



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

ROLANDO CASTRO  
Mayor

VICTOR MARTINEZ  
Mayor Pro Tempore

JESSE MENDOZA

OSCAR ROSALES

ROBERT SILVA

## AGENDA MENDOTA CITY COUNCIL

Regular City Council Meeting  
CITY COUNCIL CHAMBERS

643 QUINCE STREET

August 14, 2018

6:00 PM

CRISTIAN GONZALEZ  
Interim City Manager

JOHN KINSEY  
City Attorney

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

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

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

### CALL TO ORDER

### ROLL CALL

### FLAG SALUTE

### FINALIZE THE AGENDA

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

### PRESENTATION

1. Introduction of Interim City Manager Cristian Gonzalez.

### 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 July 24, 2018 and the special City Council meeting of July 27, 2018.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

## CONSENT CALENDAR

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

1. JULY 24, 2018 THROUGH AUGUST 08, 2018  
WARRANT LIST CHECKS NO. 44196 THRU 44301  
TOTAL FOR COUNCIL APPROVAL = \$919,702.70
2. Proposed adoption of **Resolution No. 18-59**, authorizing the submission of an application to the State Lands Commission for a land lease for the existing and proposed Mowry Bridge.
3. Proposed adoption of **Resolution No. 18-60**, approving an update to the Westamerica Bank signature card.

## PUBLIC HEARING

1. Introduction of **Ordinance No. 18-03**, amending the official zoning map of the City of Mendota to reflect a change of zone for Assessor's Parcel Numbers 013-061-15 and 012-160-39.
  - a. *Receive report from City Planner Schoettler*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens the public hearing, accepting comments from the public*
  - d. *Mayor closes the public hearing*
  - e. *Council provide any input and motion to waive the first reading of Ordinance No. 18-03*

2. Introduction of **Ordinance No. 18-04**, approving an agreement by and between the City of Mendota and KSA Homes, Inc. relating to the development of the La Colonia property.
  - a. *Receive report from City Planner Schoettler*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens the public hearing, accepting comments from the public*
  - d. *Mayor closes the public hearing*
  - e. *Council provide any input and motion to waive the first reading of Ordinance No. 18-04*
  
3. Introduction of **Ordinance No. 18-05**, imposing a Transactions and Use Tax to be administered by the California Department of Tax and Fee Administration.
  - a. *Receive report from Economic Development Manager Flood*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens the public hearing, accepting comments from the public*
  - d. *Mayor closes the public hearing*
  - e. *Council provide any input and motion to waive the first reading of Ordinance No. 18-05*

## **BUSINESS**

1. Council discussion and consideration of **Resolution No. 18-61**, approving a mitigated negative declaration for the La Colonia project.
  - a. *Receive report from City Planner Schoettler*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council adopt Resolution No. 18-61*
  
2. Council discussion and consideration of **Resolution No. 18-62**, approving General Plan Amendment 2018-01.
  - a. *Receive report from City Planner Schoettler*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council adopt Resolution No. 18-62*

3. Council discussion and consideration of **Resolution No. 18-63**, approving Vesting Tentative Subdivision Map 2018-01.
  - a. *Receive report from City Planner Schoettler*
  - b. *Inquiries from Council to staff*
  - c. *Mayor opens floor to receive any comment from the public*
  - d. *Council adopt Resolution No. 18-63*

### **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

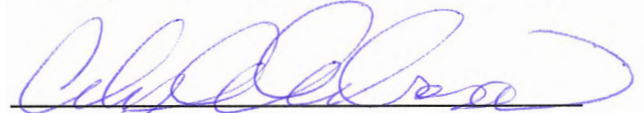
### **MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS**

1. Council Member(s)
2. Mayor

### **ADJOURNMENT**

### **CERTIFICATION OF POSTING**

I, Celeste Cabrera, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of August 14, 2018, was posted on the outside bulletin board located at City Hall, 643 Quince Street Friday, August 10, 2018 at 4:10 p.m.



Celeste Cabrera, Deputy City Clerk.



## MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

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**Regular Meeting**

**July 24, 2018**

**Meeting called to order by Mayor Pro Tem Martinez at 6:00 p.m.**

*At 6:00 p.m. Mayor Castro entered the Council Chambers*

**Flag salute led by Mayor Castro**

**Roll Call**

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

**Council Members Absent:** None

### **FINALIZE THE AGENDA**

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

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

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

**Tom Bowser (United Health Centers)** – introduced the new health center manager, Ashley Chanthaphuang; reported on the urgent care center that will open on August 1<sup>st</sup> at the Mendota Health Center; and stated that both regular care and urgent care will be available.

**Ashley Chanthaphuang (United Health Centers)** – provided the hours of operation for the urgent care center, and stated that the center can help with different types of sicknesses.

Discussion was held on the hours of operation for the urgent care center; whether there are insurance providers that the urgent care center will not accept; the center having a representative at the upcoming Gutierrez Family Backpack Giveaway event; and scheduling a charitable softball game between the Mendota Health Center and the Mendota Community Corporation.

**Dino Perez (Westside Youth Center, Inc. [WYC])** – stated that WYC was informed that it was no longer eligible to receive CDBG funding from Fresno County; that their contract and funding will end prematurely in September 2018; the total amount of funding that WYC will be losing; the negative impacts that the loss of funding will have on the center; and requested that the City Council consider providing financial assistance to WYC.

Discussion was held on the amount that WYC is requesting that the City assist with, and placing the item on the agenda at a future meeting.

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

1. Minutes of the regular City Council meeting of July 10, 2018 and the special City Council meeting of July 17, 2018.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

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

### **CONSENT CALENDAR**

1. JULY 10, 2018 THROUGH JULY 18, 2018  
WARRANT LIST CHECKS NO. 44123 THRU 44195  
TOTAL FOR COUNCIL APPROVAL = \$687,206.48

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

2. Proposed adoption of **Resolution No. 18-57**, authorizing the submission of a request for authorization for construction funding for the Black Street and 5<sup>th</sup> Street Reconstruction Project.

Discussion was held on whether the amount requested will be used entirely for the Black Street and 5<sup>th</sup> Street Reconstruction project, and whether such funding can be designated for other projects.

