO2 extraction method.

All operations are designed to ensure operational best practices, prevent diversion of medical cannabis to unauthorized individuals, and provide a robust infrastructure of organizational productivity and efficiency. The operational plan reflects the robust policies, procedures, protocols and adherence to regulatory guidelines so as to avoid potential liabilities for operations that are not in compliance with the local and state regulations on the production of medical cannabis and Adult- Use cannabis.

### General Description of Products

The cannabis products and services to be provided by the manufacturing facility will initially consist of raw oil material and vaporizer cartridges, eventually transforming into baked and candy goods.

### Cultivation

The most environmentally friendly ventilation, odor control, and mold and pest reduction system is the sealed greenhouse system and MDC will install such a system within both its indoor and greenhouse cultivation facilities.

Fans and advanced climate control systems regulate indoor conditions such as temperature, CO2 and humidity, and provide sufficient air circulation. This strategy has a number of other benefits: it reduces incoming pests and pathogens; saves CO2 and energy; and avoids the possibility of hemp pollen entering the structure and pollinating crops.

Creating a super controlled environment with advanced climate controls—including heating, cooling, dehumidification and air movement—is a major trend in commercial cannabis greenhouses. This enables growers to keep odorous air inside, while still providing precise environmental control and sufficient air movement. Back-up ventilation systems with carbon scrubbers can be much smaller, allowing for initial and ongoing savings.

### Environmental Impact

Understanding the environmental complexities of a cannabis cultivation operation, it is critical to be mindful of our impact as an operation in the local business community. As an anticipated licensed cannabis cultivation operation, the following actions will be integrated into our business to ensure environmental protection: use of solar technology to conserve

community energy resources, integration of automated and monitored watering system to conserve limited water resources, site-wide recycling program, use of waste products as compost pursuant to California law.

## General Description of Products

MDC will produce cannabis flower and trimmed leaf for sale to licensed retail and wholesale intends to operate without the use of CO<sup>2</sup> and other potentially harmful chemical substances. The fertilization and growth will be facilitated with naturally-occurring minerals and enhancement tools and will comply with the “Organic” certification requirements which California will have in place in the near future.

## Role of Automation and Designation of Duties

The tasks associated with cultivating cannabis on a commercial scale are largely automated and do not necessarily require time-consuming labor during the cultivation process. Management and staff primarily focus on monitoring of cultivation site, plants, nutrient levels, relative humidity, and other components of producing market-ready cannabis for licensed retailers.

As automation in the production process will ultimately lead to greater organizational efficiency and reduced costs associated with production, there is still a substantial load of tasks associated with the production of market-ready cannabis. In addition to the tasks to be outlined, an on-call status will be established within the organization based upon the needs of the organization that specifies an employee as being designated to respond to or manage facility needs after the hours specified within the anticipated tasks. These potential after-hours tasks will be associated strictly with response to or management of emergency conditions related to the facility or production matters occurring within the facility that require a response beyond the operating hours. In evaluating the daily routines and regimes to both management and cultivators, each requires a different daily routine to ensure the efficiency and operational goals of the organization are met.

## Water Conservation: Automatic Watering, Rainwater, Runoff and HVAC Recycling

MDC intends to use an automatic watering system that limits the flow of water with controllers that provide the precise amount of water and nutrient balance for each plant without over-watering. In addition, a rainwater catcher system will be used to store surplus rainwater that will supplement operational water needs on site. Runoff and HVAC water recycling will also serve as additional sources of water that will also be captured.

The proposed cultivation site will adhere to state and local guidelines for security and safety. The objectives and measures within the security and safety plan will focus on:

Employee health, safety, and welfare; non-diversion of product; and cooperation with law enforcement and emergency services.

## Electricity Usage

In order to supply all power requirements, MDC intends to incorporate solar power in the future. The company has a 3-year plan to use a minimum of 50% solar energy on-site to offset the carbon footprint of the medical cannabis cultivation site.

## Sustainability Statement

The Company believes it has innovative solutions to create a sustainable cultivation operation with attendant environmental benefits. The use of compost brewers to create compost teas, composting organic waste, the use of recycled materials in production and the use of naturally based nutrients will lend to a more sustainable medical cannabis production cycle without creating damage to the local environment, watersheds, streams and other habitats for wildlife within Kern County. The sole intent of MDC is to act as a good steward of the land which we love and ensure that the practices we utilize reduce our footprint on the land, water and air we share with others in the Mendota.

## OPERATIONAL TIMELINE

The following general timeline is provided as a general plan related to the various anticipated phases of development. It is understood that these anticipated timelines can shift and change with unforeseen obstacles, barriers, delays and other potential diversions from the timelines to be outlined within this section.

The provisions outlining the following timelines allow the City of Mendota to evaluate the revenue contributions in compliance with the approved county tax rates. Additionally, the timelines to be outlined include the following: (A) Permit Inspection; (B) Anticipated Compliance; (C) Operational to Revenue Generation;

**(a) PHASE ONE: City Permit Process and Inspection; 90 days.**

Upon consideration, MDC will open the facility for inspection to county officials to ensure all site features meet and or exceed construction guidelines along with the provisions set forth within the City of Mendota code in relation to cannabis production facilities. Any recommendations or mitigation orders provided by the inspections will then usher in Phase Two of the process in which all potential issues identified will be mitigated and brought up to code within a 30 to 45-day time frame. Security and additional environmental issues can be addressed for full compliance during this time. No cannabis product will be present during this phase.

**(b) PHASE TWO: Build out and Preparation; 60-90 days.**

Upon tentative permit approval, installation of buildings, security features, equipment and fencing will occur. The site will be open to the continuous inspection of City of Mendota and other appropriate government-authorized officials. No cannabis product will be present during this phase.

**(c) PHASE TWO: Anticipated Compliance and Re-Inspection; 30-45 days.**

Upon completion of build out, MDC will request inspection of proposed final site. In anticipation of any corrections or modifications resulting from inspection, MDC intends to use this time frame to ensure full compliance with City of Mendota code and all other applicable regulations and ordinances. Upon completion of the recommended upgrades and changes outlined by City of Mendota inspectors, the facility will essentially act as a turnkey production facility moving forward into Phase Three. No cannabis product will be present during this phase.

**(d) PHASE THREE: Operational to Revenue Generation; 3-4 months.**

During this phase, MDC will begin operations and training operations to ensure revenue generation that will provide for operational budgets, tax payments and additional investment in to the business and community.

## Management Organization

### **George Boyadjian**, President and Chairman of the Board of Directors

Mr. Boyadjian is a leading professional of the cannabis industry with 10 years of professional experience in all types of cannabis businesses, including retail, manufacturing, delivery and cultivation. His company, 420 College, has facilitated seminars and workshops throughout California, Washington, Oregon, Nevada, Arizona, Illinois and Florida since 2009. He has provided thousands of entrepreneurs on proper business start-up and operations. 420 College is now a recognized brand in the industry.

Growing out of the need for proper management for continued success, Mr. Boyadjian founded FTG Management Group, Inc. which has assisted clients in establishing, operating and maintaining compliant businesses in California, Oregon and Washington since 2013.

Mr. Boyadjian has years of experience working with various members of the cannabis industry, planning departments and Cities to propose solutions to anticipated or real concerns. Many proposed solutions and management plans are made in coordination with city and community members. Examples of collaborated solutions include increased security monitoring, the “no cash” on site policy, no outdoor or billboard advertising, odor management and a host of other measures which ensure constant safety and compliance while protecting the business interest and the City’s interest in safety and community development.

### **Steve Crane**, Executive Vice President and Director

Steve Crane is a highly experienced and dynamic executive who has worked as an entrepreneur, CEO and venture investor in the Los Angeles area for over thirty years. Since 2000 he has invested in and joined the boards and management teams of numerous startup and emerging growth companies.

He is perhaps best known for his work with CorpHQ Inc., a publicly traded venture incubator. Formerly an Internet destination for small businesses, he reacquired the company in 2000, then reorganized, recapitalized and built it into one of the most successful venture incubators in Los Angeles during the period. From 2001-2007 the company built seven companies, taking two to the public markets. During that period, CorpHQ generated five consecutive years of quarterly revenue and earnings growth. After taking the company private, he continued his work in venture finance with the surviving entities until 2016.

He originally co-founded CorpHQ in 1993, as the Internet’s first business-to-business destination for the small office-home office market. Under Steve’s leadership, the company grew rapidly, went public and then consolidated into a larger publicly traded Internet company in late 1999.

Steve Crane has also participated in high profile, emerging public company industry advocacy efforts. He served on the National Association of Securities Dealer's OTC-Bulletin Board Best Practices Committee in 1999; co-founded The CEO Council, a Washington DC-based advocacy organization in 2002; and testified before White House staff and Congressional Members in 2003-2004.

**Daniel Parra, Advisory Board Member**

Dan Parra is the Mayor Pro Tem for the City of Fowler, California and is active in various community organizations in the Central Valley. He is the Chairman of the City of Fresno, California's Economic Opportunities Commission, President of the League of California Cities Latino Caucus, and a commissioner for the Fresno Local Agency Formation Commission. He is committed to serving and supporting the members of his community, and continues to be a strong advocate for the cannabis industry in general and EDH companies and operations, in particular, throughout Central California.

**Randy Lewis, CFA, Chief Financial Officer**

Randy has been a private consultant for nearly 20 years – with deep experience in valuation and appraisal, business plan development and capital market consulting, as well as strategic planning, CFO services and corporate finance. He has extensive experience working with retail and restaurants, Internet and tech companies, including SaaS and mobile app businesses, and professional service companies including health care practices, physicians, and attorneys. Other types of businesses include, but are not limited to, magazine publishers, light manufacturing, beverage distributors, and medical device distributors. Business plan and valuation clients have ranged in size from startups to public companies with sales in excess of \$100 million.

He received his Bachelor's Degree in Finance with honors from California State University, Fullerton, an MBA from the Anderson School of Management at UCLA, and earned the Chartered Financial Analyst (CFA) designation in 1999 and the Certified Valuation Analyst (CVA) designation in 2010. He was also an accounting and finance lecturer at the Martin V. Smith School of Business & Economics at California State University, Channel Islands (CSUCI), and an assistant professor of finance at Los Angeles Pierce College. He has also served as interim and acting CFO of several companies, both public and private. Randy combines complex analytical abilities, and a keen understanding of the drivers and competitive forces of several industries, with the ability to effectively and succinctly communicate at all levels of the business community.

**Barry Jahn, Vice President – Compliance**

Barry Jahn is a talented cannabis cultivator, building contractor and Compliance Engineer in the petroleum and process industries. To begin his career, he worked as licensed building contractor in Southern California for fifteen years. After receiving engineering certifications in 1999, he entered the petroleum and process industries. In 2002, he managed Inspection and Safety on the US Air Force's \$350 million refueling project at Hickam Air Force Base in Honolulu, Hawaii.

The next stop for Barry was the North Slope of Alaska at the legendary BP/Exxon production facility where he served as the Managing Inspection and Safety Engineer, with over 350 direct reports. He returned to Southern California in 2008, and has since split his time between producing high quality cannabis and consulting to the petroleum and process industries as a Managing Safety and Compliance Engineer.

**Bryce Yaws, Vice President – Cultivation**

After two tours in Iraq as a Navy Corpsman and an award-winning stint in the field of music composition and scoring, Bryce began his career in the cannabis industry in 2015 with Lotus Family Farms. His work in medical cultivation predated the legalization of recreational cannabis in the state of Oregon. After a successful season, Lotus Family Farms upgraded to become one of the first tier 2 recreational farms in the state of Oregon. From the successes of Lotus Family, he was offered seminar positions for 420 College. There he travelled the country as a speaker on behalf of cannabis growers and operators. He recently created his third company, Othello Operations Inc., a cannabis management and operating company. At the young age of 30, Dennis Bryce Yaws has lived an extraordinary life, and is a key asset to the future growth of the Company.

**Tim Diaz, Vice President – Business Development**

Tim has been a fixture in Central California's Cannabis Industry since 2014. As the Co-Founder and President of Turn and Cough Extracts ("TACE"), he built a robust market for this craft producer of high-quality extracts. In 2015, he co-founded "City of Trees Smoke Out," Central California's first weekly cannabis festival and enthusiast community, which still operates and serves hundreds of recreational and medicinal customers in Stockton and Sacramento, California.

**Corey Greenberg, Vice President – Manufacturing**

As Co-Founder and Chief Manufacturing Engineer at TACE, Corey manufactured a well-known and highly successful line of craft cannabis extract products. He is expert in multi-grade production using closed-loop, light hydrocarbon extraction systems, pre and post product grading and end product manipulation. His knowledge and innovations are unique in the industry and have proven to produce the highest quality, most sought after extractions.

**Maria Elena Baker, Vice President – Administration**

Ellie has spent her career managing operations and administration departments for mid-sized accounting firms, and is both an Accountant and trained Human Resources professional. A California native, she moved to the East Coast to obtain her education and then entered the accounting field. A bilingual (Spanish) specialist in high volume, fast moving, complex environments she is a paragon of efficiency and a powerful advocate for transparent and well-managed internal controls and procedures.

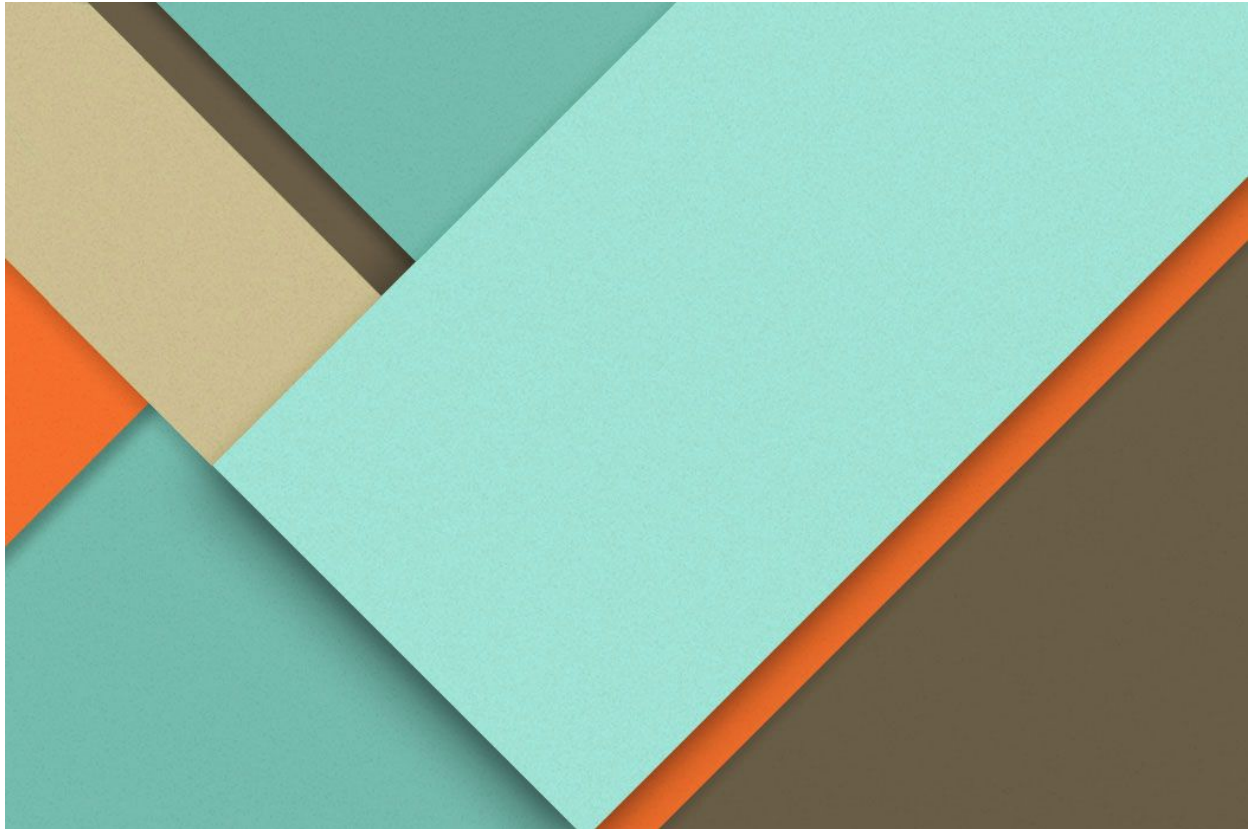
**Monica Carrera, PHR, VP-Human Resources**

Monica is a strategic and tactical senior Human Resources professional with 10+ years of leadership experience in high-growth software, technology, start-ups, multimedia, and retail companies. She has proven experience in high-growth businesses, delivering and executing strategies to align people with business objectives and leadership, developing culture and engagement, collaborating, building, and leading business partnerships, org programs/communications, talent management and performance management. She currently operates a human resources consulting practice and is an Extension Course Instructor at UCLA. As the Head of HR, Consultant for Habitat for Humanity she created and manages business operations and infrastructure. She also serves as Senior HR Consultant for Beautycon Media, where she has developed compensation design and communication strategies, directed employee relations, and implemented recruitment strategy and performance management process.

**Matt Bennett, Sales and Distribution**

Matt is a dynamic sales executive with 15 years of experience in sales and management of high performing sales organizations. As President of Empire Retail, he built the manufacturer's representative company from concept to a national operation in 10 years. Empire operated sales teams that addressed a market of over 5 million people annually. Representing a number of consumer products companies, Matt designed and implemented sales strategies that generated spectacular sales and profit growth for each client. Matt is a consummate entrepreneur and a prototypical sales director. He has built numerous long-term relationships in the cannabis industry and direct sales channel across the state that allows him to bring products to market rapidly and with extraordinary rates of success.





# HIGHER PLANE CULTIVATION

Business Outline and Executive Summary

**Higher Plane Cultivation and Distribution**

**420 Mary Jane Lane**

**Mendota California**

## **Overview**

We are a collection of highly motivated and seasoned professionals with a combined nearly 100 years of experience in all aspects of business management, cannabis cultivation, marketing, logistic and legal. Although we come from a variety of backgrounds this is a great source of strength. Every bit of knowledge, contacts and experience will be leveraged to its fullest. Starting with the right team is the best chance of success, although it's not the only ingredient needed. Combined with a very unique opportunity with the City of Mendota and a booming industry poised for exponential growth, gives us a very unique and profitable opportunity.

## **Goals**

1. Create a company with enough internal synergies to make us an immediate force within the industry while maximizing profits.
2. Reimburse our investors according to the terms of the agreement or better.
3. Maintain a hands on relationship with the City of Mendota so we can best impact the lives of the citizens and future generations. 2.5% of GROSS sales will be given back to the community to fund projects that will have a lasting impact.

## **Company Goals and Strengths**

Create a company that specializes in the cultivation, manufacturing and distribution of legal cannabis in the heart California. The industry can be summarized into a few categories.

- 1. Cultivation**
- 2. Manufacturing**
- 3. Laboratory Testing**
- 4. Distribution**
- 5. Retail**

We have the opportunity to combine numbers #1, #2 and #4. This puts us on strong ground, much more than most startup companies. For example, a farmer typically doesn't deal with sales and marketing aspects which involves everything from packaging to customer contact and maintenance. They wouldn't know where to start. (the new regulations stipulate the product MUST go through a distributor before the retailer)

Our plan includes the acquisition of an already approved 50 acre parcel in the city of Mendota for the cultivation, manufacturing and distribution of cannabis. It's important to stress this parcel is already zoned and approved for this project. There are several specialized state and county licenses still required, but we have fully accounted for those costs and the legal assistance to help facilitate the process in our cash flow. Once the final permitting is issued by the state of California the property is expected to immediately double or triple in value. Even though we will only be developing a maximum of 3.5 acres to start, we are willing to commit the entire property in order to secure financing, including all structures, equipment and licenses. The city has the option to break up the parcel into multiple pieces but has indicated they much prefer a single company to buy and manage the property. (cities are not in the property management business)

## **Sales Strategy**

Our unique business model allows us to price our product significantly cheaper than any other competition currently on the market. Our financial models use a distributor price of \$1,250 per pound, compared to the standard \$1,800 per pound. Our quality and pricing will be unmatched. This is only one aspect of our sales and marketing strategy. We believe in a multi-pronged approach, this includes.

- a. Aggressive pricing structure
- b. Innovative packaging and product placement
- c. Customer loyalty and incentive programs not just for the retailer but also the end consumer.
- d. Enter and WIN competitions for flower and concentrates, are essential to building brand awareness.
- e. Develop several "brand names" which will be sold and marketed as individual brands. Each brand will tailored to fit the economic budget of the end consumer. This allows us to have a presence at every price point but just as important, we can take a larger portion of available shelf space without compromising the retailers ability to offer different brands.

- f. This practice is done out in the open with companies like Toyota/Lexus and Gap/Old Navy. When (Michael) owned his manufacturing company he deployed this very same strategy while selling products to Walmart. The motivation was sell cheaper product while still preserving the brand integrity at higher-end stores like Costco or Harry and David.
- g. Create and implement an appropriate marketing strategy/budget that gives the most effective tools to obtain the most profitable sales.
- h. Concentrates: We have not fully addressed this issue but this is the fastest growing segment in the cannabis industry. Which is great news for us considering concentrates enjoy double the profit margins than flower. Steven Carter has decade of experience in this field and already produces award worthy product. In the interest of staying conservative, none of the projections reflect sales of concentrates.**

## **Future Growth**

We are building a total of five (5) greenhouses on the developed 3.5 acres the remaining developed property has the ability to double that capacity or more. In addition there is a remaining 46.5 (approved) acres ready for development.

Every year more and more states are either legalizing medical or recreational cannabis. It will only be a matter of time before “the walls come down” on a federal level opening up the entire country for our product. As pointed out earlier, we are in the best possible location in the entire country and poised to be a major cultivation and distribution facility. It's important to note, once these approved lands and licenses are given out that's it, there will be no more issued. This is a once in a generation opportunity to get in on the ground floor of a booming industry that is not going away.

# Threats

After some research we have two possible threats to our long term health that an investor might be concerned about.

- 1. Price per pound of Cannabis**
- 2. Overall economy**
- 3. Competition**

Price per pound: We look to Colorado for pricing trends and it's been on the decline but seems to have stabilized around \$1,000 per pound (wholesale from the farmer). California is still enjoying better pricing but we can only assume as the industry matures the pricing will follow suit. We have two major advantages, first we will take care of our own market sales and distribution in house. Even in Colorado this brings the pricing up to \$1,800 per pound, but to be conservative we have used the price of \$1,250 a pound in our financial models. It's important to note at this time our cash flows DO NOT include the sale of concentrates. Concentrates or oils are a huge part of the industry and the fastest growing segment. Concentrates also enjoy a nearly double profit margin as just the buds/flowers. Even though we have an aggressive plan and the experienced people needed to dive into that aspect of the industry, was left off the projections because at every point we believe it's important to be as conservative as possible.

In a recent Forbes article discussing the long term viability of companies in the cannabis industry, they came to the conclusion that "Unless you are on the West Coast growing in greenhouses or Latin America, all the beautiful indoor grow rooms in Pennsylvania and New Jersey will be beautiful dinosaurs." Not only do we fit this description perfectly but the operation is IDEAL spot for cultivation and distribution to both Northern, Southern and Central California. All this works greatly to our advantage and long term health.

Overall economy: There's an old saying, "When times are good people drink, when times are bad people drink" A large portion of the industry is also medical which translates into a model that is immune and efficient to economic conditions.

Competition: There is no one solution for competition, except a commitment to quality, creativity combined with a comprehensive marketing strategy. Executed correctly the cumulative effect is become leaders in our industry. We help set the trends, other companies look to us for inspiration while wondering... "How do those guys come up with this stuff?"

## **Our Team:**

### **Mario Disalvo:**

*Chairman of the Board, chief legal consultant.* Mario has over 2 decades of experience in all facets of criminal law and is a highly respected member of the legal community.

### **Michael Muhawi:**

*Director of Operations/Marketing:* Michael brings over a twenty year track record as a successful businessman who owned and operated a 20 million dollar national manufacturing company. Ultimately negotiating a multi million dollar buyout. He has an impeccable record and commitment to his community and employees. Even receiving special congressional recognition awards for his service to the immigrant community by providing stable employment. Including numerous community outreach programs.

### **Steven Carter:**

*Director of Cultivation and Manufacturing:* Steven has over a decade experience in cultivating and managing operations for some of the biggest names in Northern California. Cultivation is an art as much as a science and his knowledge is key to our success. Imagine a brewery without a brewmaster or winery without a master "vintner". Also, his knowledge of concentrates is world class and we look forward to dominating the competition circuit

### **Valunt Montgomery:**

*Director of Distribution and Sales :* Valunt, a former US Army reservist, has 20 years experience in the cannabis industry with emphasis on logistics. He will be in charge

of accounting for all finished inventory and head all of our distribution efforts ensuring safe and timely deliveries.

## **Community Outreach**

There is NO LIMIT or cap on the amount of money that can be earned by the city during the year. Based on the 2.5% of our company's gross sales, we estimate the city will earn nearly 1 million dollars in the first 3 years of operation.

We are committed to hiring at least 50% of our labor workforce from Mendota. We will pay for all training and offer benefits.

As a good faith gesture we would like to offer an additional \$50,000 to the asking price of the land that can be used by the city in any manner it sees fit that best impacts its citizens.

In the event that our company has the opportunity for a strategic acquisition, the terms with the city are passed on to the new buyer. The 2.5% is forever and will be non-negotiable with potential buyers.

## **Security Plan**

Ron Sawl owner and founder of the Police Science Institute will be developing and implementing a world class security plan. Ron's company trains FBI, Department of Homeland Security and various other government agencies. There is NO ONE better to be working with and we are truly privileged to have the opportunity. When the architect draws up detailed plans Mr. Sawl's company will be able to assess and determine exactly what is needed. An appropriate budget has been allotted for these costs. These plans will be passed on to the city as soon as they become available.

## **Financial Projections**

We are providing a three (3) year cash flow with an estimate of how and when will be able to service our debt. We believe a projection also serves as a road map for this project with clear objectives. Much of the information is derived from facts and years of experience while other parts were educated guesses. It is crucial that as we move forward systems are implemented to track our financial parameters on a monthly basis so we can accurately compare reality vs. projects. Allowing us to make course corrections in real time as needed. Michael Muhawi has decades of experience creating these systems for a multimillion dollar manufacturing operation and we are confident in our ability to stay accountable to ourselves and our investors.

## **Contact Information**

**Derrick D. Walker**

**559-724-1139**

**[vfdenterprisellc@gmail.com](mailto:vfdenterprisellc@gmail.com)**







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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** FINAL MAP 18-01, LA COLONIA RECOMMENDATION FOR APPROVAL  
**DATE:** FEBRUARY 12, 2019

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**DISCUSSION:**

On August 14, 2018, the Mendota City Council, by Resolution 18-63, approved Tentative Map 18-01, an 86-lot subdivision known as La Colonia.

Before the approved Final Map was actually recorded, the developer notified the City that he had reconsidered the distribution of lot sizes, and wished to create more lots with wider frontages. His request was relatively modest. The project engineer was able to present a revised map that eliminated only one lot while increasing the widths of eight lots along the easterly street, without changing any street alignments at all.

Since so little was changed with the subdivision's layout, and since there is actually one fewer lot being created (85 versus 86), the City Engineer has determined that the revised final map is still in conformance with the approved Tentative Map, as is required under the Subdivision Map Act. The Final Map has been reviewed by the City Engineer and has been found to be ready for recordation.

**FISCAL IMPACT:**

None.

**RECOMMENDATION:**

Staff recommends that that City Council adopt Resolution No. 19-08, approving Final Map 18-01, for La Colonia.

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
FINAL MAP 18-01, LA COLONIA AND  
ACCEPTING ALL ASSOCIATED ROAD  
RIGHTS OF WAY, PUBLIC PARCELS AND  
PUBLIC UTILITY EASEMENTS**

**RESOLUTION NO. 19-08**

**WHEREAS**, KSA Homes, Inc. is the owner (“Owner”) of real property in Mendota, California, identified as Fresno County Assessor’s Parcel Numbers 013-061-15 and 012-160-39; and

**WHEREAS**, Owner wishes to subdivide the Property into 85 lots as shown on the Final Map, attached as Exhibit “A” and incorporated herein by this reference; and

**WHEREAS**, at a duly-noticed public hearing on August 4 the Mendota City Council adopted Resolution No. 18-63, approving a Tentative Subdivision Map subject to conditions of approval; and

**WHEREAS**, the Owners timely filed a final map (“Final Map”) with the City Clerk; and

**WHEREAS**, the City Engineer has reviewed the Final Map and determined that it is technically correct and in substantial conformance with the Tentative Subdivision Map; and

**WHEREAS**, the City Clerk has found that the Parcel Map is substantially in the form required by the Mendota Municipal Code and is in conformity with the conditions of approval imposed by Resolution 18-63; and

**WHEREAS**, the Final Map offers for dedication certain road rights of way, public use parcels and public utilities easements; and

**WHEREAS**, Mendota Municipal Code Section 16.28.050(K) requires that the City Council takes action to accept or reject any offers of dedication by resolution; and

**WHEREAS**, the City Council has previously determined that the project is consistent with the City of Mendota General Plan Update 2005-2025, and that no further review under the California Environmental Quality Act is necessary.

***NOW, THEREFORE, BE IT RESOLVED*** that the City Council of the City of Mendota hereby approve Final Map 18-01, La Colonia, and accepts the street rights of way, public use parcels and and public utilities easements delineated on said, attached hereto as Exhibit "A".

\_\_\_\_\_  
Robert Silva, 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 Mendota City Hall on the 12<sup>th</sup> day of February, 2019 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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

Exhibit "A"

La Colonia Final Map (6 Sheets)

**OWNER'S STATEMENT**

THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THIS SUBDIVISION, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND OFFER FOR DEDICATION FOR PUBLIC USE THE PARCELS, STREETS, AND EASEMENTS SPECIFIED ON THIS MAP AS INTENDED FOR PUBLIC USE FOR THE PURPOSES STATED THEREIN.

OWNER: KSA HOMES, INC., A CALIFORNIA CORPORATION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
STEPHEN W. HAIR, PRESIDENT

**NOTARY ACKNOWLEDGMENT**

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ } SS  
ON \_\_\_\_\_ BEFORE ME,  
\_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED STEPHEN W. HAIR, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.  
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.  
WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY'S SIGNATURE \_\_\_\_\_  
PRINT NOTARY'S NAME \_\_\_\_\_  
PRINCIPAL COUNTY OF BUSINESS \_\_\_\_\_  
REGISTRATION # \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_

**SUBDIVISION AGREEMENT**

THE SUBDIVISION OF THIS PROPERTY IS AFFECTED BY AN AGREEMENT WITH THE CITY OF MENDOTA, RECORDED \_\_\_\_\_, AS DOCUMENT NUMBER \_\_\_\_\_, OFFICIAL RECORDS OF FRESNO COUNTY. This will be the original subdivision agreement recording info.

**NOTES**

THIS PROPERTY IS AFFECTED BY:  
PARCEL 1:  
DOCUMENT #59387, BOOK 7939, PAGE 911, RECORDED JULY 16, 1982 OF OFFICIAL RECORDS, FRESNO COUNTY.  
INSTRUMENT #1988-88073287 OF OFFICIAL RECORDS, FRESNO COUNTY.  
ANY INTEREST OF THE SOUTHERN PACIFIC RAILROAD IN AND TO THAT PORTION OF SAID LAND DESIGNATED AS ASSESSOR'S PARCEL NO. 013-060-04U AND 872-10-28D-P22, SHOWN ON COUNTY OF FRESNO ASSESSORS MAP BOOK 13 AT PAGE 6.  
PARCEL 2:  
INSTRUMENT #1988-88073287 OF OFFICIAL RECORDS, FRESNO COUNTY.  
INSTRUMENT #2010-0147304 OF OFFICIAL RECORDS, FRESNO COUNTY.

MAP OF TRACT # 6218  
**LA COLONIA**  
CONSISTING OF 6 SHEETS  
LYING IN SECTION 25, TOWNSHIP 13 SOUTH, RANGE 14 EAST AND IN SECTIONS 30 & 31, TOWNSHIP 13 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, CITY OF MENDOTA, COUNTY OF FRESNO, CALIFORNIA.  
SURVEYED AND PLATTED IN AUGUST 2018 BY  
**HAWKINS & ASSOCIATES ENGINEERING**  
436 MITCHELL RD. MODESTO, CALIFORNIA 95354  
SHEET 1 OF 6

**SOILS CERTIFICATE**

A GEOTECHNICAL INVESTIGATION REPORT FOR THE SUBDIVISION HAS BEEN PREPARED BY TECHNICON ENGINEERING SERVICES, INC., REPORT JOB NO. 180267.001, DATED JUNE 15, 2018, AND SIGNED BY SALVADOR ALVAREZ, PE NO. 83957.

**TRUSTEE & BENEFICIARY'S STATEMENT:**

WE CONCUR WITH THE FOREGOING OWNER'S STATEMENT AND WE HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS FINAL MAP IN THE OFFICE OF THE COUNTY RECORDER OF FRESNO COUNTY, CALIFORNIA.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019

UNITED SECURITY BANK, AS TRUSTEE AND BENEFICIARY, UNDER DEED OF TRUST RECORDED SEPTEMBER 19, 2018 IN OFFICIAL RECORDS UNDER RECORDER'S INSTRUMENT NUMBER 2018-00114649-00.

SIGNATURE \_\_\_\_\_  
WILLIAM YARBENET  
CHIEF CREDIT OFFICER

**NOTARY ACKNOWLEDGMENT**

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ } SS  
ON \_\_\_\_\_ BEFORE ME,  
\_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED WILLIAM YARBENET, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.  
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.  
WITNESS MY HAND AND OFFICIAL SEAL.  
NOTARY'S SIGNATURE \_\_\_\_\_  
PRINT NOTARY'S NAME \_\_\_\_\_  
PRINCIPAL COUNTY OF BUSINESS \_\_\_\_\_  
REGISTRATION # \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_

**SURVEYOR'S STATEMENT**

THIS MAP WAS MADE BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF KSA HOMES, INC. ON AUGUST 2, 2018. I HEREBY STATE THAT ALL THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

RODRICK H. HAWKINS \_\_\_\_\_ DATE \_\_\_\_\_  
P.L.S. 9489

**CITY ENGINEER'S STATEMENT**

I, DAVID M. MCGLASSON, CITY ENGINEER OF THE CITY OF MENDOTA, HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, THAT THE MAP COMPLIES WITH THE PROVISIONS OF THE SUBDIVISION MAP ACT, STATE OF CALIFORNIA STATUTES OF 2018, AND ALL LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP AND THAT I AM SATISFIED THE MAP IS TECHNICALLY CORRECT.

DAVID M. MCGLASSON, \_\_\_\_\_ DATE \_\_\_\_\_  
MENDOTA CITY ENGINEER  
P.L.S. 6968

**CITY CLERK'S CERTIFICATE**

I HEREBY CERTIFY THAT THE CITY COUNCIL OF THE CITY OF MENDOTA, COUNTY OF FRESNO, STATE OF CALIFORNIA, BY RESOLUTION NO. \_\_\_\_\_ ADOPTED AT THE REGULAR MEETING OF SAID COUNCIL DULY CONVENED AND HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, DID APPROVE THE WITHIN MAP (AND ACCEPTED ON BEHALF OF THE PUBLIC, SUBJECT TO CONSTRUCTION, ALL PARCELS OF LAND AND EASEMENTS OFFERED FOR DEDICATION IN FEE FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION). IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL OF SAID CITY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

MATT FLOOD  
CITY CLERK OF THE CITY OF MENDOTA

**RECORDER'S CERTIFICATE**

DOCUMENT NO. \_\_\_\_\_ FEE PAID \$ \_\_\_\_\_  
FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, AT \_\_\_\_\_  
\_\_\_\_\_, M. IN BOOK \_\_\_\_\_ OF PLATS, AT PAGES \_\_\_\_\_, FRESNO COUNTY RECORDS, AT THE REQUEST OF STEPHEN W. HAIR.  
PAUL DICTOS, C.P.A., ASSESSOR-RECORDER  
COUNTY OF FRESNO RECORDS  
BY: \_\_\_\_\_  
DEPUTY COUNTY RECORDER

MAP OF TRACT # 6218  
**LA COLONIA**  
 CONSISTING OF 6 SHEETS

LYING IN SECTION 25, TOWNSHIP 13 SOUTH, RANGE 14 EAST AND IN SECTIONS 30 & 31, TOWNSHIP 13 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, CITY OF MENDOTA, COUNTY OF FRESNO, CALIFORNIA.  
 SURVEYED AND PLATTED IN AUGUST 2018 BY

HAWKINS & ASSOCIATES ENGINEERING  
 436 MITCHELL RD. MODESTO, CALIFORNIA 95354

SHEET 2 OF 6

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 ONE**

ALL THAT PROPERTY LOCATED IN THE CITY OF MENDOTA, COUNTY OF FRESNO, STATE OF CALIFORNIA, IN SECTIONS 30 AND 31, TOWNSHIP 13 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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.

**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, 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", AN 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 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", AN 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 (12), 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 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. 88004208, 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 AS INSTRUMENT NO. 2010-0147303, OFFICIAL RECORDS.

