



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

ROLANDO CASTRO  
Mayor

VICTOR MARTINEZ  
Mayor Pro Tempore

JESSE MENDOZA

OSCAR ROSALES

ROBERT SILVA

## AGENDA MENDOTA CITY COUNCIL

Special City Council Meeting  
CITY COUNCIL CHAMBERS  
643 QUINCE STREET

June 15, 2017

6:00 PM

VINCE DIMAGGIO  
City Manager

JOHN KINSEY  
City Attorney

The Mendota City Council welcomes you to its meetings; Regular meetings 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.

### 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.

### CONSENT CALENDAR

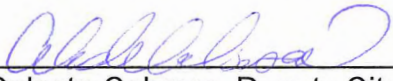
Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Calendar and will be considered separately.

1. Council approval of a water pumping infrastructure agreement.
2. Council approval of a settlement agreement with Gonzalez Towing.

**ADJOURNMENT**

**CERTIFICATION OF POSTING**

I, Celeste Cabrera, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Special meeting of June 15, 2017, was posted on the outside bulletin board located at City Hall, 643 Quince Street on Wednesday, June 14, 2017 at 10:30 a.m.

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

## WATER PUMPING INFRASTRUCTURE AGREEMENT

This Water Pumping Infrastructure Agreement ("*Agreement*") is entered into for reference purposes as of the 1st day of June, 2017, by and between BB Limited, a California limited partnership ("*BB Limited*"), and the City of Mendota, a political subdivision of the State of California ("*City*"), with reference to the following facts and intentions:

A. BB Limited and City are parties to that certain Lease Agreement dated December 14, 1999, as amended (the "*Lease*"), which, among other things, requires City to withdraw potable water from a 1,172 acre ranch owned by BB Limited and located in the County of Fresno, State of California (the "*Property*"), and to replace such water with non-potable irrigation water from the City's water wells (the "*Wells*") at the City Wastewater Treatment Plant ("*WWTP*") or an alternate source equivalent to the amount of water City withdraws from the Property (but not less than 2,000 acre-feet per year);

B. The water pumping infrastructure, including the Wells, at the WWTP that provides water to BB Limited (the "*WWTP Pumping Infrastructure*") requires repair, restoration and/or improvements due to its old age and certain deferred maintenance;

C. City expends approximately \$ 55,000.00 annually ("*Annual Pumping Cost*") to provide 2,000 acre-feet per year of non-potable irrigation water from the WWTP to BB Limited, as required by the Lease; and

D. Due to extreme water conditions, BB Limited is willing to forego delivery of non-potable irrigation water from City for the period beginning December 1, 2016 and ending November 30, 2017 (the "*2017 Lease Year*") provided that City invests a substantial portion of its Annual Pumping Cost into repairing, restoring and/or improving the WWTP Pumping Infrastructure (the "*Project*") as provided in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Examination of WWTP Pumping Infrastructure.** Prior to commencing the Project, BB Limited will retain a pump company or other individual with expertise in wells and water delivery systems (the "*Expert*") to: (1) assess the condition of the WWTP Pumping Infrastructure, (2) recommend a scope of work for the Project to maximize the useful life and efficiency of the WWTP Pumping Infrastructure (the "*Scope of Work*"), (3) estimate the cost to perform each repair required in the Scope of Work (the "*Project Cost*"), and (4) prioritize the repairs on the Scope of Work based on the present condition of the WWTP Pumping Infrastructure and the need to perform the repairs to maximize the efficiency and useful life of the WWTP Pumping Infrastructure. If the Project Cost exceeds \$55,000, then all repairs in the Scope of Work shall be performed according to their priority up to a maximum amount of \$55,000. If the City has expended less than \$55,000 on the Project but the cost of the next prioritized repair exceeds the balance remaining, then BB Limited and the City shall meet to discuss and determine whether any additional repairs identified in the Scope of Work could be performed, even if not in the priority order assigned by the Expert in the Scope of Work.