Assistant Engineer Osborn stated that staff will maximize the use of funding for the

project, and reported on the restrictions that exists when using federal funds.

Discussion was held on whether additional specifications could be added, such as reconstruction of the intersection at Black Street and Sorensen Street; the tight schedule to submit the request for authorization; and the Council directing staff to analyze the issue when the project gets closer to the start of construction.

A motion was made by Councilor Silva to adopt item 2 of the Consent Calendar, seconded by Mayor Pro Tem Martinez; unanimously approved (5 ayes).

## **BUSINESS**

1. Proposed adoption of **Ordinance No. 18-02**, amending Title 17 of the Mendota Municipal Code, Chapter 17.81, the Economic Incentive Zone, by adding Sections 17.81.024 through 17.81.033 and creating Enhanced Economic Incentive Areas.

Mayor Castro introduced the item and City Manager DiMaggio reported that it is the second hearing for the item; that the ordinance will take effect 30 days following its adoption; explained that the Enhanced Economic Incentive Areas will provide incentives for certain industry sectors; and the requirements that a parcel needs to meet to be eligible for the incentives.

At 6:20 pm Mayor Castro 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 Rosales to perform the second reading and adopt Ordinance No. 18-02, seconded by Mayor Pro Tem Martinez; unanimously approved (5 ayes).

## **DEPARTMENT REPORTS AND INFORMATIONAL ITEMS**

1. Administrative Services
  - a) Monthly Report

Administrative Services Director Lekumberry summarized the report including the recruitment that was done for three positions; that there were no new claims or worker's compensation claims in the month of June; the daily average of attendees at the Senior Center; and that she completed the 2020 Census LUCA project and submitted a LUCA Incentive Fund Request.

2. Public Works
  - a) Monthly Report

Planning & Public Works Director Gonzalez stated that he reached out to Caltrans regarding the road striping on Derrick Avenue; and provided an update on the Lozano

Lift Station project, including that the project will resume in September.

Discussion was held on searching for additional fuel vendors, and the City's local preference policy.

3. City Attorney
  - a) Update

Assistant City Attorney Harlos introduced herself.

4. City Manager

City Manager DiMaggio stated that it was his last Council Meeting, and shared the experience he has gained the last four and a half years as City Manager for Mendota.

The Council thanked him for his work and wished him well.

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

1. Council Member(s)

Councilor Mendoza emphasized the importance of continuing with projects after City Manager DiMaggio leaves.

Councilor Rosales thanked the audience for attending the meeting and thanked staff for their work.

Mayor Pro Tem Martinez reported that the Salvadoran Consulate would be at Gonzalez Hall on August 4<sup>th</sup>.

Councilor Silva inquired on the possibility of having a sidewalk sales program.

Discussion was held on the progress of SB 946, Safe Sidewalk Vending Act, through the State Legislature.

2. Mayor

Mayor Castro reminded everyone about the upcoming Gutierrez Family Annual Backpack Giveaway that will be held on August 5<sup>th</sup> at Rojas-Pierce Park.

**David Keyes (Clovis, CA)** – stated that he is in the run-off for the office of Fresno County Auditor-Controller/Treasurer-Tax Collector.

Mayor Pro Tem Martinez reminded everyone about the upcoming Coffee with a Cop and Council Member event that will be held on July 25<sup>th</sup>.



## **CLOSED SESSION**

1. CONFERENCE WITH LABOR NEGOTIATORS  
CA Government Code § 54957.6  
Title: City Manager
2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 (1 potential matter).

At 6:39 p.m. the Council moved into closed session.

At 7:19 p.m. the Council reconvened in open session and Assistant City Attorney Harlos stated that in regards to item 1 of the closed session, the City will be presenting a personnel contract to Planning & Public Works Director Gonzalez. In regards to item 2 of the closed session, Assistant City Attorney Harlos stated that there was no reportable action.

## **BUSINESS**

1. Council discussion and possible action on proposed agreement concerning interim City Manager services.

Mayor Castro introduced the item and Assistant City Attorney Harlos stated that the Council will be revising the job offer and postponing the item to a future City Council Meeting.

## **ADJOURNMENT**

With no more business to be brought before the Council, a motion for adjournment was made at 7:20 p.m. by Councilor Silva, seconded by Councilor Rosales; unanimously approved (5 ayes).

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Rolando Castro, Mayor

ATTEST:

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Matt Flood, City Clerk



## MINUTES OF MENDOTA SPECIAL CITY COUNCIL MEETING

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**Special Meeting**

**July 27, 2018**

**Meeting called to order by Mayor Castro at 5:46 p.m.**

*At 5:47 p.m. Mayor Pro Tem Martinez entered the Council Chambers.*

### **Roll Call**

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

**Council Members Absent:** None.

**Flag salute led by Mayor Castro.**

### **FINALIZE THE AGENDA**

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

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

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

None offered.

### **CLOSED SESSION**

1. CONFERENCE WITH LABOR NEGOTIATORS  
CA Government Code § 54957.6  
Title: Interim City Manager

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 (1 potential matter).

Mayor Castro introduced the item.

At 5:49 p.m. the Council moved into closed session.

At 6:10 p.m. the Council reconvened in open session.

### **BUSINESS**

1. Council discussion and consideration of **Resolution No. 18-58**, approving an employment agreement for the Interim City Manager.

A motion was made by Councilor Silva to adopt Resolution No. 18-58, seconded by Mayor Pro Tem Martinez; unanimously approved (5 ayes).

At 6:12 p.m. consensus was reached to have a recess.

At 6:23 p.m. the Council reconvened in open session (absent: Martinez).

### **CLOSED SESSION**

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 (1 potential matter).

Mayor Castro introduced the item.

At 6:23 p.m. the Council moved into closed session.

*At 6:24 p.m. Mayor Pro Tem Martinez entered the closed session.*

At 6:28 p.m. the Council reconvened in open session and Assistant City Attorney Harlos stated that in regards to item 2 of the closed session, there was no reportable action.

### **ADJOURNMENT**

With no more business to be brought before the Council, a motion for adjournment was made at 6:28 p.m. by Councilor Rosales, seconded by Mayor Pro Tem Martinez; unanimously approved (5 ayes).