LINE TABLE		
LINE	LENGTH	BEARING
L1	21.89'	N57°45'42"W
L2	21.51'	N33°10'50"E
L3	23.75'	N26°43'51"E
L4	21.51'	S1°43'03"W
L5	21.51'	N88°16'57"W
L6	13.36'	N0°53'30"E
L7	8.90'	N0°44'03"E
L8	21.51'	N88°16'57"W
L9	9.83'	S1°20'54"E
L10	23.27'	S51°35'12"E
L11	21.51'	N56°49'10"W
L12	21.86'	N34°07'00"E

CURVE TABLE											
CURVE	LENGTH	DELTA	RADIUS	TANGENT	CHORD	CURVE	LENGTH	DELTA	RADIUS	TANGENT	CHORD
C1	15.95'	20°18'16"	45.00'	8.06'	15.86'	C24	40.86'	52°01'47"	45.00'	21.96'	39.47'
C2	15.30'	19°29'00"	45.00'	7.73'	15.23'	C25	25.20'	8°23'36"	172.00'	12.62'	25.17'
C3	31.25'	39°47'16"	45.00'	16.28'	30.63'	C26	13.34'	4°26'34"	172.00'	6.67'	13.33'
C4	15.58'	17°51'19"	50.00'	7.85'	15.52'	C27	38.53'	12°50'11"	172.00'	19.35'	38.45'
C5	17.02'	19°30'06"	50.00'	8.59'	16.94'	C28	31.25'	39°47'16"	45.00'	16.28'	30.63'
C6	23.25'	29°35'50"	45.00'	11.89'	22.99'	C29	17.88'	20°29'41"	50.00'	9.04'	17.79'
C7	2.59'	3°17'49"	45.00'	1.30'	2.59'	C30	15.19'	19°20'28"	45.00'	7.67'	15.12'
C8	25.83'	32°53'39"	45.00'	13.28'	25.48'	C31	16.06'	20°26'48"	45.00'	8.12'	15.97'
C9	38.78'	9°44'48"	228.00'	19.44'	38.74'	C32	31.25'	39°47'16"	45.00'	16.28'	30.63'
C10	36.01'	9°02'54"	228.00'	18.04'	35.97'	C33	7.30'	1°16'30"	328.00'	3.65'	7.30'
C11	74.79'	18°47'42"	228.00'	37.73'	74.46'	C34	7.30'	1°16'29"	328.00'	3.65'	7.30'
C12	50.00'	16°39'25"	172.00'	25.18'	49.83'	C35	14.60'	2°32'58"	328.00'	7.30'	14.59'
C13	5.50'	1°49'56"	172.00'	2.75'	5.50'	C36	43.18'	54°58'25"	45.00'	23.41'	41.54'
C14	55.50'	18°29'20"	172.00'	28.00'	55.26'	C37	22.19'	25°25'21"	50.00'	11.28'	22.00'
C15	47.67'	11°58'46"	228.00'	23.92'	47.58'	C38	18.28'	20°56'33"	50.00'	9.24'	18.17'
C16	31.43'	7°53'53"	228.00'	15.74'	31.40'	C39	43.18'	54°58'25"	45.00'	23.41'	41.54'
C17	79.10'	19°52'39"	228.00'	39.95'	78.70'	C40	50.16'	8°45'40"	328.00'	25.13'	50.11'
C18	18.11'	23°03'47"	45.00'	9.18'	17.99'	C41	50.15'	8°45'35"	328.00'	25.12'	50.10'
C19	7.72'	9°49'52"	45.00'	3.87'	7.71'	C42	3.87'	0°40'31"	328.00'	1.93'	3.87'
C20	25.83'	32°53'39"	45.00'	13.28'	25.48'	C43	31.36'	39°55'21"	45.00'	16.34'	30.72'
C21	17.68'	11°15'11"	90.00'	8.87'	17.65'	C44	20.19'	23°08'15"	50.00'	10.24'	20.05'
C22	39.56'	25°11'02"	90.00'	20.10'	39.24'	C45	16.93'	19°23'48"	50.00'	8.55'	16.85'
C23	16.42'	18°49'15"	50.00'	8.29'	16.35'	C46	31.25'	39°47'16"	45.00'	16.28'	30.63'



**REFERENCES**

NOTE: ALL REFERENCES PER FRESNO COUNTY RECORDS

- A. PARCEL MAP NO. 90-01, BOOK 51 OF PARCEL MAPS, AT PAGE 26
- B. PARCEL MAP NO. 88-1, BOOK 48 OF PARCEL MAPS, AT PAGE 52
- C. PARCEL MAP NO. 08-01, VOLUME 70 OF PARCEL MAPS, AT PAGES 1&2
- D. HACIENDA GARDENS, VOLUME 50 OF PLATS, AT PAGES 13&14
- E. CORNER RECORD #4710, FILED 11/19/1990 IN THE OFFICE OF THE FRESNO COUNTY SURVEYOR
- F. DOCUMENT NO. 2010-0147304, RECORDED 11/03/2010, FRESNO COUNTY OFFICIAL RECORDS
- G. DOCUMENT NO. 5458, JANUARY 25, 1967, BOOK 5400, PAGE 563
- H. PARCEL MAP NO. 88-2, BOOK 49 OF PARCEL MAPS, AT PAGES 9&10
- I. LAS PALMAS ESTATES, BOOK 87 OF PLATS, AT PAGES 73-75

MAP OF TRACT # 6218  
**LA COLONIA**  
 CONSISTING OF 6 SHEETS

LYING IN SECTION 25, TOWNSHIP 13 SOUTH, RANGE 14 EAST  
 AND IN SECTIONS 30 & 31, TOWNSHIP 13 SOUTH, RANGE 15  
 EAST, MOUNT DIABLO BASE AND MERIDIAN, CITY OF  
 MENDOTA, COUNTY OF FRESNO, CALIFORNIA.  
 SURVEYED AND PLATTED IN AUGUST 2018 BY

**HAWKINS & ASSOCIATES ENGINEERING**  
 436 MITCHELL RD. MODOESTO,  
 CALIFORNIA 95354  
 SHEET 3 OF 6

**LEGEND**

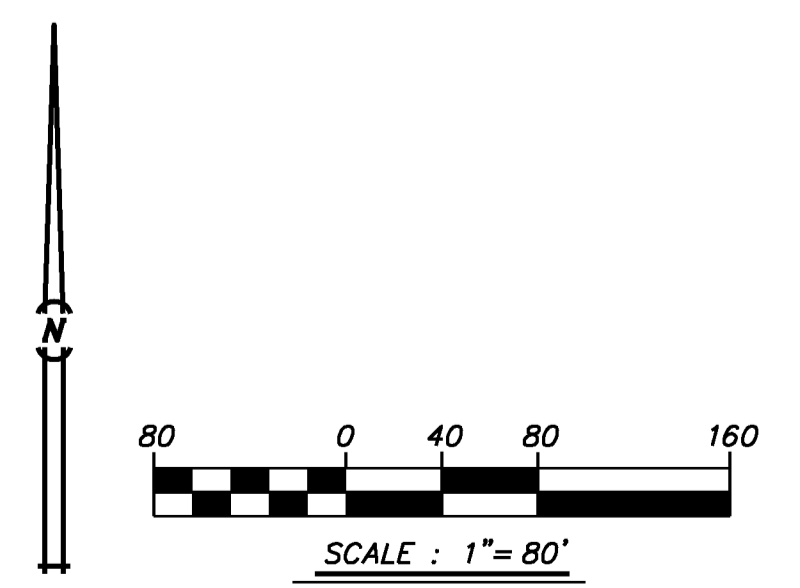
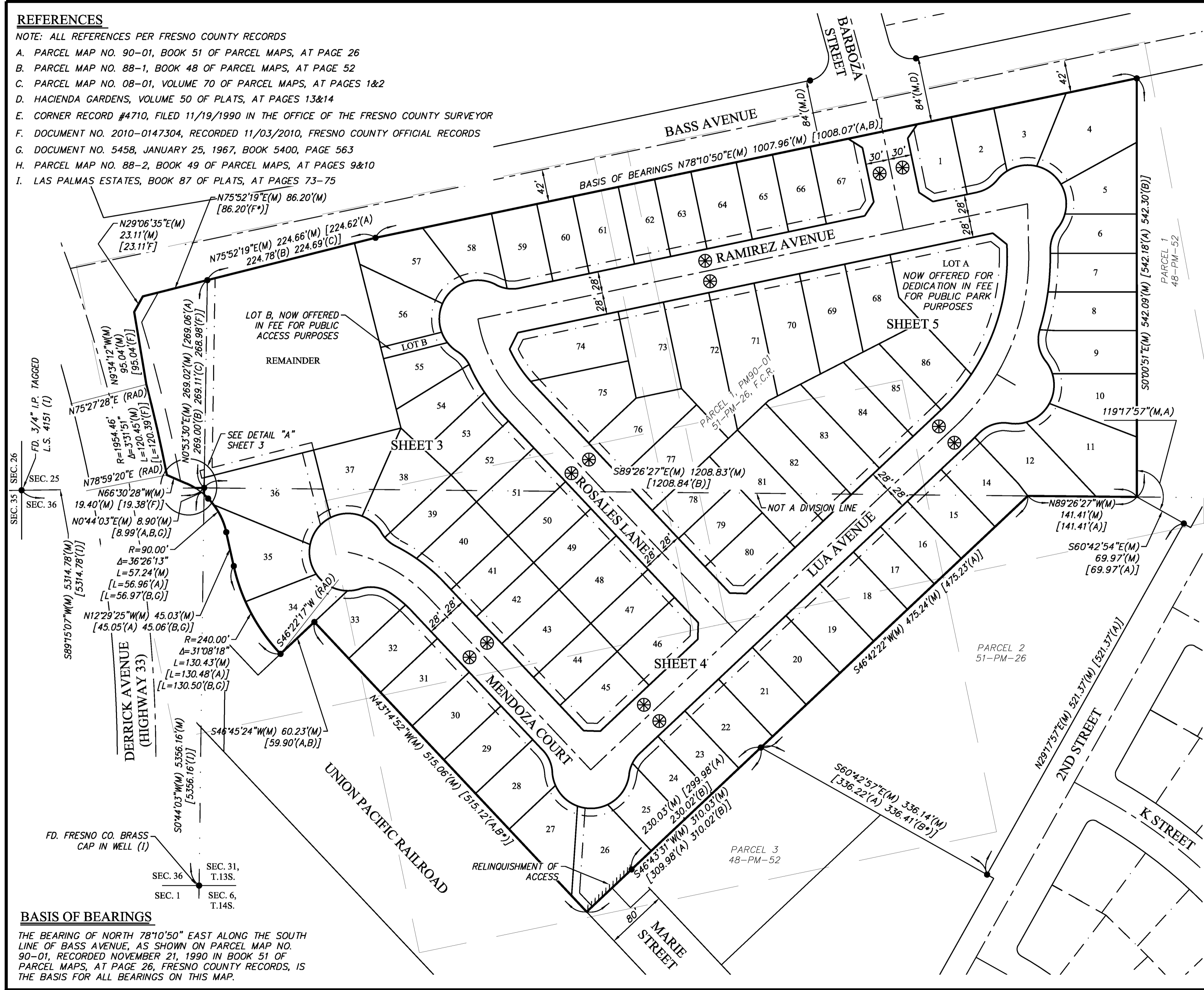
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- ⊙ INDICATES SET BRASS CAP IN CONCRETE, STAMPED L.S. 9489, FLUSH WITH PAVEMENT, PER CITY OF MENDOTA STANDARD DWG M-9
- P.U.E. INDICATES PUBLIC UTILITY EASEMENT
- (M) MEASURED AS NOTED ON THIS MAP
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- PROPOSED LOT LINE
- PROPOSED CENTER LINE
- PROPOSED EASEMENT LINE
- EXISTING EASEMENT LINE
- EXISTING SECTION LINE
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**NOTES**

1. ALL DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMAL PARTS THEREOF.
2. SUBDIVISION CONTAINS 85 RESIDENTIAL LOTS, 1 COMMUNITY PARK LOT, 1 PEDESTRIAN ACCESS LOT, AND 1 REMAINDER ON 18.69 GROSS ACRES, MORE OR LESS.
3. SEE SHEET 2 FOR LINE AND CURVE TABLE.
4. THE LOT NUMBERING SCHEME INTENTIONALLY OMITTS LOT NO. 13 FROM THE LOT NUMBERING SEQUENCE.

**BASIS OF BEARINGS**

THE BEARING OF NORTH 78°10'50" EAST ALONG THE SOUTH LINE OF BASS AVENUE, AS SHOWN ON PARCEL MAP NO. 90-01, RECORDED NOVEMBER 21, 1990 IN BOOK 51 OF PARCEL MAPS, AT PAGE 26, FRESNO COUNTY RECORDS, IS THE BASIS FOR ALL BEARINGS ON THIS MAP.



# LA COLONIA

CONSISTING OF 6 SHEETS

LYING IN SECTION 25, TOWNSHIP 13 SOUTH, RANGE 14 EAST AND IN SECTIONS 30 & 31, TOWNSHIP 13 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, CITY OF MENDOTA, COUNTY OF FRESNO, CALIFORNIA.

SURVEYED AND PLATTED IN AUGUST 2018 BY HAWKINS & ASSOCIATES ENGINEERING

436 MITCHELL RD. MODESTO, CALIFORNIA 95354

SHEET 4 OF 6

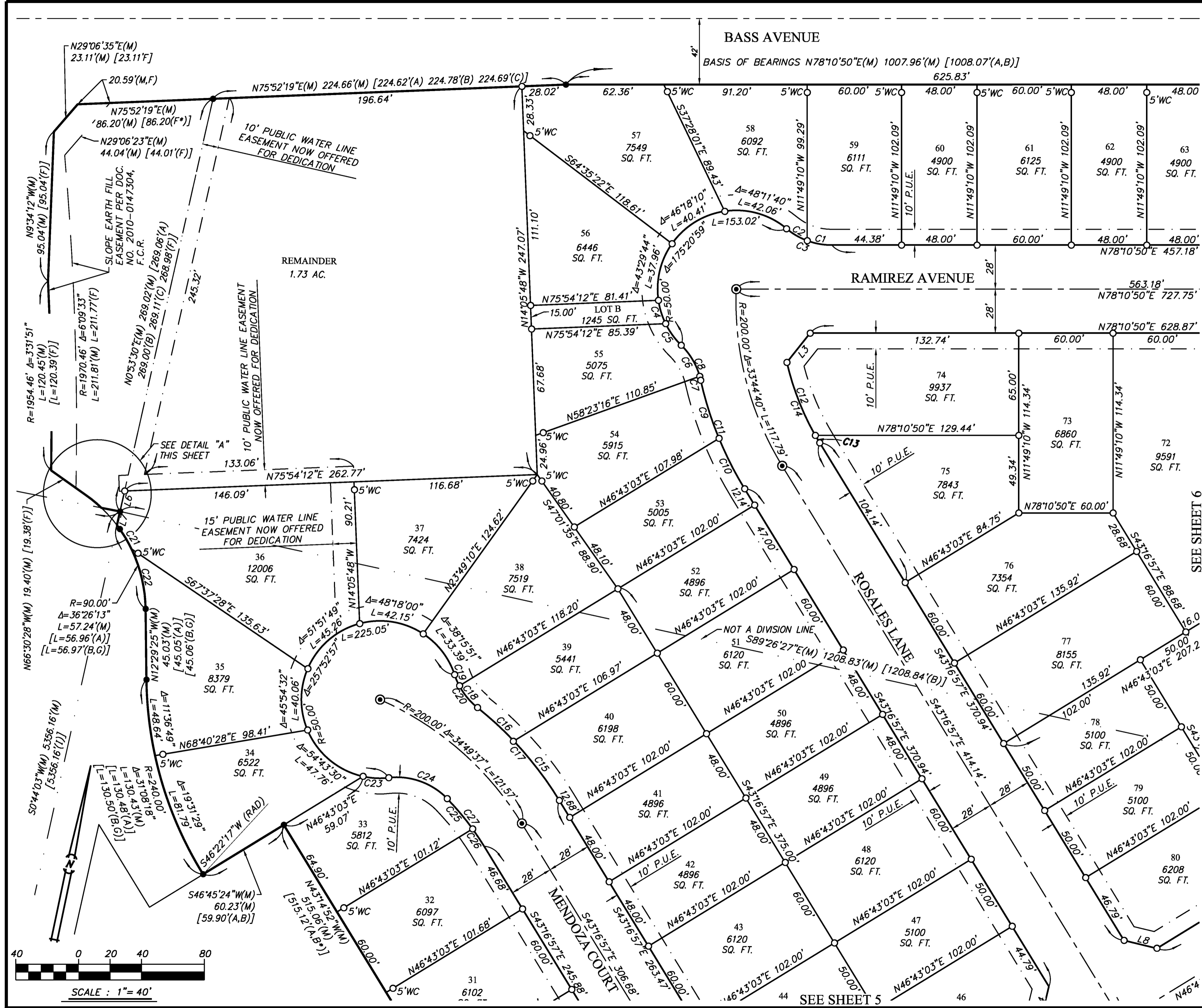
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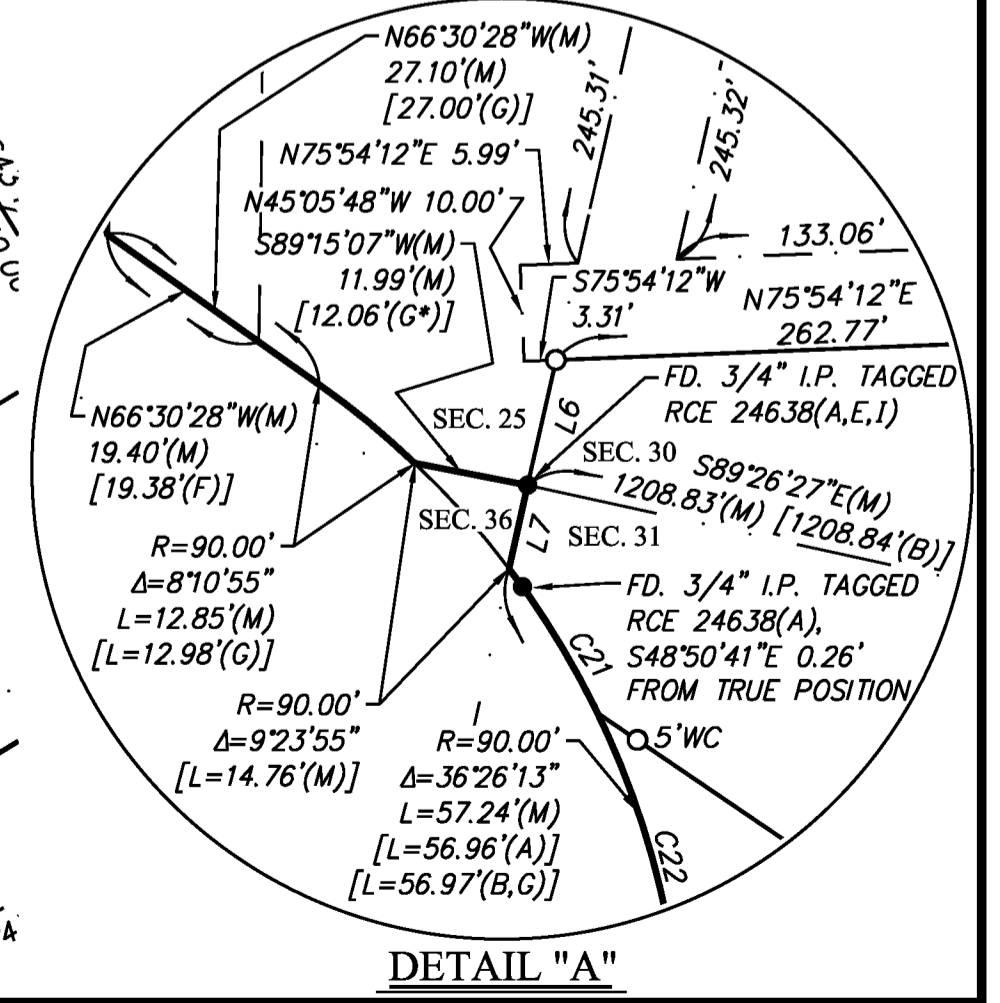
### NOTES

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2. SEE SHEET 2 FOR LINE AND CURVE TABLE
3. THE LOT NUMBERING SCHEME INTENTIONALLY OMITTS LOT NO. 13 FROM THE LOT NUMBERING SEQUENCE.



SEE SHEET 6

SEE SHEET 5



DETAIL "A"

MAP OF TRACT # 6218  
**LA COLONIA**  
 CONSISTING OF 6 SHEETS

LYING IN SECTION 25, TOWNSHIP 13 SOUTH, RANGE 14 EAST  
 AND IN SECTIONS 30 & 31, TOWNSHIP 13 SOUTH, RANGE 15  
 EAST, MOUNT DIABLO BASE AND MERIDIAN, CITY OF  
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 SURVEYED AND PLATTED IN AUGUST 2018 BY  
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 SHEET 5 OF 6

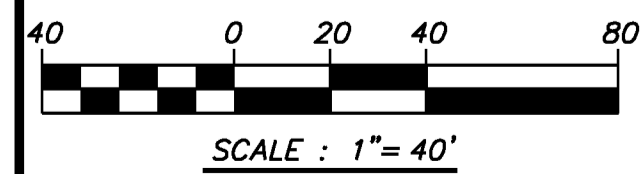


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MAP OF TRACT # 6218  
**LA COLONIA**  
 CONSISTING OF 6 SHEETS

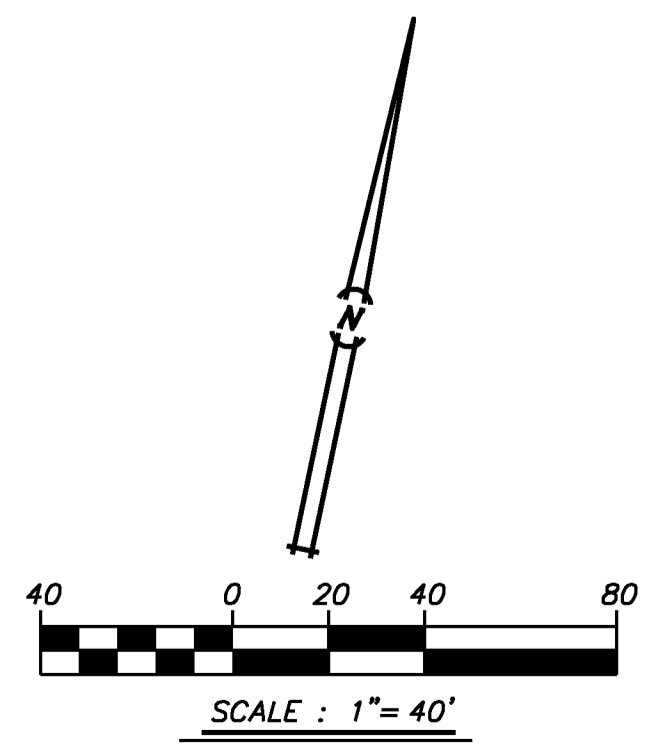
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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** CRISTIAN GONZALEZ, CITY MANAGER

**SUBJECT:** FIRST READING OF ORDINANCE 19-01 AMENDMENT TO DEVELOPMENT AGREEMENT, LA COLONIA RECOMMENDATION FOR APPROVAL

**DATE:** FEBRUARY 12, 2019

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**DISCUSSION:**

On August 14, 2018, the Mendota City Council, by Resolution 18-63, approved Tentative Map 18-01, an 86-lot subdivision known as La Colonia.

At that same meeting, Ordinance 18-04, approving the project's Development Agreement, was introduced, and then duly passed and approved by your Council on August 28, 2018.

As a result of evolving discussions between the City and the developer, KSA Homes Inc., since that time, a number of minor amendments to the development agreement have become desirable. The agreement provides for amendments, but requires that they be reviewed and approved by the City Council.

Subjects covered by this amendment include:

- Revision of the number of lots in the subdivision from 86 to 85. This affects some language in the body of the agreement as well as the fee summary in Exhibit I.
- Revision of Exhibit F, regarding the timing of the requirement for completion of the traffic signal at Second and Bass. It is being delayed from the 25<sup>th</sup> building permit to the 60<sup>th</sup> building permit, to more accurately reflect the existence of actual project traffic at the intersection.
- Revision of Exhibit G, regarding the mechanics of the improvements to Rojas Pierce Park. It was originally planned for KSA Homes to do the work at the park. However, the City has learned that substantial CDBG funding will be available for park work in addition to the La Colonia impact fees, and combination of the two funding sources into a single project will make for a better and more unified project. Accordingly, the development agreement is being amended to have KSA Homes pay fees directly into the Park Improvement Fund, which can then be used by the City to pay for the larger park improvement project.

Overall, the intent of the agreement is unchanged from the original. Only the mechanics and the cash flows have changed.

**FISCAL IMPACT:**

The revised lot layout (reducing count from 86 to 85) will result in one less lot paying Development Impact Fees as the subdivision is built out. This will result in a loss of income to the City of \$8,778.47.

**RECOMMENDATION:**

Staff recommends that the City Council discuss the proposed ordinance, take comment from the public, conduct the first reading of Ordinance No. 19-01 and set the public hearing for the February 26<sup>th</sup> Council Meeting.

**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 AMENDMENT 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. 19-01**

**WHEREAS**, on August 28, 2018 the City Council of the City of Mendota (“City”) adopted Ordinance No. 18-04, approving a development agreement (“Development Agreement”) by and between the City and KSA Homes, Inc. (“Developer”) (collectively, “Parties”);

**WHEREAS**, an Addendum to the Development Agreement was adopted on October 23, 2018; and

**WHEREAS**, after approval of the Development Agreement, Developer requested certain changes to the parcel map resulting in the development property being subdivided into 85 lots, rather than the original 86 lots;

**WHEREAS**, City and Developer have agreed to alter certain rights and responsibilities under the Development Agreement and to various clarifying and conforming changes;

**WHEREAS**, to accommodate Developer’s requested changes to the parcel map and the Parties’ other desired modifications, the Parties have agreed to amend the Development Agreement;

**WHEREAS**, staff has prepared a revised Development Agreement modifying the Development Agreement in accordance with the Parties’ intentions, which is attached hereto as Exhibit “A” and incorporated herein by this reference (“Amendment to Development Agreement”);

***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 Amendment to 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 the “Development Agreement Regulations.”

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

1. The Amendment to 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 Amendment to 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 Amendment to Development Agreement is in conformity with public convenience, general welfare, and good land use practice;
4. The Amendment to Development Agreement will not be detrimental to the public health, safety, and general welfare;
5. The Amendment to 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.** Pursuant to 14 C.C.R. § 15162, when a negative declaration has been adopted for a project, no subsequent analysis need be performed upon a subsequent approval unless substantial evidence shows that changed conditions could potentially cause new significant environmental effects. In accordance with § 15162, the City hereby finds:

1. No substantial changes are proposed in the project which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. No substantial changes have occurred with respect to the circumstances under which the project will be undertaken which will require major revisions of the negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
3. No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the negative declaration was adopted, shows any of the following: (A) the project will have one or more significant effects not discussed in the previous negative declaration; (B) significant effects previously examined will be substantially more severe than shown in the previous negative declaration; (C) mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or (D) mitigation measures or alternatives which are considerably different from those analyzed in the previous negative declaration would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

**SECTION 6.** The City Council hereby approves the Amendment to 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 7.** 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 Amendment to Development Agreement on behalf of the City of Mendota.

**SECTION 8.** 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 Amendment to Development Agreement pursuant to the terms of the Amendment to Development Agreement.

**SECTION 9.** This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption.

\* \* \* \* \*

The foregoing ordinance was introduced on the 12<sup>th</sup> day of February, 2019 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 26<sup>th</sup> day of February, 2019 by the following vote:

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

\_\_\_\_\_  
Robert Silva, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

**Exhibit A**  
(Revised Development Agreement)

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

This First Amendment is entered into by and between the City of Mendota, a California municipal corporation, and KSA Homes, Inc., a California corporation, (collectively, “Parties”) as of \_\_\_\_\_ (“Effective Date”).

**RECITALS**

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

**WHEREAS**, an Addendum to the Development Agreement was adopted on October 23, 2018, attached hereto as Exhibit “B” and incorporated herein by this reference; and

**WHEREAS**, after approval of the Development Agreement, Developer requested certain changes to the parcel map resulting in the development property being subdivided into 85 lots, rather than the original 86 lots;

**WHEREAS**, City and Developer have agreed to alter certain rights and responsibilities under the Development Agreement and to various clarifying and conforming changes;

**WHEREAS**, to accommodate Developer’s requested changes to the parcel map and the Parties’ other desired modifications, the Parties have agreed to execute an amendment to the Development Agreement (“Amendment”);

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing, and in consideration of the mutual promises and agreements as hereafter set forth, the Parties hereto agree and compromise as follows:

**A. Amendments to the Development Agreement**

The Parties agree that the Development Agreement shall be amended as follows:

**1. Recitals**

Recitals, Section D (“Development Approvals”), Subsection 5 is hereby amended to read as follows:

5. Tentative Subdivision Map No. 2018-01, proposing creation of 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**). The Tentative Subdivision Map proposed creation of 86 single-family lots. In the process of finalizing lot configurations, Developer has

revised the lot arrangement to include 85 lots. The City Engineer has determined the Final Map to be in substantial conformance with the Tentative Map.

## **2. Article 1**

Article 1, Section 105.6 is hereby amended to read as follows:

**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 Act 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 adopted by the City for the 2019-20 fiscal year as part of the formation of the LLD, which amount shall be calculated as the total estimated lighting operation and landscape maintenance cost for the fiscal year, plus a ten-percent reserve, spread equally across the 81 units of Tract No. 6218. This assessment 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.

## **3. Exhibit E**

Exhibit E is hereby amended to read as follows:

### **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 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 retention basin at the WWTP, in a location specified by the City and to the

capacity required by the City Standards. This work will also require coordination with PG&E for relocation and elevation of existing power poles which run along the northerly side of the proposed retention basin.

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.

#### **4. Exhibit F**

Exhibit F is hereby amended to read as follows:

#### **EXHIBIT "F"**

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 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.

## **5. Exhibit G**

Exhibit G is hereby amended to read as follows:

### **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."

City shall work with DDW to design and contract for construction of 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 Applicant will pay the actual documented cost of the improvements. The City will reimburse the Applicant a total of \$25,000.

Documented construction costs in excess of \$25,000 shall be borne by the Applicant, but will be credited toward the credited toward the total Development Impact Fees that will be due from this project. The total impact 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.

## **6. Exhibit H**

Exhibit H is hereby amended to read as follows:

### **EXHIBIT "H"**

#### **Exaction: Rojas-Pierce Park Improvements**

The City has determined that the La Colonia Development will have an impact on City Park Facilities in the amount of \$50,000. In lieu of construction of mitigations, Applicant shall pay this amount to the City Park Improvement Fund directly.

In addition, the Applicant agrees to pay the sum of \$250,000 to the City Park

Improvement Fund to assist the City to reconstruct and improve Rojas Pierce Park including but not limited to the following:

- Construction of an additional soccer field.
- Construction of a new baseball field.
- Construction of new ballfield lighting systems.
- Construction of new metal bleachers on concrete pads.
- Construction of new modular restroom structure.
- Construction of new snack bar
- Construction of new electronic scoreboard.

Cost of the Rojas-Pierce Park park improvements shall be the responsibility of the City and may exceed \$250,000. City reimbursement of the \$250,000 will be made as Development Impact Fees are paid in from building permits issued within the La Colonia development only.

**7. Exhibit I**

Exhibit I is hereby amended to read as follows:

**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.

Fee	Unit Type	Units	Fee per Unit	Subtotal
City Management and General Services	EDU	85	\$218.81	\$18,598.85
Law Enforcement	EDU	85	\$591.49	\$50,276.65
Fire Protection	EDU	85	\$714.10	\$60,698.50



Storm Drainage	AC	17.00	\$5,169.45	\$87,880.65
Water Supply & Treatment	EDU	85	\$2,350.30	\$199,775.50
Wastewater & Treatment	EDU	85	\$1,947.56	\$165,542.60
Traffic Impact	EDU	85	\$690.05	\$58,654.25
Recreational Facilities	EDU	85	\$1,364.51	\$115,983.35
Water Connection Charges	Connection		\$420.77	\$35,765.45
Sewer Connection Charges	Connection		\$480.88	\$40,874.80
<b>Total</b>				\$834,050.60

**B. Ratification & Conflict**

Except as expressly amended by this Amendment, the terms and conditions of the Development Agreement shall remain unaltered, are hereby reaffirmed, and shall continue in full force and effect. In the event of any conflict or inconsistency between the terms of the Development Agreement and the terms of this Amendment, the terms of this Amendment shall govern and control.

**WHEREFORE**, the undersigned declare that they have read this document and understand its terms and freely enter into this Agreement.

CITY OF MENDOTA

KSA HOMES, INC.

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

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

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

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

## Exhibit A

**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:

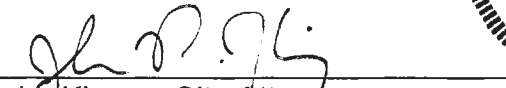
**AYES: 4 – Mayor Pro Tem Martinez, Councilors Mendoza, Rosales, and Silva**  
**NOES: 0**  
**ABSENT: 1 – Mayor Castro**  
**ABSTAIN: 0**

  
\_\_\_\_\_  
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.

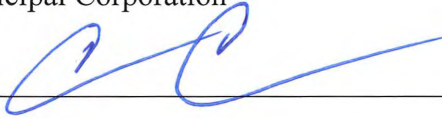
IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first set forth above.

**CITY:**

**DEVELOPER:**

CITY OF MENDOTA,  
a Municipal Corporation

KSA HOMES, INC.,  
a California corporation

By: 

By: 

Name: STEPHEN W. HAIR

Its: President

**ATTEST:**

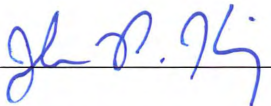
MATT FLOOD  
City Clerk

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

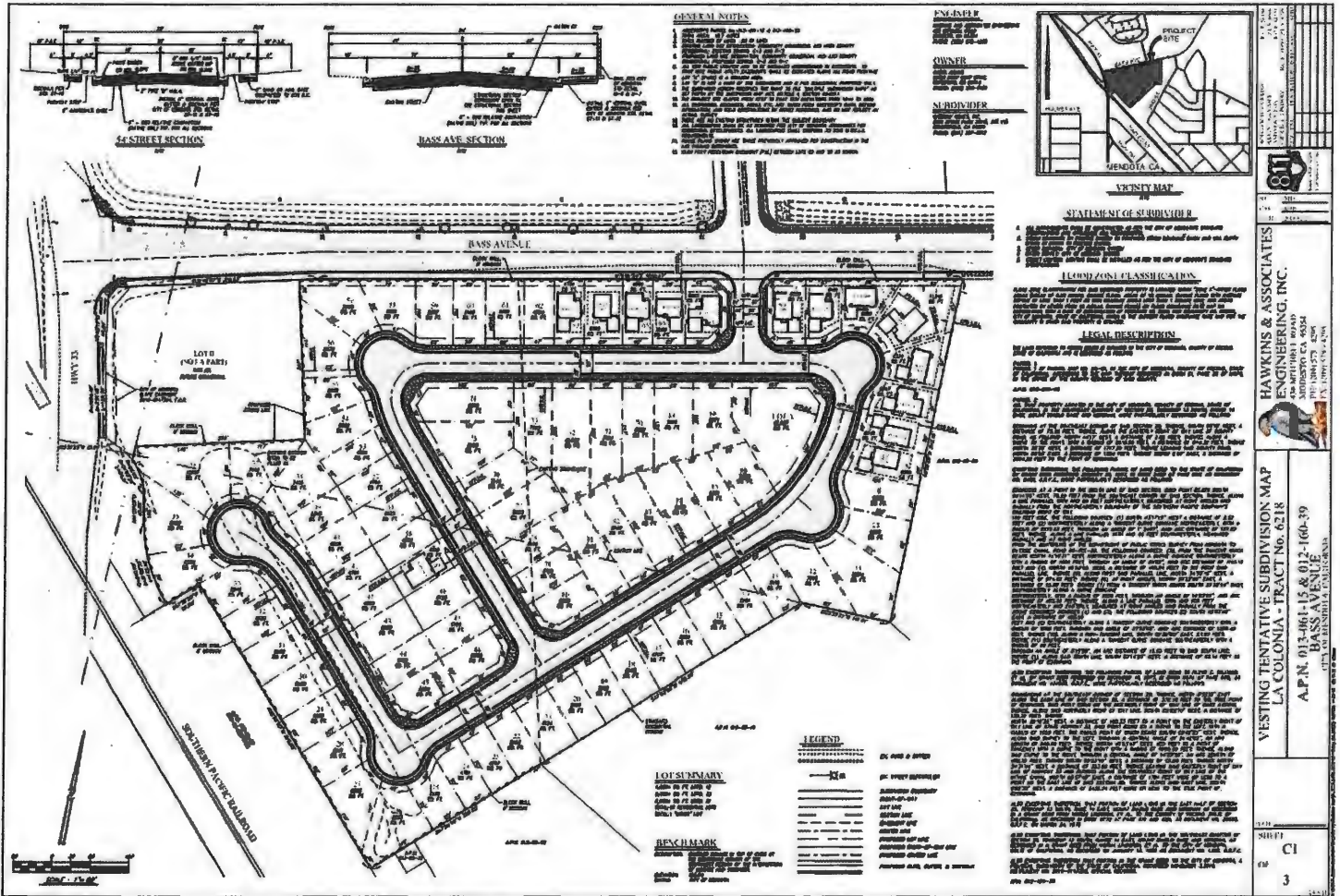


# EXHIBIT "B"



**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.

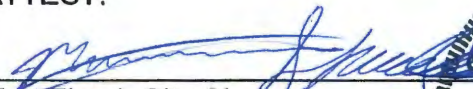
\* \* \* \* \*

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:

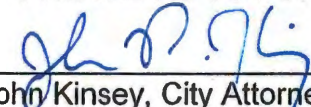
**AYES:** 4 – Mayor Pro Tem Martinez, Councilors Mendoza, Rosales, and Silva  
**NOES:** 0  
**ABSENT:** 1 – Mayor Castro  
**ABSTAIN:** 0

  
\_\_\_\_\_  
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 24 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 achievedrainage.
    - 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-fieldline.

- 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.



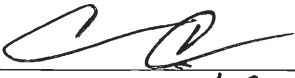
B. The Development Agreement, as modified by this Addendum, shall remain in full force and effect in all other respects.

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

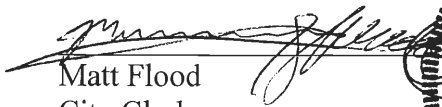
  
Name: Cristian Gonzalez  
Its: Interim City Manager

**DEVELOPER:**

KSA HOMES, INC.,  
a California corporation

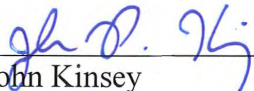
  
Name: Stephen W. Hain  
Its: Pres

**ATTEST:**

  
Matt Flood  
City Clerk



**APPROVED AS TO FORM:**

  
John Kinsey  
City Attorney

Date: 10/29/2018

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** ENERGY SERVICE CONTRACT WITH ENGIE SERVICES AND FINANCING AGREEMENT WITH SIGNATURE PUBLIC FINANCING FOR AN ENERGY EFFICIENCY PROJECT  
**DATE:** FEBRUARY 12, 2019

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**ISSUE**

Should the City Council adopt resolution number 19-09 authorizing the City Manger to execute an Energy Service Contract with ENGIE Services and approving a resolution number 19-10 for a financing agreement with Signature Public Funding Corp for energy related improvements to City facilities, in accordance with California Government Code Section 4217.10 to 4217.18?

**BACKGROUND**

On November 5, 2018, the City issued a public Request for Proposals (RFPs) for a firm price citywide solar and energy efficiency proposal. Only ENGIE Services submitted a proposal, on January 14<sup>th</sup> as specified in the RFP. Staff determined that ENGIE Services provided the best comprehensive proposal that will provide the most value and economic benefit to the City.

Staff then worked diligently with ENGIE Services to define the following scope of work:

- Solar PV at five (5) sites:
  - City Hall: 47 kW Canopy
  - Water Plant: 250 kW Canopy and Ground Mount
  - Well #3: 101 kW Ground Mount
  - Sewer Plant: 945 kW Ground Mount
  - Public Works Yard Shop: 15 kW Rooftop
- Switchgear and VFD upgrade at one (1) site: Replace the existing 200A switchgear at Well site #8 with a new switchgear with a new integrated variable frequency drive (VFD) for the 100 horsepower well pump
- Community Partnership: ENGIE will fund 3 years of a community recreation program for the Mendota Community through a local non-profit.

Financing is being proposed through a tax-exempt lease purchase funded by Signature Public Financing, and ENGIE will guarantee the savings for 16 years.



## ANALYSIS

The project price is \$3,920,000.00. ENGIE will guarantee the savings for 16 years during the term of the financing. Upon approval of the contract and determination of financing, the project will take approximately nine months to complete.