2. **Oversight and Payment.** BB Limited will (1) hire a contractor to perform the Project, (2) oversee the Project, and (3) pay for the Project; provided, however, that City will reimburse BB Limited for all of its expenses relating to the Project in the maximum sum of **\$55,000.**

3. **Effect on Lease.** Except with respect to BB Limited relieving the City from its obligation to provide BB Limited with non-potable irrigation water during the 2017 Lease Year, as expressly provided in this Agreement, this Agreement has no effect on the Lease, which will continue in full force and effect.

4. **General Provisions.**

a. **Notice.** If during the term of this Agreement any notices or written communications are required to be sent, then such notices shall be in writing addressed as provided below and with copies as provided below. Notice shall be deemed effective: (1) upon receipt by the party to be notified; or (2) three days following deposit in the United States Mail, postage pre-paid, registered or certified mail, return receipt requested; or (3) the next business day following the deposit with Federal Express or other overnight air courier with instructions to deliver on the next business day; or (4) when sent by facsimile with confirmation of receipt, on the same day if sent during the recipient's normal business hours and otherwise, on the next business day. Either party may change its address upon at least three days prior written notice to the other party.

**BB Limited:**

**BB Limited**  
c/o William Ward Jr.  
1994 Paquita Drive  
Carpinteria, California 93013

**City:**

**City of Mendota**  
Attention: City Manager  
643 Quince Street  
Mendota, California 93640

b. **Binding on Successors.** This Agreement shall be binding upon the heirs, executors, successors and assigns of the parties hereto.

c. **Other Instruments.** The parties shall, whenever and as often as reasonably requested by another party or parties, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting party to carry out the intent and purposes of this Agreement, provided that the requesting party shall bear the cost and expense of such further instruments or documents (except that each party shall bear his, her or its own attorneys' fees).

d. **Amendments.** Any modification of this Agreement must be in writing and signed by the parties hereto.

e. **Attorneys' Fees.** If any action or proceeding is brought to construe or enforce this Agreement or the rights of the parties under this Agreement, then the party prevailing in such action shall be entitled to recover all court costs and reasonable attorneys' fees incurred in connection with such action, to be fixed by the court as part of its judgment.

f. **Severability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

g. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

h. **Miscellaneous.** The captions and headings of this Agreement are for convenience only and have no force or effect in the interpretation or construction of this Agreement. Words indicated in parenthesis, quotations or both signify an abbreviation for the previous set of words or terms, so that when the abbreviation is used within the Agreement, it shall have the same meaning as a full statement of the words or terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**CITY OF MENDOTA**

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

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

**BB LIMITED, a California Limited Partnership**

By: U.B. NUTS, LLC, a California limited liability company

Its: General Partner

By:  6/7/17  
William E. Ward, Manager

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the "Agreement") is made this \_\_\_ day of June in the year 2017 (the "Effective Date"), by and between the City of Mendota, a political subdivision of the State of California ("CITY"), on one hand, and Felipe Gonzalez ("GONZALEZ"). CITY and GONZALEZ are individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

### **RECITALS**

**WHEREAS**, GONZALEZ is the owner of that certain business known and referred to as Gonzalez Towing, which is located at 1297 Oller Street, Mendota, CA 93640 (the "Property"), that provides towing and other services to the public at large; and

**WHEREAS**, CITY, at one time, regularly engaged the services of Gonzalez Towing to perform various tasks and activities for CITY; and

**WHEREAS**, in addition to Gonzalez Towing, GONZALEZ and his son Abraham Gonzalez ("ABRAHAM") operate a sand and gravel business known as Gonzalez Transport that utilizes the towing yard (the "Yard") located on the Property for storage of materials; and

**WHEREAS**, in the year 2016, CITY was engaged in a certain public works project that produced gravel shavings as a saleable by-product of the work and was engaged in discussions to sell the gravel shavings; and

**WHEREAS**, CITY engaged Gonzalez Transport to transport the shavings to the Yard for storage as the CITY negotiated to sell the gravel shavings; and

**WHEREAS**, instead of storing the gravel shavings as contemplated, CITY contends that ABRAHAM sold the gravel shavings and has since failed and refused, despite the CITY's demands, to compensate CITY for the converted gravel shavings; and

**WHEREAS**, the Parties now desire to fully resolve the disputes which exist between concerning the conversion of the gravel shavings subject to the terms and conditions of this Release.