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Rolando Castro, Mayor

ATTEST:

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Matt Flood, City Clerk

CITY OF MENDOTA  
 CASH DISBURSEMENTS  
 7/24/2018 - 8/8/2018  
 Check# 44196 - 44301

Date	Check #	Amount	Vendor	Department	Description
July 24, 2018	44196	\$51.27	ADT SECURITY SERVICES	GENERAL	SECURITY SERVICES 8/3/18 - 9/2/18 COMMUNITY CENTER
July 24, 2018	44197	\$802.92	AFLAC	GENERAL	AFLAC INSURANCE FOR JULY 2018
July 24, 2018	44198	\$24,112.70	BLUE SHIELD OF CALIFORNIA	GENERAL	MEDICAL INSURANCE FOR AUGUST 2018
July 24, 2018	44199	\$120,889.00	CSJVRMA C/O BICKMORE RISK SERVICES	GENERAL-WATER-SEWER	2018 - 2019 1ST QUARTER DEPOSITS, BUSINESS TRAVEL ACCIDENT 7/1/18-6/30/19, CRIME SHIELD PROGRAM, EMPLOYEE ASSITANCE
July 24, 2018	44200	\$205.80	DLT SOLUTIONS, LLC	GENERAL	AUTOCAD LT GOVERNMENT MAINTENANCE PLAN (1YR RENEWAL)
July 24, 2018	44201	\$991.99	PURCHASE POWER	GENERAL-WATER-SEWER-REFUSE	POSTAGE METER REFILL 7/8/2018
July 24, 2018	44202	\$238,588.18	AVISON CONSTRUCTION, INC	STREETS	2018 PAVEMENT SEAL PROJECT FOR JUNE 2018
July 24, 2018	44203	\$50.00	CHRISTIAN LIFE TABERNACLE	GENERAL	REIMBURSEMENT FOR FIREWORK STAND DEPOSIT
July 24, 2018	44204	\$90,225.75	FRESNO COUNTY FIRE	FIRE PROTECTION	FY 17/18 FIRE PROTECTION SERVICES 1/1/18 - 6/30/18
July 24, 2018	44205	\$50.00	MENDOTA PENTECOSTAL CHURCH	GENERAL	REIMBURSEMENT FOR FIREWORK STAND DEPOSIT
July 24, 2018	44206	\$50.00	MENDOTA YOUTH RECREATION	GENERAL	REIMBURSEMENT FOR FIREWORK STAND DEPOSIT
July 24, 2018	44207	\$50.00	MARIO PLASCENCIA JR-MHS BOYS BASKETBALL	GENERAL	REIMBURSEMENT FOR FIREWORK STAND DEPOSIT
July 24, 2018	44208	\$50.00	MENDOTA HIGH SCHOOL FOOTBALL PROGRAM	GENERAL	REIMBURSEMENT FOR FIREWORK STAND DEPOSIT
July 24, 2018	44209	\$1,687.89	NISSAN MOTOR ACCEPTANCE CORP	GENERAL-WATER-SEWER	FINAL INSTALLMENT- CM LEASED 2015 NISSAN ALTIMA
July 24, 2018	44210	\$4,500.00	PROVOST & PRITCHARD	GENERAL-WATER-SEWER	CITY ENGINEERING SERVICES - RETAINER JUNE 2018
July 24, 2018	44211	\$380.41	THE HOME DEPOT	WATER-SEWER	(1)GATOR GRIP 3/8 DR, (1) MAK 8A 1", (1)20PK GORILLA GRIP GLOVES
July 24, 2018	44212	\$50.00	WESTSIDE YOUTH	GENERAL	REIMBURSEMENT FOR FIREWORK STAND DEPOSIT
July 24, 2018	44213	\$105,180.00	WESTAMERICA BANK	GENERAL	PAYROLL TRANSFER 7/9/2018 - 7/22/2018
July 27, 2018	44214	\$250.00	OPHELIA LUGO MADRIGAL	GENERAL	NATIONAL NIGHT OUT RAFFLE PRIZES AND FOOD SUPPLIES
July 27, 2018	44215	\$174.30	DIVISION OF THE STATE ARCHITECT	GENERAL	30% OF FEES COLLECTED FOR SB 1186 \$1.00 BUSINESS LICENSE FEE
July 27, 2018	44216	\$200.00	DATA TICKET, INC.	GENERAL	JUNE 2018 - DAILY CITATION, NOTICES, APPEAL PROCESSING
July 27, 2018	44217	\$3,334.50	GIERSCH & ASSOCIATES INC	SEWER	PROFESSIONAL SERVICES LOZANO LIFT STATION JUNE 2018
July 27, 2018	44218	\$51,057.22	PROVOST & PRITCHARD	GENERAL-STREETS	PASSTHRU - LAS PALMAS CONSTRUCTION REVIEW AND FINAL MAP, APRIL, MAY, AND JUNE 2018, PASSTHRU - LA COLONIA MAP, 2018 PAVEMENT SEAL
July 27, 2018	44219	\$189.90	DIVISION OF THE STATE ARCHITECT	GENERAL	2017 FEES COLLECTED: SB 1186 30% TOTAL FEES BUSINESS LICENSE
July 31, 2018	44220	\$2,200.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	MEDICAL CHECK RUN 7/24/18