## FISCAL IMPACT

The scope of work defined includes improvements that are expected to result in \$12.1 Million in savings over the 30-year life of the project. Here is the project cash flow:

City of Mendota Comprehensive Energy Program Financial Cash Flow									
Project Cost									\$3,920,000
Finance Term									16
Estimated Annual Interest Rate									3.394%
Year	Estimated Electricity Savings - Solar PV	Estimated Electricity Savings - Energy Efficiency	Incentives	Total Program Savings	Lease Payment	Measurement & Verification Cost	Solar Maintenance Cost	Total Program Costs	Net Savings
1	\$299,882	\$10,280	\$6,777	\$316,939	\$236,044	\$8,547	\$22,328	\$266,919	\$50,021
2	\$313,302	\$10,794	\$0	\$324,096	\$242,275	\$8,803	\$22,998	\$274,075	\$50,021
3	\$327,322	\$11,334	\$0	\$338,656	\$255,880	\$9,067	\$23,688	\$288,635	\$50,021
4	\$341,970	\$11,901	\$0	\$353,870	\$270,112	\$9,339	\$24,398	\$303,850	\$50,021
5	\$357,273	\$12,496	\$0	\$369,769	\$284,998	\$9,619	\$25,130	\$319,748	\$50,021
6	\$373,261	\$13,121	\$0	\$386,381	\$310,476	\$0	\$25,884	\$336,361	\$50,021
7	\$389,964	\$13,777	\$0	\$403,741	\$327,059	\$0	\$26,661	\$353,720	\$50,021
8	\$407,415	\$14,466	\$0	\$421,880	\$344,399	\$0	\$27,461	\$371,860	\$50,021
9	\$425,647	\$15,189	\$0	\$440,836	\$362,530	\$0	\$28,284	\$390,815	\$50,021
10	\$444,694	\$15,948	\$0	\$460,643	\$381,489	\$0	\$29,133	\$410,622	\$50,021
11	\$464,595	\$16,746	\$0	\$481,340	\$401,313	\$0	\$30,007	\$431,320	\$50,021
12	\$485,385	\$17,583	\$0	\$502,968	\$422,040	\$0	\$30,907	\$452,947	\$50,021
13	\$507,106	\$18,462	\$0	\$525,568	\$443,713	\$0	\$31,834	\$475,548	\$50,021
14	\$529,799	\$19,385	\$0	\$549,184	\$466,374	\$0	\$32,789	\$499,164	\$50,021
15	\$553,508	\$20,354	\$0	\$573,862	\$490,068	\$0	\$33,773	\$523,841	\$50,021
16	\$578,277	\$21,372	\$0	\$599,649	\$109,036	\$0	\$34,786	\$143,822	\$455,827
17	\$604,155	\$22,441	\$0	\$626,596	\$0	\$0	\$35,830	\$35,830	\$590,766
18	\$631,191	\$23,563	\$0	\$654,754	\$0	\$0	\$36,905	\$36,905	\$617,849
19	\$659,437	\$24,741	\$0	\$684,178	\$0	\$0	\$38,012	\$38,012	\$646,166
20	\$688,947	\$25,978	\$0	\$714,925	\$0	\$0	\$39,152	\$39,152	\$675,772
21	\$719,777	\$0	\$0	\$719,777	\$0	\$0	\$40,327	\$40,327	\$679,450
22	\$751,987	\$0	\$0	\$751,987	\$0	\$0	\$41,537	\$41,537	\$710,450
23	\$785,638	\$0	\$0	\$785,638	\$0	\$0	\$42,783	\$42,783	\$742,856
24	\$820,796	\$0	\$0	\$820,796	\$0	\$0	\$44,066	\$44,066	\$776,729
25	\$857,526	\$0	\$0	\$857,526	\$0	\$0	\$45,388	\$45,388	\$812,138
26	\$895,900	\$0	\$0	\$895,900	\$0	\$0	\$46,750	\$46,750	\$849,151
27	\$935,992	\$0	\$0	\$935,992	\$0	\$0	\$48,152	\$48,152	\$887,840
28	\$977,878	\$0	\$0	\$977,878	\$0	\$0	\$49,597	\$49,597	\$928,281
29	\$1,021,638	\$0	\$0	\$1,021,638	\$0	\$0	\$51,085	\$51,085	\$970,553
30	\$1,067,356	\$0	\$0	\$1,067,356	\$0	\$0	\$52,617	\$52,617	\$1,014,739
<b>Totals</b>	<b>\$18,217,615</b>	<b>\$339,931</b>	<b>\$6,777</b>	<b>\$18,564,323</b>	<b>\$5,347,808</b>	<b>\$45,375</b>	<b>\$1,062,264</b>	<b>\$6,455,447</b>	<b>\$12,108,876</b>

## FINANCING

After reviewing two financing proposals, it was determined that Signature Public Financing provided the best proposal because of their competitive interest rate of 3.394% and lease term at 16 years.

## **BENEFITS OF THE PROJECT**

1. Create \$12.1 million in net savings after paying for all costs with annual savings exceeding \$50,000 from year-1
2. Reduce City electricity spend by over 53%
3. Hedge against rising PG&E energy costs
4. Create a community partnership and fund local community program for 3 years
5. Substantial environmental benefits – equivalent to removing 333 cars off the highways annually

## **RECOMMENDATION**

To adopt a resolution number 19-09 authorizing the City Manager to execute an Energy Service Contract with ENGIE Services for energy related improvements to City facilities and to approve the resolution number 19-10 for a financing contract with Signature Public Funding Corp. Also, authorize the City Manager to sign the Agreements subject to review and approval as to form by City Attorney.

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APROVING  
AN ENERGY SERVICE CONTRACT WITH  
ENGIE SERVICES U.S. INC.**

**RESOLUTION NO. 19-09**

**WHEREAS**, California Government Code Section 4217.10 *et seq.* authorizes the City of Mendota (“City”) to enter into an energy service contract on terms that the City Council determines are in the best interests of the City if the determination is made at a regularly scheduled public hearing for which public notice is given at least two weeks in advance and certain findings are made;

**WHEREAS**, the City has received a proposed energy service contract from Engie Services U.S., Inc. (“Engie”), attached hereto as Exhibit “A” and incorporated herein by this reference (“Energy Service Contract”);

**WHEREAS**, City staff has reviewed the Energy Service Contract and concluded that its approval and execution are in the best interests of the City and that the anticipated cost to the City for thermal or electrical energy or conservation services provided by the energy conservation facility under the Energy Services Contract will be less than the anticipated marginal cost to the City of thermal, electrical, or other energy that would have been consumed by the City in the absence of those purchases;

**WHEREAS**, this resolution is being presented at a regularly scheduled public hearing for which public notice was given at least two weeks in advance;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Mendota that in accordance with Government Code § 4217.10 *et seq.* the City Council hereby finds:

1. It is in the best interest of the City to enter into the Energy Service Contract with Engie for the implementation of certain energy-related improvements to City facilities; and
2. The anticipated cost to the City for thermal or electrical energy or conservation services provided by the energy conservation facility under the Energy Services Contract will be less than the anticipated marginal cost to the City of thermal, electrical, or other energy that would have been consumed by the City in the absence of those purchases; and
3. The improvements contemplated by the Energy Service Contract are exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, section 15301, because they constitute a minor alteration of existing public facilities involving negligible or no expansion of use beyond that existing at

the time of the lead agency's determination. The improvements are also exempt from CEQA because they fall within the so-called "common sense" exemption pursuant to CEQA Guidelines, section 15061(b)(3), which indicates that CEQA only applies to projects that have a "significant effect on the environment" as defined in Public Resources Code section 21068 and in CEQA Guidelines, section 15382, as being a substantial, or potentially substantial, adverse change in the environment. Additionally, the improvements are categorically exempt from CEQA as an action taken to maintain natural resources pursuant to CEQA Guidelines, section 15307, and as an action taken to protect the environment pursuant to CEQA Guidelines, section 15308.

***BE IT FURTHER RESOLVED***, by the City Council of the City of Mendota that the City Manager is authorized to execute the Energy Service Contract and all documentation necessary in the substantial form presented as Exhibit "A," subject to such reasonable modifications, revisions, additions and deletions as he may approve prior to execution, said execution to provide conclusive evidence of such approval.

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Robert Silva, 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 12<sup>th</sup> day of February, 2019, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

Matt Flood, City Clerk

## Exhibit A



**ENERGY SERVICES CONTRACT**

**DRAFT DATED 05 February 2019**

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of February \_\_, 2019 (the "Contract Effective Date") by and between **ENGIE Services U.S. Inc.**, a Delaware corporation, with California State Contractor's License Number 995037 ("ENGIE Services U.S."), and **City of Mendota** ("Mendota" and together with ENGIE Services U.S. the "Parties" and each of Mendota and ENGIE Services U.S. a "Party").

**CONTRACT RECITALS**

WHEREAS, Mendota owns and/or operates certain public facilities specifically described in Attachment A (the "Facilities") and Mendota wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability; and

WHEREAS, ENGIE Services U.S. is a full-service energy services company with the technical capabilities to provide services to Mendota including identifying supply-side and/or demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, ENGIE Services U.S. identified potential energy and operational savings opportunities at Mendota's Facilities and estimated program costs to implement the recommended ECMs and presented an overall potential energy cost and consumption savings for implementing the ECM recommendations; and

WHEREAS, on January 14, 2019 ENGIE Services U.S. delivered the recommendations, on an arms' length basis, to personnel of Mendota with requisite technical training and experience, for those personnel to make judgments and determinations as to the desired scope of work; and

WHEREAS, Mendota has accepted the recommended ECMs and determined that the anticipated cost to Mendota to implement the recommended ECMs will be less than the anticipated cost to Mendota for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by Mendota in the absence of the recommended ECMs in compliance with California Government Code §§4217.10 through 4217.18; and

WHEREAS, pursuant to California Government Code §4217.12, Mendota held a regularly scheduled public hearing on February 12, 2019, of which two weeks advance public notice was given regarding this Contract and its subject matter, and

WHEREAS, Mendota has determined that entering into this energy services contract to implement the ECM recommendations is in the best interests of Mendota and that California Government Code §4217.10 *et seq.* allows Mendota to enter into this Contract; and

WHEREAS, by adoption of Resolution No. [●] at the above-referenced meeting, Mendota approved this Contract and authorized its execution.

NOW, THEREFORE, Mendota and ENGIE Services U.S. hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

For purposes of this Contract and its Attachments, defined terms will have the following meanings:

"**Abnormally Severe Weather Conditions**" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work or Professional Services are then being performed. The term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

"**Act**" is defined in ARTICLE 14.

"**Affiliate**" means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means

the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; ownership of fifty percent (50%) or more of the voting securities of another Person creates a rebuttable presumption that such Person controls such other Person.

“**Applicable Law**” means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect at the time the Work or Professional Services are undertaken.

“**Applicable Permits**” means all permits, approvals, inspections and certifications required to be issued by any Governmental Authority in connection with the Professional Services or the building, installation and start-up of the Work as of the Contract Effective Date.

“**Application for Payment**” means a monthly progress payment as described in Section 8.01 or an invoice for materials stored off-site as described in Section 8.02.

“**Arbitral Panel**” is defined in Section 19.04(ii).

“**Arbitration Rules**” is defined in Section 19.04(ii).

“**Attachment**” means the following attachments to this Contract, each of which is an “Attachment:”

Attachment A	Mendota’s Facilities and Existing Equipment
Attachment B	Standards of Occupancy and Control
Attachment C	Scope of Work
Attachment D	Scope of Monitoring Installation
Attachment E	M&V Services
Attachment F	Maintenance Services

“**Beneficial Use**” means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems will be established as defined in Attachment C.

“**Business Day**” means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in San Francisco, California, are authorized or obligated by law or executive order to be closed.

“**CEQA**” means the California Environmental Quality Act, codified at California Public Resource Code § 21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

“**Certificate of Beneficial Use**” means the certificate, issued by ENGIE Services U.S. to Mendota and subcontractor(s), which identifies when Mendota took Beneficial Use of the Work or any portion thereof. A Certificate of Beneficial Use may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Final Completion**” means the certificate issued by ENGIE Services U.S. to Mendota, in accordance with Section 6.03. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Substantial Completion**” means the certificate issued by ENGIE Services U.S. to Mendota, in accordance with Section 6.02. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Change**” means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work or Professional Services.

“**Change in Law**” means any of the following events or circumstances occurring after the Contract Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

“**Change Order**” means a written document, signed by both ENGIE Services U.S. and Mendota, authorizing ENGIE Services U.S. to perform a Change. The Change Order modifies the Scope of Work and should identify: (i) the applicable Change; (ii) any additional compensation to be paid to ENGIE Services U.S. to perform such Change; and (iii) any extension of time to complete the Project.

**“Construction”** means any and all Work to be performed that involves construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

**“Construction Documents”** means the final designs, drawings, specifications and submittals that are used for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to this Contract.

**“Construction Period”** means the period beginning with the first day of the month in which material or equipment is first installed at the Facilities and continuing until the M&V Commencement Date.

**“Contract”** is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto.

**“Contract Amount”** means Three Million Nine Hundred Twenty Thousand Dollars (\$3,920,000.00), which is inclusive of the assessment fee for the Recommendations and the mobilization payment, as set forth in Section 8.01, but exclusive of any fees for Professional Services.

**“Contract Bonds”** is defined in Section 12.02.

**“Contract Effective Date”** is defined in the Preamble.

**“Delay”** means any circumstances involving delay, disruption, hindrance or interference affecting the time of performance of the Work or the Professional Services.

**“Dispute”** is defined in Section 19.02.

**“DOE Guidelines”** is defined in Section 13.01.

**“ECM”** is defined in the Recitals.

**“EMS”** means an energy management system.

**“Energy Delivery Point”** means, for each Generating Facility, the point at which Utility meter energy is being delivered, as designated in the Interconnection Agreement.

**“Energy Usage Data”** is defined in Section 2.05.

**“ENGIE Services U.S.”** is defined in the Preamble.

**“ENGIE Services U.S. Warranty”** is defined in Section 9.01.

**“Event of Default”** is defined in ARTICLE 16.

**“Excusable Event”** means an act, event, occurrence, condition or cause beyond the control of ENGIE Services U.S., including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any Mendota Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of ENGIE Services U.S.; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or Mendota Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of ENGIE Services U.S.; (vi) information provided to ENGIE Services U.S. by any Mendota Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) Delay caused by pending arbitration; (ix) acts of God; (x) acts of the public enemy or terrorist acts; (xi) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (xii) work by Utility; (xiii) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xiv) sabotage, vandalism, riots or civil disobedience; (xv) labor disputes or strikes; (xvi) labor or material shortages, delay in manufacturing and deliveries of equipment; (xvii) Abnormally Severe Weather Conditions; (xviii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Facility and/or other reliable calibrated and appropriate weather station representative of such Facility; (xix) requirement by Utility that any Generating Facility discontinue operation; (xx) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); or (xxi) any Utility power outage at a Facility.

**“Facilities”** is defined in the Recitals.



**"Final Completion"** means the stage in the progress of the Work at which the Construction Work as identified in the Scope of Work, or a designated portion thereof, has been completed and commissioned, including completion of all Punch List items, completion of all required training, and delivery to Mendota of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

**"Generating Facility"** means each of the photovoltaic, solar powered generating facilities located at the sites listed in Attachment E, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect the Generating Facility to the applicable Energy Delivery Point.

**"Governmental Authority"** means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

**"Greenhouse Gas"** is defined in Section 13.01.

**"Hazardous Substances"** means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any "hazardous substance" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in 42 U.S.C. §9601 *et seq.*), as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law.

**"Incentive Funds"** is defined in Section 8.06.

**"Installation"** means the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.

**"Instruments of Service"** is defined in Section 10.01(c).

**"Interconnection Agreement"** means the Interconnection Agreement to be entered into between Mendota and the Utility with respect to the Generating Facilities.

**"Interconnection Facilities"** is defined in Section 18.02.

**"Interest"** means interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The "prime rate" will be the "Prime Rate" of interest per annum for domestic banks as published in The Wall Street Journal in the "Money Rates" section.

**"Losses"** is defined in Section 11.01.

**"M&V Commencement Date"** means the first day of the month immediately following the later of (i) ENGIE Services U.S.'s receipt of the fully signed Certificate of Final Completion, and (ii) ENGIE Services U.S.'s receipt of the full Contract Amount.

**"M&V Services"** are defined in Attachment E.

**"Maintenance Services"** are defined in Attachment F.

**"Measurement Period"** means each one-year period following the M&V Commencement Date.

**"Mendota"** is defined in the Preamble.

**"Mendota Persons"** means Mendota, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons acting on behalf of Mendota or for whom Mendota is responsible.

**"NEC"** means the National Electric Code.

**"Notice to Proceed"** is defined in Section 2.04.

**"Party"** and **"Parties"** are defined in the Preamble.

**"Person"** means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

**"Professional Services"** means professional services (such as Maintenance Services and M&V Services, if any) provided by ENGIE Services U.S. to Mendota under this Contract.

**"Project"** means the entirety of Work to be performed by ENGIE Services U.S. pursuant to the Scope of Work, and any Change Orders.

“**Project Location**” means the area or areas where the Project materials and equipment and any other energy related equipment, as described in the Scope of Work, are installed, and the general area where the Work is performed.

“**Punch List**” means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair Mendota’s ability to beneficially operate and utilize such portion of the Work.

“**Recommendations**” is defined in the Recitals.

“**Retained Items**” is defined in Section 10.02.

“**Retention**” is defined in Section 8.03.

“**Schedule of Values**” is defined in Section 8.01.

“**Scope of Work**” means the Work set forth in Attachments C and D, as modified by any Change Order.

“**Substantial Completion**” means the stage in the progress of the Work at which the Work, or a designated portion thereof, is sufficiently complete, in conformance with the Scope of Work, the Construction Documents and any Change Orders, so that Mendota can take Beneficial Use thereof.

“**Surety**” means the surety supplying the Contract Bonds, which must be an “admitted surety insurer,” as defined by California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to Mendota.

“**Utility**” is defined in Section 18.02.

“**Work**” means the Work to be done by ENGIE Services U.S. pursuant to the Scope of Work, subject to any Change Orders.

## ARTICLE 2. TERM; PERFORMANCE OF THE WORK

Section 2.01 Contract Term. The term of this Contract commences on the Contract Effective Date and ends on the last day on which Professional Services are provided, unless terminated earlier as provided in this Contract.

Section 2.02 Performance of Work. The Work and Professional Services to be performed hereunder will be provided in accordance with the terms of this Contract and the applicable standard of care. ENGIE Services U.S. will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code. ENGIE Services U.S. represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed and equipped to supply and perform the Work and Professional Services. The Work completed herein will be subject to Mendota’s general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments C and D, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments E and F, except pursuant to a Change Order.

Section 2.04 Notice to Proceed. Within ten (10) days after Mendota has closed the financing referenced in Section 2.07, Mendota will issue to ENGIE Services U.S. a written Notice to Proceed (“Notice to Proceed”). ENGIE Services U.S. will begin Work within thirty (30) calendar days after ENGIE Services U.S.’s receipt of the Notice to Proceed. If Mendota fails to issue the Notice to Proceed within twenty (20) calendar days after the financing has closed, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as a result of such delay.

Section 2.05 Project Schedule. After receipt of the Notice to Proceed, ENGIE Services U.S. will develop, with input from Mendota, a master project schedule using Microsoft Project®. ENGIE Services U.S. will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly.

Section 2.06 Mendota’s Energy and Operational Records and Data. If ENGIE Services U.S. requests, Mendota will provide to ENGIE Services U.S., within thirty (30) calendar days after such request, Mendota’s Energy Usage Data for the twelve (12) months preceding the Contract Effective Date, and will make commercially reasonable efforts to provide the Energy Usage Data for the thirty-six (36) months preceding the Contract Effective Date. “Energy Usage Data” means all of Mendota’s records and complete data concerning energy usage, energy-related maintenance,

and other related costs for the Facilities, and including, without limitation, utility records; occupancy information; descriptions of any past, present or anticipated changes in a building's structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, operation and maintenance manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures currently utilized. Mendota agrees that ENGIE Services U.S. may rely on the foregoing data as being accurate in all respects. If ENGIE Services U.S. requests, Mendota will also provide to ENGIE Services U.S., within thirty (30) calendar days after such request, any prior energy audits of the Facilities, and copies of Mendota's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of ENGIE Services U.S.

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon Mendota closing financing that will allow it to make the payments to ENGIE Services U.S. required by this Contract. Mendota will have ninety (90) calendar days after the Contract Effective Date to close such financing. If the financing is not closed within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other Party's receipt of this notice; *provided* that Mendota may not declare this Contract to be null and void after it has issued the Notice to Proceed. It is acknowledged and agreed that ENGIE Services U.S. will have no obligation to commence performance of the Work unless and until the financing has been closed.

Section 2.08 Proof of Financial Arrangements. Prior to the commencement of the Work, Mendota will provide ENGIE Services U.S. proof that financial arrangements have been made to fulfill Mendota's obligations under this Contract. Mendota's requirement to furnish such proof to ENGIE Services U.S. is a condition precedent to commencement of the Work. After commencement of the Work, ENGIE Services U.S. may request such proof if (i) Mendota fails to make payments to ENGIE Services U.S. as this Contract requires; (ii) a Change in the Work materially changes the Contract Amount; or (iii) ENGIE Services U.S. has other reasonable concerns regarding Mendota's ability to fulfill its payment obligations under this Contract when due. Mendota will furnish such proof as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After Mendota furnishes any such proof, Mendota will not materially vary such financial arrangements without prior consent of ENGIE Services U.S. If Mendota fails to provide ENGIE Services U.S. with such proof within ten (10) calendar days of receiving a demand from ENGIE Services U.S., ENGIE Services U.S. will be entitled to suspend its performance under this Contract until such proof is received.

### **ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL**

#### Section 3.01 Registrations, Permits and Approvals.

- (a) Prior to issuing the Notice to Proceed, Mendota must register the Project with the California Department of Industrial Relations, using Form PWC-100.
- (b) Mendota will cooperate fully with and assist ENGIE Services U.S. in obtaining all Applicable Permits required under this Contract. ENGIE Services U.S. is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by Mendota itself. Mendota will be responsible for obtaining and paying for all other inspections, certifications, permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable.
- (c) Mendota is responsible for hiring and paying inspectors, and for fees associated with plan checks (including expedited plan checks), permits, inspections, certifications, and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s).

Section 3.02 Coordination. Mendota will be responsible for coordinating the activities of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors and suppliers with those of Mendota Persons.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, ENGIE Services U.S. will periodically meet with Mendota to report on the general status and progress of the Work. ENGIE Services U.S. may (but is not required to) make food and beverage items of nominal value available to Mendota and Mendota's employees and agents at such meetings, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.04 Project Location Access. Mendota hereby grants to ENGIE Services U.S., without cost to ENGIE Services U.S., all rights of ingress and egress at the Project Location, necessary for ENGIE Services U.S. to perform the Work and provide all services contemplated by this Contract. ENGIE Services U.S. will provide twenty-four-hour advance notice to Mendota for access to any Mendota Facilities. All persons entering the Project Location, including Mendota and its employees and agents, must follow ENGIE Services U.S.'s safety procedures. ENGIE Services U.S. may (but is not required to) make transportation available to Mendota and Mendota's employees and agents between

and within Project Locations, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.05 Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

Section 3.06 Independent Contractor. The Parties hereto agree that ENGIE Services U.S., and any agents and employees of ENGIE Services U.S., its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, consultant, or agent of Mendota for purposes of conflict of interest laws or any other Applicable Law.

#### ARTICLE 4. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT

##### Section 4.01 General Provisions.

- (a) After receipt of the Notice to Proceed, ENGIE Services U.S. will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by Mendota, ENGIE Services U.S. will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) Mendota will designate a single-point representative with whom ENGIE Services U.S. may consult on a reasonable, regular basis and who is authorized to act on Mendota's behalf with respect to the Project design. Mendota's representative will render decisions in a timely manner with regard to any documents submitted by ENGIE Services U.S. and to other requests made by ENGIE Services U.S. in order to avoid delay in the orderly and sequential progress of ENGIE Services U.S.'s design services.
- (d) Within ten (10) Business Days after ENGIE Services U.S.'s request, Mendota will:
  - (i) furnish all surveys or other information in Mendota's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
  - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
  - (iii) supply ENGIE Services U.S. with all relevant information in Mendota's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
  - (iv) obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
  - (v) obtain any and all title reports for those Project Locations reasonably requested by ENGIE Services U.S.
- (e) All information furnished pursuant to this Section 4.01 will be supplied at Mendota's expense, and ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided. If ENGIE Services U.S. is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, ENGIE Services U.S. will notify Mendota. The Parties will meet and confer with respect to those Changes, and ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether Mendota's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 19.
- (g) ENGIE Services U.S. contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a pre-existing condition by Mendota prior to the Contract Effective Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the Contract Effective Date will constitute a valid basis for a Change Order.

Section 4.02 Review of Construction Documents. ENGIE Services U.S. will prepare and submit all drawings and specifications to Mendota for review. Mendota will review the documents and provide any comments in writing to ENGIE Services U.S. within ten (10) Business Days after receipt of the documents. ENGIE Services U.S. will incorporate appropriate Mendota comments into the applicable drawings and specifications. ENGIE Services U.S. reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. If Mendota fails to provide written comments within the ten (10) Business Day period, Mendota will be deemed to have no comments regarding the documents.

Section 4.03 Permits. The respective obligations of the Parties in obtaining inspections and permits are as specified in Section 3.01. Mendota will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. The Contract Amount must be increased by any additional cost incurred by ENGIE Services U.S. due to a Change required by a Governmental Authority and the time required to complete the Work must be increased by the number of additional days required to complete the Work because of a Change imposed by a Governmental Authority.

Section 4.04 Changes During Final Design Phase. If during the design phase any Mendota Person requests Changes and/or modifications to the Work and/or an Excusable Event occurs, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. Valid bases for additional compensation and/or time extension include, but are not limited to: (i) any Mendota Person requests changes and/or modifications to the Project Scope of Work during the Project design phase; (ii) any Mendota Person causes delays during ENGIE Services U.S.'s design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain Applicable Permits; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any Mendota Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work, that increases the agreed-upon Contract Amount or increases the time needed to complete the Work.

## ARTICLE 5. CONSTRUCTION PHASE

Section 5.01 General Provisions. Upon securing the requisite Applicable Permits pursuant to Section 3.01, and completion of Construction Documents, ENGIE Services U.S. will commence the construction of the Project in accordance with the Construction Documents. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, by ENGIE Services U.S. and/or one or more licensed subcontractors qualified to perform the Work.

Section 5.02 ENGIE Services U.S.'s Responsibilities during Construction Phase.

- (a) As an independent contractor to Mendota, ENGIE Services U.S. will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. ENGIE Services U.S. will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. ENGIE Services U.S. will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) ENGIE Services U.S. will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Mendota's operations at the Project Location. ENGIE Services U.S. will provide at least fifteen (15) calendar days' written notice to Mendota of any planned power outages that will be necessary for the construction. ENGIE Services U.S. will cooperate with Mendota in scheduling such outages, and Mendota agrees to provide its reasonable approval of any scheduled outage.
- (c) ENGIE Services U.S. will initiate and maintain a safety program in connection with its Construction of the Project. ENGIE Services U.S. will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of ENGIE Services U.S. and subcontractors performing Work under this Contract; (ii) ENGIE Services U.S.'s property and other materials to be incorporated into the Project, under the care, custody, and control of ENGIE Services U.S. or its subcontractors; and (iii) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. ENGIE Services U.S. will not be responsible for Mendota's employees' safety unless ENGIE Services U.S.'s negligence in the performance of its Work is the proximate cause of the employee's injury.
- (d) ENGIE Services U.S. will provide notice to Mendota of scheduled test(s) of installed equipment, if any, and Mendota and/or its designees will have the right to be present at any or all such tests conducted by ENGIE Services U.S., any subcontractor, and/or manufacturers of the equipment.

- (e) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, ENGIE Services U.S. will, in advance of excavation, submit to Mendota and/or a registered civil or structural engineer, employed by Mendota, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Mendota or by the person to whom authority to accept has been delegated by Mendota. Pursuant to California Labor Code §6705, nothing in this Section 5.02(e) imposes tort liability on Mendota or any of its employees.
- (f) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
  - (i) ENGIE Services U.S. will promptly, and before the following conditions are disturbed, notify Mendota, in writing, of any:
    - 1) Material that ENGIE Services U.S. believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
    - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to ENGIE Services U.S. before the Contract Effective Date;
    - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
  - (ii) Mendota will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in ENGIE Services U.S.'s cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.
  - (iii) If a dispute arises between Mendota and ENGIE Services U.S., whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in ENGIE Services U.S.'s cost of, or time required for, performance of any part of the Work, ENGIE Services U.S. will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. ENGIE Services U.S. will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

**Section 5.03**      Mendota's Responsibilities during Construction Phase.

- (a) Mendota will designate a single-point representative authorized to act on Mendota's behalf with respect to Project construction and/or equipment installation. Mendota may from time to time change the designated representative and will provide written notice to ENGIE Services U.S. of such change. Any independent review of the construction will be undertaken at Mendota's sole expense, and will be performed in a timely manner so as to not unreasonably delay the orderly progress of ENGIE Services U.S.'s Work.
- (b) Mendota will provide a temporary staging area for ENGIE Services U.S., or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. Mendota will provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Mendota will provide access to the Facilities, including parking permits and identification tags, for ENGIE Services U.S. and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by ENGIE Services U.S. and acceptable to Mendota. Mendota will also either provide a set or sets of keys to ENGIE Services U.S. and its subcontractors (signed out per Mendota policy) or provide a readily available security escort to unlock and lock doors. Mendota will not unreasonably restrict ENGIE Services U.S.'s access to Facilities to make emergency repairs or corrections as ENGIE Services U.S. may determine are needed.
- (c) Mendota will maintain the portion of the Project Location that is not directly affected by ENGIE Services U.S.'s Work. Mendota will keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Mendota.
- (d) Mendota will obtain any required environmental clearance from, and any inspections, including special inspections, or permits required by, any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled construction start date.

- (e) Mendota will prepare the Project Location for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by Mendota and such documentation made available to ENGIE Services U.S. are the responsibility of Mendota. If ENGIE Services U.S. encounters such unforeseen conditions in the performance of the Work, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) Mendota will remove any Hazardous Substances either known to Mendota prior to the commencement of the Work or encountered by ENGIE Services U.S. during the construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by ENGIE Services U.S. ENGIE Services U.S. will respond to the discovery of Hazardous Substances at or around the Project Location during the course of ENGIE Services U.S.'s construction in accordance with Section 5.06.
- (g) Mendota will coordinate the Work to be performed by ENGIE Services U.S. with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that ENGIE Services U.S. will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) Mendota will, and will cause Mendota Persons to, allow ENGIE Services U.S. and its subcontractors access to and reasonable use of necessary quantities of Mendota's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to ENGIE Services U.S.
- (i) Mendota will, and will cause Mendota Persons to, provide ENGIE Services U.S. and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to ENGIE Services U.S., access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.
- (j) Mendota will also do the following:
  - (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
  - (ii) When requested by ENGIE Services U.S., participate in the job inspection walk-through with ENGIE Services U.S. to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion.
  - (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
  - (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

Section 5.04 Changes.

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will be authorized by a written Change Order. The Change Order should state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time. ENGIE Services U.S. may, at its election, suspend performance of that portion of the Work affected by any proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both Mendota and ENGIE Services U.S. ENGIE Services U.S. will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change until such time as the applicable Change Order is resolved. In addition, if any Mendota Person requests a proposal from ENGIE Services U.S. for a Change and Mendota subsequently elects to not proceed with such Change, Mendota agrees that a Change Order will be issued to reimburse ENGIE Services U.S. for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by such Mendota Person.
- (b) Change Orders Requiring Additional Compensation. If during construction any Mendota Person requests changes and/or modifications to the Work, and/or there are Excusable Events, Mendota will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and ENGIE Services U.S. will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) any Mendota Person requests changes and/or modifications to the Scope of Work during the construction phase of the Project; (ii) any Mendota Person causes delays during ENGIE Services U.S.'s construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any Mendota Person; (vii) changes and/or modifications to

Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work or the Contract Amount.

- (c) Change Orders Requiring Additional Time. If during construction any Mendota Person requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, ENGIE Services U.S. will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that Mendota has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
  - (i) unit prices set forth in this Contract or as subsequently agreed;
  - (ii) a mutually accepted, itemized lump sum; or
  - (iii) costs calculated on a basis agreed upon by Mendota and ENGIE Services U.S. plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between Mendota and ENGIE Services U.S. as to whether ENGIE Services U.S. is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 19. Pending the resolution of any such dispute, ENGIE Services U.S. may suspend Work.

Section 5.05 Minor Changes to Scope of Work. ENGIE Services U.S. has the authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the Construction Documents, without prior notice to Mendota. ENGIE Services U.S. will either promptly inform Mendota, in writing, of any minor changes made during the implementation of the Project, or make available to Mendota at the site a set of as-built drawings that will be kept current to show those minor changes.

Section 5.06 Hazardous Substances.

- (a) ENGIE Services U.S. will promptly provide written notice to Mendota if ENGIE Services U.S. observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. ENGIE Services U.S. will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. Mendota will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Mendota will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. ENGIE Services U.S. will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Mendota will provide ENGIE Services U.S., within ten (10) Business Days after the Contract Effective Date, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) Mendota will indemnify, defend, and hold ENGIE Services U.S. harmless from and against any and all Losses that in any way result from, or arise under, such Mendota owned or generated Hazardous Substances, except for liabilities to the extent due to the negligence or willful misconduct of ENGIE Services U.S., or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

Section 5.07 Pre-Existing Conditions. Certain pre-existing conditions may be present within the Facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of ENGIE Services U.S.'s Work, (iii) may cause ENGIE Services U.S.'s completed Work to be non-compliant with applicable codes, (iv) may prevent Mendota from realizing the full benefits of ENGIE Services U.S.'s Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of ENGIE Services U.S.'s Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, ENGIE Services U.S. will not be responsible for repairing such pre-existing conditions unless such responsibility is expressly provided for in the Scope of Work or an approved Change Order. ENGIE Services U.S., in its sole discretion,



may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a Change Order with Mendota for additional compensation and, if appropriate, an extension of time.

## ARTICLE 6. PROJECT COMPLETION

Section 6.01 Occupancy or Use of Work. Mendota may take occupancy or use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by Governmental Authority and, *provided further*, that Mendota assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. If Substantial Completion of a portion of the Construction Work is not yet achieved, occupancy or use of such portion of the Work will not commence until Mendota's insurance company has consented to such occupancy or use. When occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, Mendota and ENGIE Services U.S. will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and Retention with respect to such portion.

Section 6.02 Substantial Completion. When ENGIE Services U.S. considers the Work, or any portion thereof, to be Substantially Complete, ENGIE Services U.S. will supply to Mendota a written Certificate of Substantial Completion with respect to such portion of the Work, including a Punch List of items and the time for their completion or correction. Mendota will within ten (10) Business Days of receipt of the Certificate of Substantial Completion, review such portion of the Work for the sole purpose of determining that it is Substantially Complete, and sign and return the Certificate of Substantial Completion to ENGIE Services U.S. acknowledging and agreeing: (i) that such portion of the Work is Substantially Complete; (ii) the date of such Substantial Completion; (iii) that from the date of Substantial Completion Mendota will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. Mendota agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

Section 6.03 Final Completion. When ENGIE Services U.S. considers the entirety of the Work to be Finally Complete, ENGIE Services U.S. will notify Mendota that the Work is fully complete and ready for final inspection. Mendota will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of ENGIE Services U.S.'s certification that the Work is complete. If Mendota does not verify the Final Completion of the Work within this period, the Work will be deemed fully completed. When Mendota agrees that the Work is fully completed, ENGIE Services U.S. will issue a Certificate of Final Completion, which Mendota must sign. Mendota agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. At that time, Mendota will pay ENGIE Services U.S. any remaining Contract Amount due and any outstanding Retention being withheld by Mendota, in accordance with Section 8.03. Mendota may give ENGIE Services U.S. written notice of acceptance of the Work and will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204.

Section 6.04 Transfer of Title; Risk of Loss. Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to Mendota upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by Mendota or (ii) the date any such items are incorporated into the Project Location. ENGIE Services U.S. will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to Mendota will in no way affect Mendota's and ENGIE Services U.S.'s rights and obligations as set forth in other provisions of this Contract. Except as provided in this Section 6.04, after the date of Substantial Completion, ENGIE Services U.S. will have no further obligations or liabilities to Mendota arising out of or relating to this Contract, except for the obligation to complete any Punch List items, the obligation to perform any warranty service under Section 9.01, and obligations which, pursuant to their terms, survive the termination of this Contract.

## ARTICLE 7. SUBCONTRACTORS

Section 7.01 Authority to Subcontract. ENGIE Services U.S. may delegate its duties and performance under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as ENGIE Services U.S. may select in its discretion to perform the Work. ENGIE Services U.S. will not be required to enter into any subcontracts with parties whom ENGIE Services U.S. has not selected or subcontractors whom ENGIE Services U.S. has objection to using.

Section 7.02 Prompt Payment of Subcontractors. ENGIE Services U.S. will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract and will endeavor to prevent any lien or other claim under any provision of Applicable Law from arising against any Mendota property, against ENGIE Services U.S.'s rights to payments hereunder, or against Mendota.

Section 7.03 Relationship. Nothing in this Contract constitutes or will be deemed to constitute a contractual relationship between any of ENGIE Services U.S.'s subcontractors and Mendota, or any obligation on the part of Mendota to pay any sums to any of ENGIE Services U.S.'s subcontractors.

Section 7.04 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, Mendota will obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. Mendota will promptly notify ENGIE Services U.S. of any changes to any such prevailing wage determination.

## **ARTICLE 8. PAYMENTS**

Section 8.01 Monthly Progress Payments. Promptly after the Contract Effective Date, ENGIE Services U.S. will invoice Mendota for a mobilization payment in the amount of Seven Hundred Eighty-Four Thousand Dollars (\$784,000). These amounts must be paid to ENGIE Services U.S. within thirty (30) calendar days after Mendota's receipt of an invoice for those amounts. In addition, as the Work progresses, ENGIE Services U.S. will submit to Mendota its applications for monthly payments based on the progress made on the Project through the date on which ENGIE Services U.S. submits such Application for Payment. Within twenty-one (21) calendar days from the Contract Effective Date, ENGIE Services U.S. will prepare and submit to Mendota a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values will be assigned a value such that the total of all items equals the Contract Amount. All Applications for Payment will be in accordance with the Schedule of Values.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, ENGIE Services U.S. may invoice Mendota for materials purchased in advance and not stored at the Project Location. Each such Application for Payment will be accompanied by proof of off-site material purchases, evidence that the materials have been delivered to a warehouse reasonably acceptable to Mendota and evidence of appropriate insurance coverage. ENGIE Services U.S. will furnish to Mendota written consent from the Surety approving the advance payment for materials stored off site. Mendota will pre-pay one hundred percent (100%) of ENGIE Services U.S.'s Application for Payment for the materials delivered, less Retention as indicated in Section 8.03. ENGIE Services U.S. will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work.