**NOW, THEREFORE**, in consideration of the terms, covenants, conditions, agreements and mutual "Recitals" stated herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## AGREEMENT

1. **Payment to CITY.** GONZALEZ shall pay the sum of \$16,500 (the "Settlement Amount") to CITY in full satisfaction of all claims against GONZALEZ, including attorney's fees and costs. The Settlement Amount shall be paid according to the following schedule:

a. In May 2017, GONZALEZ has previously made payment to the City of Mendota in the amount of \$6,666.66.

b. In addition to the above amount, GONZALEZ has delivered a cashier's check to CITY in the sum of \$3,300.00. CITY shall deposit this check immediately upon mutual execution of this Agreement; and

c. GONZALEZ shall make three additional payments each in the amount of \$3,300, which payments shall be due on August 1, 2017; September 1, 2017; and October 1, 2017.

Payment shall be made by check payable to the Wanger Jones Helsley Client Trust Account. This check shall be delivered to John P. Kinsey, Esq., Wanger Jones Helsley PB 265 E. River Park Circle, Suite 310, Fresno, California 93720. GONZALEZ shall be considered to be in default under this Agreement if payment is not received on the due date and shall have ten (10) calendar days to cure. In the event that GONZALEZ fails to cure any default under this Agreement within the ten (10) day period, CITY shall be entitled to enforce the terms of this Agreement through any and all available legal and equitable remedies available.

2. **Grant of Security Interest to CITY by GONZALEZ.** GONZALEZ shall grant to CITY a security interest (the "Security Interest") in the following property of GONZALEZ' (hereafter the "Collateral"):

a. Vehicle ID No. 1HTMMAAM64H653875

The Security Interest granted to CITY by GONZALEZ shall be evidenced by a written security agreement in the form attached hereto as **Exhibit "A"** identifying CITY as the secured party and GONZALEZ as the debtor. Concurrently with or prior to GONZALEZ' execution of this Agreement, GONZALEZ shall deliver the certificate of title to the Collateral to CITY to perfect the CITY's Security Interest in the Collateral.

3. **CITY's Use of Gonzalez Towing.** CITY agrees to reestablish Gonzalez Towing as a potential vendor for performing towing and related services required by CITY. Notwithstanding the foregoing, CITY retains the ability to choose what vendor to use for towing and related services in its sole and absolute discretion and, by agreeing to restore Gonzalez Towing on its vendor list and potentially resumption of services performed by Gonzalez Towing for CITY, CITY is not committing to any minimum level of usage, or any usage at all. In the event that GONZALEZ fails to comply with the terms of this Agreement, CITY reserves the right to remove Gonzalez Towing from its vendor list and consideration of using Gonzalez Towing for any future towing and related services.

4. **Release.**

a. **Mutual Release.** Except as to the obligations created herein, the Parties and each of them, release and forever discharge each other, including any and all persons, firms, partnerships, corporations, heirs, executors, administrators, and their respective predecessors, successors, assigns, underwritten companies, insurers, and shareholders and all of their past, present and future officers, directors, agents, attorneys, accountants and employees and their respective successors, heirs, assigns, executors, and administrators thereof, and/or each of the aforesaid from all claims, actions, causes of action, discovery obligations of any nature and for all liabilities and obligations of every kind and character known or unknown, and whether existing in the past or the present or the future based upon any conduct occurring up to the Effective Date. Without limiting the generality of the foregoing, this release includes, but is not limited to, the claims that were made or could have been made regarding the conversion of gravel shavings. Notwithstanding the foregoing, this release does not release the parties' respective obligations under this Agreement.

b. Except as otherwise provided herein, the releases contained with this Settlement Agreement are made notwithstanding the provisions of California Civil Code Section 1542. California Civil Code Section 1542 provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Parties expressly waive any and all rights under said Section 1542 to the extent Section 1542 may have any application at all to the releases set forth in this Paragraph. The Parties understand and acknowledge the significance and consequences of the foregoing specific waiver of said Section 1542, waive the provisions of Section 1542 upon the advice of their legal counsel, and accept full responsibility for any injury, damage or loss which may hereafter arise in respect of such releases, although unknown or unanticipated at the time of execution of this Agreement.