CITY OF MENDOTA  
CASH DISBURSEMENTS  
7/24/2018 - 8/8/2018  
Check# 44196 - 44301

July 31, 2018	44221	\$275.38	ADT SECURITY SERVICES	GENERAL-WATER-SEWER	SECURITY SERVICES 8/13/18 - 9/12/18 EDD, DMV, CITY HALL
July 31, 2018	44222	\$1,167.64	AUTOMATED OFFICE SYSTEMS	GENERAL-WATER-SEWER	MAINTENANCE CONTRACT COPIER FOR CITY HALL & POLICE DEPARTMENT
July 31, 2018	44223	\$323.60	AQUA NATURAL SOLUTIONS	SEWER	(1) MICROBE LIFT IND 5 GALLON (1) DOSING PUMP MANHOLE
July 31, 2018	44224	\$955.14	AT&T	GENERAL-WATER-SEWER	CITYWIDE TELEPHONE SERVICES 6/25/18 - 7/24/18
July 31, 2018	44225	\$746.97	CHEMSEARCH	GENERAL	(1) FREE-FLOW BIOLOGICAL BLACK 4X10 LB
July 31, 2018	44226	\$645.52	CORBIN WILLITS SYS INC	GENERAL-WATER-SEWER	ENHANCEMENT & SERVICE FEES FOR MOMS SYS AUGUST 2018
July 31, 2018	44227	\$412.20	CROWN SERVICES CO	GENERAL-SEWER	TOILET RENTAL 1XWK FOR POOL PARK, LOZANO LINDGREN PARK, PD, & WWTP
July 31, 2018	44228	\$537.09	FOUNTAIN PEOPLE, INC	GENERAL	(1)PCB-0042 DSC RF XCVR PART FOR SPLASH PARK, (1) TRANSMITTER BOARD ACTIVATOR FOR SPLASH PARK
July 31, 2018	44229	\$24,604.71	GUTHRIE PETROLEUM INC	GENERAL-WATER-SEWER-STREETS	(6853 GAL) BLK UNLEADED GASOLINE, (1478 GAL) DIESEL
July 31, 2018	44230	\$2,278.28	JR SIMPLOT COMPANY	WATER-SEWER-STREETS	(23) 50 GAL ROUND UP POWER MAX (16) 60OZ TREEVIX 1OZ, RIGHT-A-WAY MAINTENANCE
July 31, 2018	44231	\$1,200.00	LAW & ASSOCIATES	GENERAL	MUSD SRO - (2) LAW ENFORCEMENT BACKGROUND (PD)
July 31, 2018	44232	\$1,259.33	MUTUAL OF OMAHA	GENERAL	LIFE AD&D LTD STD INSURANCE FOR AUGUST 2018
July 31, 2018	44233	\$2,009.72	NORTHSTAR CHEMICAL	WATER	(470 GAL & 500 GAL) SODIUM HYCHLORITE 12.5 MILL A
July 31, 2018	44234	\$82.74	OFFICE DEPOT	WATER-SEWER	MULTIPLE DEPARTMENT OFFICE SUPPLIES
July 31, 2018	44235	\$79,407.60	PG&E	WATER-SEWER-STREETS	WATER DEPARTMENT UTILITIES 6/14/18 - 7/10/18 AND CITYWIDE UTILITIES 6/15/18 - 7/16/18
July 31, 2018	44236	\$535.00	TECH-MASTER	GENERAL-WATER-SEWER	GENERAL PEST CONTROL FOR CITY HALL, EDD, DMV, DOG POUND, WATER PLANT, PUBLIC WORKS YARD, SENIRO CENTER, COMMUNITY CENTER,
July 31, 2018	44237	\$1,181.72	THE FLAG FACTORY	GENERAL	(4) 5' X 8' CITY OF MENDOTA FLAGS
July 31, 2018	44238	\$100.00	UNITED HEALTH CENTERS	GENERAL	PRE-EMPLOYMENT SCREEN FOR MUSD SRO - PD (R. PEREZ)
July 31, 2018	44239	\$189.58	UNDERGROUND SERVICE ALERT	WATER-SEWER	CA ANNUAL % TICKTES FEE CA FLAT RATE FEE
July 31, 2018	44240	\$1,340.13	VERIZON WIRELESS	WATER-SEWER	CITYWIDE CELL PHONE SERVICES 6/7/18 - 7/6/18
August 2, 2018	44241	\$337.50	ADMINISTRATIVE SOLUTIONS INC	GENERAL	MEDICAL CHECK RUN 7/31/18
August 3, 2018	44242	\$3,117.18	BANKCARD CENTER	GENERAL-WATER-SEWER	CREDIT CARD EXPENSES 6/27/18 - 7/20/18
August 6, 2018	44243	\$87,780.00	WESTAMERICA BANK	GENERAL	PAYROLL TRANSFER 7/23/2018 - 8/05/2018
August 7, 2018	44244	\$4,473.10	AMERITAS GROUP	GENERAL	DENTAL & VISION INSURANCE FOR SEPTEMBER 2018
August 7, 2018	44245	\$4,052.00	AVIATION MARINE INSURANCE SERVICES, INC	AVIATION	2018 AIRPORT LIABILITY POLICY