Section 8.03 Retention. Mendota, or its designee, must approve and pay each Application for Payment, less a retention amount ("Retention") of five percent (5%) in accordance with California Public Contract Code §7201, within thirty (30) calendar days after its receipt of the Application for Payment; *provided, however*, that there is to be no Retention with respect to the mobilization payment and any fee for the Recommendations. A failure to approve and pay an Application for Payment in a timely manner is a material default by Mendota under this Contract. Mendota may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. Upon Substantial Completion, the Retention must be reduced to two percent (2%) of the Contract Amount, and ENGIE Services U.S. may invoice and Mendota will pay this amount. Mendota will pay ENGIE Services U.S. the remaining two percent (2%) Retention amount upon achieving Final Completion. In lieu of Retention being held by Mendota, ENGIE Services U.S. may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. The final payment amount must also include payment to ENGIE Services U.S. for any remaining Retention withheld by Mendota.

Section 8.05 Disputed Invoices/Late Payments. Mendota may in good faith dispute any Application for Payment, or part thereof, within fifteen (15) calendar days after the date the Application for Payment was received by Mendota. If Mendota disputes all or a portion of any Application for Payment, Mendota will pay the undisputed portion when due and provide ENGIE Services U.S. a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. Mendota will be deemed to have waived and released any dispute known to it with respect to an Application for Payment if such notice and written explanation is not provided within fifteen (15) calendar days after the date the Application for Payment was received by Mendota. If any amount disputed by Mendota is finally determined to be due to ENGIE Services U.S., either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 19 below, it will be paid to ENGIE Services U.S. within ten (10) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

Section 8.06 Rebate Programs. ENGIE Services U.S. will assist Mendota in the preparation and submission to the applicable agencies of applications and documentation necessary for the following energy efficiency rebate, incentive, and/or loan program(s) PG&E custom VFD incentive; lighting rebates. ENGIE Services U.S. makes no guarantee that Mendota will receive funding from any energy efficiency rebate, incentive, and/or loan program(s), including those listed above (collectively, "Incentive Funds"), or any portion thereof; ENGIE Services U.S. expressly disclaims any liability for Mendota's failure to receive any portion of the Incentive Funds, and Mendota acknowledges and

agrees that ENGIE Services U.S. will have no liability for any failure to receive all or any portion of the Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Amount of this Contract or the payment timeline associated with payment of the Contract Amount.

#### ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, ENGIE SERVICES U.S. MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. Mendota WILL HAVE NO REMEDIES AGAINST EITHER ENGIE SERVICES U.S. OR ANY ENGIE SERVICES U.S. SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW.

Section 9.01 ENGIE Services U.S. warrants to Mendota that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. ENGIE Services U.S. further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("ENGIE Services U.S. Warranty"). Notwithstanding the preceding sentence, the date the ENGIE Services U.S. Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment C.

Section 9.02 Equipment and material warranties that exceed the ENGIE Services U.S. Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Mendota, after the one (1) year period. During the ENGIE Services U.S. Warranty period, ENGIE Services U.S. will be Mendota's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the ENGIE Services U.S. Warranty period, ENGIE Services U.S., or ENGIE Services U.S.'s subcontractors, will correct its defects, and/or ENGIE Services U.S. will work with the equipment or material manufacturer as Mendota's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of Mendota. If a warranty issue arises on any equipment or material installed after the ENGIE Services U.S. Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, Mendota will contact the manufacturer directly to resolve such warranty issues and Mendota acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than ENGIE Services U.S. or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized ENGIE Services U.S. subcontractor, improper use or operation, or normal wear and tear under normal usage. ENGIE Services U.S. shall not be responsible for the cost of correcting a breach of warranty or defect to the extent that the manufacturer of the equipment that is the subject of a warranty hereunder does not honor its equipment warranty as a result of its termination of operations, insolvency, liquidation, bankruptcy or similar occurrence. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, ENGIE Services U.S. will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.1 and 337.15.

#### ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT

##### Section 10.01 Ownership of Certain Proprietary Property Rights.

- (a) Ownership: Except as expressly provided in this Contract, Mendota will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. ENGIE Services U.S. will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.
- (b) License: Solely in connection with the Facilities, ENGIE Services U.S. grants to Mendota a limited, perpetual, royalty-free, non-transferrable license for any ENGIE Services U.S. intellectual property rights necessary for Mendota to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.

- (c) Ownership and Use of Instruments of Service. All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the “Instruments of Service”) furnished directly or indirectly, in writing or otherwise, to Mendota by ENGIE Services U.S. under this Contract will remain ENGIE Services U.S.’s property and may be used by Mendota only for the Work. ENGIE Services U.S. will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by Mendota or any Mendota Person for future additions or alterations to the Project or for other projects, without the prior written agreement of ENGIE Services U.S. Any unauthorized use of the Instruments of Service will be at Mendota’s sole risk and without liability to ENGIE Services U.S. If Mendota uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of ENGIE Services U.S., Mendota agrees to waive and release, and indemnify and hold harmless, ENGIE Services U.S., its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities on the Contract Effective Date will remain the property of Mendota even if such equipment or materials are replaced or their operation made unnecessary by work performed by ENGIE Services U.S. If applicable, ENGIE Services U.S. will advise Mendota in writing of all equipment and materials that will be replaced at the Facilities and Mendota will, within five (5) Business Days of ENGIE Services U.S.’s notice, designate in writing to ENGIE Services U.S. which replaced equipment and materials should not be disposed of off-site by ENGIE Services U.S. (the “Retained Items”). Mendota will be responsible for and designate the location and storage for the Retained Items. ENGIE Services U.S. will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. ENGIE Services U.S. will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. ENGIE Services U.S. will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

#### **ARTICLE 11. INDEMNIFICATION / LIMITATION ON LIABILITY**

Section 11.01 Indemnification. To the fullest extent permitted by Applicable Laws, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants’ and attorneys’ fees and other defense expenses) and liabilities of any nature (“Losses”) that may be asserted by any person or entity, to the extent arising out of that Party’s performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Contract, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination of this Contract.

Section 11.02 Waiver of Consequential Damages and Limitation of Liability. Except as otherwise provided herein, the liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. The limitation set forth in this Section 11.02 shall not apply to damages resulting from the gross negligence or willful misconduct of a Party.

#### **ARTICLE 12. INSURANCE / BONDS**

Section 12.01 ENGIE Services U.S. Insurance. ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to Mendota via an insurance certificate.

- (a) Workers’ Compensation/Employers Liability for states in which ENGIE Services U.S. is not a qualified self-insured. Limits as follows:

*	Workers’ Compensation:	Statutory
*	Employers Liability:	Bodily Injury by accident \$1,000,000 each accident Bodily Injury by disease \$1,000,000 each employee Bodily Injury by disease \$1,000,000 policy limit

- (b) Commercial General Liability insurance with limits of:

*	\$2,000,000 each occurrence for Bodily Injury and Property Damage
*	\$4,000,000 General Aggregate - other than Products/Completed Operations
*	\$2,000,000 Products/Completed Operations Aggregate
*	\$2,000,000 Personal and Advertising Injury
*	\$ 100,000 Damage to premises rented to ENGIE Services U.S.

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

(c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

(d) Professional Liability insurance with limits of:

- \* \$1,000,000 per occurrence
- \* \$1,000,000 aggregate

Coverage to be written on a claims-made form.

(e) Umbrella/Excess Liability Insurance. Limits as follows:

- \* \$1,000,000 each occurrence
- \* \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

- \* The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against Mendota, but only to the extent of the indemnity obligations contained in this Contract.
- \* The insurance provided for Commercial General Liability and Auto Liability above will:
  - (i) include Mendota as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
  - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

Section 12.02 Mendota's Insurance. Mendota will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to ENGIE Services U.S. via an insurance certificate.

(a) Commercial General Liability insurance, written on an occurrence form, with limits of:

- \* \$2,000,000 each occurrence for Bodily Injury and Property Damage; and
- \* \$4,000,000 General Aggregate

(b) The insurance provided for above will contain waivers of subrogation rights against ENGIE Services U.S., will include ENGIE Services U.S. as an additional insured, and will provide that the insurance is primary coverage with respect to all insureds.

Section 12.03 Waivers of Subrogation. The Parties waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this ARTICLE 12 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Parties and their respective property damage insurers also waive all rights of subrogation against the other Party, its directors, officers, agents and employees. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Section 12.04 Performance and Payment Bonds. Prior to commencing Work under this Contract, ENGIE Services U.S. will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to Mendota.

**ARTICLE 13. DOE GUIDELINES; ENERGY POLICY ACT**

Section 13.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines. Mendota hereby assigns and transfers to ENGIE Services U.S., and its Affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work.

Section 13.02 As authorized by §1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) Mendota agrees that for the Work, ENGIE Services U.S. will be the "designer" as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and ENGIE Services U.S. will have the exclusive right to report to any federal, state, or local agency, authority or other party any tax benefit associated with the Work. Upon Final Completion, Mendota agrees to execute a written allocation including a declaration related to Internal Revenue Code §179D. ENGIE Services U.S. will prepare the declaration and all accompanying documentation. ENGIE Services U.S. will be designated the §179D beneficiary.

**ARTICLE 14. MUNICIPAL ADVISOR**

Section 14.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT ENGIE SERVICES U.S. IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO MENDOTA WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT Mendota BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. ENGIE SERVICES U.S. IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO MENDOTA OR THE PROVISION OF INFORMATION TO MENDOTA. MENDOTA WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR MENDOTA'S SITUATION.

**ARTICLE 15. TRADE SECRETS**

If any materials or information provided by ENGIE Services U.S. to Mendota under this Contract are designated by ENGIE Services U.S. as a "trade secret" or otherwise exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the "Act") and if a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than five (5) calendar days) after receipt of such request, Mendota will notify ENGIE Services U.S. of such request and advise ENGIE Services U.S. whether Mendota believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Within seven (7) calendar days after a third party's request for disclosure of materials under the Act, ENGIE Services U.S. will (i) authorize Mendota to release the documents or information sought; or (ii) if ENGIE Services U.S. reasonably believes that the information is exempt from disclosure, advise Mendota not to release the materials.

**ARTICLE 16. EVENTS OF DEFAULT**

Section 16.01 Events of Default by ENGIE Services U.S. Each of the following events or conditions will constitute an "Event of Default" by ENGIE Services U.S.:

- (i) any substantial failure by ENGIE Services U.S. to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to ENGIE Services U.S. demanding that such failure to perform be cured; *provided that* (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, and (z) if such cure cannot be effected in thirty (30) calendar days, ENGIE Services U.S. will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by ENGIE Services U.S. in this Contract which was false or misleading in any material respect when made.

Section 16.02 Events of Default by Mendota. Each of the following events or conditions will constitute an "Event of Default" by Mendota:

- (i) any substantial failure by Mendota to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Mendota demanding that such failure to perform be cured; *provided that* (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract; and (z) if such cure cannot be effected in thirty (30) calendar days, Mendota will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

- (ii) any representation or warranty furnished by Mendota in this Contract which was false or misleading in any material respect when made; or
- (iii) any failure by Mendota to pay any amount to ENGIE Services U.S. which is not paid within ten (10) calendar days after written notice from ENGIE Services U.S. that the amount is past due.

**ARTICLE 17. REMEDIES UPON DEFAULT**

Section 17.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 16, the non-defaulting Party may terminate this Contract by providing three (3) Business Days' written notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, ENGIE Services U.S. will be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 17.02 Remedies Upon Default by ENGIE Services U.S. If an Event of Default by ENGIE Services U.S. occurs, Mendota will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by ENGIE Services U.S. and/or damages, which will include Mendota's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 17.03 Remedies upon Default by Mendota. If an Event of Default by Mendota occurs, ENGIE Services U.S. will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19 including, without limitation, terminating this Contract or recovering amounts due and unpaid by Mendota, and/or damages which will include ENGIE Services U.S.'s reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

**ARTICLE 18. CONDITIONS BEYOND CONTROL OF THE PARTIES**

Section 18.01 Excusable Events. If any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention. Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an Excusable Event.

Section 18.02 Utility Work. Mendota expressly understands and agrees that Excusable Events may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for ENGIE Services U.S. to fully implement the Project. "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

**ARTICLE 19. GOVERNING LAW AND RESOLUTION OF DISPUTES**

Section 19.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State where the Work is performed, without regard to the jurisdiction's choice of law rules.

Section 19.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a "Dispute"), either Party may initiate the dispute resolution process set forth in this ARTICLE 19 by giving notice to the other Party. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting*: Within fifteen (15) Business Days after notice of the Dispute, ENGIE Services U.S.'s senior project management personnel will meet with Mendota's project representative in a good faith attempt to resolve the Dispute.

- (ii) *Management Representatives' Meeting*: If ENGIE Services U.S.'s and Mendota's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for ENGIE Services U.S. and for Mendota, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of ENGIE Services U.S. and Mendota are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with Section 19.03.

Section 19.03 Mediation. If the Dispute is not settled pursuant to Section 19.02, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator. If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration, as described in Section 19.04. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association.

Section 19.04 Arbitration Proceedings. The following provisions apply to all arbitration proceedings pursuant to this ARTICLE 19:

- (i) The place of arbitration will be the American Arbitration Association office closest to where the Work was performed.
- (ii) One arbitrator (or three arbitrators if the monetary value of the Dispute is more than \$2,000,000) (the "Arbitral Panel") will conduct the arbitral proceedings in accordance with the Commercial Arbitration Rules and Mediation Procedures (Excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect ("Arbitration Rules"). To the extent of any conflicts between the Arbitration Rules and the provisions of this Contract, the provisions of this Contract prevail.
- (iii) The Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply. In the discretion of the Arbitral Panel, the production of additional documents that are relevant and material to the determination of the Dispute may be required.
- (iv) The Arbitral Panel may award punitive, indirect or consequential damages (however denominated) only in accordance with Section 11.02 herein. All arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails. Each Party will pay its own costs of legal representation and witness expenses.
- (v) The award must be in the form of a reasoned award.
- (vi) The Dispute will be resolved as quickly as possible. The Arbitral Panel will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced.
- (vii) The award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

Section 19.05 Multiparty Proceeding. Either Party may join third parties whose joinder would facilitate complete resolution of the Dispute and matters arising from the resolution of the Dispute.

Section 19.06 Lien Rights. Nothing in this ARTICLE 19 limits any rights or remedies not expressly waived by ENGIE Services U.S. that ENGIE Services U.S. may have under any lien laws or stop notice laws.

## **ARTICLE 20. REPRESENTATIONS AND WARRANTIES**

Section 20.01 Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by its governing body, or are in accordance with its organizational documents, and this Contract has



been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;

- (iii) the execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under, its organizational documents or any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, awards or permits which would materially and adversely affect its ability to perform hereunder.

**ARTICLE 21. NOTICE**

Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ENGIE SERVICES U.S.:           ENGIE Services U.S. Inc.  
500 12<sup>th</sup> Street, Suite 300  
Oakland, CA 94607  
Tel: (415) 735-9159  
Attention: Shira Zingman-Daniels, Project Manager

With a COPY TO:                   Legal Department  
ENGIE Services U.S. Inc.  
150 East Colorado Boulevard, Suite 360  
Pasadena, CA 91105-3711  
Tel: 626-377-4948  
Attention: Contract Administrator

TO Mendota:                       City of Mendota  
643 Quince St.  
Mendota, CA 93640  
Attention:

With a COPY TO:                   Office of \_\_\_\_\_  
\_\_\_\_\_  
Street Address  
City, State, Zip  
Tel:  
Attention:

**ARTICLE 22. CONSTRUCTION OF CONTRACT**

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will be construed in a manner that most accurately reflects the intent of the Parties as of the Contract Effective Date. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial, or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

**ARTICLE 23. BINDING EFFECT**

Except as otherwise provided herein, the terms and provisions of this Contract will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

**ARTICLE 24. NO WAIVER**

The failure of ENGIE Services U.S. or Mendota to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ENGIE Services U.S. or Mendota.

**ARTICLE 25. SEVERABILITY**

If any clause or provision of this Contract or any part thereof becomes or is declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions; *provided* that no such severability will be effective if it materially changes the benefits or obligations of either Party hereunder.

**ARTICLE 26. HEADINGS**

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

**ARTICLE 27. COUNTERPARTS; INTEGRATION**

This Contract may be executed in counterparts (and by different Parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Contract cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto. Delivery of an executed counterpart of a signature page of this Contract by email will be effective as delivery of a manually executed counterpart of this Contract.

*[the Parties' signatures appear on the following page]*

DRAFT

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers as of the Contract Effective Date.

**ENGIE SERVICES U.S.:**

ENGIE Services U.S. Inc.

**Mendota:**

City of Mendota

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

DRAFT

**ATTACHMENT A**

**MENDOTA'S FACILITIES and EXISTING EQUIPMENT**

(a) The following Mendota Facilities are included under the Scope of Work as listed below:

Facility	Address	Square Feet
City Hall	643 Quince Street, Mendota, CA 93640	6,500
Public Works Yard Shop	912 Marie St, Mendota, CA 93640	22,000
Water Plant	1300 2 <sup>nd</sup> St, Mendota, CA 93640	6,700
Well #3	Bass Ave across from Sewer Plant, Mendota, CA 93640	n/a
Sewer Plant	3699 Bass Ave, Mendota, CA 9340	1,400
Well #8	B&B Ranch, Mendota, CA 93640	n/a

(b) The existing equipment is that which is listed in ENGIE Services U.S.'s Recommendations dated: 14 January 2019.

DRAFT

**ATTACHMENT B**  
**STANDARDS OF OCCUPANCY and CONTROL**

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*Not  
Used*

**ATTACHMENT C  
SCOPE OF WORK**

California State Contractor's License Number 995037  
California Public Works Contractor Registration Number 1000001498

**Energy Conservation Measures (ECM) to Be Implemented**

ECM #	Description
1	Integrated Switchgear & VFD
2	Solar Generating Facilities

**ENERGY CONSERVATION MEASURES**

Below please find the detailed scope per ECM.

**ECM 1 – INTEGRATED SWITCHGEAR & VFD**

**SCOPE OF WORK**

ENGIE Services U.S. will replace the existing 200A General Switchgear Inc. switchgear at the Well #8 site with a Cutler Hammer switchgear with an integrated variable frequency drive (VFD) for the 100 horsepower well pump. The VFD shall be controlled by the Water Plant's PLC to match the sequence of operations of Well Pump #7 & #9.

**ECM 2 – SOLAR GENERATING FACILITIES**

Table 1 below lists the locations for the solar PV installations and the structure type.

**Table 1: Solar PV Locations**

SG #	Facility	Type	First Year System Production (kWh)	Ground Clearance Height
1	City Hall	Canopy	70,352	10'
2	Water Plant	Canopy and Ground Mount	387,179	14' in parking lot, 8' in retention pond
3	Well #3	Ground Mount	162,861	3'
4	Sewer Plant	Ground Mount	1,545,029	3'
5	Public Works Yard Shop	Rooftop	21,867	n/a

**SCOPE OF WORK – GENERAL**

1. Prepare and submit design drawings to the City of Mendota for approval and to local Utility for interconnection permits.
2. Provide geotechnical evaluations necessary for design requirements.
3. Provide Utility interconnection drawings and application management services.
4. Provide and coordinate installation of the NGOM and NEM metering.
5. Procure materials and equipment necessary for construction.
6. All project management and construction management necessary for a full and complete installation.
7. Provide labor, supervision, and coordination with the City of Mendota for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
8. Provide and install PV modules and all necessary mounting hardware for each system.
9. Provide and install inverters and necessary electrical equipment and conduits to connect to the electrical switchgear or meter. Electrical shut-downs are anticipated at each site. Time of shutdown will be coordinated with the City of Mendota and Utility and may include weekends.

10. Provide and install solar canopy structures. The canopy structure design will include a painted canopy structure 8-14 feet in height and a pier depth of 8 feet deep and assumes no de-watering, benching, shoring, or casing.
11. DC wiring and AC wiring within the solar canopies, roof structures, and ground mount structures shall be copper wire. Aluminum wire shall be used from each system's AC combiner to the main point of connection at the site's electrical switchgear.
12. Provide and install (6) new LED lighting fixtures (RAB PRT42N or equivalent) for canopies located in parking lots (one for each 27' bay) at City Hall and the Water Plant.
13. All ground mounted systems will be tilted 25 degrees from horizontal, rooftop structures will be tilted 5 degrees from horizontal, and canopy structures will be tilted 7 degrees from horizontal.
14. Provide as-built drawings and Operations & Maintenance manuals in electronic format upon Project completion.
15. Provide tree removal, as required.
16. Provide lighting removal, as required.
17. Provide miscellaneous backfill and restoration of landscaping in areas of work.
18. Start-up, test, and commission the Generating Facilities in accordance with design plan and applicable industry standards.
19. Secure the Project Location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. City of Mendota will assist with the foregoing site logistics by coordinating access and scheduling with ENGIE Services U.S.

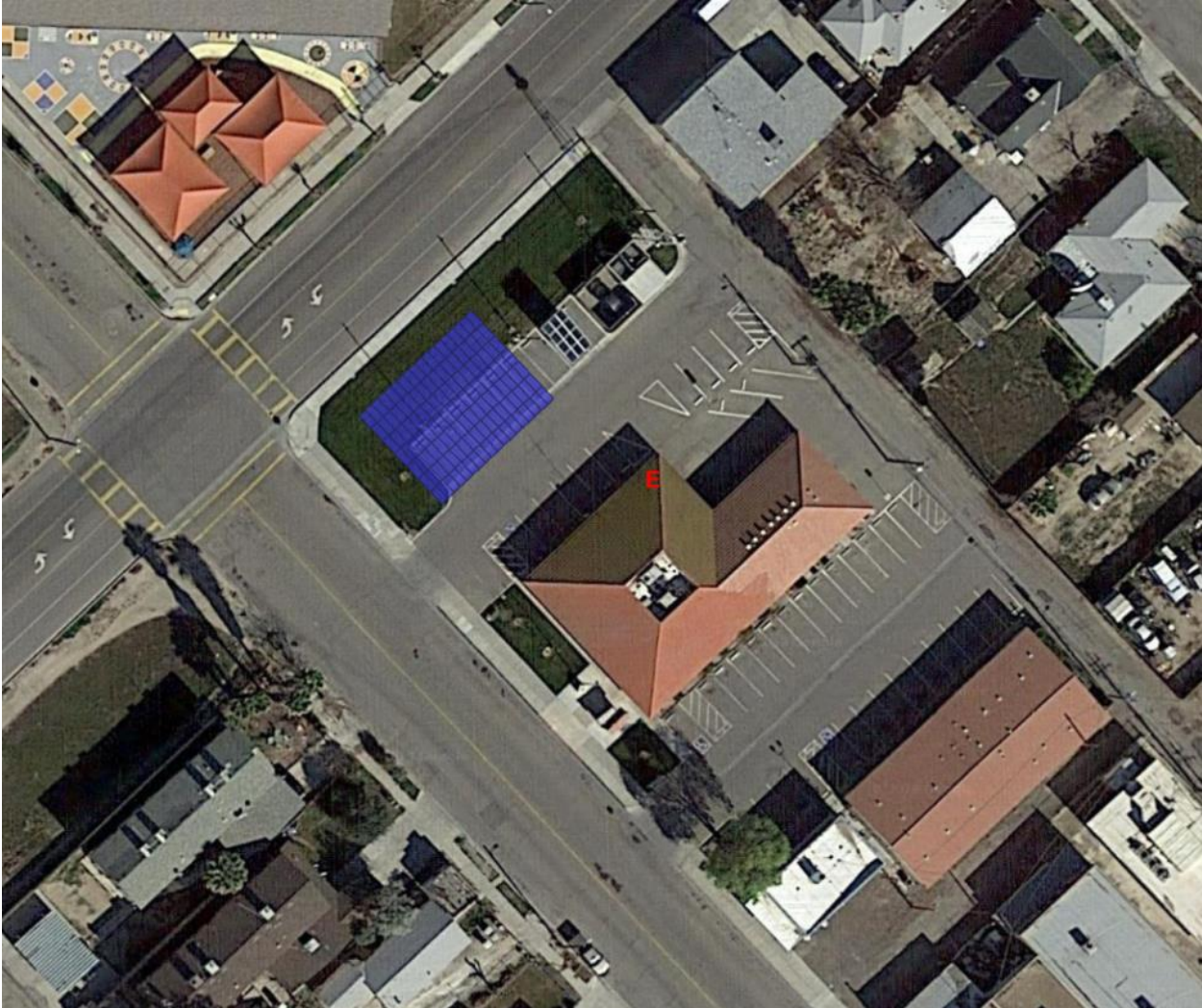
### **SOLAR PV SCOPE OF WORK – STRUCTURAL**

#### **PV Layouts**

The following photos are schematic engineering layouts. The schematic engineering layouts and the electrical routing related to them are subject to change due to field conditions and upon completion of final engineering.

Solar Generating Facility #1 – City Hall

Figure 1 – City Hall



**Inclusions:**

- Removal of two light poles and demolition of two light pole bases in the parking lot. The bases shall be taken down 4" below grade and patched to match surrounding area.



Solar Generating Facility #2 – Water Pant

Figure 2 – Water Plant



**Inclusions:**

- Removal of one light pole under the proposed canopy (Array 2), and demolition of one light pole base. The base shall be taken down 4" below grade and patched to match surrounding area.
- Minimum of 14 foot height clearance for the proposed canopy (Array 2).
- Minimum of 8 foot height clearance for the proposed ground mount system (Array 1).

Solar Generating Facility #3 – Well #3

Figure 3 – Well #3



**Inclusions:**

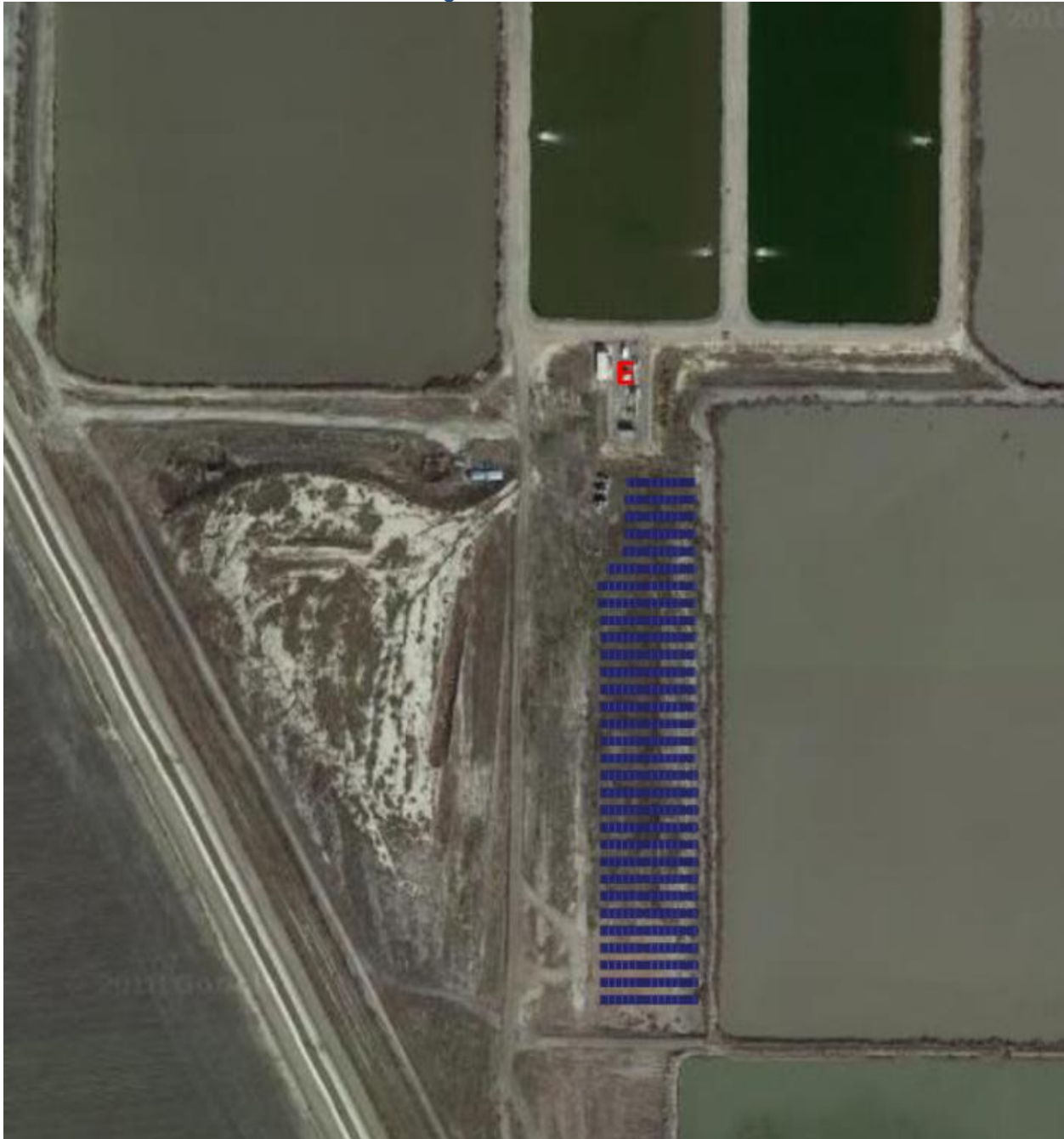
- Permanent perimeter 6' high chain link fencing around the solar PV installation, with (1) 20 feet wide swinging gate for access.

**Exclusions:**

- Ground maintenance in solar PV area after installation (weed abatement).
- FEMA has not mapped this area to determine a specific base flood elevation. ENGIE Services U.S. will need to investigate this further. The clearance height was assumed to be 3 feet. A required clearance of over 3 feet, if required due to the site's determined base flood elevation, is excluded from the cost.

Solar Generating Facility #4 – Sewer Plant

Figure 4 – Sewer Plant



**Inclusions:**

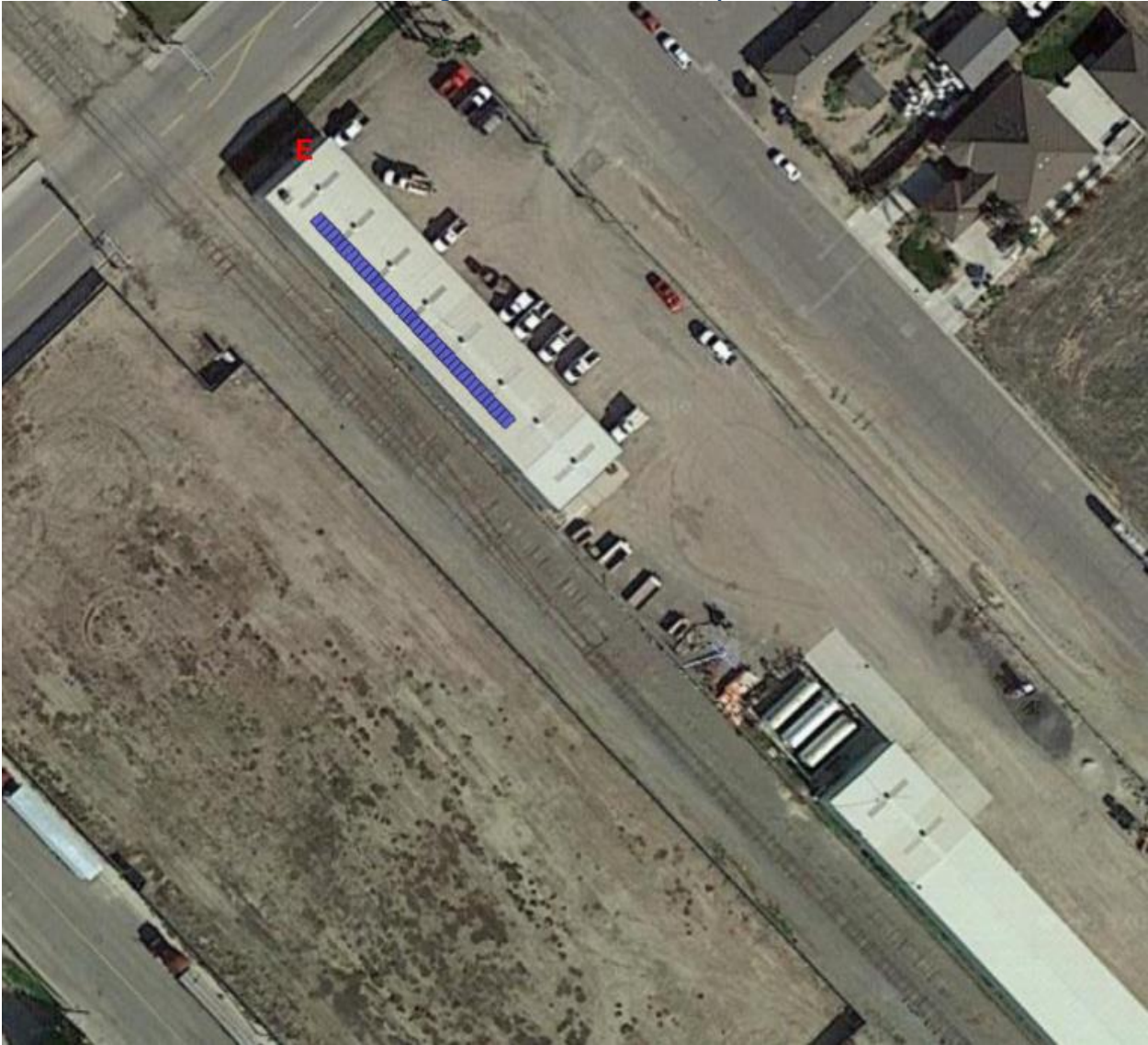
- Permanent perimeter 6' high chain link fencing around the solar PV installation, with (1) 20 feet wide swinging gate for access.

**Exclusions:**

- Ground maintenance in solar PV area after installation (weed abatement).
- FEMA has not mapped this area to determine a specific base flood elevation. ENGIE Services U.S. will need to investigate this further. The clearance height was assumed to be 3 feet. A required clearance of over 3 feet, if required due to the site's determined base flood elevation, is excluded from the cost.

Solar Generating Facility #5 – Public Works Shop

Figure 5 – Public Works Shop



**Exclusions:**

- Structural upgrades to the rooftop, if required.

**COMMUNITY IMPACT**

ENGIE will fund 3 years of a recreation program for the Mendota community through a local non-profit up to Eight Thousand Dollars (\$8,000.00) maximum per year.

**GENERAL PROJECT EXCLUSIONS AND CLARIFICATIONS APPLICABLE TO ALL SCOPES:**

- The City of Mendota will be responsible for paying for inspections and any required Building, Mechanical, and Electrical Permits.
- ENGIE Services U.S. has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.

- Temporary utilities are to be provided by the City of Mendota at no cost to ENGIE Services U.S. (including, without limitation, trailer power, phone lines, and construction power).
- Remediation and/or removal and disposal of Hazardous Substances, including asbestos containing materials, to be by the City of Mendota, unless specifically included in the Scope of Work. If ENGIE Services U.S. encounters material suspected to be hazardous, ENGIE Services U.S. will notify the City of Mendota's representative and stop further work in the area until the material is tested and, if Hazardous Substances, removed by the City of Mendota. CEQA or other environmental studies, if required, will be the responsibility of the City of Mendota.
- Access to areas of construction will be blocked to the public during construction for safety.
- ENGIE Services U.S. will require the assistance of the City of Mendota personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
- No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
- It is assumed that the roof structure can handle the solar PV, so no allowances has been made to upgrade or repair the roof structure if required for solar PV installation at the New Public Works Yard.
- No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.
- No temporary heating or cooling services have been included in the Contract Amount. ENGIE Services U.S. will attempt to phase Construction in such a way as to avoid complete interruptions of service.
- ENGIE Services U.S. standard construction means and methods will be used.
- The City of Mendota will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for ENGIE Services U.S. and ENGIE Services U.S.'s subcontractor vehicles in parking lots at the Facilities.
- Work will be performed during normal work hours; no overtime hours are included in the Contract Amount.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. ENGIE Services U.S. will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, ENGIE Services U.S. will immediately notify a representative of the City of Mendota.
- No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
- Smoke detectors and fire alarm system work is excluded.
- The PV shade structure is not weather tight and will not provide shelter from rain.
- Installing water hose bibs for washing the panels is excluded.
- Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
- Parking lot repairs are excluded, except to the extent of damage caused by ENGIE Services U.S. or its subcontractors.
- Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
- Painting, unless specified herein, is excluded.
- With respect to lighting equipment maintenance and/or lamp and ballast retrofitting, the City of Mendota will properly ground lighting fixtures before ENGIE Services U.S. commences Work in compliance with applicable codes.
- With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, the City of Mendota will provide an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC requirements adopted by the authority having jurisdiction. This Scope of Work includes, if applicable, properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
- Where this Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor must be included in the lighting circuits. The City of Mendota is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the Facility grounding electrode system in compliance with the latest NEC adopted by the authority having jurisdiction.
- With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, ENGIE Services U.S. will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. The City of Mendota

is responsible for providing and maintaining the facility’s electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.

- Depth of piers for canopy and ground mount installations are assumed to be 8 ft. No allowances have been made should soils report indicate that depth of piers should be deeper due to soil quality and/or seismic concerns, or additional seismic concerns requires deeper footings.

**ENGIE Services U.S. Warranty criteria for specific pieces of equipment:**

1. HVAC - MOTORS/VFDs/GENERATORS - The ENGIE Services U.S. Warranty commences immediately upon the occurrence of uninterrupted operation for a duration as necessary, with a maximum of 2 weeks, for ENGIE Services U.S. to determine proper operation. With respect to the Motors/VFDs/Generators, ENGIE Services U.S. will provide written notice to City of Mendota of the date the ENGIE Services U.S. Warranty commences.
2. SOLAR GENERATING FACILITIES - - The ENGIE Services U.S. Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.
  - a. Solar Module Warranty – solar modules will be provided with a 25-year manufacturer production warranty.
  - b. Solar Inverter Warranty – inverters will be provided with a 10-year manufacturer parts and service warranty.

**Substantial & Final Completion Forms per Scope of Work:**

The table below provides the number of substantial and final completion forms that will be used to document beneficial use and final completion of each scope of work.

Scope of Work	Location	Total Quantity of Substantial Completions	Total Quantity of Final Completions
ECM 1 - Integrated Switchgear & VFD	1 Site	1, for entire ECM	1: for entire ECM
ECM 2 - Solar Generating Facilities	5 Sites	5, for entire ECM	5: for entire ECM

**ATTACHMENT D**  
**MONITORING INSTALLATION SCOPE OF WORK**

Overview of DAS Network Installation and Equipment Requirements

ENGIE Services U.S. will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plant.

**ENGIE Services U.S. DAS Monitoring Installation:**

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with Mendota's specifications.
- Test and verify Mendota/Facility network connectivity.
  - a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated Mendota/Facility maintenance staff.

**ATTACHMENT E  
M&V SERVICES**

**EQUIPMENT AND FACILITIES COVERED**

ENGIE Services U.S. will perform measurement and verification services (“M&V Services”) as set forth in this Attachment E with respect to Mendota’s property at the following Project Locations:

Facility	Address
City Hall	643 Quince Street, Mendota, CA 93640
Public Works Yard Shop	912 Marie St, Mendota, CA 93640
Water Plant	1300 2 <sup>nd</sup> St, Mendota, CA 93640
Well #3	Bass Ave across from Sewer Plant, Mendota, CA 93640
Sewer Plant	3699 Bass Ave, Mendota, CA 9340
Well #8	B&B Ranch, Mendota, CA 93640

**I. Definitions:**

Capitalized terms used in this Attachment E and not defined in the Contract, have the meanings set forth below:

“**Accumulated Savings**” means, as of any date of determination, the cumulative total of Excess Savings.