## 5. Other Provisions

a. **Each Party Bears Own Costs and Fees.** Except as provided for herein, the Parties hereto will each bear their own respective costs and attorneys' fees incurred in connection with the events, facts, or circumstances as described in the "Recitals" section above.

b. **Good Faith Compromise.** Execution of this Settlement Agreement does not constitute evidence of, and shall not be construed to be an admission of, liability and/or wrongdoing by any of the Parties. Rather, this Settlement Agreement is a settlement of disputed claims, and the Parties expressly deny any liability to each other. The Parties acknowledge and agree that this Settlement Agreement is entered into in good faith and has no purpose other than to compromise, settle, and extinguish the claims referred to herein.

c. **Representations and Warranties.** The Parties to this Agreement represent, warrant, and agree as follows:

(i) The Parties have each received independent legal advice from attorneys of their choice with respect to the advisability of making this Agreement and the release provided herein. This Agreement is based upon such advice, after each Party's respective independent attorneys were provided with a full and fair opportunity to review the Agreement and consult with their respective clients regarding the terms contained herein.

(ii) Each party to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its obligations under this Agreement, and that no approvals or consents of any other persons or entities are necessary in connection herewith.

(iii) The Parties each warrant that they own, and have not assigned, sold, conveyed, or otherwise become dispossessed of any rights, claims or causes of action against the other in relation to any matter covered by this Agreement.

(iv) This Agreement is intended to be final and binding upon the Parties and, with the exception of any obligation created under the Agreement (including, but not limited to, any covenant recorded pursuant to this Agreement), is further intended to be effective as a full and final accord and satisfaction among them of the claims released herein. The Parties each relied upon the finality of this Agreement as contemplated herein as a material factor inducing the other party's execution of this Agreement.

(v) The terms of this Agreement are contractual and are the result of negotiation among the Parties. Each Party hereto has cooperated in the drafting and preparation of this Agreement.

(vi) This Agreement has been read carefully by each of the Parties and its contents are known and understood by the Parties. This Agreement is signed freely and voluntarily by each of the Parties hereto.

## 6. Notices.

All notices, demands, or other communications that either Party desires or is required or permitted to give or make to the other Party under or pursuant to this Agreement (collectively referred to as "notices") shall be made or given in writing and shall either be: (i) personally served; (ii) sent by registered or certified mail, postage prepaid; (iii) sent by telex or facsimile ("fax"); or (iv) sent by a nationally recognized overnight delivery service or courier (such as Federal Express). All notices shall be given to the Parties at the following addresses:

**GONZALEZ:**

Felipe Gonzalez  
1297 Oller Street  
Mendota, CA 93640

**City of Mendota:**

City of Mendota  
ATTN: Vince DiMaggio, City Manager  
643 Quince St  
Mendota, CA 93640

**With a copy to:**

John P. Kinsey  
**WANGER JONES HELSLEY PC**  
265 E. River Park Circle, Suite 310  
Fresno, CA 93720  
Facsimile: (559) 233-9330

**7. Further Assurances.**

The Parties each agree to cooperate in good faith to execute such further documents as may be necessary to effectuate the provisions of this Agreement.

**8. Bind Successors.**

This Agreement shall bind and inure to the benefit of all executors, trustees, beneficiaries, administrators, successors, assigns, and heirs of the Parties.