CITY OF MENDOTA  
CASH DISBURSEMENTS  
7/24/2018 - 8/8/2018  
Check# 44196 - 44301

August 7, 2018	44246	\$246.84	COLONIAL LIFE	GENERAL	LIFE INSURANCE FOR JULY 2018
August 7, 2018	44247	\$236.89	AT&T	GENERAL-WATER-SEWER	TELEPHONE SERVICES 7/26/18 - 8/25/18 559-266-6456
August 8, 2018	44248	\$3,000.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	MEDICAL CHECK RUN 8/7/2018
August 8, 2018	44249	\$78.37	AG & INDUSTRIAL SUPPLY INC	WATER-STREETS	BACKHOE #11- (9.5FT) HYDRAULIC HOSE 1/4" 2WIRE (2) GLOBAL FITTING
August 8, 2018	44250	\$2,867.47	ALERT-O-LITE	GENERAL-STREETS	(32) STRIPING PAINT WHITE 180 P 5 GAL (1)STIHL BRUSH CUTTER - PARKS WEED EATER
August 8, 2018	44251	\$237.55	ALL-PHASE	GENERAL-WATER-SEWER	(4) TOPAZ FL WRAP/42W/40K - 91 LED WRAP , NON-DIM LIGHTS
August 8, 2018	44252	\$263.36	AMERIPRIDE SERVICES INC	GENERAL-WATER-SEWER	PUBLIC WORKS UNIFORM WEEK 7/5/18, 7/12/18, 7/19/18 & 7/26/18
August 8, 2018	44253	\$692.82	GREGG ANDREOTTI	GENERAL	EXPENSE REIMBURSEMENT - OFFICE & CLEANING SUPPLIES, FOOD & BEVERAGES
August 8, 2018	44254	\$200.96	AT&T	GENERAL	POLICE DEPARTMENT DISPATCH SERV 6/27/18 - 7/26/18
August 8, 2018	44255	\$925.00	BAR PSYCHOLOGICAL GROUP	GENERAL	(3) POST PRE-EMPLOYMENT PSYCHOLOGICAL SCREEN -PD
August 8, 2018	44256	\$1,540.00	BC LABORATORIES	GENERAL-WATER	DRINKING WATER EDT WELL #3 & #5 (PASSTHRU-LA COLONIA), WELL #7,#8, & #9 LAB ANALYSIS DRINKING WATER EDT 1,2,3,TCP
August 8, 2018	44257	\$26.98	BEST UNIFORM	GENERAL	(1) CUFF CASE - PD
August 8, 2018	44258	\$6,711.91	BSK ASSOCIATES	WATER-SEWER	5TH STREET RECON PROF.SERV. JULY 2018, MONTHLY WASTEWATER WW MONTHLY (WEEK 1, WEEK2-5), FILTER WATER PLANT PROFILE EDT WEEKLY
August 8, 2018	44259	\$130.00	CITY CLERK ASSOCIATION OF CALIFORNIA	GENERAL	ANNUAL DUES PRIMARY/ASSOCIATE MEMBERSHIP APPLICATION
August 8, 2018	44260	\$337.50	COLLINS & SCHOETTLER PLANNING	GENERAL	PLANNING CONSULTING PASSTHRU-LA COLONIA, CANNAHUB, STAMOULES-DUPLEX
August 8, 2018	44261	\$245.69	DATAMATIC, INC	WATER	MONTHLY SOFTWARE LICENSE & SERVICE MAINTENANCE SEPTEMBER 2018
August 8, 2018	44262	\$194.35	EINERSON'S PREPRESS	GENERAL-WATER-SEWER	(3) 250 CT BUSINESS CARDS - PD (1000 CT) BUSINESS CARDS CM
August 8, 2018	44263	\$698.36	EWING, FRESNO	GENERAL	(20) RAINBIRD ADJ ROTOR (12) HNTR ULTRA 1 INSTA, (2) NODE - 100 HNTR 15TA BATTERY CONTROLLER
August 8, 2018	44264	\$538.80	MATTHEW FLOOD	GENERAL	EXPENSE REINBURSEMENT: PARKING FEE & CANNAHUB FRESNO BEE POSTING
August 8, 2018	44265	\$421.00	CITY OF FRESNO-POLICE DEPARTMENT	GENERAL	PERISHABLE SKILLS CLASS 8/7-9/2018 -PD
August 8, 2018	44266	\$137.99	FRESNO COUNTY SHERIFF	GENERAL	RMS JSM ACCESS FEE - JULY 2018 (PD)
August 8, 2018	44267	\$434.00	FRESNO MOBILE RADIO INC	GENERAL	(31) POLICE DEPARTMENT RADIOS FOR JULY 2018
August 8, 2018	44268	\$342.28	GONZALEZ TOWING, TIRE, AUTO & TRUCK DISMANTLING	GENERAL	2008 CHEVY SILVERADO- H LAMP LEFT & RIGHT (1) HINGE 16320 N (PD)
August 8, 2018	44269	\$3,009.93	GRANTED SOLUTIONS	GENERAL-WATER-SEWER	JULY GRANT WRITING SERVICES ATP GRANT 7/31/18
August 8, 2018	44270	\$1,366.90	HARDWARE DISTRIBUTION	STREETS	(6) 6' YELLOW PLASTIC SPEED BUMP

CITY OF MENDOTA  
CASH DISBURSEMENTS  
7/24/2018 - 8/8/2018  
Check# 44196 - 44301

August 8, 2018	44271	\$71.47	ICAD INC	WATER	WATER PLANT SERVICES & MATERIAL
August 8, 2018	44272	\$386.27	JORGENSEN & COMPANY	GENERAL	POLICE DEPARTMENT (18) FIRE EXTINGUISHER ANNUAL MAINTENANCE (4) FIRE EXTINGUISHER (4) VALVE
August 8, 2018	44273	\$890.00	KERWEST NEWSPAPER	GENERAL	(5) ORD NO. 18-02 EIZ ZONE, (34) NOTICE OF PUBLIC HEARING -PROJ MAP ORD 18-03 & 18-04, (5.5) SUMMARY ORDINANCE NO 18-02 ECONOMIC
August 8, 2018	44274	\$255.00	LABORATORY CORPORATION OF AMERICA	GENERAL	LAB ANALYSIS FOR PD
August 8, 2018	44275	\$274.00	LEXIS NEXIS	GENERAL-WATER-SEWER	SUBSCRIPTION SERVICES FOR JULY 2018
August 8, 2018	44276	\$3,800.42	MCCROMETER	WATER	(1) METER HEAD 12"ML 04 INDICATOR - WTP
August 8, 2018	44277	\$667.00	MENDOTA COMMUNITY CORPORATION	DONATION	TRANSFER RECREATION COMMISSION FUNDS
August 8, 2018	44278	VOID			
August 8, 2018	44279	\$1,108.50	MID VALLEY DISPOSAL, INC	REFUSE-STREETS	ROLL OFF BIN EXCHANGE (2) 40YARD & (2) 10 YARD
August 8, 2018	44280	\$47.97	OFFICE DEPOT	GENERAL	MULTIPLE DEPARTMENT OFFICE SUPPLIES
August 8, 2018	44281	\$5,136.45	QUINN COMPANY	WATER-SEWER	ANNUAL SERVICE OIL CHANGE FUEL & AIR FILTER WWTP, WTP, WELL #10, BACKUP GENERATOR, WELL #9, AND EXCERSISER OPERATION CHECK
August 8, 2018	44282	\$565.47	R.G. EQUIPMENT COMPANY	GENERAL	(50) EDGER BLADE (12) 60 IN DECK BLADE (4) TRIMMER LINE, MOWER PARTS - (1) AIR FILTER PRIM (1) AIR FILTER SAFETY
August 8, 2018	44283	\$1,204.61	RAMON'S TIRE & AUTO SERVICE	GENERAL-WATER-SEWER-STREETS	CITYWIDE VEHICLE MAITENANCE AND TIRE REPAIR
August 8, 2018	44284	\$350.00	RIGHT NOW PHLEBOTOMY	GENERAL	(3) BLOOD DRAW (PD)
August 8, 2018	44285	\$931.08	ERNEST PACKING SOLUTIONS	GENERAL-WATER-SEWER	MULTIPLE DEPARTMENT JANITORIAL SUPPLIES
August 8, 2018	44286	\$19.95	SEBASTIAN	GENERAL	SECURITY SERVICES 7/21/18 - 8/20/18 (PD)
August 8, 2018	44287	\$1,625.59	SIGNMAX	GENERAL-WATER-SEWER-STREETS	(20) 14" ROUND CITY OF MENDOTA VEHICLE LOGOS, (12) 24X24 BLACK/YELLOW SPEED BUMP SIGN
August 8, 2018	44288	\$1,438.81	SORENSEN MACHINE WORKS	GENERAL-WATER-SEWER	MULTIPLE DEPARTMENT SUPPLIES FOR JULY 2018
August 8, 2018	44289	\$194.85	TCM INVESTMENTS	GENERAL	MPC3503 LEASE PAYMENT FOR PD COPIER
August 8, 2018	44290	\$75.00	TRANSUNION RISK & ALTERNATIVE DATA	GENERAL	TRANSUNION RISK & ALTER SERV FOR JULY, AUGUST, & SEPTEMBER 2018 (PD)
August 8, 2018	44291	\$300.00	UNITED HEALTH CENTERS	GENERAL-WATER-SEWER	(3) PRE-EMPLOYMENT SCREEN
August 8, 2018	44292	\$2,176.10	USA BLUEBOOK	WATER-SEWER	(4) CONDUCTIVITY SOLUTION, (4) ZERO OXYGEN STANDARDS, (1) WALCHEM PUMP (1) WALCHEM REPAIR KIT (1) 56 GAL ECONOMY WASTE
August 8, 2018	44293	\$8,601.19	WANGER JONES HELSLEY PC ATTORNEYS	GENERAL-WATER-SEWER	PASSTHRU-LEGAL SERV FOR CANNAHUB DEVELOPMENT, LEGAL SERVICES RE: GENERAL LEGAL SERVICES RETAINER, PITCHESS MOTION
August 8, 2018	44294	\$55.80	WECO	GENERAL-WATER-SEWER	(6) RENT CYL ACETYLENE#4, OXYGEN D, & OXYGEN K
August 8, 2018	44295	\$47.00	SANTOS MOISES BOLANOS	WATER	MQ CUSTOMER REFUND FOR BOL0002