“**Actual Energy Rate**” means, for any Measurement Period, utility rates calculated by ENGIE Services U.S. using actual utility billing information supplied by Mendota for that Measurement Period.

“**Annual M&V Fee**” means a fee payable annually in advance by Mendota to ENGIE Services U.S., in consideration of the provision of up to sixteen (16) years of M&V Services. The Annual M&V Fee for the first Measurement Period will be Eight Thousand Five Hundred Forty-Seven Dollars (\$8,547.00). The Annual M&V Fee will be increased annually thereafter at the rate of three percent (3%) per annum for the first five (5) Measurement Periods, each increase to be effective on the first day of the corresponding Measurement Period. The Annual M&V Fee for each Measurement Period after the fifth (5<sup>th</sup>) Measurement Period will be negotiated in good faith by the Parties, not later than ninety (90) days prior to the end of the preceding Measurement Period, on the basis of then-prevailing market rates for, e.g., labor and equipment.

“**Assessment Work**” means work required to assess the effect on EC Savings for any significant changes to the Facilities (including, but not limited to, building additions, new buildings, and new or changed HVAC equipment).

“**Average Energy Unit Savings**” means, with respect to any number of consecutive Measurement Periods, the arithmetic mean of the Energy Unit Savings for such number of Measurement Periods.

“**Base Energy Rate**” means the dollars per energy unit for each building and/or each ECM, set forth in this Attachment E, Section (III), and used by ENGIE Services U.S. to calculate the EC Savings.

“**Baseline**” means the energy use established by ENGIE Services U.S. from time to time for each building in the Facilities, taking into consideration Energy Use Factors for such buildings.

“**EC Savings**” means the savings in units of dollars (\$) calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Rate Factors**” means factors identified by ENGIE Services U.S. which may affect utility rates from the local utility companies.

“**Energy Savings Report**” is defined in this Attachment E, Section (II)(D).

“**Energy Savings Term**” means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the sixteenth (16<sup>th</sup>) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; (iii) the termination by Mendota of the M&V Services in accordance with this Attachment E, Section (II)(G); or (iv) the failure by Mendota to pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H)(i).

“**Energy Unit Savings**” means the savings in units of energy, power, water, etc., calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.



**“Energy Use Factors”** means factors identified by ENGIE Services U.S. which may affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

**“Energy Use Savings”** means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

**“Excess Savings”** means the excess of EC Savings over Guaranteed Savings, calculated in the manner set forth in this Attachment E, Section (II)(I)(iv).

**“Guarantee Payment”** means, for any Measurement Period, either: (i) a cash payment by ENGIE Services U.S. to Mendota in an amount equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment E, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by Mendota with an agreed value equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment E, Section (II)(A)(iii).

**“Guarantee Shortfall”** means an amount calculated in accordance with this Attachment E, Section (II)(I)(v).

**“Guaranteed Savings”** means, for any Measurement Period, the dollar amount set forth below for such Measurement Period, as the same may be adjusted from time to time by ENGIE Services U.S. for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

Measurement Year	Guaranteed Savings
1	\$295,173
2	\$308,436
3	\$322,296
4	\$336,778
5	\$351,911
6	\$367,725
7	\$384,249
8	\$401,517
9	\$419,560
10	\$438,416
11	\$458,118
12	\$478,707
13	\$500,221
14	\$522,703
15	\$546,196
16	\$570,745

**IPMVP”** means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

**“Projected Energy Savings”** means those Energy Unit Savings, which ENGIE Services U.S. anticipates will be realized from the installation and continued operation of the Work, as set forth in this Attachment E, Section (III).

**“Savings Guarantee”** is defined in this Attachment E, Section (II)(A)(i).

**“Stipulated Non-Energy Savings”** means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in non-energy costs due to the implementation of the Work. Stipulated Non-Energy Savings will be stipulated by the Parties and set forth in this Attachment E, Section (III).

## II. Terms and Conditions

### A. Guaranteed Savings.

- i. Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, ENGIE Services U.S. warrants that Mendota will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the "Savings Guarantee"), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, ENGIE Services U.S. will pay to Mendota, within thirty (30) calendar days after the acceptance by Mendota of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of Mendota, Mendota would benefit from additional energy services or energy saving retrofits, Mendota and ENGIE Services U.S. may mutually agree that ENGIE Services U.S. will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- iv. Excess Savings. For any Measurement Period in which there are Excess Savings, Mendota will repay to ENGIE Services U.S., to the extent of such Excess Savings, any Guarantee Payments previously paid by ENGIE Services U.S. to Mendota and not previously repaid to ENGIE Services U.S. by Mendota, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If ENGIE Services U.S. has provided services or retrofits in lieu of the Guarantee Payment for a prior Measurement Period, such that the Guarantee Payment for such Measurement Period cannot be repaid by Mendota, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.
- v. Excusable Events. If ENGIE Services U.S. is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any Excusable Event, such circumstance will not constitute a default, and ENGIE Services U.S. will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.
- vi. Average Energy Unit Savings. For any Measurement Period beginning with the fifth (5<sup>th</sup>) Measurement Period, upon completion of that Measurement Period's Energy Savings Report, ENGIE Services U.S. has the right to calculate the Average Energy Unit Savings which have occurred over all previous Measurement Periods. The Average Energy Unit Savings will be applied to all subsequent Measurement Periods to determine the Energy Unit Savings for each remaining Measurement Period. After applying such Average Energy Unit Savings for each subsequent Measurement Period and calculating the resulting EC Savings, if the *sum* of (i) such calculated EC Savings for any future Measurement Period *plus* (ii) the Annual M&V Fee for such Measurement Period is greater than the Guaranteed Savings for that Measurement Period, then such excess will be Excess Savings and the Savings Guarantee will have been met for that Measurement Period. If such *sum* of (i) calculated EC Savings for any future Measurement Period *plus* (ii) the Annual M&V Fee for such Measurement Period is less than the Guaranteed Savings for that Measurement Period, then ENGIE Services U.S. will apply Accumulated Savings then outstanding to determine whether there is a Guarantee Shortfall for that Measurement Period. If a Guarantee Shortfall is calculated to exist for a future Measurement Period, ENGIE Services U.S. may, in its sole discretion, pay to Mendota, not later than the ninetieth (90<sup>th</sup>) day of such future Measurement Period, the net present value of the Guarantee Shortfall for any or all of such future Measurement Period(s). Net present value will be determined using a discount rate of ten percent (10%).

### B. Changes in Energy Use Factors.

- i. Adjustments to Baselines. Mendota will notify ENGIE Services U.S. in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by ENGIE Services U.S. during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. ENGIE Services U.S. will determine the effect that any such change will have on EC Savings and present to Mendota a written analysis of the effects of such changes. ENGIE Services U.S. will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.

- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. ENGIE Services U.S. will notify Mendota, in writing, of all such changes.
- iii. Changes to Facilities. Mendota or ENGIE Services U.S. may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Attachment E, Section (II)(B)(iii).
- iv. Baseline Adjustment. If ENGIE Services U.S. proposes changes to the Facilities that would not unreasonably interfere with the conduct of Mendota's business or cause Mendota to incur additional costs, and Mendota does not consent to the changes, then ENGIE Services U.S. will adjust the Baselines upward by the amount of savings projected from the changes.
- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by ENGIE Services U.S.
- vi. Assessment Work. ENGIE Services U.S. has the right to charge Mendota for Assessment Work, which will be billed at current ENGIE Services U.S. engineering rates and will be paid by Mendota within thirty (30) calendar days after receiving ENGIE Services U.S.'s invoice. Before initiating Assessment Work, ENGIE Services U.S. will notify Mendota in writing of the intent and estimated cost associated with the Assessment Work. Mendota will, within forty-five (45) calendar days, give ENGIE Services U.S. written permission to proceed or, alternatively at no charge to ENGIE Services U.S., to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If ENGIE Services U.S. does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as Mendota approves the Assessment Work.
- vii. Changes in Energy Use Factors. If Mendota fails to notify ENGIE Services U.S. of changes in Energy Use Factors or fails to supply ENGIE Services U.S. in a timely manner with information that is requested by ENGIE Services U.S. for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.
- viii. Change Order – Savings Effect. ENGIE Services U.S. will calculate the energy impact of any Change Orders.
- ix. Changes in Savings Calculations. Any changes made by ENGIE Services U.S. to the savings calculations will be presented to Mendota in advance. Mendota will have thirty (30) calendar days to challenge or question the changes in writing.
- x. Inspection of Facilities. Mendota agrees that ENGIE Services U.S. will have the right, with or without prior notice, to inspect the Facilities to determine if Mendota has consistently complied with its obligations as set forth above. If any inspection discloses that Mendota has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.
- xi. Interference. Mendota may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Mendota will promptly notify ENGIE Services U.S. If an unforeseeable overshadowing or shading condition not caused by ENGIE Services U.S. or its subcontractors exists and continues for five (5) Business Days or more, Mendota agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and ENGIE Services U.S. may present Mendota with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. Mendota Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Mendota will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by ENGIE Services U.S. and by the

manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

D. Energy Savings Report. Annually during the first five (5) Measurement Periods of the Energy Savings Term, ENGIE Services U.S. will submit to Mendota an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Savings Report"). ENGIE Services U.S. will use its best efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Mendota will be notified of such a situation within the ninety (90) calendar-day period.

E. On-Site Measurements. Mendota irrevocably grants to ENGIE Services U.S. the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. ENGIE Services U.S. will not exercise such right in a manner that unreasonably interferes with the business of Mendota as conducted at the Facilities as of the date hereof. Mendota will cooperate fully with the exercise of such right by ENGIE Services U.S. pursuant to this Attachment E, Section (II)(E). Mendota will further cooperate with ENGIE Services U.S.'s performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by ENGIE Services U.S.

F. Internet Communication Path. At ENGIE Services U.S.'s request, to facilitate ENGIE Services U.S.'s monitoring of the Work, Mendota will open an internet communication path between Mendota's energy management system(s) and ENGIE Services U.S.'s office in Overland Park, Kansas. Mendota will provide, at Mendota's expense, all networking, telecommunication, encryption, and security hardware and/or software ENGIE Services U.S. deems necessary to achieve such communication path, as well as any similar hardware, software, or encryption devices necessary for use at ENGIE Services U.S.'s office. ENGIE Services U.S. will provide Mendota with the precise locations for network communication ports within Mendota's Facilities. Mendota agrees not to charge ENGIE Services U.S. to install or maintain such communication paths.

G. Termination of Guaranteed Savings. If (i) Mendota notifies ENGIE Services U.S. in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by ENGIE Services U.S. for default by Mendota or by Mendota for any reason permitted by the Contract, (iii) ENGIE Services U.S. is no longer the provider of the Maintenance Services set forth in Attachment F, or (iv) Mendota fails to maintain the Project in accordance with this Attachment E, Section (II)(C), or is in default of any of its other obligations under this Attachment E, the obligation of ENGIE Services U.S. to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a Measurement Period, ENGIE Services U.S. will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Savings Report for such Measurement Period.

H. Annual M&V Fee.

- i. Invoicing and Payment. The Annual M&V Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to Mendota in a lump sum on the M&V Commencement Date. All subsequent Annual M&V Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. Mendota, or its designee, will pay ENGIE Services U.S. such Annual M&V Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless Mendota gives ENGIE Services U.S. prior written notice of its intent to terminate the M&V Services, any failure to timely pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H) will be a material default by Mendota under the Contract, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to perform M&V Services or to make Guarantee Payments.
- ii. Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- iii. Not Refundable. The Annual M&V Fee is not refundable for any reason.

H. Calculations.

- i. Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.
- ii. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to the *sum*, for such Measurement Period, of (i) the Energy Use Savings, *plus* (ii) the Stipulated Non-Energy Savings, in each case as adjusted for changes in Energy Use Factors during such Measurement Period. EC

Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.

- iii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by ENGIE Services U.S. as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.
- iv. Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by ENGIE Services U.S. as the *difference*, to the extent positive, between (i) the EC Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III). For the avoidance of doubt, Excess Savings will not be reduced below zero.
- v. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by ENGIE Services U.S. as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

**III. Methodologies and Calculations**

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

**Table E-1: Measurement and Verification Methods**

ECM	ECM Description	M&V Method	
		Electric Usage	Electric Demand
1	Integrated Switchgear & VFD	Stipulated	N/A
2	Solar Generating Facilities	Option B	N/A

1. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
  - a. ENGIE Services U.S. will supply a one-time report to Mendota detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
  - b. Scope of Work  
No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-2* below and is projected to degrade by 0.5% per year.

**Table E-2: First Year Solar PV Production (ECM-2)**

Location / ECM	Projected Annual Production (kWh)
City Hall	70,352
Water Plant	387,179
Well #3	162,861

Sewer Plant	1,545,029
Public Works Yard Shop	21,867
<b>Total</b>	<b>2,187,288</b>

- c. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.
  - d. Baselines and Projected Savings: EC Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in ongoing reports. During the Construction Period, the EC Savings will be calculated by adding the production measured for the period between Substantial Completion of the ECM and the M&V Commencement Date.
2. Stipulated Savings: When the cost, complexity, or uncertainty of savings measurements are high as compared to the projected savings, Mendota and ENGIE Services U.S. may agree to stipulate the projected Energy Unit Savings as being achieved, without any measurements being taken.
- a. For the Stipulated Option, the Energy Unit Savings presented below will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings projected for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.

**Table E-3: First Year Stipulated Savings**

Location / ECM	Projected Annual Production (kWh)
ECM-1: All Sites	56,474
<b>Total</b>	<b>56,474</b>

3. Base Energy Rates: EC Savings will be calculated using the Base Energy Rates or Actual Energy Rates for that meter, whichever results in greater EC Savings. Actual Energy Rates will be calculated at the end of each Measurement Period using utility billing information for that Measurement Period and using the same methodology as was employed to determine the base energy rate in the Recommendations.

The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by five percent (5%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

**Table E-4: Base Energy Rates**

Location	Electricity Rate (\$/kWh)
ECM-2: City Hall	0.2229
ECM-2: Water Plant	0.1503
ECM-2: Well #3	0.1613
ECM-2: Sewer Plant	0.1166
ECM-2: Public Works Yard Shop	0.2104
ECM-1: All Sites	0.1820

ATTACHMENT F  
MAINTENANCE SERVICES

**EQUIPMENT AND FACILITIES COVERED**

ENGIE Services U.S. will perform preventive maintenance services (“Maintenance Services”) as set forth in this Attachment F with respect to Generating Facilities being constructed on Mendota’s property at the following Project Locations:

Facility	Address
City Hall	643 Quince Street, Mendota, CA 93640
Water Plant	1300 2 <sup>nd</sup> St, Mendota, CA 93640
Sewer Plant	3699 Bass Ave, Mendota, CA 9340
Public Works Yard Shop	912 Marie St, Mendota, CA 93640
Well #3	Bass Ave across from Sewer Plant, Mendota, CA 93640

Capitalized terms used in this Attachment F and not defined in the Contract, have the meanings set forth below:

**I. Definitions**

“Annual Maintenance Fee” means a fee payable annually in advance by Mendota to ENGIE Services U.S., in consideration of the provision of up to sixteen (16) years of Maintenance Services. The Annual Maintenance Fee for the first Measurement Period will be Twenty-Two Thousand Three Hundred Twenty-Eight Dollars (\$22,328.00). The Annual Maintenance Fee will be increased annually thereafter at the rate of three percent (3%) per annum for the first five (5) Measurement Periods, each increase to be effective on the first day of the corresponding Measurement Period. The Annual Maintenance Fee for each Measurement Period after the fifth (5<sup>th</sup>) Measurement Period will be negotiated in good faith by the Parties, not later than ninety (90) days prior to the end of the preceding Measurement Period, on the basis of then-prevailing market rates for, e.g., labor and equipment.

**II. Term**

So long as Mendota pays to ENGIE Services U.S. the Annual Maintenance Fee, ENGIE Services U.S. will provide the Maintenance Services, as described herein, up to sixteen (16) years from the M&V Commencement Date on an annualized basis. At the end of this term, Mendota may:

- a. Enter into another agreement with ENGIE Services U.S. to perform Maintenance Services
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

**III. Annual Maintenance Fee; Reporting**

The Annual Maintenance Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to Mendota in a lump sum on the M&V Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. Mendota, or its designee, will pay ENGIE Services U.S. such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment F will be a material default by Mendota, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, ENGIE Services U.S. will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to Mendota on a quarterly basis.

If ENGIE Services U.S. is no longer the provider of Maintenance Services, Mendota’s new provider will maintain similar service logs. ENGIE Services U.S. will have reasonable access to inspect service logs to determine that adequate Maintenance Services are being performed.

**IV. Preventive Maintenance Services Provided**

ENGIE Services U.S. will provide the following Maintenance Services during the term:

- a. Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.
- b. Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.
- c. Monitoring: Monitor system performance on a daily basis.
- d. Cleaning:
  - i. Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.
  - ii Wash PV modules and remove accumulated dust and debris on an annual basis.

**V. Repair Services**

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, Mendota must contact the ENGIE Services U.S. PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by ENGIE Services U.S. can be repaired or reconstructed by ENGIE Services U.S. at Mendota's request. Mendota must submit a request for quotation to the ENGIE Services U.S. PV Operations & Maintenance Manager. ENGIE Services U.S. will inspect the damage and provide a written quotation and complete scope of work to Mendota to restore the Generating Facility to normal operational condition. Before proceeding with repairs, ENGIE Services U.S. and Mendota must execute a work order, on ENGIE Services U.S.'s form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis.

- Hourly technician labor rate \$150/hr.
- Materials markup 15%

**VI. Warranty Services**

The ENGIE Services U.S. PV Operations & Maintenance Manager will also be Mendota's point of contact for all issues related to the ENGIE Services U.S. Warranty set forth in Section 9.01 of the Contract. Mendota should refer to Section 9.02 of the Contract for services provided by ENGIE Services U.S. to Mendota in relation to manufacturer's warranties. The terms and conditions of the relevant manufacturer's warranties can be found in the operation and maintenance manuals delivered to Mendota at Final Completion.

**VII. Services and Equipment to Be Covered by Mendota**

ENGIE Services U.S.'s obligations under this Attachment F are expressly conditioned upon Mendota's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to ENGIE Services U.S.:

- a. Making the Generating Facilities described herein available to ENGIE Services U.S. as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. Maintaining all landscaping in and around Generating Facilities including tree trimming.
- d. Allowing ENGIE Services U.S. and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
- e. Allowing ENGIE Services U.S. and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for ENGIE Services U.S. to satisfy its obligations under the Contract.
- f. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by ENGIE Services U.S. during the performance of the Maintenance Services which Hazardous Substances were not deposited by ENGIE Services U.S., including any backfill with clean soil as may be reasonably required.
- g. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

ENGIE Services U.S. will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by Mendota's failure to satisfy the conditions set forth in this Attachment F.



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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
A FACILITY FUNDING CONTRACT WITH  
SIGNATURE PUBLIC FUNDING  
CORPORATION**

**RESOLUTION NO. 19-10**

**WHEREAS**, California Government Code Section 4217.10 *et seq.* authorizes the City Council to enter into a facility financing contract for the funding of energy related improvements if the Council finds that it is in the best interest of City of Mendota (“City”) to enter into such facility financing contract and that the anticipated funds for the repayment of the financing or the cost of design, construction, and operation of the energy conservation facility, or both, as required by the contract, are projected to be available from the revenues resulting from the sales of electricity or thermal energy from the facility or from the funding that would otherwise would have been used for the purchase of electrical, thermal, or other energy required by the City in the absence of the energy conservation facility, or both; and

**WHEREAS**, staff has reviewed a proposal from Engie Services U.S., Inc. (“Engie”) for the implementation of certain energy-related improvements to City facilities (“Project”) and concluded that it is in the best interests of the City to enter into a facility financing contract for the Project; and

**WHEREAS**, staff has received a lease agreement and associated documents, attached hereto as Exhibit “A” and incorporated herein by this reference, from Signature Public Funding Corporation (“SPFC”) to finance the Project (“Lease Agreement”);

**WHEREAS**, staff has reviewed the Lease Agreement and all associated documents and concluded that it is in the best interests of the City to execute the Lease Agreement to finance the Project;

**WHEREAS**, staff has concluded that the funds for the repayment of the financing or the cost of design, construction, and operation of the energy conservation facility, or both, as required by the contract, will be available from the revenues resulting from the sales of electricity or thermal energy from the facility or from the funding that would otherwise would have been used for the purchase of electrical, thermal, or other energy required by the City in the absence of the energy conservation facility, or both.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Mendota that in accordance with Government Code § 4217.10 *et seq.*, the City Council hereby finds:

1. It is in the best interest of the City to enter into the Lease Agreement with SPFC for the purpose of financing the Project; and
2. The funds for the repayment of the financing or the cost of design, construction, and operation of the energy conservation facility, or both, as required by the contract, will be available from the revenues resulting from the sales of electricity or thermal energy from the facility or from the funding that would otherwise would have been used for the purchase of electrical, thermal, or other energy required by the City in the absence of the energy conservation facility, or both; and
3. The improvements contemplated for the Project are exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, section 15301, because they constitute a minor alteration of existing public facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The improvements are also exempt from CEQA because they fall within the so-called “common sense” exemption pursuant to CEQA Guidelines, section 15061(b)(3), which indicates that CEQA only applies to projects that have a “significant effect on the environment” as defined in Public Resources Code section 21068 and in CEQA Guidelines, section 15382, as being a substantial, or potentially substantial, adverse change in the environment. Additionally, the improvements are categorically exempt from CEQA as an action taken to maintain natural resources pursuant to CEQA Guidelines, section 15307, and as an action taken to protect the environment pursuant to CEQA Guidelines, section 15308.

***BE IT FURTHER RESOLVED***, by the City Council of the City of Mendota that the City Manager is authorized to execute the Lease Agreement and all documentation necessary in the substantial form presented as Exhibit “A,” subject to such reasonable modifications, revisions, additions and deletions as he may approve prior to execution, said execution to provide conclusive evidence of such approval.

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Robert Silva, 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 12<sup>th</sup> day of February, 2019, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

Matt Flood, City Clerk

## Exhibit A

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**INDEX TO LEGAL DOCUMENTS**  
**NON-BANK-QUALIFIED, APPROPRIATION-BASED**  
**TAX-EXEMPT EQUIPMENT LEASE-PURCHASE AGREEMENT**

**DATED [MONTH] [ ]], 2019 BY AND BETWEEN**  
**SIGNATURE PUBLIC FUNDING CORP.**  
**And**  
**THE [LESSEE]**

---

Lease Documents:

- |         |  |
|---------|--|
| Tab 1:  | Equipment Lease-Purchase Agreement;  |
| Tab 2:  | Exhibit A - Equipment Schedule;  |
| Tab 3:  | Exhibit B – Reserved;  |
| Tab 4:  | Exhibit C-1 – Insurance Coverage Request;  |
| Tab 5:  | Exhibit C-2 – Self-Insurance Rider (if applicable);                                  |
| Tab 6:  | Exhibit D - Essential Use Certificate;   |
| Tab 7:  | Exhibit E - Incumbency Certificate;  |
| Tab 8:  | Exhibit F - Opinion of Lessee’s Counsel;   |
| Tab 9:  | Exhibit G – Bank Qualified Designation/Reserved;                                     |
| Tab 10: | Exhibit H - Post Issuance Tax Compliance Procedures;                                 |
| Tab 11: | Exhibit I- Escrow Agreement/Reserved;  |
| Tab 12: | Resolution of Lessee;  |
| Tab 13: | UCC-1 Financing Statement with attached Schedule A (prepared and filed by Investor); |
| Tab 14: | Form 8038-G;   |
| Tab 15: | Closing Memorandum/Payment Proceeds Direction; and                                   |
| Tab 16: | Vendor Contract & Warranty   |
- 

A stylized, cursive signature logo in a brownish-gold color.

**SIGNATURE  
PUBLIC FUNDING**

# EQUIPMENT LEASE-PURCHASE AGREEMENT

1. **Agreement.** Subject to the terms and conditions contained in this Equipment Lease-Purchase Agreement dated [Month] [\_\_\_\_], 2019 (together with all Exhibits attached hereto and certificates delivered herewith, the "Lease Agreement"), SIGNATURE PUBLIC FUNDING CORP., as lessor ("Lessor"), whose mailing address is 600 Washington Avenue, Suite 305, Towson, MD 21204, hereby purchases from and agrees to sell, transfer and lease back to the [LESSEE], as lessee ("Lessee"), whose mailing address is [Lessee Address 1], [CITY], CA [ZIP], and Lessee hereby sells to and agrees to acquire, purchase and lease back from Lessor, the items of personal property (together with any replacement parts, additions, substitutions, repairs or accessories now or hereafter incorporated in or affixed to it, hereinafter referred to collectively as the "Equipment") described in Exhibit A attached hereto.

2. **Term.** The term of this Lease Agreement (the "Lease Term") begins as of the Commencement Date stated in Exhibit A and shall continue so long as any amounts remain unpaid hereunder. The Lease Term will terminate upon the first to occur of: (a) the exercise by Lessee of the option to purchase the Equipment pursuant to Paragraph 10, (b) Lessor's election to terminate this Lease Agreement pursuant to Paragraph 16, (c) Lessee's option to terminate this Lease Agreement pursuant to the second paragraph of Section 3, and (d) the payment by Lessee of all sums required to be paid by Lessee hereunder.

2.5. **Funding and Acquisition of the Equipment.** On the Commencement Date, Lessor shall pay: (a) \$[\_\_\_\_\_] to the Vendor pursuant to the Vendor Agreement for the acquisition of the Equipment; (b) \$[\_\_\_\_\_] as a reimbursement to the Lessee following proof of payment to the Vendor; and (c) \$[\_\_\_\_\_] for the payment of issuance costs, which shall be disbursed as provided for in the Closing Memorandum of even date herewith.

**Escrow Agreement.** On the Commencement Date, Lessor and Lessee shall enter into an [Escrow and Escrow Deposit Agreement] (the "Escrow Agreement") dated the Commencement Date, between Lessor, Lessee, and Signature Bank, as escrow agent, relating to the escrow fund ("Escrow Fund") created thereunder. On the Commencement Date, Lessor shall deposit: \$[\_\_\_\_\_] into the Escrow Fund to be held in escrow and applied upon the express terms and conditions of the Escrow Agreement. The monies and investments held in the Escrow Fund shall be used only for the acquisition of the Equipment (\$\_\_\_\_\_.00) and for the payment of issuance costs (\$\_\_\_\_\_.00), which shall be disbursed as provided for in the Closing Memorandum of even date herewith.

3. **Rental Payments.** Lessee agrees to pay the rental payments hereunder for the Lease Term in the amounts and on the dates identified in Exhibit A. Payment of all rental payments and other amounts payable hereunder shall be made to Lessor at its above-stated address or as it shall otherwise designate in writing. As set forth in Exhibit A, a portion of each rental payment is paid as, and represents payment of, interest, and the balance of each rental payment is paid as, and represents payment of, principal.

Notwithstanding any provision to the contrary in this Lease Agreement, Lessee may terminate this Lease Agreement at the end of any fiscal year of Lessee as identified in Exhibit A (a "Fiscal Year") if sufficient funds are not appropriated by Lessee's Governing Body to pay rental payments and other amounts due hereunder during the next succeeding Fiscal Year (an "Event of Nonappropriation"). Lessee hereby agrees to notify Lessor at least 30 days prior to the last day of its then current Fiscal Year of the occurrence of an Event of Nonappropriation or, if nonappropriation has not occurred by that date, promptly upon the occurrence of an Event of Nonappropriation.

Lessee represents and warrants that: (a) it has made sufficient appropriations or has other legally available funds to pay all rental payments hereunder due (if any) during the current Fiscal Year hereunder ending on [Fiscal Year End]; (b) the officer of Lessee responsible for budget preparation will do all things lawfully within his/her power to request, budget for and obtain appropriated funds for the payment of

rental payments and other amounts required to be paid hereunder in each next succeeding Fiscal Year for the Lease Term with the understanding that any such appropriation is within the sole discretion of the Lessee's Governing Body; and (c) Lessee acknowledges that Lessor has relied upon these representations as an inducement to enter into this Lease Agreement. If an Event of Nonappropriation hereunder shall occur, Lessee agrees to comply with the provisions of Section 16(c) and (d), if and as applicable, on or before the effective date of termination.

Lessee's obligation to pay rental payments and any additional amounts payable hereunder constitutes a current obligation payable exclusively from legally available funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement.

4. **Essentiality.** Subject to Paragraph 3 of this Lease Agreement, Lessee's present intention is to make rental payments for the Lease Term as long as it has sufficient appropriations or, if any/applicable, other legally available funds. Lessee represents that, with respect hereto, (a) the use and operation of the Equipment is essential to its proper, efficient, and economic governmental operation and (b) the functions performed by the Equipment could not be transferred to other equipment available for its use. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last rental payment scheduled to be paid hereunder. On the Commencement Date, Lessee shall complete and provide Lessor a certificate in the form of Exhibit D.

5. **Disclaimer of Warranties.** **LESSEE REPRESENTS THAT IT HAS SELECTED THE EQUIPMENT PRIOR TO HAVING REQUESTED LESSOR TO FINANCE THE SAME. LESSEE AGREES THAT LESSOR HAS NOT MADE ANY, AND MAKES NO, REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING (WITHOUT LIMITATION) THE SUITABILITY OF THE EQUIPMENT, ITS DURABILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, ITS MERCHANTABILITY, ITS CONDITION, ITS CAPACITY, ITS OPERATION, ITS PERFORMANCE, ITS DESIGN, ITS MATERIALS, ITS WORKMANSHIP AND/OR ITS QUALITY. AS BETWEEN LESSEE AND LESSOR, LESSEE LEASES, PURCHASES AND ACQUIRES THE EQUIPMENT "AS IS" "WHERE IS" AND "WITH ALL FAULTS."** Lessor hereby assigns to Lessee, to the extent that it may lawfully do so, so long as no Event of Default and no Event of Nonappropriation shall have occurred and be continuing hereunder, all rights and benefits that Lessor may have under any warranty, guaranty or the like that may be made with respect to the Equipment by the Vendor thereof (as such term is defined in Exhibit A hereto). Lessor shall not be liable to Lessee or any third party for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by any of the Equipment or the use or maintenance thereof or any defect therein, the failure of operation thereof or by any interruption of service or loss of use thereof or for any loss of business or damage whatsoever and howsoever caused. Lessor makes no warranty as to the treatment of this Lease Agreement for tax or accounting purposes or as to the compliance of the Equipment with applicable government regulations or requirements. Lessee agrees to look solely to the Vendor for any claim arising from any defect, breach of warranty, failure or delay in delivery, mis-delivery or inability to use the Equipment for any reason whatsoever and Lessee's obligations to Lessor hereunder shall not in any manner be affected thereby, including (without limitation) Lessee's obligations to pay Lessor all rental payments and other amounts payable hereunder. Lessee has selected both the Equipment and the Vendor and acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or the Vendor. Lessor has no obligation to install, erect, test, adjust, service or maintain the Equipment.

6. **Delivery and Acceptance; Quiet Enjoyment.** Lessee shall accept the Equipment for which disbursement is requested from the Escrow Fund upon its delivery and authorizes Lessor to insert on Exhibit A the serial numbers and any additional description of the items of Equipment so delivered. As evidence of that acceptance, Lessee shall execute and deliver to Lessor a Certificate of Acceptance in the

form attached as Exhibit A to the Escrow Agreement. Regardless of whether Lessee has furnished a Certificate of Acceptance pursuant to this Paragraph 6, by making a rental payment after its receipt of the Equipment, Lessee shall be deemed to have accepted the Equipment on the date of such rental payment for purposes hereof. During the Lease Term, Lessee shall be entitled to quiet enjoyment of the Equipment, subject to the terms of this Lease Agreement.

**7. Use of Equipment; Maintenance and Repairs.** Lessee shall keep the Equipment within the State at the "Equipment Location" stated in Exhibit A and Lessee shall not remove any of the Equipment therefrom (except as within the Equipment's normal and contemplated use) without Lessor's prior written consent. Lessee shall use the Equipment in a careful manner and shall at all times, at its sole expense, keep the Equipment in good operating condition, repair and appearance and comply with all laws, ordinances, regulations or requirements of any governmental authority, official, board or department relating to its installation, possession, use or maintenance. Lessee shall not make any alterations, additions, or improvements to the Equipment that are not readily removable without causing damage to or reducing the value of the Equipment. All alterations, additions, or improvements not readily removable shall become property of Lessor.

**8. Security Interest; Title to Equipment. (a)** With respect to all Equipment financed hereunder: To secure the performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor, and Lessor shall have and retain, a security interest constituting a first priority and perfected lien and security interest on the Equipment delivered hereunder and on any attachments, proceeds, warranty rights or other payments from the Vendor, and other amounts related thereto. As further security therefor, Lessee hereby grants to Lessor a first priority security interest in the cash and negotiable instruments from time to time in the Escrow Fund and all proceeds (cash and non-cash) thereof. Lessee agrees to execute, provide and/or deliver such additional documents and such information (including, without limitation, opinions of counsel, financing statements, landlord-tenant or mortgagee waivers, information necessary for fixture filings), notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its first priority and perfected security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. To the extent possible, Lessee further agrees that Lessor shall have all the rights and remedies of a secured party under the applicable Uniform Commercial Code. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. Lessor shall have the right during normal hours, upon reasonable prior notice to Lessee, to enter upon any premises owned by the Lessee and where the Equipment is located in order to inspect the Equipment and/or any books or records related thereto.

**(b)** Solely with respect to Equipment that is not comprised of vehicles and during the Lease Term, ownership and legal title of all of the Equipment and all substitutions, repairs, modifications, and replacements shall be in Lessee, and Lessee shall take all necessary action to vest such ownership and title in Lessee. Lessor does not own the Equipment, and, by this Lease Agreement, Lessor is merely financing the acquisition of the Equipment for the Lessee. Lessor has not been in the chain of title, does not operate, control or have possession or control over the Equipment, or Lessee's use, maintenance, operation, storage, or maintenance of the Equipment. Lessee is entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder (including its interest in the Equipment as the lessor hereunder). If Lessor terminates this Lease Agreement pursuant to Paragraph 16(a) hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee and Lessor shall be entitled to all applicable remedies set forth in Section 16(b) and (c) hereunder. Lessee, at its expense, will protect and defend Lessee's rights in the Equipment and Lessor's rights and interests therein and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons.

(c) Solely with respect to Equipment consisting of vehicles, the provisions of this Section 8(c) shall apply: Lessee agrees to either cause the original registration of Lessor or its assignee as legal owner of the Equipment or endorse the certificate of ownership showing Lessor or its assignee as legal owner (as required by Section 6301 of the California Vehicle Code). Lessee agrees to execute and deliver such additional documents, including, without limitation, opinions of counsel, MSOs/Certificates of Origin, Title Applications, notices and similar instruments, in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of Lessor's rights hereunder. During the Lease Term, Lessee shall be the owner (as defined in Section 460 of the California Vehicle Code) of the Equipment entitled to use and possession of the Equipment, subject to the rights of Lessor hereunder, which is the legal owner (as defined in Section 370 of the California Vehicle Code) of the Equipment. If Lessor terminates this Lease pursuant to Paragraph 16 hereof or an Event of Nonappropriation occurs hereunder, all rights, title, and interests in the Equipment shall immediately vest in Lessor free and clear of any right, title or interest of Lessee and Lessor shall be entitled to all applicable remedies set forth in Section 16(b) and (c) hereunder.

(d) Solely with respect to Equipment consisting of software, programming or other materials subject to licensure, Lessor will not have the right to repossess, use and/or re-sell or re-let that portion of the Equipment consisting of licensed software or programming that the repossession, use and/or re-sale or re-leasing of which is expressly prohibited by law or applicable licensing agreement. In lieu of the foregoing, Lessee agrees to purge any software and programming from its operating systems and destroy any hard or electronic copies of such software and programming. Upon Lessor's request, Lessee will provide Lessor with reasonable certifications as to the foregoing.

**9. Personal Property.** The Equipment shall be and remain personal property notwithstanding the manner in which it may be attached or affixed to realty. Lessee covenants that, unless Lessee owns the premises in which the Equipment is to be located and such premises are not subject to any mortgage or lease. At Lessor's request, Lessee shall provide Lessor with a waiver from each landlord and/or mortgagee of the premises in which the Equipment is to be located of any rights that such landlord and/or mortgagee may have in respect of any of the Equipment. Lessee will also provide any information as may be reasonably requested by Lessor with respect to any fixture filings that Lessor may deem necessary.

**10. Purchase of Equipment by Lessee; Prepayment.** At the option of Lessee, and provided that no Event of Default has occurred and is continuing hereunder, Lessor's interest in all, but not less than all, of the Equipment will be transferred, conveyed and assigned to Lessee, and this Lease Agreement shall terminate: (a) upon payment in full of the rental payments and all other payments then due hereunder or (b) on any rental payment date hereunder, provided Lessee shall have delivered written notice at least 30 days prior to such date of Lessee's intention to purchase the Equipment pursuant to this provision, by paying to Lessor, in addition to the rental payment due and all other amounts due and owing on such date, an amount equal to the concluding payment (the "Concluding Payment") shown for such rental payment date in the rental payment schedule in Exhibit A.

**11. Risk of Loss.** Lessee shall bear the entire risk of loss, theft, destruction of or damage to the Equipment or any part thereof from any cause whatsoever during the Lease Term and thereafter until redelivery to a location designated by Lessor, and shall not be relieved of the obligation to pay rental payments or any other obligation hereunder because of any such occurrence. If (a) the Equipment or any portion thereof hereunder is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof hereunder is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the net proceeds of any insurance claim (including self-insurance) or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of the then applicable Concluding Payment. Any balance



of net proceeds remaining after completion of such work or payment of such Concluding Payment shall be paid promptly to Lessee. If the net proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Concluding Payment in full, Lessee shall, at Lessor's direction, either complete the work or pay the then applicable Concluding Payment in full and in either case pay any cost in excess of the amount of net proceeds, but only from legally available funds.

12. **Insurance.** (a) Insurance Policies. If Lessee is not self-insured (as hereafter provided), Lessee shall, at its expense, keep the Equipment fully insured against loss, fire, theft, damage or destruction from any cause whatsoever in an amount not less than the greater of (a) the amount of the then applicable Concluding Payment, or (b) the full replacement cost of the Equipment without consideration for depreciation. Lessee shall also provide such additional insurance against injury, loss or damage to persons or property arising out of the use or operation of the Equipment as is customarily maintained by the owners of like property, with companies satisfactory to Lessor. Each policy shall provide that, as to the interest or coverage of Lessor or Lessor's assignee, the insurance afforded thereby shall not be suspended, forfeited or in any manner prejudiced by any default or by any breach of warranty, condition or covenant on the part of Lessee. If Lessee shall fail to provide any such insurance required hereunder or, within ten (10) days after Lessor's request therefor, shall fail to deliver the policies or certificates thereof to Lessor, then Lessor, at its option, shall have the right to procure such insurance and to add the full cost thereof to the rental payment next becoming due, which Lessee agrees to pay as additional rent. All such insurance shall be in form, issued by such insurance companies and be in such amounts as shall be satisfactory to Lessor, and shall provide that losses, if any, shall be payable to Lessor as "loss payee," and all such liability insurance shall include Lessor as an "additional insured." Lessee shall pay the premiums for such insurance and deliver to Lessor a certification in the form of Exhibit C-1 and satisfactory evidence of the insurance coverage required hereunder. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payments of and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy.