**9. Severability.**

Should any paragraph, clause or provision of this Agreement be construed to be against public policy or determined by a court of competent jurisdiction to be void, invalid, or unenforceable, such construction and decision shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no event affect the remaining paragraphs, clauses or provisions of this Agreement which shall remain in full force and effect.

**10. Integration.**

This Agreement constitutes a single, integrated written contract expressing the entire agreement between the Parties. This Agreement supersedes any prior understandings and agreements among the Parties with respect to the subject matter herein.

**11. Interpretation.**

Headings in this Agreement are used for convenience only and shall have no force or effect regarding its interpretation or construction. The Parties have each participated in the drafting of this Agreement. None of the Parties hereto shall be deemed to be the author of this Agreement.

**12. Entire Agreement.**

This Agreement (including all exhibits hereto) contains the entire agreement and understanding about the subject matter described herein and in the Recitals between the Parties hereto. The Agreement also supersedes and replaces all prior negotiations and agreements, whether written or oral, between the Parties regarding the subject matter described herein and in the Recitals. The Parties acknowledge that no other Party hereto nor any of their legal counsel has made any promise, representation or warranty, express or implied, not contained in this Agreement (or the exhibits hereto), and further acknowledge that no Party has executed this Agreement in reliance upon any promise, representation or warranty not set forth herein.

**13. Time of the Essence.**

Time is of the essence with regard to the performance of each provision of this Agreement.

**14. Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument. It shall be necessary to account for only one fully executed counterpart in proving this Agreement.

**15. Governing Law.**

The parties agree that this Agreement is entered into in California relating to property located in California and, therefore, the law governing this Agreement shall be that of the State of California.

**16. Attorneys' Fees.**

If any additional or further legal proceedings are necessary by any of the parties for enforcement of this Agreement or declaration of any rights under the terms of this Agreement, the prevailing party in that litigation shall be entitled to receive from the other party or parties who oppose such action all costs incurred, including, but not limited to, reasonable attorneys' fees.

**17. Enforcement of Settlement.**

The parties hereto agree that this Agreement is binding and enforceable and further shall be admissible in evidence in any action or proceeding to enforce this Agreement, notwithstanding any provisions of the Evidence Code to the contrary.

**18. Recitals.**

The "Recitals" stated above are hereby incorporated into this Agreement.

**WITNESS** the Parties have executed this Agreement effective, on the day and in the year set forth on page one of this Agreement.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
**Felipe Gonzalez**

**City of Mendota**

Dated: \_\_\_\_\_, 2017

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

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

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

**EXHIBIT "A"**

**FORM OF SECURITY AGREEMENT**

## SECURITY AGREEMENT

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

1. **GRANT OF SECURITY INTEREST.** As security for any and all Indebtedness of FELIPE GONZALEZ DOING BUSINESS AS GONZALEZ TOWING (collectively, "Debtors" and "Pledgors"), hereby irrevocably and unconditionally grant a security interest in and assign and transfer the Property (as defined below) to the CITY OF MENDOTA, a political subdivision of the State of California ("Secured Party"). The Debtors and Pledgors may be the same person(s) hereunder.

2. **INDEBTEDNESS.** "Indebtedness" means the Settlement Agreement wherein Debtors agree to pay sum of \$16,550.00 to Secured Party, dated of even date herewith, executed by Debtors in favor of Secured Party. Unless otherwise agreed in writing, "Indebtedness" shall not include such debts, obligations or liabilities which are or may hereafter be "consumer credit" subject to the disclosure requirements of the federal Truth-in-Lending law or any regulation promulgated thereunder.

3. **PROPERTY.** For purposes of this agreement, "Property" means that certain 2004 model year tow truck, Vehicle ID No. 1HTMMAAM64H653875

4. **NO OTHER SECURITY INTERESTS.** Pledgors hereby represent and warrant to Secured Party that they own the Property free and clear of any and all liens, encumbrances, or interests of any third parties other than the security interest of Secured Party, and that no other liens, encumbrances or interests of any third party shall be granted by Pledgors in the Truck.