CITY OF MENDOTA  
 CASH DISBURSEMENTS  
 7/24/2018 - 8/8/2018  
 Check# 44196 - 44301

August 8, 2018	44296	\$33.10	ABEL CASTANEDA	WATER	MQ CUSTOMER REFUND FOR CAS0076
August 8, 2018	44297	\$54.81	VERONICA GONZALEZ	WATER	MQ CUSTOMER REFUND FOR GON0114
August 8, 2018	44298	\$41.59	MARIA ORTIZ	WATER	MQ CUSTOMER REFUND FOR ORT0021
August 8, 2018	44299	\$68.76	WILLIAM L SMITH	WATER	MQ CUSTOMER REFUND FOR SMI0009
August 8, 2018	44300	\$16.00	LETICIA R VALLEJO	WATER	MQ CUSTOMER REFUND FOR VAL0092
August 8, 2018	44301	\$47.00	BONIFACIO VALADEZ	WATER	MQ CUSTOMER REFUND FOR VAL0095
		\$919,702.70			

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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** DAVID McGLASSON, PE, PLS, CITY ENGINEER

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

**SUBJECT:** CONSIDERATION OF A RESOLUTION AUTHORIZING  
SUBMISSION OF APPLICATION FOR A LAND LEASE  
FOR THE MOWRY BRIDGE OVER THE FRESNO SLOUGH

**DATE:** AUGUST 14, 2018

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**ISSUE**

Should the Council approve submission of an application to the State Lands Commission for a land lease for the Mowry Bridge over the Fresno Slough, as included in Resolution 18-59?

**BACKGROUND**

The Mowry Bridge over the Fresno Slough has belonged to the City since it was acquired from the B&B Ranch as part of the lease agreement for the water supply wells located east of the Fresno Slough, which was entered into in 1980. While the City has used the old bridge for over 30 years, it has been closed since 2015 due to safety issues. The City is working with US Bureau of Reclamation to secure funding to replace the bridge with a larger, stronger and more permanent structure. If that funding assistance is received, the City will benefit from a new, larger, stronger and more durable bridge structure which will be usable to access the wellfield for 50 years or more. The anticipated funding assistance will cover the entire cost of replacing the bridge, and will total over \$4 million.

The State Lands Commission (SLC), which manages State lands, has notified the City that the existing Mowry Bridge exists on State lands without an official permit, and that a land lease must be created if the bridge is to remain in place. If the City does not secure a land lease, the State could mandate removal of the structure completely. Since the proposed new bridge would be parallel to the old bridge and located on State lands as well, a land lease would be required for the new structure as well.

The SLC, which would be the agency to enter into such a lease on behalf of the State, has indicated its willingness to grant a land lease covering both bridge structures, upon the City's official application. The City Engineer has prepared the lease application. With approval of the

resolution included with this item, the Interim City Manager will be authorized to sign the application on behalf of the City, and the Finance Director will be authorized to prepare a warrant for payment of the application fee in the amount of \$3,025.

### **ANALYSIS**

The City Engineer has prepared the application and has coordinated with SLC to add supplemental materials to the application, explaining the benefits to the State of California for granting the lease. The State will benefit because they plan to use the new bridge as a construction access for the Reach 2B San Joaquin River Restoration Project. Any benefit to the State is considered to be positive by the SLC in its consideration of the lease application. Discussions with SLC staff suggest that they are very favorable not only to the City but to the idea of constructing a new bridge to benefit the River Restoration project, and approval of the lease is expected to go smoothly.

Once the new bridge is in place and the River Restoration project is complete, the bridge will remain and will be owned by the City. Throughout construction, the bridge would be usable by the City of Mendota and by B&B Ranch just as the old bridge has been used for many years.