(b) Self-Insurance. If Lessee is self-insured with respect to equipment such as the Equipment under an actuarially sound self-insurance program that is acceptable to and approved by Lessor, Lessee shall maintain during the Lease Term such actuarially sound self-insurance program and shall provide Lessor a certification in the form of Exhibit C-2 together with evidence of the self-insurance program in form and substance satisfactory to Lessor.

13. **Fees; Taxes and Other Governmental Charges; Liens.** Lessee covenants and agrees at all times to keep the Equipment free and clear of all levies, liens (other than those created hereunder) and encumbrances, and to pay all charges, taxes and fees (including any recording or stamp fees or taxes) that may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment and shall give Lessor immediate written notice of any of the foregoing. If any of same shall remain unpaid when due, Lessor may pay same and add such payment to the rental payment next becoming due, as additional rent. Lessee shall execute and deliver to Lessor upon Lessor's request such further instruments and documents containing such other assurances as Lessor deems necessary or advisable for the confirmation or perfection of Lessor's rights hereunder or to otherwise effectuate the intent of this Lease Agreement.

14. **Release.** To the extent not prohibited by law, Lessee shall release, defend and save Lessor, its officers, employees, agents, servants, successors and assigns, harmless from any and all liabilities (including, without limitation, negligence, tort and strict liability), damages, expenses, claims, actions, proceedings, judgments, settlements, losses, liens and obligations, including (without limitation) attorneys' fees and costs ("Claims"), arising out of the ordering, purchase, delivery, rejection, non-delivery, ownership, selection, possession, operation, control, use, condition, maintenance, transportation, storage, repair, return or other disposition of the Equipment, any claims arising under federal, state or local environmental protection and hazardous substance clean up laws and regulations and any claims of patent,

trademark or copyright infringement or, if Lessee shall be in default hereunder, arising out of the condition of any item of Equipment sold or disposed of after use by Lessee, including (without limitation) claims for injury to or death of persons and for damage to property. The indemnities, assumption of liabilities and obligations herein provided shall be payable solely from funds legally available for such purpose and shall continue in full force and effect notwithstanding the expiration, termination or cancellation of this Lease Agreement for any reason whatsoever. However, Lessee shall not be obligated to indemnify Lessor from Claims arising from the actual, proven, direct and proximate gross negligence or willful misconduct of Lessor, nor shall Lessee be required to expend any sums that are not properly appropriated or otherwise legally available.

**15. Assignment; Subleasing.** LESSEE SHALL NOT ASSIGN, PLEDGE, MORTGAGE, SUBLET OR OTHERWISE TRANSFER OR ENCUMBER ANY OF ITS RIGHTS UNDER THIS LEASE AGREEMENT OR IN THE EQUIPMENT OR ANY PART THEREOF, NOR PERMIT ITS USE BY ANYONE OTHER THAN LESSEE AND ITS REGULAR EMPLOYEES, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT. ANY SUCH PURPORTED TRANSFER, ASSIGNMENT OR OTHER ACTION WITHOUT LESSOR'S PRIOR WRITTEN CONSENT SHALL BE VOID.

Lessor may, at any time and from time to time, assign, transfer or otherwise convey all or any part of its interest in the Equipment and this Lease Agreement, including, but not limited to, Lessor's rights to receive the rental payments hereunder or any part thereof (in which event Lessee agrees to make all rental payments thereafter to the assignee designated by Lessor) without the necessity of obtaining Lessee's consent, *provided, however*, Lessor will deliver to Lessee prior written notice of an assignment. No such assignment, transfer or conveyance shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee. During the term of this Lease Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect hereto in form necessary to comply with Section 149 of the Internal Revenue Code of 1986, as amended (the "Code"). Lessee agrees (unless otherwise stated), if so requested, to acknowledge any such assignment in writing within 15 days after request therefor in the form attached as Exhibit B hereto. Lessee further agrees that any moneys or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

**16. Events of Default; Remedies.** (a) Each of the following events constitutes an "Event of Default" hereunder: (i) Lessee fails to pay in full the rental payment due hereunder on any date upon which such rental payment is due; (ii) Lessee fails to comply with any other agreement or covenant of Lessee hereunder for a period of 30 days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied; (iii) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property; (iv) any warranty, representation or statement made in writing by or on behalf of Lessee in connection herewith is found to be incorrect or misleading in any material respect on the date made; (v) actual or attempted sale, lease or encumbrance of any of the Equipment or the making of any levy, seizure or attachment thereof or thereon; or (iv) Lessee defaults in its obligations under any other agreement for borrowing money, lease financing of property, or otherwise receiving credit and the obligee thereunder (or trustee on its behalf) is permitted to exercise any remedies under the agreement.

(b) Immediately upon the occurrence of an Event of Default hereunder: (i) Lessor may demand payment of the Concluding Payment, together with all rental payments and other amounts that may have been appropriated through the end of the then current Fiscal Year and terminate this Lease Agreement or Lessee's rights hereunder; and (ii) Upon return (if applicable as per Section 16(c) hereunder), if the Equipment is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee, Lessee agrees, at its option, to (x) repair and restore the Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) or (y) pay to

Lessor the reasonable costs of such repair and restoration, or (z) pay for the transfer of any and all licenses, rights, or interest in any software or programming, to the extent the foregoing may be assigned.

(c) Following any Event of Default or Event of Nonappropriation hereunder, Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct; provided, however, that Lessor will use reasonable efforts to require return to the closest point nearest the Lessor's then current location. If the Equipment is unable to be returned, Lessee has not delivered the Equipment as requested, or following Lessor's election in lieu of taking possession of the Equipment, either: (a) Lessee will permit Lessor or its agents to enter the premises where the Equipment is then located and take such Equipment and exercise all legally permitted rights of repossession, or (b) Lessee will agree to refrain from using such Equipment and purge any and all software, programming, operating systems, manuals, other information (hard or electronic copy) and/or destroy any hard or electronic copies of such software and programming which may constitute the Equipment. Upon Lessor's request, Lessee will provide Lessor with reasonable certifications as to the foregoing. In the event that any such Equipment is returned to the Lessor, Lessee shall execute and deliver such documents as may reasonably be required to restore title to and possession of the Equipment to Lessor, free and clear of all liens and security interests arising by, through or under the Lessee to which the Equipment may have become subject. If Lessor is able to (i) recover any Equipment, (ii) sell or otherwise liquidate the Equipment (or any portion thereof) following an Event of Default or an Event of Nonappropriation, and (iii) realize net proceeds (after payment of costs) in excess of total rental payments that would have been paid during the Lease Term plus any other amounts then due hereunder, Lessor shall immediately pay the amount of any such excess to Lessee.

(d) If Lessor terminates this Lease Agreement under this Paragraph 16 or an Event of Nonappropriation occurs hereunder and in either case Lessee continues to use the Equipment or if Lessee otherwise refuses to pay rental payments hereunder due during a Fiscal Year for which Lessee's governing body has appropriated sufficient legally available funds to pay such rental payments due hereunder, Lessor (i) may declare the rental payments due and owing for the Fiscal Year for which such appropriations have been made to be immediately due and payable, (ii) shall be entitled to bring such action at law or in equity to recover money and other damages attributable to such holdover period for the Equipment, and (iii) will be entitled to recover interest on all such amounts at the Default Rate.

(e) Lessor shall also be entitled to exercise any or all remedies available to a secured party under the applicable Uniform Commercial Code and all other rights and remedies that Lessor may have at law or in equity. All rights and remedies of Lessor shall be cumulative and not alternative. Lessor's failure to exercise or delay in exercising any right or remedy shall not be construed as a waiver thereof, nor shall a waiver on one occasion be construed to bar the exercise of any right or remedy on a future occasion. Lessee agrees to reimburse Lessor for any expenses (including attorney's fees) reasonably incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor, but only from legally available funds.

**17. Late Payments.** Whenever any rental payment or other amount payable to Lessor by Lessee hereunder is not paid within ten (10) days after such due date, Lessee agrees to pay Lessor a late charge on the delinquent amount at the "Default Rate," which is one percent (1%) per month, or the maximum amount permitted under applicable law, whichever is less. Such amount(s) shall be payable solely from legally available funds in addition to all amounts payable by Lessee as a result of the exercise of any of the remedies herein provided.

**18. Rental Payments to Be Unconditional.** Except as expressly set forth to the contrary in this Lease Agreement (including Paragraph 3), Lessee agrees that as of the Commencement Date, Lessee's obligations hereunder are absolute and unconditional and shall continue without set-off, deduction, counterclaim, abatement, recoupment, or reduction and regardless of any disability of Lessee to use the

Equipment or any part thereof because of any reason including, but not limited to, war, act of God, governmental regulations, strike, loss, damage, destruction, obsolescence, failure of or delay in delivery or failure of the Equipment to operate properly.

19. **Tax Covenants.** Lessee agrees that it will not take any action that would cause the interest component of rental payments hereunder to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action which omission would cause the interest component of rental payments hereunder to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to (a) execute and deliver to Lessor, upon Lessor's request, a tax certificate and agreement (the terms and conditions of which are incorporated fully by reference herein) in form and content acceptable to Lessor and Lessee, relating to the establishment and maintenance of the excludability from gross income of the interest component of rental payments hereunder for federal income tax purposes; (b) complete and file in a timely manner an information reporting return as required by the Code; and (c) rebate an amount equal to excess earnings on the Escrow Fund to the federal government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code.

Lessee represents that neither Lessee nor any agency or unit of Lessee has on hand any property, including cash and securities, that is legally required or otherwise restricted (no matter where held or the source thereof) to be used directly or indirectly to purchase the Equipment. Lessee has not and will not establish any funds or accounts (no matter where held or the source thereof) the use of which is legally required or otherwise restricted to pay directly or indirectly rental payments hereunder. Lessor and Lessee certify that, so long as any rental payments hereunder remain unpaid, moneys on deposit in the Escrow Fund will not be used in a manner that will cause this Lease Agreement to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code.

Should Lessor either (i) receive notice, in any form, from the Internal Revenue Service or (ii) reasonably determine, based on an opinion of a nationally recognized independent tax counsel, that Lessor may not exclude, for any reason, any interest (or portion thereof) paid under the Lease Agreement from its Federal gross income (an "Event of Taxability"), the Lessee shall pay to Lessor upon demand (x) an amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Lessor its anticipated after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of Rental Payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Lease through the date of such event and (y) as additional Rental Payments to Lessor on each succeeding Payment Date such amount as will maintain such anticipated after-tax yield to Lessor.

It is Lessor's and Lessee's intention that this Lease Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment hereunder for federal income tax purposes.

20. **Lessee Representations and Warranties.** Lessee hereby represents and warrants to and agrees with Lessor that:

(a) Lessee is a political subdivision of the State of California, within the meaning of Section 103(c) of the Code, and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such.

(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Lease Agreement and the Escrow Agreement and has been duly authorized to execute and deliver this Lease Agreement and the Escrow Agreement and to carry out its obligations hereunder and

thereunder. Lessee has provided to Lessor a full, true and correct copy of a resolution or other appropriate official action of Lessee's governing body specifically authorizing Lessee to execute and deliver this Lease Agreement and the Escrow Agreement and all documents contemplated hereby and thereby. Lessee has provided to Lessor a full, true, and correct copy of an Incumbency Certificate in substantially the form attached as Exhibit F hereto relating to the authority of the officers who have executed and delivered this Lease Agreement and who will execute and deliver this Lease Agreement and the Escrow Agreement and all documents in connection herewith and therewith on behalf of Lessee.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Lease Agreement and the Escrow Agreement, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Lease Agreement and the Escrow Agreement.

(d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Lease Agreement and the Escrow Agreement, or performing any of its obligations hereunder or thereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Lease Agreement or the Escrow Agreement, or any other agreement or instrument to which Lessee is a party and that is used or contemplated for use in the consummation of the transactions contemplated by this Lease Agreement or the Escrow Agreement. All authorizations, consents, and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Lease Agreement and the Escrow Agreement or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained.

(f) The payment of the rental payments or any portion thereof hereunder is not (under the terms of this Lease Agreement) directly or indirectly (i) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (ii) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local government unit. No portion of the purchase price for the Equipment will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(g) The entering into and performance of this Lease Agreement will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of Lessee or on the Equipment pursuant to an indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(h) Lessee's name as indicated on the first page of this Lease Agreement is its true, correct, and complete legal name.

(i) The useful life of the Equipment will not be less than the Lease Term hereof.

(j) Lessee has entered into this Lease Agreement for the purpose of purchasing, acquiring, and leasing the Equipment and not for the purpose of refinancing any outstanding obligation of Lessee more than 90 days in advance of its payment or prepayment date. The purchase price for the Equipment

has been or will be paid directly by Lessor to the Escrow Agent, and no portion of the purchase price for the Equipment has been or will be paid to Lessee as reimbursement for any expenditure paid by Lessee more than 60 days prior to the execution and delivery hereof, unless a proper reimbursement resolution has been passed and the Lessee has complied with all reimbursement requirements under the Code, including, without limitation, Treasury Reg. 1:150.

(k) The application, statements, and credit or financial information submitted by Lessee to Lessor are true and correct and made to induce Lessor to enter into this Lease Agreement.

(l) During the Lease Term of this Lease Agreement, Lessee shall (i) provide Lessor, at or prior to the end of each Fiscal Year (commencing with the current Fiscal Year), with current budgets or other proof of appropriation for the ensuing Fiscal Year and such other information relating to Lessee's ability to continue the Lease Term for the next succeeding Fiscal Year as may be reasonably requested by Lessor and (ii) furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Year, the audited financial statements of Lessee at the close of and for such Fiscal Year, all in reasonable detail, audited by and with the report of Lessee's auditor.

(m) On the Commencement Date, Lessee shall cause to be executed and delivered to Lessor an Opinion of Lessee's Counsel in substantially the form attached as Exhibit G hereto.

(n) Lessee shall pay the excess (if any) of the actual costs of acquiring the Equipment hereunder over the amount paid by Lessor in the Escrow Fund and interest earnings thereon.

(o) Lessee has experienced no material change in its financial condition since [Fiscal Year End].

(p) Lessee acknowledges that: (a) Lessor is acting solely for its own account and not as a fiduciary for Lessee or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor; (b) Lessor has not provided, and will not provide, financial, legal, tax, accounting or other advice to or on behalf of Lessee with respect to its acquisition of the Equipment; and (c) Lessee has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to this Lease Agreement from its financial, legal and other advisors (and not Lessor) to the extent that Lessee desired to obtain such advice.

**21. Execution in Counterparts; Chattel Paper.** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided, however*, that only Counterpart No. 1 hereof shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

**22. Applicable Law.** This Lease Agreement shall be construed under the laws of the State of California.

**23. Binding Effect; Severability; Survival.** This Lease Agreement shall not become effective until accepted by Lessor at its herein-described office, and upon such acceptance shall inure to and bind the parties, their successors, legal representatives, and assigns. No provision of this Lease Agreement that may be construed as unenforceable shall in any way invalidate any other provision hereof, all of which shall remain in full force and effect.

**24. Miscellaneous Provisions.** Any notice to a party hereunder shall be deemed given when mailed to that party by certified mail, return receipt requested, at its address set forth herein or such other address as either may designate for itself in such notice to the other. This Lease Agreement, the Escrow Agreement and the Exhibits attached hereto and certificates delivered in connection herewith constitute the entire mutual understanding of the parties regarding the subject matter hereof and thereof and may not be modified except in writing, signed by the party against whom such modification is asserted. Upon the

request of Lessor, Lessee shall at any time and from time to time execute and deliver such further documents and do such further acts as Lessor may reasonably request in order fully to effect the purposes hereof and any assignment hereof. If a court with competent jurisdiction rules that the interest rate charged hereunder exceeds the maximum rate of interest allowed by applicable law, then the effective rate of interest hereunder shall be automatically reduced to the maximum lawful rate allowable under the applicable laws.

*[Remainder of page intentionally left blank]*

THE UNDERSIGNED HEREBY AGREE TO ALL OF THE TERMS AND CONDITIONS AS SET FORTH IN THIS EQUIPMENT LEASE-PURCHASE AGREEMENT.

SIGNATURE PUBLIC FUNDING  
CORP., Lessor

[LESSEE], Lessee

By: x \_\_\_\_\_  
Name:  
Title:

By: x \_\_\_\_\_  
Name:  
Title:

Counterpart No. \_\_\_\_ of three manually executed and serially numbered counterparts. To the extent that this Lease Agreement constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.



**EXHIBIT A**  
**EQUIPMENT SCHEDULE TO EQUIPMENT LEASE-PURCHASE AGREEMENT**  
**DATED [MONTH], 2019**

1. DESCRIPTION OF THE EQUIPMENT:

The "Equipment" is [REDACTED], as more fully described in that certain [REDACTED] dated as of [REDACTED], 2019 (the "Vendor Agreement") between [Vendor] (the "Vendor") and the Lessee.

The Equipment consisting primarily of [REDACTED] (and all accessories, attachments, substitution, replacements, and accessories thereto) to be sold, delivered, installed, or performed under the Vendor Agreement will be financed by this Equipment Schedule dated [Month] [REDACTED], 2019 to that Equipment Lease-Purchase Agreement dated [Month] [REDACTED], 2019 by and between Signature Public Funding Corp. and the [Lessee Name], and such Equipment shall, include, without limitation, the following:

Equipment	Amount	Location
Total Project Cost:	\$ XXXXX.00	
Closing Costs	\$ XXX.00	
<b>Total Equipment Cost:</b>	<b>\$ XXXXX.00</b>	

2. EQUIPMENT LOCATION: The Equipment will be generally located at various locations throughout the [Lessee Name]. Specific locations for each light unit will be as set forth on each Disbursement Request Form or as more specifically set forth in the Vendor Agreement. If locations for Equipment vary from those set forth herein, they will be set forth on the Final Certificate of Acceptance, but will not be located outside the Lessee's jurisdictional boundaries.

3. RENTAL PAYMENT SCHEDULE: The rental payments shall be made for the Equipment as follows:

PAYMENT NUMBER	DATE DUE	TOTAL RENTAL PAYMENT DUE	INTEREST COMPONENT	PRINCIPAL COMPONENT	CONCLUDING PAYMENT
0					
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					

20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

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**Grand Totals**

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° Assumes that all rental payments and additional rentals due on and prior to that date have been paid.

4. INTEREST RATE: [Rate] %
5. COMMENCEMENT DATE: [Month] [ ], 2019
6. SCHEDULED LEASE TERM: [ ] months
7. Lessee's Current Fiscal Year extends from [ ] to [Fiscal Year End].
8. The terms and provisions of the Equipment Lease-Purchase Agreement described above (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.
9. Lessee hereby represents, warrants, and covenants that (i) its representations, warranties, and covenants set forth in the Equipment Lease-Purchase Agreement (particularly Paragraph 20 thereof) are true and correct as though made on the date of execution of this Schedule, and (ii) sufficient funds have been appropriated by Lessee for the payment of all rental payments (if any) due under this Schedule during Lessee's Current Fiscal Year, which ends on [Fiscal Year End].
10. Interest, if any, accruing from the Commencement Date to the actual date of funding shall be retained by Lessor as additional consideration for entering into this Schedule No. 01.

*[Remainder of page intentionally left blank]*

[LESSEE]  
as Lessee

SIGNATURE PUBLIC FUNDING CORP.,  
as Lessor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Donald S. Keough  
Title: Senior Managing Director

Counterpart No. \_\_\_\_\_ of three manually executed and serially numbered counterparts. To the extent that this Schedule constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security or ownership interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

[Signature Page to Exhibit A- Equipment Schedule]

**EXHIBIT B**

**Reserved**

**EXHIBIT C-1**

**INSURANCE CERTIFICATION**

[complete **only** if Lessee is **not** self-insured]

Signature Public Funding Corp.  
600 Washington Ave, Suite 305  
Towson, MD 21204

[Month] [\_\_\_\_], 2019

Re: Equipment Lease-Purchase Agreement dated [Month] [\_\_\_\_], 2019

In connection with the above-referenced Lease Agreement, [LESSEE NAME], as lessee (the "Lessee") certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

Name of Agent: [Insert Insurer Name Here- Lessee to provide]  
Address: [Insert Address Here- Lessee to provide]  
Phone: [Insert Phone Here—Lessee to provide]  
to issue:

*Liability Insurance.* Lessee is required to maintain public liability insurance, personal injury and property damage with policy limits of \$3/5,000,000. The  
X policy should be endorsed to name Signature Public Funding Corp. (the assignee of SIGNATURE PUBLIC FUNDING CORP.) as an additional insured.

*Casualty Insurance.* Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in the  
X above-referenced Equipment Schedule in an amount not less than the greater of \$[Concluding Price].00 or the full replacement cost of the Equipment. Such insurance shall be endorsed to name Signature Public Funding Corp. as a lender loss payee with respect to such Equipment.

The required insurance should also be endorsed to give Signature Public Funding Corp. at least 30 days prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of Signature Public Funding Corp. shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

Proof of insurance coverage will be provided to Signature Public Funding Corp. prior to and/or commensurate with the Commencement Date of the Lease.

Very truly yours,

[LESSEE NAME], as Lessee

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT C-2**

Signature Public Funding Corp.  
600 Washington Ave, Suite 305  
Towson, MD 21204

[Month] [\_\_\_\_], 2019

Re: Equipment Lease-Purchase Agreement dated [Month] [\_\_\_\_], 2019

In connection with the above-referenced Lease Agreement, [LESSEE NAME], as lessee (the "Lessee") certifies that it participates in an actuarially sound self-insurance program for property damage and public liability risks.

The following is attached (check all that apply):

- Letter from risk manager describing self-insurance program
- Other evidence of Lessee's participation in self-insurance program

Very truly yours,

[LESSEE NAME], as Lessee

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

Name:

Title:

**EXHIBIT D**

**ESSENTIAL USE CERTIFICATE**

Signature Public Funding Corp.  
600 Washington Ave, Suite 305  
Towson, MD 21204

[Month] [\_\_\_\_], 2019

Re: Equipment Lease-Purchase Agreement dated [Month] [\_\_\_\_], 2019

I, [\_\_\_\_], the [\_\_\_\_] of the [LESSEE NAME], as lessee (the “Lessee”), am qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Lease Agreement:

1. *What is the specific use of the Equipment?*  
[Lessee to insert answer here.]
2. *What increased capabilities will the Equipment provide?*  
[Lessee to insert answer here.]
3. *Why is the Equipment essential to your ability to deliver governmental services?*  
[Lessee to insert answer here.]
4. *Does the Equipment replace existing equipment?*  
*(If so, please explain why you are replacing the existing equipment)*  
[Lessee to insert answer here.]
5. *Why did you choose this specific Equipment?*  
[Lessee to insert answer here.]
6. *For how many years do you expect to utilize the Equipment?*  
[Lessee to insert answer here.]

Very truly yours,  
[LESSEE NAME], as Lessee

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Essential Use Certificate]

**EXHIBIT E**

**INCUMBENCY CERTIFICATE**

I, [Attester Name], do hereby certify that I am the [Attester Title] [Lessee Name], a [municipal corporation/body corporate and politic] (the "City"), which is a duly established and validly existing as a political subdivision of the State of California under the Constitution and laws of the State of California, and that I have custody of the records of such entity.

I hereby certify that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the City holding the offices set forth opposite their respective names. I further certify that:

- (i) The signatures set opposite their respective names and titles are their true and authentic signatures, and
- (ii) Such officers have the authority on behalf of such entity to:
  - a. Enter into that certain Equipment Lease-Purchase Agreement and Equipment Schedule both dated [Month] [\_\_\_], 2019 (the "Lease Agreement"), between the [LESSEE] and SIGNATURE PUBLIC FUNDING CORP., as lessor, and
  - b. Enter into that certain [Escrow Fund and Account Control Agreement] dated [Month] [\_\_\_], 2019 (the "Escrow Agreement"), between the [Lessee Name], Signature Bank, as escrow agent, and Signature Public Funding Corp., as lessor, and to execute various payment and disbursement request forms,
  - c. Execute Certificates of Acceptance, Disbursement Request Forms, and all other certificates, documents, and agreements relating to the Lease Agreement and/or Escrow Agreement.

NAME	TITLE	SIGNATURE
[Signer Name]	[Signer Title]	_____
		_____
		_____

IN WITNESS WHEREOF, I have duly executed this Certificate on behalf of the [LESSEE NAME],  
[Month] [\_\_\_], 2019

\_\_\_\_\_  
[Attester Name], [Attester Title]



**EXHIBIT F**

**OPINION OF LESSEE'S COUNSEL**

[Month] [\_\_\_\_], 2019

SIGNATURE PUBLIC FUNDING CORP.  
600 Washington Ave, Suite 305  
Towson, MD 21204

Re: Equipment Lease-Purchase Agreement and Equipment Schedule both dated [Month] [\_\_\_\_], 2019

Ladies and Gentlemen:

As counsel to the [Lessee Name] (the "*Lessee*"), I have examined the Equipment Lease-Purchase Agreement and Equipment Schedule both dated [Date] (collectively, the "*Lease Agreement*"), between the Lessee and Signature Public Funding Corp., as lessor ("*Lessor*"), the form of the Escrow Account and Escrow Deposit Agreement, together the Disbursement Request Form and Certificate of Acceptance (collectively, the "*Escrow Agreement*"), and the proceedings taken by the Governing Body of the Lessee to authorize on behalf of the Lessee the execution and delivery of the Lease Agreement and the Escrow Agreement and the investment of the lease proceeds (if any) into the Permitted Investment (as such term is defined in the Escrow Agreement). The Lease Agreement and the Escrow Agreement, together with all documents, exhibits, certificates and attachments thereto are herein collectively referred to as the "*Transaction Documents*." Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

1. The Lessee is a municipal corporation, which is a duly established and validly existing as a political subdivision of the State of California under the Constitution and laws of the State of California with full power and authority to enter into the Transaction Documents.
2. The Transaction Documents have each been duly authorized, executed, and delivered by the Lessee. The Permitted Investment has been duly authorized by the Lessee. Assuming due authorization, execution and delivery thereof by Lessor, the Transaction Documents constitute legal, valid, and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
3. The Equipment to be leased pursuant to the Lease Agreement constitutes personal property and, when subjected to use by the Lessee, will not be a fixture under applicable law.
4. The Lessee has complied with any applicable public bidding requirements in connection with the Transaction Documents and the transactions contemplated thereby. The resolution adopted by the Governing Body of the Lessee authorizing the execution and delivery of the Transaction Documents, and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
5. No litigation or proceeding is pending or, to the best of my knowledge, threatened to restrain or enjoin the execution, delivery, or performance by the Lessee of the Transaction Documents or in any way to contest the validity of the Transaction Documents, to contest or question the creation or existence

of the Lessee or the Governing Body of the Lessee or the authority or ability of the Lessee to execute or deliver the Transaction Documents or to comply with or perform its obligations thereunder. There is no litigation pending or, to the best of my knowledge, threatened seeking to restrain or enjoin the Lessee from annually appropriating sufficient funds to pay the rental payments or other amounts contemplated by the Lease Agreement. The entering into and performance of the Transaction Documents do not and will not violate any judgment, order, law, or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest, or other encumbrance upon any assets of the Lessee or on the Equipment (as such term is defined in the Lease Agreement) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Lessee is a party or by which it or its assets may be bound.

6. The Lessee has covenanted to comply with any continuing requirements that may be necessary to preserve the exclusion from gross income for purposes of federal income taxation under the Internal Revenue Code of 1986, as amended (“Code”), of the portion of the Rental Payments designated as interest. In the event that the Lessee continuously complies with its covenants under the Transaction Documents and so long as the amounts payable to the Lessor are derived from the Rental Payments made by the Lessee, the portion of the Rental Payments designated as interest is not includible in gross income for federal income tax purposes under the current law. No opinion is expressed as to the tax treatment of payments made to the Lessor from sources other than from Rental Payments made by the Lessee. The Lease Agreement and the obligation to pay Rental Payments thereunder as represented by the Lease Agreement are not “specified private activity bonds” as such term is defined in the Code and the portion of the Rental Payments designated as interest is not includible as an item of tax preference under Section 57 of the Code for purposes of computing the alternative minimum tax. However, the portion of Rental Payments designated as interest and received by the Lessor may be subject to an alternative minimum tax. The portions of the Rental Payments designated as interest represented by the Lease Agreement and any gain on the sale of the Lease Agreement are not includible as gross income under California Law. Except as set forth in paragraph 6 herein, we express no opinion regarding other federal tax consequences arising with respect to the Lease Agreement and Transaction Documents.

This opinion may be relied upon by purchasers and assignees of Lessor’s interests in the Lease Agreement.

Respectfully submitted,

**EXHIBIT G:**

**BANK-QUALIFIED DESIGNATION**

The [LESSEE NAME], as lessee, (the “*Lessee*”) under Equipment Schedule No. [001] dated as of [Month] [\_\_\_], 2019 to that certain Master Equipment Lease-Purchase Agreement dated as of [Date] (collectively, the “Lease”) to which this Designation is attached, hereby designates the Lease as a “qualified tax-exempt obligation” for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Lease) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which the Lease is executed and delivered and interest commences to accrue thereunder.

This Designation is attached to and made a part of the Lease and inures to the benefit of the Lessor and its successors and/or assigned.

EXECUTED as of this [\_\_\_] day of [Month], 2019.

[LESSEE NAME], as Lessee

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

Name: [Lessee Signer Name]

Title: [Lessee Signer Title]

## EXHIBIT H

### POST-ISSUANCE TAX COMPLIANCE PROCEDURES

Dated: [Month] [\_\_\_\_], 2019

The following certificate is delivered in connection with the execution and delivery of the Equipment Lease-Purchase Agreement dated [Month] [\_\_\_\_], 2019 (the "Lease Agreement"), entered into between the [LESSEE] (the "Lessee") and SIGNATURE PUBLIC FUNDING CORP. (the "Corporation"). Capitalized terms used herein have the meanings defined in the Lease Agreement.

#### **Section 1. In General.**

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply \$[\_\_\_\_].00 (the "Principal Amount") toward the acquisition of the Equipment and closing costs, and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the resolution or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule. The Principal Amount will be paid to the Vendor by Lessor on the date of issuance of the Financing Documents.

1.4 Lessee will timely file for the Lease a Form 8038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

1.5 The Lease is NOT a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. As such, the Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including the Equipment Schedule) the aggregate principal amount of which exceed \$10,000,000 during the calendar year in which Equipment Schedule is executed and delivered and interest commences to accrue thereunder.

#### **Section 2. Non-Arbitrage Certifications.**

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of the Financing Documents, (ii) issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

### **Section 3. Disbursement of Funds; Reimbursement to Lessee.**

3.1 It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the Vendor or for any financial advisory or closing costs, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

(a) Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to a Vendor under the Equipment Acquisition Contract not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

### **Section 4. Use and Investment of Funds; Temporary Period.**

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited in any applicable escrow, debt service or sinking fund to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee

reasonably expects to cause the Equipment to be acquired by [Insert 12 month date], but not later than [Insert 18 month date].

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.

(c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a "private activity bond" under Section 141 of the Code; and (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee; (iv) the aggregate principal amount of all tax-exempt obligations (including the Lease) issued by Lessee and its subordinate entities, if any, during the current calendar year is not reasonably expected to exceed \$5,000,000. Accordingly, the rebate requirements of Section 148(f) of the Code are treated as being met, in lieu of the spending exceptions set forth in paragraph (b) above.

#### **Section 5. Escrow Account.**

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the Vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment. Lessee acknowledges that the provisions of Sections 2 and 4 herein are particularly applicable when the Principal Amount is funded into an Escrow Fund subject to the Escrow Agreement.

#### **Section 6. No Private Use; No Consumer Loan.**

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

6.2 In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.3, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

6.4. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

**Section 7. No Federal Guarantee.**

7.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

7.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

**Section 8. Miscellaneous.**

8.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.

8.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

8.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

8.4. The Lessee's Tax Identification Number is: [TIN].

8.5. The Lessee has adopted, or will adopt in a reasonable period post-closing, by resolution, separate written procedures regarding ongoing compliance with federal tax requirements necessary to keep, ensure and maintain the interest portions of the Rental Payments under the Lease Agreement as excluded from Lessor's gross income for federal income tax purposes, and will, on an annual basis, conduct an audit of the Lease Agreement to ensure compliance with such procedures

**IN WITNESS WHEREOF**, this Post-Issuance Tax Compliance Procedures Certificate has been executed on behalf of Lessee as of [Month] [\_\_\_\_], 2019.

[LESSEE NAME],

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

Name: [Signer Name]

Title: [Signer Title]

## EXHIBIT I:

---

This **ESCROW DEPOSIT AGREEMENT** (this “**Agreement**”) dated as of this [Day]<sup>th</sup> day of [Month] 2019 by and among **SIGNATURE PUBLIC FUNDING CORP.** (“**Lessor**”), a New York corporation, having its primary address at 600 Washington Avenue, Suite 305, Towson, Maryland 21204, [**LESSEE NAME**] (“**Lessee**”), a [political subdivision] of the State of [State], having its primary office at [Lessee Address 1], [Lessee Address 2] and **SIGNATURE BANK** (the “**Escrow Agent**”), a New York state-chartered commercial bank and having an office at Signature Bank, 75 Holly Hill Lane, Greenwich, CT 06830.

### WITNESSETH:

WHEREAS, Lessee and Lessor have entered into that certain Equipment Schedule No [001] dated as of [Schedule Date] to that certain Master Equipment Lease Purchase Agreement dated as of [Master Date] (collectively and together with all other documents, certificates, exhibits and related documentation therewith, collectively, the “**Lease**”); and

WHEREAS, the Lessor has made a loan to Lessee in the form of “Lease Proceeds,” which are to be used to pay various costs associated with the Lease and to acquire certain items of Equipment (as such term is defined in the Lease); and

WHEREAS, Lessor and Lessee have agreed that all or a portion of the Lease Proceeds shall be held in escrow upon certain terms and conditions; and

WHEREAS, Lessor and Lessee appoint the Escrow Agent as escrow agent of such escrow subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Escrow Agent accepts such appointment as escrow agent subject to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE, IT IS AGREED** as follows:

1. Delivery of Escrow Funds.

(a) Upon execution of the Lease and delivery of all documents and completion of all conditions precedent in the Lease, the Lessor will deliver, or shall cause to be delivered, to the Escrow Agent checks, internal transfers or wire transfers equal to the Initial Deposit Amount (as set forth on Schedule A hereto) and made payable to “[Lessee Name], Signature Bank as Escrow Agent” for the benefit of Lessor and Lessee to be held in an account at Signature Bank entitled “[Lessee Name] Equipment Schedule [001], Signature Bank, as Escrow Agent” having ABA No. 026013576, Account No. [\*\*\*] (the “**Escrow Account**”).

(b) The Initial Deposit Amount that consists of good and indefeasible collected funds that are deposited into the Escrow Account is referred to as the “**Escrow Funds.**” The Escrow Funds shall be maintained and collateralized by the Escrow Agent in accordance with the written instructions provided by the Lessee and Lessor as more fully set forth on Schedule C hereto, which Lessee represents and warrants is in accordance with all applicable laws, regulations, and rules.



(c) The Escrow Agent shall have no duty or responsibility to enforce the collection or demand payment of these checks or any other funds delivered to Escrow Agent for deposit into the Escrow Account. If, for any reason, these checks or any other funds deposited into the Escrow Account shall be returned unpaid to the Escrow Agent, the sole duty of the Escrow Agent shall be to advise Lessor and Lessee promptly thereof and return check in the manner directed in writing by Lessor and Lessee.

2. Release of Escrow Funds. (a) The Escrow Funds shall be paid by the Escrow Agent in accordance with the instructions, in form and substance satisfactory to the Escrow Agent, received from Lessor and Lessee, in all cases subject to Lessor approval and subject to delivery of those items set forth in Section 2(b) herein, or in accordance with Lessor's instructions delivered pursuant to Section 6 herein, or in absence of such instructions in accordance with the order of a court of competent jurisdiction. The Escrow Agent shall not be required to pay any uncollected funds or any funds that are not available for withdrawal. The Escrow Agent may act in reliance upon any instructions, court orders, notices, certifications, demands, consents, authorizations, receipts, powers of attorney or other writings delivered to it without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. The Escrow Agent may act in reliance upon any signature believed by it to be genuine, and may assume that such person has been properly authorized to do so.

(b) Upon receipt of a Payment Request Form (in substantially the form as set forth on Schedule B hereto) executed by Lessor and Lessee, an amount equal to the Acquisition Cost as shown therein shall be paid directly by Escrow Agent to the person or entity entitled to payment as specified therein. Although the Payment Request Form may have schedules, invoices and other supporting document attached to it, Lessor will send to Escrow Agent only the page or pages showing the signatures of Lessor and Lessee, the Acquisition Cost and related payment information, without such schedules, invoices or other supporting documentation. Escrow Agent may act and rely upon the signed Payment Request Form without the need to review or verify any such schedules, invoices or other supporting documentation.

3. Acceptance by Escrow Agent. The Escrow Agent hereby accepts and agrees to perform its obligations hereunder, provided that:

(a) Upon execution of this Agreement, Lessor shall execute and deliver to Escrow Agent Schedule A-1 hereto and Lessee shall execute and deliver to Escrow Agent Schedule A-2 (together with Schedule A-1, each a "**Certificate**") hereto, for the purpose of (i) establishing the identity of each respective authorized representative(s) of Lessor and Lessee entitled to singly initiate and/or confirm disbursement instructions to Escrow Agent on behalf of each such party and (ii) providing standing wire instructions for each of Lessor and Lessee to be used for disbursements to said party. The Escrow Agent may act in reliance upon any signature on each Certificate believed by it to be genuine, and may assume that any person who has been designated by Lessor and Lessee to give any written instructions, notice or receipt, or make any statements in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent shall have no duty to make inquiry as to the genuineness, accuracy or validity of any statements or instructions or any signatures on statements or instructions, including but not limited to, those contained on each Certificate. Lessor and Lessee may update their respective Certificate by executing and delivering to the Escrow Agent an updated Certificate substantially in the form attached hereto as Schedule A-1 and/or Schedule A-2. Until such time as Escrow Agent shall receive an updated Certificate, Escrow Agent shall be fully protected in relying without inquiry on the current Certificate on file with Escrow Agent.

(b) The Escrow Agent may seek confirmation of disbursement instructions by telephone call back to one of the authorized representatives set forth on each Certificate, and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person(s) so designated. To ensure the accuracy of the instruction it receives, the Escrow Agent may record such call back. If the Escrow Agent is unable to verify the instruction, or is not satisfied in its sole discretion with the verification it receives, it will not execute the instruction until all issues have been resolved to its satisfaction. Lessor and Lessee agree that the foregoing procedures constitute commercially reasonable security procedures. Escrow Agent further agrees not to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Agreement) from any party inconsistent with the foregoing.

(c) The Escrow Agent may act relative hereto in reliance upon advice of counsel in reference to any matter connected herewith. The Escrow Agent shall not be liable for any mistake of fact or error of judgment or law, or for any acts or omissions of any kind, unless caused by its willful misconduct or gross negligence.