### 5. **DUTIES TOWARD PROPERTY.**

a. Protection of Secured Party's Interest. Pledgors will defend the Property against any other claim. Pledgors agree to do whatever Secured Party requires to protect its security interest and to keep Secured Party's claim in the Truck ahead of the claims of other creditors. Pledgors will not do anything to harm Secured Party's position in the Truck of the remaining Property. Pledgors will keep books, records and accounts about the Property and its business in general. Pledgors will let Secured Party examine these and make copies at any reasonable time. Pledgors will prepare any report or accounting you request which deals with the Property. Pledgors will pay all taxes and assessments levied or assessed against Pledgors or the Property and provide timely proof of payment of these taxes and assessments upon request.

b. Selling, Leasing or Encumbering the Property. Pledgors will not sell, offer to sell, lease, or otherwise transfer or encumber the Property without Secured Party's prior written permission. Secured Party's permission to sell the Property may be reasonably withheld without regard to the creditworthiness of any buyer or transferee. Pledgors will not permit the Property to be the subject of any court order affecting Secured Party's rights to the Property in any action by anyone other than Secured Party. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Pledgors will note Secured Party's security interest on the face of the chattel paper or instruments.

6. **AUTHORITY TO PERFORM.** Pledgors authorize Secured Party to do anything Secured Party deems reasonably necessary to protect the Property, and perfect and continue Secured Party's security interest in the Property. If Pledgors fail to perform any of Pledgors'

duties under this Agreement or any other agreement between the parties, Secured Party is authorized, without notice to Pledgors, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to:

- a. Pay and discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Property.
- b. Pay any rents or other charges under any lease affecting the Property.
- c. Order and pay for the repair, maintenance and preservation of the Property.
- d. File any financing statements on Pledgors' behalf and pay for filing and recording fees pertaining to the Property.
- e. File any collateral assignment or assignment of deed of trust.
- f. Place a note on any chattel paper indicating your interest in the Property.
- g. Take any action Secured Party feels necessary to realize on the Property, including performing any part of a contract or endorsing it in Pledgors' name.
- h. Handle any suits or other proceedings involving the Property in Pledgors' name.
- i. Prepare, file, and sign Pledgors' name to any necessary reports or accountings.
- j. make an entry on Pledgors' books and records showing the existence of this

Agreement.

k. Notify any Account Debtor of Secured Party's interest in the Property and tell the Account Debtor to make payments to Secured Party or someone else Secured Party names. If Secured Party performs for Pledgors, Secured Party will use reasonable care. If Secured Party exercises the care and follows the procedures that Secured Party generally applies to the collection of obligations owed to Secured Party, Secured Party will be deemed to be using reasonable care. Reasonable care will not include: any steps necessary to preserve rights against prior parties; the duty to send notices, perform services or take any other action in connection with the management of the Property; or the duty to protect, preserve or maintain any security interest given to others by Pledgors or other parties. Secured Party's authorization to perform for Pledgors will not create an obligation to perform and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement. All cash and non-cash proceeds of the Property may be applied by you only upon Secured Party's actual receipt of cash proceeds against such of the Indebtedness as Secured Party determines in its sole discretion.

7. **COSTS.** All advances, charges, costs and expenses, including reasonable attorney's fees, incurred or paid by Secured Party in exercising any right, power or remedy conferred by this Agreement or in the enforcement thereof, shall become a part of the Indebtedness secured hereunder and shall be paid to Secured Party by Debtors immediately and without demand, with interest thereon at an annual rate equal to the highest rate of interest of any Indebtedness secured by this Agreement.