In discussions with the SLC and the USBR, it has been determined that the land lease must be in place before any construction of the new bridge could begin.

### **FISCAL IMPACT**

This proposal has no impact on the General Fund. The payment will come from the Water Fund, and will be eligible for reimbursement from funding assistance received from USBR.

### **RECOMMENDATION**

That the City Council review and approve the attached Resolution No. 18-59 authorizing the Interim City Manager to execute all documents necessary to complete the lease application; and to authorize the Finance Director to issue a warrant in the amount of \$3,025.00 to be submitted along with the Application.

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AUTHORIZING  
SUBMISSION OF AN APPLICATION TO  
THE STATE LANDS COMMISSION FOR A  
LAND LEASE FOR THE EXISTING  
AND PROPOSED MOWRY BRIDGES**

**RESOLUTION NO. 18-59**

**WHEREAS**, the State Lands Commission (SLC) has notified the City that the existing Mowry Bridge exists on State lands without an official permit; and

**WHEREAS**, the ongoing use of the Mowry bridge is essential to the City of Mendota for access to the wellfield east of the Fresno Slough; and

**WHEREAS**, the City has applied to the US Bureau of Reclamation (Bureau) for funding assistance for construction of a new Mowry bridge; and

**WHEREAS**, the SLC will also require a land lease for the new bridge along its new alignment; and

**WHEREAS**, to obtain a lease from the SLC, the City is required to complete an Application for Lease of State Lands, attached hereto as Exhibit "A" and incorporated herein by this reference, and submit the application to the SLC; and

**WHEREAS**, the City and the Bureau will benefit from the lease for many years; and

**WHEREAS**, the SLC has indicated its willingness to grant the lease upon the City's official application; and

**WHEREAS**, the fee for the lease will be \$3,025.00, payable with the application;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Mendota does hereby authorize the Interim City Manager or his designee to execute all documents necessary to complete the Application for Lease of State Lands and submit the same to the State Lands Commission; and further does authorize the Finance Director to issue a City warrant in the amount of \$3,025.00, payable to the State Lands Commission, to be submitted along with the Application.

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

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 14<sup>th</sup> day of August, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Matt Flood, City Clerk

STATE OF CALIFORNIA – STATE LANDS COMMISSION  
**SHORT - FORM APPLICATION FOR LEASE OF STATE LANDS**  
SLC 400.33 (Revised 10/16)

**IDENTIFICATION OF APPLICANT AND CONTACT INFORMATION**

**Notice to natural persons:**<sup>1</sup> This page will be separated from the application and treated as personal information under the Information Practices Act. See Privacy Notice in Attachment A to this application.

1. Applicant:

Name:		
Mailing Address:		
City:	State:	Zip:
Phone:	Fax:	
E-mail Address:		

2. Applicant's authorized agent or representative (if any):

Name:		
Mailing Address:		
City:	State:	Zip:
Phone:	Fax:	
E-mail Address:		

- If you are ***an elected or appointed official*** as specified in Government Code section 6254.21, check this box. If you do not check this box, by signing this application you are deemed to have given consent to have your home address (when it is the project location) posted on the Internet.

Title: \_\_\_\_\_

Agency or Branch of Government: \_\_\_\_\_

***INSTRUCTIONS TO COMMISSION STAFF:*** *Separate this page from the rest of the application and place in a CONFIDENTIAL ENVELOPE.*

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<sup>1</sup> "Natural Persons" means individuals but does not include trusts, corporations, or other business entities.

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ALL APPLICANTS ARE REQUIRED TO COMPLETE PARTS I, II AND III. Please answer all questions to the best of your availability. Staff of the Land Management Division are available to assist you with any questions you may have related to this application: 916-574-1940.

**PART I: General Data**

**SECTION A: Identification of Applicant**

1. Applicant(s):

Legal Name (as it appears on property title):

2. Applicant's authorized agent or representative (if any):

Name:

The agent or representative must submit written evidence of their authority to act on behalf of the Applicant. A letter or email from the Applicant is sufficient.

3. Who should receive correspondence relevant to this application? (Check one only)

Applicant(s)

OR

Authorized agent or Representative

**SECTION B: Legal Status of Applicant**

*Instructions:*

*Indicate the Applicant's legal status and submit any required information*

INDIVIDUAL(S)

TRUST(S): Attach a copy of the trust agreement(s) and all amendments, if any.

CORPORATION, PARTNERSHIP, or LIMITED LIABILITY COMPANY: Attach a Certificate of Incorporation; Articles of Incorporation and/or By-Laws; partnership statement and partnership agreement; or Articles of Organization and Certificates of Amendment. NOTE: Additional information may be requested.

PUBLIC AGENCY: Submit evidence of the authority of the official(s) to execute contracts together with a resolution or other document authorizing execution of the appropriate lease or permit. Some public agency leases may qualify for rent reduction or exemption. Submit a written statement detailing the statewide, as compared to primarily local, public benefit if you wish a determination as to whether a rent reduction or exemption is appropriate. Leases for "School Lands" cannot qualify for rent-free status. Contact Commission staff for more details.

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- OTHER: State the nature, membership and other particulars regarding the legal status of Applicant. Provide legal documentation establishing the authority of Applicant to enter into the requested transaction, and designating who is authorized to act on behalf of Applicant.

**SECTION C: State Land Location**

Address or Assessor's Parcel Number (APN) of State Land or Nearest Adjoining Property. If address and APN are unknown, provide the Township, Range, Section and Reference Meridian.	
County:	City:
Waterway (if State Land is in or near a Waterway):	

**SECTION D: Type of Authorization Requested**

1. Please check the type(s) of activity for which you are seeking Commission authorization (check all that apply):
  - Recreational (Personal uses that do not generate income. Improvements are typically used by the adjacent upland owner such as docks, piers or buoys.)
  - Protective Structure (Riprap, revetments, seawall, groins, jetties, breakwaters, bulkheads, etc.)
  - Public Agency (Local, State or Federal agencies that provide substantial public benefit such as public roads or bridges)
  - Right-of-Way (Uses such as roadways, power lines, conduits, pipelines or outfall lines)
  - Grazing or other Agricultural Use
  - Dredging (Please check this box if any portion of the application involves dredging.)
  - Other (please describe): \_\_\_\_\_
  
2. Please indicate the authorization you are seeking (check all that apply):
  - Proposed new use of state-owned land (New construction and/or new activity)
  - Continued use of state-owned land not previously under lease (Existing use, facilities or improvements, but no prior lease, no new construction or activity)
  - Renewal<sup>2</sup> of an expired lease. Lease File No. PRC \_\_\_\_\_

<sup>2</sup> As used here and throughout this application, the term "renewal" refers to a new lease, on new terms, issued after a prior lease ends or is terminated.