(d) Lessor and Lessee, jointly and severally, agree to indemnify, release, and hold the Escrow Agent harmless from and against any and all claims, losses, costs, liabilities, damages, suits, demands, judgments or expenses, including, but not limited to, attorney's fees, costs and disbursements, (collectively "**Claims**") claimed against or incurred by Escrow Agent arising out of or related, directly or indirectly, to the Escrow Agreement and the Escrow Agent's performance hereunder or in connection herewith, except to the extent such Claims arise from Escrow Agent's willful misconduct or gross negligence as adjudicated by a court of competent jurisdiction.

(e) In the event of any disagreement between or among Lessor and Lessee, or between any of them and any other person, resulting in adverse claims or demands being made to Escrow Agent in connection with the Escrow Account, or in the event that the Escrow Agent, in good faith, be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after thirty (30) days' notice to Lessor and Lessee of its intention to do so, to file an action in interpleader requiring the parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this section are cumulative of all other rights which it may have by law or otherwise.

(f) In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder, the Escrow Agent shall be entitled to (i) refrain from taking any action other than to keep safely the Escrow Funds until it shall be directed otherwise by a court of competent jurisdiction, or (ii) deliver the Escrow Funds to a court of competent jurisdiction.

(g) The Escrow Agent shall have no duty, responsibility or obligation to interpret or enforce the terms of any agreement other than Escrow Agent's obligations hereunder, and the Escrow Agent shall not be required to make a request that any monies be delivered to the Escrow Account, it being agreed that the sole duties and responsibilities of the Escrow Agent shall be to the extent not prohibited by applicable law (i) to accept checks or other instruments for the payment of money delivered to the Escrow Agent for the Escrow Account and deposit said checks or instruments into the Escrow Account,

and (ii) disburse or refrain from disbursing the Escrow Funds as stated herein, provided that the checks or instruments received by the Escrow Agent have been collected and are available for withdrawal.

4. Escrow Account Statements and Information. The Escrow Agent agrees to send to the Lessee and/or the Lessor a copy of the Escrow Account periodic statement, upon request in accordance with the Escrow Agent's regular practices for providing account statements to its non-escrow clients and to also provide the Lessee and/or Lessor, or their designee, upon request other deposit account information, including Account balances, by telephone or by computer communication, to the extent practicable. The Lessee and Lessor agree to complete and sign all forms or agreements required by the Escrow Agent for that purpose. The Lessee and Lessor each consents to the Escrow Agent's release of such Account information to any of the individuals designated by Lessee or Lessor, which designation has been signed in accordance with Section 3(a) by any of the persons in Schedule A-1 and Schedule A-2. Further, the Lessee and Lessor have an option to receive e-mail notification of incoming and outgoing wire transfers. If this e-mail notification service is requested and subsequently approved by the Escrow Agent, the Lessee and Lessor agrees to provide a valid e-mail address and other information necessary to set-up this service and sign all forms and agreements required for such service. The Lessee and Lessor each consents to the Escrow Agent's release of wire transfer information to the designated e-mail address(es). The Escrow Agent's liability for failure to comply with this section shall not exceed the cost of providing such information.

5. Resignation and Termination of the Escrow Agent. The Escrow Agent may resign at any time by giving thirty (30) days' prior written notice of such resignation to Lessor and Lessee. Upon providing such notice, the Escrow Agent shall have no further obligation hereunder except to hold the Escrow Funds that it has received as of the date on which it provided the notice of resignation as depository. In such event, the Escrow Agent shall not take any action until Lessor and Lessee jointly designate a banking corporation, trust company, attorney or other person as successor escrow agent. Upon receipt of such written instructions signed by Lessor and Lessee, the Escrow Agent shall promptly deliver the Escrow Funds, net of any outstanding charges, to such successor escrow agent and shall thereafter have no further obligations hereunder. If such instructions are not received within thirty (30) days following the effective date of such resignation, then the Escrow Agent may deposit the Escrow Funds and any other amounts held by it pursuant to this Agreement with a clerk of a court of competent jurisdiction pending the appointment of a successor escrow agent. In either case provided for in this section, the Escrow Agent shall be relieved of all further obligations and released from all liability thereafter arising with respect to the Escrow Funds.

6. Termination.

(a) Lessor and Lessee may terminate the appointment of the Escrow Agent hereunder upon a joint written notice to Escrow Agent specifying the date upon which such termination shall take effect. In the event of such termination, Lessor and Lessee shall, within thirty (30) days of such notice, jointly appoint a successor escrow agent and the Escrow Agent shall, upon receipt of written instructions signed by both Lessor and Lessee, turn over to such successor escrow agent all of the Escrow Funds; provided, however, that if Lessor and Lessee fail to appoint a successor escrow agent within such thirty (30)-day period, such termination notice shall be null and void and the Escrow Agent shall continue to be bound by all of the provisions hereof. Upon receipt of the Escrow Funds, the successor escrow agent shall become the Escrow Agent hereunder and shall be bound by all of the provisions hereof and the Escrow Agent shall be relieved of all further obligations and released from all liability thereafter arising with respect to the Escrow Funds.

(b) The Escrow Account shall be terminated on the “Termination Date,” which shall be the earliest of (i) the final distribution of amounts in the Escrow Account, (ii) the “Anticipated Closing Date” (as such term is defined on Schedule A hereto), or (iii) unilateral written notice given by Lessor of the occurrence of a default, Event of Default (as such term is defined in the Lease), Non-Appropriation (as such term is defined in the Lease) or any other termination of the Lease which results in Lessor being paid less than the Prepayment Price (as such term is defined in the Lease).

(c) Unless all of the Escrow Funds deposited by Lessor in the Escrow Account have been previously disbursed pursuant to Section 2 herein, on the Termination Date, Escrow Agent shall pay upon written direction from Lessor all remaining moneys in the Escrow Account to Lessor or its assignee for application to the Prepayment Price, including any fees, interest or premium included in the definition thereof as found in the related Lease. If any Prepayment Price does not contain a premium or penalty and this Agreement and the Escrow Account is terminated pursuant to Section 6(b) herein, then any amounts paid pursuant to this Section 6(c) shall be subject to a prepayment fee equal to three percent (3%) of such amount. Lessor shall apply amounts received under this Section 6 first to unpaid fees, late charges and collection costs, if any, which have accrued or been incurred under the Lease, then to overdue Principal and Interest on the Lease and then, in the sole discretion of Lessor, either (i) to the Prepayment Price due under the Lease in the inverse order of all respective principal maturities, or (ii) proportionately to each Principal payment thereafter due under the Lease. In the event that Lessor elects to apply any such amounts in accordance with clause (i) of the preceding sentence, Lessee shall continue to make Rental Payments as scheduled in the applicable Payment Schedule. In the event that Lessor elects to apply such amounts in accordance with clause (ii) of this Section 6(c), Lessor shall provide Lessee with a revised Payment Schedule which shall reflect the revised Principal balance and reduced Rental Payments due under the Lease. Capitalized terms used in this Section 6, but not defined herein, shall have the meanings given to such terms in the Lease. Escrow Agent shall have no responsibility to see to the appropriate application of any moneys returned under this Section 6.

## 7. Investment.

(a) If the non-interest bearing account option is selected in Schedule A hereto, all Escrow Funds received by the Escrow Agent shall be held only in non-interest bearing bank accounts at Escrow Agent.

(b) If the interest-bearing account option is selected in Schedule A hereto, the Escrow Fund shall be invested in Signature Bank’s Monogram Insured Money Market Deposit Account for Business. Lessee agrees and represents to the Escrow Agent that any interest or other income earned on the Escrow Account shall for the purposes of reporting such income to the appropriate taxing authorities be deemed to be earned by the Lessee.

(c) The following provisions are applicable regardless of whether an interest-bearing or non-interest bearing account is elected. The Lessee represents that it is a US person as that term is defined by IRS. The Lessee agrees to provide the Escrow Agent with a certified tax identification number by signing and returning a Form W-9 to the Escrow Agent upon execution of this Escrow Agreement. The Lessee understands that, in the event the Lessee’s tax identification number is incorrect or is not certified to the Escrow Agent, the Internal Revenue Code, as amended from time to time, may require withholding of a portion of any interest or other income earned on the Escrow Funds. The Lessee agrees to assume any and all obligations imposed, now or hereafter, by the applicable tax law and/or applicable taxing authorities, with respect to any interest or other income earned on the Escrow Funds and to indemnify and hold the Escrow Agent harmless from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be

assessed or asserted against the Escrow Agent in connection with or relating to any payment made or other activities performed under the terms of this Agreement, including without limitation any liability for the withholding or deduction of (or the failure to withhold or deduct) the same, and any liability for the failure to obtain proper certifications or to report properly to governmental authorities in connection with this Agreement, including costs and expenses (including reasonable legal fees and expenses) interest and penalties, in each such case to the extent applicable to, or arising in respect of, the interest earned on the Escrow Account, unless such liability is caused by the Escrow Agent's gross negligence or willful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement.

8. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Escrow Account, the Escrow Funds, and all investments, cash, securities, and proceeds thereof are being irrevocably held by Escrow Agent for the benefit of the Lessee and Lessor subject to disbursement or return solely as set forth herein. In addition to the foregoing and should Lessor's interest in the Lease Proceeds be invalidated, illegal or challenged in any fashion, Lessee hereby grants to Lessor a first priority perfected security interest in the Escrow Account and Escrow Funds, and all cash, securities, investments and proceeds thereof that may, from time to time, be held in the Escrow Account. If the Escrow Account, or any part thereof, is converted to investments as set forth in this Agreement, such investments shall be made in the name of Escrow Agent and held for the benefit of Lessor and Lessee subject to the express terms and conditions of this Agreement. Notwithstanding the grant and conveyance of a lien and security interest in favor of the Lessor and solely with respect to Claims, Fees or other actual and out-of-pocket costs that have not been previously reimbursed, Escrow Agent is hereby granted a security interest in and a lien upon the Escrow Account and Escrow Funds, which security interest and lien shall be prior to all other security interests, liens or claims against the Escrow Account, Escrow Funds, or any part thereof. The Escrow Account and Escrow Funds shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessor or Lessee or Escrow Agent (other than Lessor's and Escrow Agent's respective security interests granted hereunder).

9. Compensation. The Escrow Agent shall be entitled, for the duties to be performed by it hereunder, to a one-time "Set-Up Fee," if any, as set forth on Schedule A hereto, which fee shall be paid by Lessor or Lessee upon the signing of this Agreement. In addition, Lessor and Lessee shall be obligated to reimburse Escrow Agent for all fees, costs and expenses incurred or that becomes due in connection with this Agreement or the Escrow Account, including reasonable attorney's fees (collectively, and together with the Set-Up Fee, "Fees"). Neither the modification, cancellation, termination or rescission of this Agreement nor the resignation or termination of the Escrow Agent shall affect the right of the Escrow Agent to retain the amount of any fee which has been paid, or to be reimbursed or paid any amount which has been incurred or becomes due, prior to the effective date of any such modification, cancellation, termination, resignation or rescission. To the extent the Escrow Agent has incurred any such expenses, or any such fee becomes due, prior to or commensurate with the Termination Date, the Escrow Agent shall advise the Lessee and Lessor and the Lessee and Lessor shall direct all such amounts to be paid directly to Escrow Agent prior to any distribution of funds set forth in Section 6 herein

10. Regulatory Compliance.

(a) Lessee and Lessor agree to observe and comply, to the extent applicable, with all anti-money laundering laws, rules and regulations including, without limitation, regulations issued by the Office of Foreign Assets Control of the United States Department of Treasury and the Financial Crimes Enforcement Network of the U.S. Department of Treasury.

(b) Lessee and Lessor shall provide to the Escrow Agent such information as the Escrow Agent may require to enable the Escrow Agent to comply with its obligations under the Bank Secrecy Act of 1970, as amended (“BSA”), or any regulations enacted pursuant to the BSA or any regulations, guidance, supervisory directive or order of the New York State Department of Financial Services or Federal Deposit Insurance Corporation. The Escrow Agent shall not make any payment of all or any portion of the Escrow Funds to any person unless and until such person has provided to the Escrow Agent such documents as the Escrow Agent may require to enable the Escrow Agent to comply with its obligations under the BSA.

(c) To help the United States government fight funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When an account is opened and from time to time as be required by the Escrow Agent’s internal policies and procedures, the Escrow Agent shall be entitled to ask for such information that will allow the Escrow Agent to identify relevant parties. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Escrow Agent may ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Parties acknowledge that a portion of the identifying information set forth herein is being requested by the Escrow Agent in connection with Title III of the USA Patriot Act, Pub.L. 107-56 (the “Act”), and Lessee and Lessor each agrees to provide any additional information requested by the Escrow Agent in its sole discretion in connection with the Act or any other legislation, regulation, regulatory order or published guidance to which the Escrow Agent is subject, in a timely manner.

11. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if sent by hand-delivery, by facsimile followed by first-class mail, by nationally recognized overnight courier service or by prepaid registered or certified mail, return receipt requested, to the addresses set forth below.

If to Lessor:

Signature Public Funding Corp.  
600 Washington Avenue, Suite 305  
Towson, Maryland 21204  
Attention: Donald Keough  
E-mail Address: [DKeough@signatureny.com](mailto:DKeough@signatureny.com)  
Fax No: (646) 927-4005

If to Lessee:

[Lessee Name]  
[Lessee Address 1]  
[Lessee Address 2]  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

If to Escrow Agent:

Signature Bank  
75 Holly Hill Lane  
Greenwich, CT 06830  
Attention: Thomas Mooney, Group Director and Senior Vice President

12. General.

(a) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to agreements made and to be entirely performed within such State, without regard to choice of law principles, and any action brought hereunder shall be brought in the courts of the State of New York, located in New York County. Each party hereto irrevocably waives any objection on the grounds of venue, forum nonconveniens or any similar grounds and irrevocably consents to service of process by mail or in any manner permitted by applicable law and consents to the jurisdiction of said courts. **UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.**

(b) This Agreement sets forth the entire agreement and understanding of the parties in respect to the matters contained herein and supersedes all prior agreements, arrangements and understandings relating thereto.

(c) All of the terms and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties hereto, as well as their respective successors and assigns.

(d) This Agreement may be amended, modified, superseded or canceled, and any of the terms or conditions hereof may be waived, only by a written instrument executed by each party hereto or, in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver of any party of any condition, or of the breach of any term contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term of this Agreement. No party may assign any rights, duties or obligations hereunder unless all other parties have given their prior written consent.

(e) If any provision included in this Agreement proves to be invalid or unenforceable, it shall not affect the validity of the remaining provisions.

(f) This Agreement and any modification or amendment of this Agreement may be executed in several counterparts or by separate instruments and all of such counterparts and instruments shall constitute one agreement, binding on all of the parties hereto.

13. Form of Signature. The parties hereto agree to accept a facsimile or e-mail transmission copy of their respective actual signatures as evidence of their actual signatures to this Agreement and any modification or amendment of this Agreement; *provided, however*, that each party who produces a facsimile or e-mail signature agrees, by the express terms hereof, to place, promptly after transmission of his or her signature by fax, a true and correct original copy of his or her signature in first class mail, postage pre-paid, to the address of the Escrow Agent.

14. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the parties and their respective successors and permitted assigns, and no other person has any right, benefit, priority or

interest under or because of the existence of this Agreement.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first set forth above.

**[LESSEE NAME]**

By: \_\_\_\_\_  
Name: [Lessee Signer Name]  
Title: [Lessee Signer Title]

**SIGNATURE PUBLIC FUNDING CORP.**

By: \_\_\_\_\_  
Name: Donald S. Keough  
Title: Senior Managing Director

**SIGNATURE BANK**

By: \_\_\_\_\_  
Name: Thomas Mooney  
Title: Group Director and Senior Vice President



**Schedule A**

SPFC Lease/Account Number: [001]

Name of Lessee: [Lessee Name]

Beneficiary Name for Fund: [Lessee Name] Equipment Schedule [001], Signature Bank, as Escrow Agent

Date of Escrow Agreement: [Schedule Date]

Date of Master Lease Agreement: [Master Date]

Lessee's State / Commonwealth: [State]

Lessee's Tax Identification Number: [Lessee TIN]

Escrow Agent Fee: \$0.00

Initial Deposit Amount: \$[Initial Deposit Amount]

Account Type: [Interest/Non-interest] Bearing

Anticipated Closing Date: [18 months after Schedule Date]

Schedule A-1

CERTIFICATE OF AUTHORIZED REPRESENTATIVES – LESSOR

Name	Signature	Initiate (Y/N)	Callback (Y/N)	Phone No.	Alt. Phone No.
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

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**STANDING WIRE INSTRUCTIONS FOR LESSOR**

In accordance with Section 3(a) of the Agreement disbursements to Lessor by wire transfer must be sent in accordance with the following wire instructions:

Bank Name: [\_\_\_\_\_] ]  
Bank Address: [\_\_\_\_\_] ]  
ABA Number: [\_\_\_\_\_] ]  
Account Number: [\_\_\_\_\_] ]  
Account Name: [\_\_\_\_\_] ]

Schedule A-2

CERTIFICATE OF AUTHORIZED REPRESENTATIVES – LESSEE

Name	Signature	Initiate (Y/N)	Callback (Y/N)	Phone No.	Alt. Phone No.
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	-	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	-	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	-	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	-	_____

**STANDING WIRE INSTRUCTIONS FOR LESSEE**

In accordance with Section 3(a) of the Agreement disbursements to Lessee by wire transfer must be sent in accordance with the following wire instructions:

Bank Name: [\_\_\_\_\_] ]  
Bank Address: [\_\_\_\_\_] ]  
ABA Number: [\_\_\_\_\_] ]  
Account Number: [\_\_\_\_\_] ]  
Account Name: [\_\_\_\_\_] ]

**Schedule B:**

**Payment Request Form No. [\_\_\_]**

CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

The following payment request is directed to Signature Bank (the “Escrow Agent”), as escrow agent under that certain Escrow Deposit Agreement dated [Schedule Date] (the “Escrow Agreement”), between the [Lessee Name] (“Lessee”), Signature Public Funding Corp. (“Lessor”), and the Escrow Agent.

The Escrow Agent is hereby requested to pay from the Escrow Fund established and maintained under the Escrow Agreement the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment described below is part or all of the Equipment purchased pursuant to Equipment Schedule No. [001] dated as of [Schedule Date] to that certain Master Equipment Lease Purchase Agreement dated as of [Master Date] (collectively, the “Lease”), between Lessor and Lessee:

QUANTITY	DESCRIPTION OF UNITS OF EQUIPMENT	AMOUNT	PAYEE
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Lessee hereby certifies and represents to and agrees with Lessor as follows with respect to the Equipment described above: (i) the Equipment has been delivered to the location(s) set forth in the Lease; (ii) a present need exists for the Equipment, which need is not temporary or expected to diminish in the near future; (iii) the Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee’s authority; (iv) the estimated useful life of the Equipment based upon the manufacturer’s representations and Lessee’s projected needs is not less than the term of the Lease; (v) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate; (vi) the Equipment is covered by insurance in the types and amounts required by the Lease; (vii) no default, Event of Default or Event of Nonappropriation, as those terms are defined in the Lease, and no event that with the giving of notice or lapse of time or both, would become a default, Event of Default or an Event of Nonappropriation, has occurred and is continuing on the date hereof; and (viii) sufficient funds have been appropriated by Lessee for the payment of all rental payments or other amounts due under the Lease during Lessee’s current Fiscal Year.

Based on the foregoing, the Escrow Agent is hereby authorized and directed to fund the acquisition of the Equipment set forth above by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) Original Invoice(s) and (b) Copies of Certificate(s) of Ownership, designating Lessor as legal owner, and evidence of filing.

*[Remainder of page intentionally left blank]*

IF REQUEST IS FINAL REQUEST, CHECK HERE . The undersigned hereby certifies that the items of Equipment described above, together with the items of Equipment described in and accepted by Certificates of Acceptance and Payment Requests previously filed by Lessee with Lessor constitute all of the Equipment subject to the Lease.

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

**Approved:**

SIGNATURE PUBLIC FUNDING CORP., as Lessor

[LESSEE NAME], as Lessee

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

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

Title: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

**Schedule C:**  
**Collateralization Disclosure and Acknowledgement for Deposit of Public Moneys**

The undersigned acknowledges and agrees that all moneys belonging to the Lessee and Lessor and on deposit at Escrow Agent in excess of the FDIC insurance levels shall be collateralized by Escrow Agent by a Municipal Letter of Credit (MULOC) issued by the Federal Home Loan Bank of New York (FHLBNY). Lessee and Lessor represent and warrant that the foregoing FHLBNY MULOC is compliant with any applicable local, county, state or federal rule and regulations, including, without limitation, the [CA: Local Agency Deposit Security Law and applicable California Government Code and Code of Regulations/Other States—Insert Applicable Statutes].

IN WITNESS WHEREOF, the duly authorized parties have executed this Collateralization Disclosure and Acknowledgement for Deposit of Public Moneys as of the date first set forth below.

LESSOR:  
SIGNATURE PUBLIC FUNDING CORP.

LESSEE:  
[LESSEE NAME]

By: \_\_\_\_\_  
Donald S. Keough  
Senior Managing Director

By: \_\_\_\_\_  
[Lessee Signer Name]  
[Lessee Signer Title]

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

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

ESCROW AGENT:  
SIGNATURE BANK

By: \_\_\_\_\_  
Thomas Mooney  
Group Director & Senior Vice President

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

## FORM OF RESOLUTION

RESOLUTION NO. [ ] OF THE GOVERNING BODY OF THE [LESSEE NAME], AUTHORIZING, PURSUANT TO THE [INSERT STATUTE] (COLLECTIVELY, "AUTHORIZING LAW"), THE INCURRING OF LEASE OBLIGATIONS IN ANY AMOUNT NOT TO EXCEED \$[LEASE AMOUNT] TO BE EVIDENCED BY THE EXECUTION AND DELIVERY OF A MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT, AN ESCROW AGREEMENT AND AN EQUIPMENT SCHEDULE WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING, AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the [Lessee Name] (the "*Lessee*"), a body politic and corporate duly organized and existing as a political subdivision of the State of [state], is authorized by the laws of the State of [state] to purchase, acquire, and lease personal property for the benefit of the Lessee and those it provides services to and to enter into contracts with respect thereto;

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions; including without limitation various [Insert description of Equipment] [purchased from [Insert names of vendors if known, otherwise modify resolution] and all other equipment Lessee or its Designated Officers may deem necessary and/or desirable (the "*Equipment*") in an amount not more than \$[Lease Proceeds], and the Lessee hereby finds and determines that the realistic estimated useful life of the Equipment is at least [YEARS (XX)] years

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into a Master Equipment Lease Purchase Agreement dated as of [Date] (together with the Equipment Schedule dated as of [Month] [\_\_\_], 2019 and all related exhibits, schedules, and certificates attached thereto, the "*Lease Agreement*") with Signature Public Funding Corp. (the "*Lessor*") and one Escrow Agreement (together with the Disbursement Request Form and Acceptance Certificate, the "*Escrow Agreement*", and together with the Lease Agreement, the "*Transaction Documents*") with the Lessor and [Escrow Bank Name], as escrow agent, the forms of which have been presented to the Governing Body of the Lessee at this meeting;

WHEREAS, the Governing Body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Transaction Documents for the purchase, acquisition, and leasing of the Equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT RESOLVED AND ENACTED by the Governing Body of the [Lessee Name] as follows:

*Section 1. Approval of Documents.* The Governing Body of the Lessee hereby approves the form, terms and provisions of the Transaction Documents in substantially the forms presented to this meeting and authorizes and directs [Name], the [Title], and [Name], the [Title], [Insert other names and

titles as desired and/or necessary—should match names on incumbency certificate] of the [Lessee Name], and such other persons as he/she/they may delegate (the “*Designated Officers*”), and each of them individually, for and in the name of and on behalf of the Lessee, to execute, attested, seal, and deliver the Transaction Documents, and any related Certificate, Exhibits, or other documents attached thereto substantially in such forms as presented herewith, together with such changes, modification, negotiations, insertions, revisions, corrections, or amendments as shall be approved by the officer executing them. The execution of the foregoing by a Designated Officer shall constitute conclusive evidence of such officer’s and the Governing Body’s approval of any such changes, insertions, revisions, corrections, negotiations, or amendments to the respective forms of agreements presented to this meeting.

*Section 2. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Transaction Documents to carry out, give effect to, and consummate the transactions contemplated thereby (including the execution and delivery of Certificates of Acceptance and Disbursement/Payment Requests, Notice and Acknowledgements of Assignments, and any tax certificate and agreement, each with respect to and as contemplated in the Agreement and/or Escrow Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Transaction Documents. The Designated Officers and all other officers and employees of the Lessee are hereby directed and authorized to take and shall take all action necessary or reasonably required in order to select, purchase, and take delivery of the Equipment. All actions heretofore taken by officers, employees, and agents of the Lessee that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

*Section 3. No General Liability.* Nothing contained in this Resolution No. [ ], the Transaction Documents, nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution No. [ ], the Transaction Documents, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, [payable from the general and current revenues of the Lessee/except to the extent that the rental payments payable under the Transaction Documents are special limited obligations of the Lessee] as provided therein.

*Section 4. Appointment of Authorized Lessee Representatives.* The Designated Officers are each hereby designated to act as authorized representatives of the Lessee for purposes of the Transaction Documents until such time as the Governing Body of the Lessee shall designate any other or different authorized representative for purposes of the Transaction Documents.

*Section 5. Severability.* If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution No. [ ].

*Section 6. Repealer.* All bylaws, orders, and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution, or ordinance or part thereof.

*Section 7. [Qualified Tax Exempt Obligations.* The Lessee, and its Governing Body, designate its obligations under the Lease Agreements as “qualified tax exempt obligations” as defined in and for the purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended./Reserved.]



Section 8. *Effective Date.* This Resolution [ ] shall be effective immediately upon its approval and adoption.

The foregoing Resolution was duly passed and adopted at a meeting of the [Town Council] (the "Governing Body") of [Lessee Name] held on [Month] [ ], [Year], by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Presiding Officer

ATTEST:

By: \_\_\_\_\_  
[Attester Name], [Attester Title]

**IRS FORM 8038-G**

**[To be prepared by Lessee]**

**CLOSING MEMORANDUM**

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**[\$[CONCLUDING PRICE] LEASE OF [REDACTED]]**  
**PURSUANT TO THAT EQUIPMENT LEASE-PURCHASE AGREEMENT AND EQUIPMENT SCHEDULE THERETO**  
**DATED [MONTH] [REDACTED], 2019**  
**BETWEEN [LESSEE], AS LESSEE, AND**  
**SIGNATURE PUBLIC FUNDING CORP., AS LESSOR**

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**Pre-Closing:** Pre-Closing will be held at the Lessee's convenience, on or before [Month] [REDACTED], 2019. All documents will be executed and three (3) blue ink originals will be overnighted to Donald S. Keough, Esquire, 600 Washington Avenue, Suite 305, Maryland 21204, for delivery no later than 9:00 am on the morning of **June [REDACTED], 2019** and held in trust until such time as the wires and original documents are released by the Parties.

**Closing:** (1) By wire transfer and pending receipt of original, executed Lease Documents, on the morning of [Month] [REDACTED], 2019, the Investor is authorized by Lessee to transfer via wire transfer the Total Equipment Cost (as defined below) to the Vendor as follows:

Bank Name: [REDACTED]  
ABA Number: [REDACTED]  
Account Number: [REDACTED]  
Account Name: [REDACTED]  
F/B/O: [REDACTED]  
Attn: [REDACTED].

(2) By wire transfer and pending receipt of original, executed Lease Documents, on the morning of [Month] [REDACTED], 2019, the Investor is authorized by Lessee to transfer via wire transfer the Issuance Costs (as defined below) to Lessor, pursuant to the wire instructions as follows:

Bank Name: [REDACTED]  
ABA Number: [REDACTED]  
Account Number: [REDACTED]  
Account Name: [REDACTED]  
F/B/O: [REDACTED]  
Attn: [REDACTED].

Counsel for each of the Parties will confirm by e-mail receipt of funds and then the release of all original documents held in trust, when such funds and/or documents are in the possession of each of the Parties.

**Sources and Uses of Funds:**

Principal Amount of Lease	\$ [REDACTED].00
<b>TOTAL SOURCES</b>	<b>\$ [REDACTED].00</b>
Total Equipment Cost:	\$ [REDACTED].00
Issuance Costs:	\$ [REDACTED].00
<b>TOTAL LEASE PROCEEDS</b>	<b>\$ [REDACTED].00</b>

**Attest:**  
[LESSEE NAME]

By: \_\_\_\_\_  
Name:  
Title:

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**PROPOSAL AND TERMS SHEET**

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Proposal Response to:

City of Mendota Tax Exempt Lease Purchase  
To Fund an Energy Efficiency and Renewable Energy Project  
\$3,920,000\*

By and Between

**Signature Public Funding Corp.**

and

**City of Mendota**

\*Subject to change

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**SIGNATURE  
PUBLIC FUNDING**

Signature Public Funding Corp.,  
a wholly-owned subsidiary of Signature Bank



**SIGNATURE**  
**PUBLIC FUNDING**

Chris Youngs Mitchell, Executive Sales Officer  
303-617-1290 (Office)  
303-919-2929 (Mobile)  
[cmitchell@signatureny.com](mailto:cmitchell@signatureny.com)

January 28, 2019  
Updated February 6, 2019  
Mr. Cristian Gonzalez, City Manager  
Mr. Rudy Marquez, Finance Officer  
City of Mendota  
643 Quince Street  
Mendota, CA 93640

**RE: City of Mendota, CA Lease Financing Proposal, due January 28, 2019**

Dear Mr. Gonzalez and Mr. Marquez:

Signature Public Funding Corp. (“SPFC” or “Lessor”) is pleased to present to the City of Mendota (the “City” or “Lessee”) its Bank Qualified and Non-Bank Qualified, Tax-exempt Lease Purchase Agreement proposal (the “Proposal”) for the financing of the City’s Energy Efficiency and Renewable Energy Project (the “Equipment”). The terms and conditions of our Proposal are outlined in the attached terms sheet (the “Term Sheet”).

Thank you for this opportunity to present our proposal to you. We look forward to committing our resources, our members, and the expertise of SPFC to provide the City of Mendota with the most flexible and effective contracting package. We will work with you to develop the payment schedule that best meets the cash flow and budgetary needs of the City. Please contact me directly at 303-617-1290 with any questions you may have.

We look forward to your favorable acknowledgment.

Sincerely,

*Chris Mitchell*

Chris Youngs Mitchell  
Executive Sales Officer

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PROPOSAL & TERMS SHEET: BACKGROUND AND PARTIES

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City of Mendota  
Tax-exempt Lease Purchase Financing

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- LESSEE:** The City of Mendota (the “City” or “Lessee”), a political subdivision or body corporate and politic of the State of California and qualifies as a political subdivision within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the “Code”).
- LESSOR:** Signature Public Funding Corp., a wholly-owned subsidiary of Signature Bank (“SPFC” or “Lessor”), or its Assignee.
- TYPE OF FINANCING:** An appropriation based Lease Purchase Agreement or California Abatement Lease (the “Lease”) to be executed between the Lessee and Lessor. The Lessee will be responsible for all costs of operation, maintenance, insurance, taxes (if applicable) and expenses imposed by the ownership or possession of the Equipment. The Lease shall be governed by the laws of the State of California and shall comply with all applicable state and federal laws and regulations. Rental Payments will be computed on the basis of a 360-day year of twelve 30-day months. The Lessee’s Rental Payments shall be quarterly with the first Rental Payment due the 12th month from lease funding. A quarterly payment structure has been provided.
- TAX EXEMPT STATUS:** The Lease will be a tax-exempt financing such that the interest component of the Rental Payments will be excludable from the Lessor’s gross income for federal income tax calculations and exempt from all taxation in the State. The Lessee covenants and agrees to comply with all requirements of the Internal Revenue Code of 1986, as amended, and all other applicable rules, laws, regulations and promulgations necessary to keep the interest portion exempt from such Federal and State income taxes. If as a result of the Lessee’s failure to comply with the foregoing covenant or as a result of a change in laws the interest portion of the Lease payments is included in the Lessor’s federal or state gross income tax

calculations, the Lessee will pay interest at a taxable rate, together with any fees or penalties resulting from its non-compliance.

The City reasonably anticipates the total amount of tax-exempt obligations (other than private activity bonds) to be issued by the City during calendar year 2019 will not be greater than ten million (\$10,000,000.00) dollars, and the City will designate the transaction Bank Qualified. This Proposal is also effective for a Non-Bank Qualified transaction.

The City will hold legal title to the Equipment, and federal tax ownership will be deemed to be with the City.

The Lessor has not provided, nor will it provide tax or accounting advice to the Lessee regarding this transaction or the treatment thereof for tax and accounting purposes. The Lessor is not a registered financial advisor, nor registered with the MSRB or as a broker-dealer in securities. No municipal financial products or municipal securities have been included in the proposal. The Lessee has obtained independent tax, financial advisory, securities and accounting advice as it deems necessary.

An 8038-G will be provided with respect to the Lease executed in connection herewith.

**PROJECT/USE OF PROCEEDS:**

The equipment will consist of the purchase of energy efficiency and renewable energy project (the "Equipment") to be installed at City owned sites. The specific items, makes, models and manufacturers/vendors of the Equipment will be selected by the Lessee (subject to the approval of the Lessor, which shall not be unreasonably withheld) and more fully set forth on the Lease Equipment Schedule and/or Acceptance Certificate delivered in connection with the draw from any escrow account.



**PROPOSAL & TERMS SHEET: LEASE TERMS, AMOUNT, & RATES**

City of Mendota  
Tax-exempt Lease Purchase Financing

**TERM, RATES, AND PAYMENTS:**

OPTION	CLOSING DATE	APPROXIMATE FINANCING AMOUNT	TERM	INTEREST RATE*	STRUCTURE**	PAYMENT DUE	TOTAL COST OVER TERM
1	On or before March 5, 2019	\$3,920,000	16 years	3.394%	Quarterly payments**	First quarterly P & I payment due 2/28/2020 assuming a 2/28/2019 lease closing; final maturity 2/28/2035	\$5,347,805.86

\*The Interest Rates above are fixed and locked assuming that this Proposal is accepted on or before February 8, 2019 and the transaction closes on or before March 5, 2019. SPFC shall use all reasonable efforts to honor the quoted interest rate after this date; however, SPFC reserves the right to reset the rate if the transaction is not closed on or before March 5, 2019. At no time shall the Interest Rate be less than the rates set forth above. The interest rates provided are applicable for a Bank Qualified or Non-Bank Qualified designation.

\*\* Sample amortization schedules provided assume a February 28, 2019 lease closing date. We will work with the City to develop a repayment schedule that best meets the City’s budgetary and cash flow needs.

**RATE LOCK EXPIRATION:**

As noted above, the Interest Rates quoted shall be held firm for lease closing on or before March 5, 2019 (“Closing Date”) provided the Lessee notifies SPFC in writing that the proposal has been accepted, subject to governing body approval, by February 5, 2019 (“Proposal Expiration Date”); which may be extended by the mutual agreement of the parties. The Proposal Expiration Date and Estimated Closing Date shall be referred to as the “Expiration Date”. If funding does not occur by March 5, 2019, the Interest Rate and Payments may be increased, if necessary. At no time shall the Interest Rate be less than the rates set forth above. Once set, the Interest Rate and Rental Payments shall remain fixed for the lease term.

**PREPAYMENT OPTIONS:**

The Lessee can exercise its right to prepay its obligations under the Lease in whole (partial prepayments are permitted with respect to damaged items of Equipment or unused lease proceeds remaining in the Escrow Account) on any scheduled payment date following 30 days’

notice by paying the Prepayment Price to the Lessor. Prepayment Price is equal to the sum of: (a) the Lease Payment due on such date, (b) all other amounts due and owing under the Lease, and (c) 103% of the Remaining Principal Balance in years 1-5, and 102% of the Remaining Principal Balance year 6-10, and 101% of the Remaining Principal Balance thereafter.

**SECURITY:**

The Lessee will grant Lessor a first priority and perfected security interest in the Equipment, Escrow Fund, and all proceeds with respect to the foregoing. Lessor will file UCC-1 fixture financing statements in order to perfect its security interest at its cost and expense; provided, however, that Lessee will provide Lessor with all reasonably requested information in order to make such filings.

**ESCROW FUNDING:**

SPFC has assumed funding of the Lease Proceeds into an Escrow Account established pursuant to an Escrow Agreement (the "Escrow"). The Escrow Account shall be used to pay contractors and vendors and any fees associated with the financing. The Escrow shall be provided by Signature Bank or an escrow agent to be mutually approved by the parties (the "Escrow Agent") using the Escrow Agent's standard form of escrow agreement with such changes as may be agreed by the parties. With any escrow agent selected, SPFC will review and approve the City requested escrow disbursements prior to the Escrow Agent disbursing funds. The City will be responsible for all escrow fees charged by the Escrow Agent which would be free (Signature Bank), and would otherwise vary depending on the Escrow Agent and investment options chosen for the escrow account by the City. It is assumed that all interest earnings (if any) will accrue for benefit of the City and that unused portions of the escrow account will be applied to the Prepayment of the Lease.

**REIMBURSEMENT:**

If the City intends to be reimbursed for any cost associated with the Project, the RFP or the Lease financing, intent for reimbursement from the Lease Proceeds must be evidenced and must qualify under the Treasury Regulation Section 1.150.2.

**INSURANCE:**

The Lessee shall furnish evidence of continuing all-risk property and casualty coverage for the greater of the Prepayment Price and/or replacement value of the Equipment and liability coverage of at least \$1,000,000 per occurrence for each property and bodily injury liability, with a minimum of \$3,000,000 aggregate for the Lease financed hereunder for the full term thereof. Such property and liability coverages shall, respectively, name Lessor as loss payee and additional insured. Lessee may choose to self-insure or provide alternate coverage on the terms and conditions acceptable to and approved by the Lessor.

**RENTAL INTERRUPTION INSURANCE:**

Under an Abatement Lease, the Lessee will be required to obtain rental interruption insurance in the event the Equipment is not available for use due to damage or destruction. Such insurance will provide for payments in an amount not less than the maximum aggregate lease payment amount over any 24-month period of the lease term or a term mutually agreed by all parties.

**AUTHORIZED SIGNORS:**

The Lessee's governing body shall provide SPFC with its resolution or other evidence of authority to acquire the Equipment, enter into the Lease/financing thereof, and to execute the Lease Documentation and shall designate the individual(s) to execute all necessary documents used therein.

**LEGAL OPINION:**

The Lessee's counsel shall furnish SPFC with a validity and tax opinion covering, *inter alia*, the tax-exempt nature of this transaction, the authority of the City, the approval of the Project, and the approval of the documents used herein. This opinion shall be in a form and substance satisfactory to SPFC; however, such opinion may be delivered by the City's internal counsel. The Lessee shall be responsible for its own costs. Any fees, to include escrow costs (if any), may be included in the amount to be financed.

**LEASE DOCUMENTATION:**

The Lease Documentation will be prepared by SPFC and subject to approval by the City, its counsel, SPFC, and its counsel. Documentation shall include all standard representations,

warranties, and covenants typically associated with a transaction of this nature, including any requirements of SPFC's credit approval.

**PAYMENT AND PERFORMANCE BONDS:**

The Lessor requires to be listed as dual obligee on the payment and performance bonds as provided by ENGIE Services U.S. No draws from Escrow shall be permitted until such bonds are in place.