8. **EVENTS OF DEFAULT.** At the option of Secured Party and without necessity of demand or notice, all or any part of the Indebtedness of Debtors shall immediately become due and payable irrespective of any agreed maturity upon the happening of any of the following events ("Events of Default"); provided, however, that all Indebtedness of Debtors automatically shall become due and payable if a bankruptcy petition is filed with respect to any Debtor: (a) failure to keep or perform any of the terms or provisions of this Agreement; (b) default in the payment of principal or interest or any other default with respect to any Indebtedness of Debtors; (c) the levy of any attachment, execution or other process against any of the collateral; (d) the

death, insolvency, failure in business, commission of an act of bankruptcy, general assignment for the benefit of creditors, filing of any petition in bankruptcy or for relief under the provisions of the Bankruptcy Code, of, by, or against any Debtor or Pledgor or any comaker, surety or guarantor of the Indebtedness or any endorser of any note or other document evidencing the Indebtedness. Upon the happening of any of the foregoing specified events, any agreement for further financial accommodation by Secured Party shall terminate at its option.

9. **REMEDIES.** Upon the happening of any Event of Default, Secured Party may then exercise as to the Property all the rights, powers and remedies of an owner and all rights, powers and remedies of a secured party under the Uniform Commercial Code and other laws. Secured Party may charge any amounts due under the Indebtedness, without notice, against any funds in any Deposit Account. In addition, Secured Party may record any Assignment of Promissory Note and Deed of Trust and exercise any rights under the promissory notes secured by real property given as Property. "Property" is a defined term under the Security Agreement (paragraph 3) and is the Property in which a security interest is given.

10. **PERFECTION OF SECURITY INTEREST AND COSTS.** Pledgors agree to immediately deliver the original Certificate of Title to Secured Party. Pledgors authorize Secured Party to file a financing statement and/or security agreement covering the Property. Pledgors will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining perfection or control over the Property for purposes of perfecting Secured Party's security interest under the Uniform Commercial Code, including delivering the original certificates of title to Secured Party. Pledgors agree to pay all taxes, fees and costs Secured Party pays or incurs in connection with preparing, filing or recording any financing statements or other security interest filings on the Property. Pledgors agree to pay all actual costs of terminating Secured Party's security interest.

11. **WAIVERS.** Pledgors waive any right to require Secured Party to (a) proceed against any person, (b) proceed against or exhaust any collateral, or (c) pursue any other remedy in Secured Party's power; and waive any defense arising by reason of any disability or other defense of any Debtor or any other person, or by reason of the cessation from any cause whatsoever of the liability of Debtors or any other person. Pledgors waive any right of subrogation, reimbursement, indemnification, and contribution (contractual, statutory or otherwise), including without limitation, any claim or right of subrogation under the Bankruptcy Code or any successor statute, arising from the existence or performance of this Agreement, and Pledgors waive any right to enforce any remedy which Secured Party now has or may hereafter have against Debtors or against any other person, and waive any benefit of, and any right to participate in, any security now or hereafter held by Secured Party. If any Pledgor is not also a Debtor with respect to a specified Indebtedness, such Pledgor authorizes Secured Party without notice or demand and without affecting Pledgors' liability hereunder from time to time to: (a) renew, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, such Indebtedness or any part thereon; (b) take and hold security, other than the collateral herein described for the payment of such Indebtedness or any part thereof, and exchange, enforce, waive and release the collateral herein described or any part thereof or any such other security; and (c) release or substitute Debtors, or any of the endorsers or guarantors of such Indebtedness or any part thereof, or any other parties thereto.



12. **TRANSFER OF COLLATERAL.** Upon the transfer of all or any part of the Indebtedness, Secured Party may transfer all of any part of the collateral and shall be fully discharged thereafter from all liability and responsibility with respect to such collateral so transferred. With respect to such collateral not so transferred, the Secured Party shall retain all rights and powers hereby given.

13. **CONTINUING AGREEMENT.** This is a continuing Agreement and all the rights, powers and remedies hereunder shall apply to all past, present and future Indebtedness of Debtors, including that arising under successive transactions which shall either continue the Indebtedness, increase or decrease it, or from time to time create new Indebtedness after all or any prior Indebtedness has been satisfied, and notwithstanding the death, incapacity or bankruptcy of any Debtor, or any other event or proceeding affecting any Debtor.

14. **CONTINUING POWERS.** Until all Indebtedness shall have been paid in full all rights, powers and remedies granted to Secured Party hereunder shall continue to exist and may be exercised by Secured Party at the time specified hereunder irrespective of the fact that the Indebtedness or any part thereof may have become barred by any statute of limitations, or that the personal liability of any Debtor may have ceased.

15. **OTHER RIGHTS.** The rights, powers and remedies given to Secured Party by this Agreement shall be in addition to all rights, powers and remedies given to Secured Party by virtue of any statute or rule of law. Any forbearance or failure or delay by Secured Party in exercising any right, power or remedy hereunder shall not be deemed to be a waiver of such right, power or remedy, any single or partial exercise or any right, power or remedy hereunder shall not preclude the further exercise thereof; and every right, power and remedy of Secured Party shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by Secured Party.

16. **TERMINATION.** This Security Agreement shall remain in full force and effect until all obligations under Standby or Commercial Letters of Credit are satisfied and paid, and Borrower requests termination due to no further credit requests.

17. **LAW.** This Agreement shall be governed by the laws of the State of California. The Debtor's application for credit may not yet have been approved by Secured Party at the time this Agreement is executed. By signing below, each Pledgor agrees that Secured Party may place a hold on the Deposit Accounts while the application is under review. If the application is denied, the hold will be released.

18. **JURY TRIAL WAIVER AND JUDICIAL REFERENCE.**

(a) SUBJECT TO SECTION 19(b) AND TO THE EXTENT THAT IN THE FUTURE SUCH WAIVERS ARE PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BEFORE A JURY IN CONNECTION WITH ANY ACTION, CLAIM, LAWSUIT, DISPUTE OR CONTROVERSY OVER, ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT OR INSTRUMENT RELATING HERETO, THE ENFORCEMENT HEREOF OR THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

(b) The foregoing provision shall not apply if, at the time an action, claim, lawsuit, dispute or controversy is brought or initiated; jury trial waivers are not permitted by applicable law. If jury trial waivers are not permitted by applicable law, either party may require that such action, claim, lawsuit, dispute or controversy be resolved by judicial reference in accordance with California Code of Civil Procedure, Sections 638, et seq., including without limitation whether the action is subject to a judicial reference proceeding. The referee shall be a retired judge or justice or a practicing or retired attorney with experience in the field of international trade and finance selected by mutual written agreement of the parties. If the parties cannot agree, the referee shall be selected by the presiding judge (or his or her representative) of the superior court or federal district court in a county or district where venue is appropriate under applicable law. The referee shall sit with all of the powers provided by law. The parties agree that time is of the essence in conducting the judicial reference proceeding set forth herein. The costs of the judicial reference proceeding, including the fee for the court reporter, shall be borne equally by the parties as the costs are incurred, unless otherwise awarded by the referee. The referee shall hear all pre-trial and post-trial matters (including without limitation requests for equitable relief), prepare an award with written findings of fact and conclusions of law and apportion costs as appropriate. The referee shall be empowered to enter equitable relief as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that are binding on the parties and rule on any motion that would be authorized in a trial, including without limitation motions for summary judgment or summary adjudication. Judgment upon the award shall be entered in the court in which such proceeding was commenced, and all parties shall have full rights of appeal. This provision will not be deemed to limit or constrain Secured Party's right of set-off, to obtain provisional or ancillary remedies, to interplead funds in the event of a dispute, to exercise any security interest or lien Secured Party may hold in any collateral or property (whether such proceedings are judicial or non-judicial or otherwise) or to comply with legal process involving the Deposit Accounts or Pledgors' other accounts or property.

By agreeing to judicial reference proceedings, the parties do not intend to deprive any court of its jurisdiction to issue a pre-trial injunction, pre-trial attachment or other order in aid of these judicial reference proceedings and the enforcement of any award.

IN WITNESS WHEREOF, Pledgor(s) have executed this Agreement as of the \_\_\_ day of \_\_\_\_\_ in the year 2017.

“PLEDGORS”

\_\_\_\_\_  
**FELIPE GONZALEZ, an individual and  
d/b/a GONZALEZ TOWING**