**DUE DILIGENCE:**

Where not available in the public domain, and at reasonable request by the Lessor, the City shall provide documentation and information that may include items such as a final executed copy of any vendor performance contract or energy contract, three (3) years of current financial statements, budgets, demographics, and such other financial information relating to the ability of the City to continue the Lease as may be reasonably requested by SPFC.

This proposal shall not be construed as a commitment to a lease or lend by and is subject to final credit approval by the Credit/Investment Committee of Signature Public Funding Corp. and Signature Bank and approval of the definitive lease documents and final project in SPFC's sole discretion. Any and all capitalized terms not specifically defined herein shall be given their meaning under the Lease Documents.

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PROPOSAL & TERMS SHEET: PROPOSAL ACCEPTANCE

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City of Mendota  
Tax-exempt Lease Purchase Financing

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**ACCEPTANCE BY LESSEE:**

The Proposal & Terms Sheet submitted by Signature Public Funding Corp. on February 6, 2019 has been reviewed, agreed to, and accepted by the City of Mendota, subject to final Board approval, on this \_\_\_\_ day of \_\_\_\_\_, 2019.

**AGREED AND ACCEPTED:**

**CITY OF MENDOTA**

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

Name:

Title:

Date:

City of Mendota

Compound Period: Quarterly

Nominal Annual Rate: 3.394%

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

	Date	Payment	Interest	Principal	Balance	Prepayment Price
Loan	2/28/2019				3,920,000.00	
1	2/28/2020	59,011.00	134,747.73	-75,736.73	3,995,736.73	4,115,608.83
2	5/28/2020	59,011.00	33,903.83	25,107.17	3,970,629.56	4,089,748.45
3	8/28/2020	59,011.00	33,690.79	25,320.21	3,945,309.35	4,063,668.63
4	11/28/2020	59,011.00	33,475.95	25,535.05	3,919,774.30	4,037,367.53
5	2/28/2021	60,568.75	34,004.65	26,564.10	3,893,210.20	4,010,006.51
6	5/31/2021	60,568.75	33,033.89	27,534.86	3,865,675.34	3,981,645.60
7	8/31/2021	60,568.75	32,800.26	27,768.49	3,837,906.85	3,953,044.06
8	11/30/2021	60,568.75	32,564.64	28,004.11	3,809,902.74	3,924,199.82
9	2/28/2022	63,970.00	32,327.02	31,642.98	3,778,259.76	3,891,607.55
10	5/31/2022	63,970.00	32,058.53	31,911.47	3,746,348.29	3,858,738.74
11	8/31/2022	63,970.00	31,787.77	32,182.23	3,714,166.06	3,825,591.04
12	11/30/2022	63,970.00	31,514.70	32,455.30	3,681,710.76	3,792,162.08
13	2/28/2023	67,528.00	31,239.32	36,288.68	3,645,422.08	3,754,784.74
14	5/31/2023	67,528.00	30,931.41	36,596.59	3,608,825.49	3,717,090.25
15	8/31/2023	67,528.00	30,620.88	36,907.12	3,571,918.37	3,679,075.92
16	11/30/2023	67,528.00	30,307.73	37,220.27	3,534,698.10	3,640,739.04
17	2/29/2024	71,249.50	29,991.91	41,257.59	3,493,440.51	3,598,243.73
18	5/31/2024	71,249.50	29,641.84	41,607.66	3,451,832.85	3,555,387.84
19	8/31/2024	71,249.50	29,288.80	41,960.70	3,409,872.15	3,512,168.31
20	11/30/2024	71,249.50	28,932.77	42,316.73	3,367,555.42	3,434,906.53
21	2/28/2025	77,619.00	28,573.71	49,045.29	3,318,510.13	3,384,880.33
22	5/31/2025	77,619.00	28,157.56	49,461.44	3,269,048.69	3,334,429.66
23	8/31/2025	77,619.00	27,737.88	49,881.12	3,219,167.57	3,283,550.92
24	11/30/2025	77,619.00	27,314.64	50,304.36	3,168,863.21	3,232,240.47
25	2/28/2026	81,764.75	26,887.80	54,876.95	3,113,986.26	3,176,265.99
26	5/31/2026	81,764.75	26,422.17	55,342.58	3,058,643.68	3,119,816.55
27	8/31/2026	81,764.75	25,952.59	55,812.16	3,002,831.52	3,062,888.15
28	11/30/2026	81,764.75	25,479.03	56,285.72	2,946,545.80	3,005,476.72
29	2/28/2027	86,099.75	25,001.44	61,098.31	2,885,447.49	2,943,156.44
30	5/31/2027	86,099.75	24,483.02	61,616.73	2,823,830.76	2,880,307.38
31	8/31/2027	86,099.75	23,960.20	62,139.55	2,761,691.21	2,816,925.03
32	11/30/2027	86,099.75	23,432.95	62,666.80	2,699,024.41	2,753,004.90

33	2/29/2028	90,632.50	22,901.22	67,731.28	2,631,293.13	2,683,918.99
34	5/31/2028	90,632.50	22,326.52	68,305.98	2,562,987.15	2,614,246.89
35	8/31/2028	90,632.50	21,746.95	68,885.55	2,494,101.60	2,543,983.63
36	11/30/2028	90,632.50	21,162.45	69,470.05	2,424,631.55	2,473,124.18
37	2/28/2029	95,372.25	20,573.00	74,799.25	2,349,832.30	2,396,828.95
38	5/31/2029	95,372.25	19,938.33	75,433.92	2,274,398.38	2,319,886.35
39	8/31/2029	95,372.25	19,298.27	76,073.98	2,198,324.40	2,242,290.89
40	11/30/2029	95,372.25	18,652.78	76,719.47	2,121,604.93	2,142,820.98
41	2/28/2030	100,328.25	18,001.82	82,326.43	2,039,278.50	2,059,671.29
42	5/31/2030	100,328.25	17,303.28	83,024.97	1,956,253.53	1,975,816.07
43	8/31/2030	100,328.25	16,598.81	83,729.44	1,872,524.09	1,891,249.33
44	11/30/2030	100,328.25	15,888.37	84,439.88	1,788,084.21	1,805,965.05
45	2/28/2031	105,510.00	15,171.89	90,338.11	1,697,746.10	1,714,723.56
46	5/31/2031	105,510.00	14,405.38	91,104.62	1,606,641.48	1,622,707.89
47	8/31/2031	105,510.00	13,632.35	91,877.65	1,514,763.83	1,529,911.47
48	11/30/2031	105,510.00	12,852.77	92,657.23	1,422,106.60	1,436,327.67
49	2/29/2032	110,928.25	12,066.57	98,861.68	1,323,244.92	1,336,477.37
50	5/31/2032	110,928.25	11,227.73	99,700.52	1,223,544.40	1,235,779.84
51	8/31/2032	110,928.25	10,381.77	100,546.48	1,122,997.92	1,134,227.90
52	11/30/2032	110,928.25	9,528.64	101,399.61	1,021,598.31	1,031,814.29
53	2/28/2033	116,593.50	8,668.26	107,925.24	913,673.07	922,809.80
54	5/31/2033	116,593.50	7,752.52	108,840.98	804,832.09	812,880.41
55	8/31/2033	116,593.50	6,829.00	109,764.50	695,067.59	702,018.27
56	11/30/2033	116,593.50	5,897.65	110,695.85	584,371.74	590,215.46
57	2/28/2034	122,517.00	4,958.39	117,558.61	466,813.13	471,481.26
58	5/31/2034	122,517.00	3,960.91	118,556.09	348,257.04	351,739.61
59	8/31/2034	122,517.00	2,954.96	119,562.04	228,695.00	230,981.95
60	11/30/2034	122,517.00	1,940.48	120,576.52	108,118.48	109,199.66
61	2/28/2035	109,035.86	917.38	108,118.48	0.00	0.00
Grand Totals		5,347,805.86	1,427,805.86	3,920,000.00		

Last interest amount decreased by 0.01 due to rounding.

## STATEMENT OF QUALIFICATIONS-CITY OF MENDOTA

Signature Public Funding Corp. is a wholly owned subsidiary of Signature Bank (“SB”). Our parent is a full-service commercial bank offering a wide variety of business and personal banking products and services. The Bank is ranked among the top 1 percent of commercial banks in the U.S. based on assets and is one of only three banks in the nation to rank in the top 10 in each of the past six years in Forbes annual list of Best and Worst Banks. Investor Relations and Financial Information may all be viewed at [www.signatureny.com](http://www.signatureny.com) and click “Investor Information”.

**Signature Public Funding Corp.** was formed in early 2015 to specialize solely in the providing of tax-exempt financing to obligors in the government and not-for-profit sectors across the United States. The SPFC team has a breadth of experience in the tax-exempt marketplace with many of the individuals having worked together in this marketplace for over 14 years. Since inception, over \$600MM of transactions have been completed and funded by SPFC/SB. Financings have been provided for rolling stock, computer hardware and software, energy management equipment, communications equipment, real estate, copiers, revenue pledges, general obligation, and other miscellaneous essential use equipment. SPFC has successfully worked with the end-users, financial advisors, placement agents, and vendors to bring the transactions to a successful close. The financings have been in the form of master equipment lease purchase contracts, revenue pledges and single installment sale contracts.

**Our team includes:**

Don Keough, Sr. Managing Director and head of SPFC. Don has been in the Public Finance arena since 2002. Prior to heading SPFC, Don was in the private practice of law representing a significant number of lenders and lessors in this arena. Don previously ran the operations for SunTrust Equipment Finance & Leasing Corp’s public finance and municipal leasing division.

Rich Cumbers, Sr. Managing Underwriter. Prior to joining SPFC, Rich worked at Bridge Capital Leasing and Capital One Equipment Finance. Prior to that, Rich was the head municipal/public finance underwriter at SunTrust, which is where Rich and Don successfully closed over \$1.2B in public finance transactions on an annual basis.

The remainder of the documentation, credit and sales team at SPFC has a similar breadth of experience and has worked together for over 12 years. Tonia Lee, Sr. Documentation Specialist, Mike Furnari, Sr. Documentation Specialist, and Tracey Galvani, Sr. Credit Officer would also be a part of our team for this transaction.

**Primary Contact:**

Chris Youngs Mitchell – Executive Sales Officer, Signature Public Funding: Chris is an Executive Sales Officer for Signature Public Funding based in Denver, Colorado. Chris is responsible for the origination, structuring and purchase of tax-exempt finance offerings for public-sector essential use assets in the central and western United States. Ms. Youngs has over 30 years’ experience in the tax-exempt finance industry, including both originating and syndicating private placement structures. Prior to joining Signature Public Funding, Ms. Youngs was a SVP for Banc of America Public Capital Corp focusing on the financing of energy-conservation measures and alternative energy sources. Chris has also held positions with Hannon Armstrong Municipal Finance Group, CitiCapital Healthcare and Energy Services Group, and ABN AMRO/LaSalle Bank in the roles of origination, syndication and private placement of tax-exempt obligations.



**Signature Public Funding Corp.  
Information Sheet/ Doc. Request Form**

Entire Legal name of Entity:	City of Mendota
Name:	
Address:	643 Quince Street
City, State and Zip Code:	Mendota, CA 93640
<b>TIN:</b>	

Email address for notices:	<a href="mailto:Rudy@cityofmendota.com">Rudy@cityofmendota.com</a> and <a href="mailto:Cristian@cityofmendota.com">Cristian@cityofmendota.com</a>
Email address for documents:	Same

<b>Mailing address for invoices:</b>	City of Mendota
Address:	643 Quince Street
City, State and Zip Code:	Mendota, CA 93640
<b>Email:</b>	

Authorized Signatory's Name:	Cristian Gonzalez
Title:	City Manager
Phone & Fax Number:	559-655-4298
Email Address:	
<b>Attester's Name</b>	
Attester's Title:	

Anticipated Closing Date:	February 28, 2019
Document Delivery Date:	
Resolution Date:	February 12, 2019
Reimbursement Resolution:	Y      NXX

Transaction Amount:	\$3,920,000
Use of Proceeds:	Solar Generating Facilities and Integrated Switchgear and VFD
Documentation Fee:	\$0
Paid by Lessee/ From:	Y      N

Equipment Description:	Solar Generating Facilities and Integrated Switchgear and VFD
New/Used:	New
Refinancing:	Old
Invoices/ Proof of Payment:	Invoices
Re-imbusement to Client:	

Equipment Location:	City Hall, Public Works Yard Shop, Water Plant, Well #3, Sewer Plant, Well #8
City, State and Zip Code:	Mendota, CA 93640 - Location addresses in Attachment A

Vendor Name: Engie Services U.S. Inc.  
500 12<sup>th</sup> Street, Ste. 300  
Oakland, CA 94607

BQ/NBQ: BQ

Escrow/Non-Escrow: Escrow  
Escrow Information: Signature Bank  
Signatory Name & Address if different:

Prepayment Premium: 103% years 1-5, 102% years 6-10 and 101% thereafter

**Insurer's Name:**

Address:

City, State, Zip Code:

Phone & Fax Number:

Contact Name & Number:

Self-Insured: Y/N

Risk Pool: Y/N

Legal Counsel/ Bond Counsel Information: Nicolas R. Cardella, Wanger Jones Helsley PC

Opinion of Counsel/ Bond Counsel Tax Opinion:

Resolution Adopted: February 12, 2019

Declaration of Intent to Reimburse: No

Current Audited Financials: Received

Current Operating & Capital Budget: Received

Legal Documentation Fees:

Invoices/Proof of Payment:

Wiring Instructions:

**Code Enforcement  
Monthly Log**

<b>Address</b>	<b>Type of Case</b>	<b>1st Notice</b>	<b>Deadline</b>	<b>Status</b>	<b>Fine Amount</b>
545 BOU CIR.	MUNICODE/ PARKING VIOLATION	1/1/2019	N/A	CITED	\$40.00
545 BOU CIR.	MUNICODE/ PARKING VIOLATION	1/1/2019	N/A	CITED	\$40.00
545 BOU CIR.	MUNICODE/ PARKING VIOLATION	1/1/2019	N/A	CITED	\$40.00
AMADOR/ GONZALEZ	MUNICODE/ PARKING VIOLATION	1/1/2019	N/A	ADVISED	\$0.00
BLACK/ SORENSEN	VEHICLE TAGGED FOR 72 HRS	1/1/2019	1/4/2018	COMPLETE	\$0.00
DIRT LOT MARIE/ DIVISADERO	COMMUNITY CONTACT	1/1/2019	N/A	COMPLETE	\$0.00
452 NAPLES	COMMUNITY CONTACT	1/3/2019	N/A	ADVISED	\$0.00
630 OLLER	MUNICODE/ FOLLOW UP	1/3/2019	N/A	COMPLETE	\$0.00
SEGOVIA/ CANTU	MUNICODE/ PARKING VIOLATION	1/3/2019	N/A	COMPLETE	\$0.00
DIRT LOT N OF 890 QUINCE	MUNICODE/ PARKING VIOLATION	1/3/2019	N/A	CITED	\$100.00
485 NAPLES	MUNICODE/ PUBLIC NUISANCE	1/3/2019	N/A	COMPLETE	\$0.00
2ND/ OLLER	MUNICODE/ PARKING VIOLATION	1/3/2019	N/A	CITED	\$50.00
2ND/ OLLER	MUNICODE/ PARKING VIOLATION	1/3/2019	N/A	CITED	\$50.00
800 GARCIA	MUNICODE/ PARKING VIOLATION	1/3/2019	N/A	CITED	\$275.00
RIO FRIO/ 7TH	MUNICODE/ PARKING VIOLATION	1/4/2018	N/A	ADVISED	\$0.00
630 OLLER	MUNICODE/ FOLLOW UP	1/4/2018	N/A	COMPLETE	\$0.00
HOLMES/ SORENSEN	MUNICODE/ FOLLOW UP	1/4/2019	N/A	COMPLETE	\$0.00
318 GOMEZ	MUNICODE/ PARKING VIOLATION	1/4/2019	N/A	ADVISED	\$0.00
GUROLLA/ HOLMES	MUNICODE/ PARKING VIOLATION	1/4/2019	N/A	TOWED	\$0.00
GUROLLA/ HOLMES	COMMUNITY CONTACT	1/4/2019	N/A	COMPLETE	\$0.00
242 TUFT	COMMUNITY CONTACT	1/4/2019	N/A	ADVISED	\$0.00
700 BLK ALLEY QUINCE/ RIOFRIO	MUNICODE/ FOLLOW UP	1/8/2019	N/A	COMPLETE	\$0.00
FAMILY DOLLAR	MUNICODE/ PUBLIC NUISANCE	1/8/2019	N/A	ADVISED	\$0.00
CANAL/ 8TH	MUNICODE/ PARKING VIOLATION	1/8/2019	N/A	TOWED	\$0.00
CANAL/ 8TH	COMMUNITY CONTACT	1/8/2019	N/A	COMPLETE	\$0.00
2ND/ OLLER	MUNICODE/ PARKING VIOLATION	1/8/2019	N/A	ADVISED	\$0.00
628 JUANITA	COMMUNITY CONTACT	1/8/2019	N/A	COMPLETE	\$0.00
896 OLLER	MUNICODE/ FOLLOW UP	1/10/2019	N/A	COMPLETE	\$0.00
630 OLLER	MUNICODE/ FOLLOW UP	1/10/2019	N/A	COMPLETE	\$0.00
600 BLK OF LOZANO	MUNICODE/ PUBLIC NUISANCE	1/10/2019	N/A	COMPLETE	\$0.00
1167 PUCHUE	MUNICODE/ PUBLIC NUISANCE	1/10/2019	N/A	COMPLETE	\$0.00
2ND/ I	VEHICLE TAGGED FOR 72 HRS	1/10/2019	1/13/2019	COMPLETE	\$0.00
6TH/ MARIE	MUNICODE/ FOLLOW UP	1/10/2019	N/A	COMPLETE	\$0.00
200 BLK VALENZUELA	MUNICODE/ PARKING VIOLATION	1/10/2019	N/A	COMPLETE	\$0.00
2ND/ BASS	MUNICODE/ PARKING VIOLATION	1/10/2019	N/A	COMPLETE	\$0.00

**Code Enforcement  
Monthly Log**

459 N KATE	VEHICLE TAGGED FOR 72 HRS	1/11/2019	1/14/2019	COMPLETE	\$0.00
DIRT LOT DIVISADERO/ MARIE	MUNICODE/ PARKING VIOLATION	1/11/2019	N/A	COMPLETE	\$0.00
FOOD CENTER PARKING LOT	MUNICODE/ NO BUSINESS LICENSE	1/11/2019	N/A	ADVISED	\$0.00
860 KATE	MUNICODE/ PARKING VIOLATION	1/11/2019	N/A	CITED	\$50.00
LATINO MARKET PARKING LOT	MUNICODE/ PUBLIC NUISANCE	1/11/2019	N/A	ADVISED	\$0.00
6TH/ KATE	MUNICODE/ PARKING VIOLATION	1/11/2019	N/A	COMPLETE	\$0.00
800 ALLEY BLK OF LOLITA/ KATE	COMMUNITY CONTACT	1/11/2019	N/A	ADVISED	\$0.00
CITY HALL	MUNICODE/ PARKING VIOLATION	1/12/2019	N/A	COMPLETE	\$0.00
396 QUINCE	MUNICODE/ PARKING VIOLATION	1/12/2019	N/A	ADVISED	\$0.00
7TH/ LOLITA	COMMUNITY CONTACT	1/12/2019	N/A	COMPLETE	\$0.00
1290 6TH	COMMUNITY CONTACT	1/12/2019	N/A	COMPLETE	\$0.00
549 LOLITA	COMMUNITY CONTACT	1/12/2019	N/A	COMPLETE	\$0.00
2ND / BASS	VEHICLE CHECK	1/12/2019	N/A	VEHICLE TAG	\$0.00
630 OLLER	FOLLOW UP	1/15/2019	N/A	COMPLETE	\$0.00
625 JUANITA	VEHICLE TAGGED FOR 72 HRS	1/15/2019	N/A	VEHICLE TAG	\$0.00
800 GARCIA	VEHICLE TAGGED FOR 72 HRS	1/15/2019	N/A	WARNING	\$0.00
ALLEY BEH 643 RIO FRIO	COMMUNITY CONTACT	1/16/2019	N/A	ADVISED	\$0.00
210 VALENZUELA	MUNICODE/ PARKING VIOLATION	1/16/2019	N/A	COMPLETE	\$0.00
175 ASH	MUNICODE/ PARKING VIOLATION	1/16/2019	N/A	RTF	\$0.00
617 GARCIA	MUNICODE VIOLATION	1/16/2019	N/A	ADVISED	\$0.00
1940 6TH ST	FOLLOW UP	1/17/2019	N/A	ADVISED	\$0.00
226 J ST	VEHICLE CHECK	1/19/2019	N/A	RTF	\$0.00
240 FLEMING	VEHICLE CHECK	1/19/2019	N/A	WARNING	\$0.00
691 I	MUNICODE VIOLATION	1/19/2019	N/A	WARNING	\$0.00
ARNAUDON/ SORENSON	COMMUNITY CONTACT	1/19/2019	N/A	ADVISED	\$0.00
PEREZ / LOZANO	VEHICLE CHECK	1/19/2019	N/A	VEHICLE TAG	\$0.00
647 PEREZ	COMMUNITY CONTACT	1/19/2019	N/A	COMPLETE	\$0.00
796 UNIDA	COMMUNITY CONTACT	1/19/2019	N/A	COMPLETE	\$0.00
FAMILY DOLLAR	MUNICODE VIOLATION	1/22/2019	N/A	CITED	\$0.00
630 OLLER	COMMUNITY CONTACT	1/22/2019	N/A	COMPLETE	\$0.00
CITY HALL	COMMUNITY CONTACT	1/22/2019	N/A	COMPLETE	\$0.00
800 GARCIA	VEHICLE TAGGED FOR 72 HRS	1/22/2019	1/25/2019	CITED	\$0.00
241 HOLMES	MUNICODE VIOLATION	1/22/2019	N/A	COMPLETE	\$0.00
FAMILY DOLLAR	MUNICODE VIOLATION	1/24/2019	N/A	CITED	\$0.00
CITY HALL	COMMUNITY CONTACT	1/24/2019	N/A	COMPLETE	\$0.00
645 DE LA CRUZ	MUNICODE VIOLATION	1/24/2019	N/A	ADVISED	\$0.00

**Code Enforcement  
Monthly Log**

FAMILY DOLLAR	COMMUNITY CONTACT	1/24/2019	N/A	COMPLETE	\$0.00
647 PEREZ APT G	FOLLOW UP	1/26/2019	N/A	COMPLETE	\$0.00
629 4TH CT	VEHICLE CHECK	1/26/2019	N/A	CITED	\$0.00
SINCLAIRE GAS STATION	MUNICODE VIOLATION	1/26/2016	N/A	WARNING	\$0.00
PEREZ / LOZANO	VEHICLE TAGGED FOR 72 HRS	1/26/2019	1/29/2019	VEHICLE TAG	\$0.00
919 RIO FRIO CIR	VEHICLE TAGGED FOR 72 HRS	1/27/2019	1/30/2019	VEHICLE TAG	\$0.00
205 SMOOT	VEHICLE TAGGED FOR 72 HRS	1/27/2019	1/30/2019	VEHICLE TAG	\$0.00
7TH/ INEZ	PARKING VIOLATION/EXPIRED REG	1/28/2019	N/A	CITED	\$50.00
LOZANO/PEREZ	MUNICODE VIOLATION	1/28/2019	N/A	WARNING	\$0.00
300 BLANCO	MUNICODE VIOLATION	1/28/2019	1/29/2019	WARNING	\$0.00
626 GAXIOLA	MUNICODE VIOLATION	1/29/2019	N/A	WARNING	\$0.00
300 GOMEZ	MUNICODE VIOLATION	1/30/2019	2/5/2019	COMPLETE	\$0.00
800 GARCIA	PARKING VIOLATION/MUNI CODE	1/30/2019	N/A	WARNING	\$0.00
300 RIOS	PARKING VIOLATION/MUNI CODE	1/30/2019	N/A	WARNING	\$0.00
				<b>TOTAL=</b>	<b>\$695.00</b>



# POLICE

M E N D O T A

## MEMORANDUM

**Date:** February 4, 2019  
**To:** Cristian Gonzalez, City Manager  
Mendota City Council Members  
**From:** Gregg L. Andreotti, Chief of Police  
**Subject:** Monthly Report for January 2019

### **Significant Cases:**

Vehicle stop at Gomez/Rios discovered the driver was intoxicated. He was arrested for DUI, cited and released to a sober adult.

Report of a fight at a local bar was unfounded. The caller was contacted outside and found to be extremely intoxicated. He was arrested and transported to Jail.

An unknown suspect stole property from the victim's vehicle while it was parked on Rowe Street.

Disturbance at a residence on Rowe Street discovered the suspect hit the victim. He was arrested and transported to Jail.

### **Start of 2019**

An unknown suspect stole tools from a backyard shed on Kate Street.

Subject check in an alley on Oller discovered two meth pipes. He was arrested, cited and released.

An unknown suspect stole the victim's vehicle license plate while his car was parked on 7<sup>th</sup> Street.

An unknown suspect stole the victim's vehicle while it was parked by his residence over night.

Officers recovered a stolen vehicle at Fleming/Rowe Streets previously stolen in Oakhurst.

An unknown suspect stole the victim's vehicle while it was parked on Lozano Street.

An unknown suspect broke into the victim's two vehicles while they were parked on Quince Street. Unknown property was stolen.

A known unwanted subject returned to a property he was admonished not to return to. He was contacted for trespassing and resisted officers, who eventually took him into custody. He was arrested, cited and released.

The driver of a vehicle was unconscious behind the wheel of a vehicle idling in a local fast food parking lot. The driver was contacted and found to be intoxicated. A 7 yr old child was also in the vehicle. The driver was arrested for DUI and transported to Jail. The child was turned over to a relative.

An unknown suspect forced entry into the victim's vehicle while it was parked on Tuft Street and stole property from inside.

Officers recognized a stolen vehicle as it past them on the roadway. Officers conducted a vehicle stop and positively identified the two subjects in the stolen vehicle. Auto theft tools were located in the vehicle. Both subjects were arrested. One was transported to Jail and the other to JJC.

Subject check at Marie/2<sup>nd</sup> resulted in an FI for information.

Subject check at Derrick/McCabe discovered an outstanding warrant for his arrest. He was arrested, cited and released.

Vehicle stop at Oller/10<sup>th</sup> resulted in the driver being uncooperative and obstructing officers. He was arrested and eventually cited and released.

Vehicle stop by Oller/Belmont discovered an outstanding warrant. He was arrested, cited and released to family members.

Subject check at a local park discovered he was in possession of an open container of alcohol. He was cited and released.

An unknown suspect damaged the windshield to the victim's vehicle while it was parked on Puchue.

An unknown suspect broke the victim's bedroom window from the outside while she was inside her home on Rio Frio Street.

An unknown suspect stole the victim's vehicle while it was parked on Garcia Street overnight.

A known suspect violated a restraining order on Gregg Court by going to the protected person's residence. He left the scene prior to officers arriving.

Vehicle stop at Oller/5<sup>th</sup> discovered the driver was intoxicated. He was arrested for DUI, cited and released to a sober family member.

Vehicle check in the parking lot of a local business on Derrick Avenue. The driver was found to have outstanding warrants and in possession of a meth pipe. He was arrested, cited and released.

An unknown suspect stole the victim's vehicle while it was parked on Gomez Street.

Injury traffic collision at Bass/Barboza. Two parties complained of pain and were evaluated by EMS. Both were released on scene.

Vehicle stop by Bass/Hwy33 discovered the driver was on probation and admitted to methamphetamine being in his vehicle. The passenger was found to have an active warrant for her arrest. Both were arrested, cited and released.

Officers conducted a vehicle stop and discovered the driver was intoxicated. He was arrested for DUI and transported to Jail.

Non-injury traffic collision by Bass/Hwy 33. A driver cut off another driver who veered off the roadway and hit a parked car.

An unknown suspect stole a water container from the front porch of the victim's residence on Third Street. Video captured the event.

Officers located a subject sleeping behind the wheel of a vehicle while it was idling on H Street. He was found to be intoxicated and arrested for DUI. He was cited and released to a sober family member.

An unknown suspect stole the victim's vehicle while it was parked overnight on L Street.

A subject trespassed onto property on Oller and then entered a vehicle without permission. He was contacted and arrested for trespassing, cited and released.

A known suspect damaged the interior of the victim's residence. The suspect was found to be on probation and located by Firebaugh PD in the City of Firebaugh. He was arrested for the vandalism and probation violation and turned over to MPD Officers. He was then transported to Jail.

Probation check at the residence of a subject who knows a person wanted for auto theft. The wanted suspect was located and attempted to flee the location. He was apprehended by officers and found to be in possession of property stolen from a prior auto theft. The probationer was arrested for probation violation. Both were transported to Jail.

Subject check in front of a business on 7<sup>th</sup> Street discovered they were in possession of open containers of alcohol. Both were cited and released.



Subject check of a person lying in the driveway of a residence on Kate Street. He was found to be extremely intoxicated and wanted on outstanding warrants. He was arrested and transported to Jail.

Subject check by Oller/9<sup>th</sup> discovered outstanding warrants for his arrest. He was arrested, cited and released.

Assist to Firebaugh Police during their pursuit of a stolen vehicle into the City of Mendota. The pursuit ended by Amador/Oxnard and the suspects fled on foot. Mendota Officers assisted in apprehending the suspects who were eventually turned over to Firebaugh Officers.

The victim started his vehicle and then returned into his residence on San Pedro. When he returned his vehicle was gone. Suspect unknown.

An unknown suspect stole the victim's credit card and used it without permission.

An unknown suspect stole the victim's purse from her unlocked vehicle while it was parked on Quince.

Subject check of three in front of a local business on 7th Street discovered one was in possession of an open container of alcohol and drug paraphernalia. All three were found to be wanted on active warrants. All were arrested, cited and released.

Subject check on Tuft Street discovered he was in possession of an open container of alcohol and wanted on an active warrant. He was arrested and transported to Jail.

Subject check by 7<sup>th</sup>/Lolita resulted in an FI for information.

Subject check by Holmes/Sorensen discovered he was wanted on an active warrant. He was arrested and transported to Jail.

Subject check on Fleming discovered active warrants. He was arrested, cited and released.

Subject check at 2<sup>nd</sup>/Bass discovered active warrants. He was arrested, cited and released.

Disturbance at a residence on Kate Ct. discovered the suspect hit the victim. The suspect was arrested and transported to Jail.

Disturbance at a location on Oller discovered a victim of a beating. EMS responded and transported him to CRMC for treatment. The victim was uncooperative.

Officers received information of a stolen vehicle being driven on Bass Avenue. Officers located the vehicle with two occupants and were able to stop it. The driver was positively identified by the

victim as the person who stole the vehicle. The passenger was found in possession of illegal drugs. Both were arrested and transported to Jail.

An unknown suspect forced entry into storage units at a local mini storage location. Unknown property was stolen.

An unknown suspect broke into the victim's vehicle while it was parked on Cervantes Street. Unknown property is missing.

An unknown suspect stole the victim's vehicle while it was parked on Silva Street.

An unknown suspect broke into the victim's residence on Barajas Court and stole personal property.

A known suspect borrowed the victim's vehicle to run an errand and then did not return it. He was last known to be in southern California.

An unknown suspect stole the victim's vehicle while it was parked on Rios Street.

Subject check by Divisadero/Lolita discovered outstanding warrants for his arrest. He was arrested and transported to Jail.

Offices located an embezzled vehicle on J Street and the suspect who stole it. He was arrested and transported to Jail.

Subject check at 7<sup>th</sup>/Stamoules discovered he was on parole and wanted on an active warrant. He was also found to be in possession of a meth pipe and ammunition. He was arrested and transported to Jail.

An unknown suspect was driving reckless and hit and run the victim vehicle by Oller/9<sup>th</sup> Street. Officers located the suspect vehicle damaged and abandoned on Inez Street.

An unknown suspect stole the victim's vehicle while it was parked on Segovia Street.

Subject check of a known probationer at Gregg Ct/Sorensen. He was FI'ed for information.

A vehicle stop discovered the driver was wanted on an outstanding want and active warrants. He was arrested and transported to Jail.

Subject check of restrooms at a local park discovered two subjects inside after park hours. They were FI'ed for information

Police responded to an address on 8<sup>th</sup> and located a wanted subject. He was arrested and transported to Jail.

Subject check on 4<sup>th</sup> discovered he was in possession of a meth pipe. He was arrested, cited and released.

Attempted stabbing at a residence on Lozano Street. The suspect attempted to stab the victim. He was contacted by officers and arrested. He was eventually transported to Jail.

An unknown suspect broke into the victim's vehicle on 2<sup>nd</sup> Street and stole lose money from inside.

An unknown suspect stole an abandoned trainer that was on city property.

Subject check in the trash dumpster area of a local school while school was in session. He was in possession of an open container of alcohol and had been previously admonished to not trespass. He was arrested, cited and released.

Vehicle stop discovered the driver was wanted on an outstanding warrant. He was arrested, cited and released.

An unknown suspect stole the victim's vehicle from Sorensen Street. Officers discovered Kerman PD had already recovered the vehicle in their city.

An unknown suspect entered the victim's vehicle on Puchue and stole documents and other property.

An unknown suspect hit the victim while walking on Quiroga Street prior to fleeing the area.

Intoxicated subject at a local bar. Upon contact he resisted officers when they attempted to take him into custody. He was also found to have an active warrant for his arrest. He was arrested and transported to Jail.

An unknown suspect stole the victim's vehicle while it was parked on Rios Street.

An unknown suspect stole the victim's vehicle while it was parked on 3<sup>rd</sup> Street. It was later recovered on Guillen Parkway.

A petty theft occurred at a local market on Derrick. The suspect was contacted by officers and found to be on active parole. He was arrested and transported to Jail.

An unknown suspect attempted to steal the victim's vehicle while it was parked on Puchue Street.

Injury traffic collision at Oller/3rd discovered the driver causing fled on foot. Officers located the suspect and discovered he was intoxicated. The victim driver was found to be pregnant and transported to the hospital via EMS. The suspect was arrested for DUI, hit and run and transported to Jail.

An unknown suspect stole the victim's vehicle while it was parked on De La Cruz.

Officers recovered a Kerman PD stolen vehicle on 10<sup>th</sup> Street. Witnesses observed a subject identified as a known Mendota auto thief remove property from the vehicle and flee the scene. Officer located the suspect and took him into custody. His parole was also violated and he was transported to Jail.

Subject check on Puchue discovered an outstanding warrant. He was arrested, cited and released.

Recovered stolen vehicle on 11th Street located witnesses who identified suspects in the vehicle when it was left at the scene. Officers conducted follow up and located both suspects who were arrested and transported to Jail.

Bicycle stop at Marie/5<sup>th</sup> located a suspect wanted for auto theft. He was found in possession of Methamphetamine and arrested. His parole agent violated him and he was transported to Jail.

Officers recovered a stolen vehicle on 5<sup>th</sup> Street. It was returned to the owner.

Subject check at a local mini mart on Oller Street located an active warrant. He was arrested, cited and released.

An unknown suspect stole the victim's vehicle while it was parked on Castaneda.

Non-injury traffic collision at Derrick and Naples Streets. Both parties remained on scene. Driver of victim vehicle was cited for not being licensed to drive.

A possible known suspect stole the victim's personal check and stole some of her bank funds with forged checks.

A known suspect arrived to the victim's residence on I Street in an intoxicated state and then hit the victim. He fled prior to officers arriving.

A known suspect was witnessed trying to force entry into a locked mailbox on Oller. She was located by officers and found to be in possession of an illegal knife. The Postmaster advised Postal Inspectors will be notified to investigate the vandalism. She was arrested and transported to Jail.

A known suspect was witnessed by the protected party violating a restraining order on Tuft/Derrick.

A known suspect was witnessed trespassing on the victim's property on L Street. The victim pressed charges.

Subject check on Naples discovered an active warrant for his arrest and for him to be in possession of methamphetamine. He was arrested, cited and released.

Vehicle stop by Marie/9<sup>th</sup> discovered the driver's CDL was suspended and he was intoxicated. He was arrested for DUI and eventually transported to Jail.

An unknown suspect stole the victim's truck tailgate while his vehicle was parked on Garcia.

Vehicle stop on Maria/9<sup>th</sup> discovered he was in possession of methamphetamine and a stun gun. He was arrested, cited and released.

An unknown suspect entered the victim's storage locker on Naples and stole his property.

Vehicle stop by Bass/Hwy 33 discovered the driver was intoxicated. He was arrested for DUI and transported to Jail.

Vehicle stop by Perez/Barboza resulted in the driver of the stopped vehicle backing into the Officer's parked patrol vehicle. No damage to the patrol vehicle, minor damage to the rear bumper of the stopped vehicle. CHP handled the collision.

Vehicle stop by Marie/9<sup>th</sup> resulted in the driver exiting and attempting to walk away. He was contacted and resisted officers. He was detained by officers who discovered methamphetamine and a meth pipe in his possession. Methamphetamine packaged for sale was located in his vehicle. He was arrested and transported to Jail.

Vehicle stop by Quince/6<sup>th</sup> discovered the driver was intoxicated. He was arrested for DUI, cited and released.

An unknown suspect forced entry into the victim's vehicle while it was parked on Fleming.

A known suspect violated a restraining order by going to the protected person's residence on 7<sup>th</sup> Street in an attempt to contact the protected party. The restrained person fled prior to officers arriving.

A trespasser was located on the victim's private property on Kate Street. He was arrested, cited and released.

Disturbance at a residence on Kate Street discovered the suspect threw furniture at two victims hitting them. The suspect was located and arrested. During processing the suspect hit officers and resisted. The suspect was transported to JJC.

A known trespasser entered a market on Derrick Avenue and attempted to grab the store clerk. He then fled and contacted two students walking to school. Offices located the suspect and he was eventually arrested for trespassing. The parents of the two students did not want to pursue a complaint. He was transported to Jail.

Vehicle stop by 2<sup>nd</sup>/Marie discovered the driver was intoxicated and unlicensed. He was arrested for DUI, cited and released to a sober adult.

Officers located a wanted parolee at a residence on Espinoza and arrested him. He was transported to Jail.

Officers located a wanted person related to a Mendota PD case and arrested him. He was transported to Jail.

An unknown citizen passed a counterfeit bill at City Hall.

Non-injury traffic collision at 3<sup>rd</sup>/Oller. The driver causing rear ended the other vehicle. All parties remained on scene.

A known suspect grabbed the victim's arm during a verbal argument. The suspect fled prior to officers arriving.

Non-injury traffic collision on Garcia St. The driver causing inadvertently pressed the accelerator and drove into the wall of an apartment building causing minor damage to the structure. Building management was notified and responded.

### **Strategic Planning:**

- Personnel attended new computer report writing software/program training
- An Officer attended detective training school
- Submitted for OTS Grant
- Submitted for Crime Stoppers Grant
- Code Enforcement Officers began training for Animal Control duties

### **Personnel Information:**

- Conditional Job Offer to candidate for Police Officer position
- Animal Control was reassigned to the Police Department and combined with Code Enforcement
- Hired full-time Animal Control/Code Enforcement Officer
- The following Police Department positions remain vacant and frozen:
  - One Police Officer
  - One Administrative Assistant