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- Renewal of a lease that has not yet expired. Lease File No. PRC \_\_\_\_\_
- Amendment of an existing lease. Lease File No. PRC \_\_\_\_\_
- Sublease of an existing lease. Lease File No. PRC \_\_\_\_\_
- Consent to encumber an existing lease. Lease File No. PRC \_\_\_\_\_
- Assignment of an existing lease. Lease File No. PRC \_\_\_\_\_
- Other (please describe): \_\_\_\_\_

**SECTION E: Site Specific Information**

*This requested information is necessary to determine the proposed and/or existing use and condition of the lease area.*

*If you are applying to construct new improvements on state land, or to expand or modify existing improvements, this application may be subject to the Permit Streamlining Act, Government Code sections 65920 and following. You may be required to submit supplemental information. Please contact Commission staff if you have questions as to whether the Permit Streamlining Act applies.*

Sea Level Rise and Climate Change (all applicants should answer to the best of your ability):

1. What is the expected life of the structure/activity/project?
2. Does the area experience flooding, storm surge, wave runup or wave action?
3. Do you know if the city or county where your structure/activity/project is located has a Local Coastal Program, Sea Level Rise Vulnerability Assessment, or any other local plans or reports that deal with sea-level rise and climate change impacts? If so, please provide copies or links.
4. To the best of your ability, describe any features of the structure/activity/project that can adapt, respond, or account for sea-level rise and climate change impacts, including increased storm frequency and intensity, changes in erosion, and increased flooding.
5. To the best of your ability, characterize any sensitive habitats and resources within or adjacent to the lease area location you are applying for.
6. Photos of the state lands you seek to use.
  - a. If the state lands are a water body, please provide photos looking towards the upland property, photos looking to both sides and photos looking out toward the state lands from the upland.
  - b. Photos of any improvements or structures on the state lands and the immediately adjoining uplands.
  - c. If possible, provide recent photographs of the lease area location you are applying for, from the winter/spring season (February to May) and the summer/fall season (September to November). Please label all photos and list the dates the photos were taken.

Sea Level Rise and Climate Change Questions: Attachment 3  
Site and Area Photos: Attachment 4

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Lease renewals:

If you are applying to renew an existing lease and there are no changes from the existing lease (including a change in legal ownership, the physical lease premises or improvements, or uses on lease premises), please address the preceding Sea Level Rise and Climate Change section, initial below, and proceed to Section II.

I am renewing an existing lease and there are no changes from the prior lease:

\_\_\_\_\_  
(Initial here)

Site information: (only for applicants not renewing an existing lease without change)

1. A detailed plot of the lease area(s) location you are applying for including the siting and dimensions of both the existing and proposed structures (how will the lease area be used). Please include property lines along with the location of high and low water marks. (If an elevation is used to locate the water marks, then include the datum of water line elevation used.) **See Attachment 5**
2. An area or vicinity map to scale, showing the project site in relation to major roadways and other landmarks. **See Attachment 1**
3. A land description of the location you are applying for, tied to a monument or monuments of record. This location includes the area occupied by the structures, the area occupied by the Applicant's activities, and any associated impact area as provided in Title 2 California Code of Regulations section 1900(l). If a land description is not provided, Commission staff may be required to prepare a land description to process the lease application at the Applicant's cost. **See Attachment 6**
4. Copies of any other relevant documents, including, but not limited to: easements or other agreements granting other parties a right to use the area for which you are submitting an application.
5. If you will access the proposed lease area through separately-owned uplands, please provide a copy of the deed for the upland property, or the lease, permit or other evidence of your right to use this property. **See Attachments 7 & 8**

## **PART II: Certification & Indemnity Agreement**

*I hereby certify under penalty of perjury that I have completed this application (including Part III Agreement to Reimburse Staff Costs) and all related exhibits. To the best of my knowledge, the information is full, complete, and correct. I understand that any misstatement or omission of the requested information or of any information subsequently requested shall be grounds for terminating the application or for denying a lease.*

*I understand that any projects authorized by the State Lands Commission must be completed as specified by the Commission. If the Commission approves a lease, the lease will specify the improvements allowed, and the time frame for which the lease is valid.*

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*Except to the extent caused by the negligence and/or willful misconduct of the Commission, Lessee shall indemnify, hold harmless and, at the Commission's option, defend the Commission, its officers, agents, and employees from all damages, injuries, or claims that may arise from the consideration, approval, or denial of this application. This indemnity agreement includes the provisions of, certification of, or adoption of documents prepared pursuant to the California Environmental Quality Act, the National Environmental Policy Act, or other provision of law. This indemnity agreement applies to third party claims and shall not apply to any claims, litigation, or other actions which may be brought by either Lessee or Lessor against each other.*

*For any Applicant submitting this application as an individual(s), Applicant acknowledges and agrees that by submitting this application the Applicant gives consent for information contained in the Application, except as set forth on page 1A, to be disclosed as described in the Privacy Notice above. This consent meets the consent requirements of Civil Code Section 1798.24.*

*For **appointed or elected officials** specified in Government Code Section 6254.21: If you did not check the box on page 1A, by signing this application you are deemed to have given consent to have your home address (when it is the project location) posted on the internet.*

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Co-Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_ (If Agent)

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

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**FOR COMMISSION USE ONLY:**

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Date Received:	
Work Order No.:	Assigned to:
Type of Document:	
Fee(s) Received:	

**PART III: Agreement to Reimburse Staff Costs**

Each Applicant is required to pay the Commission’s costs of processing the application. Each application shall include a non-refundable Filing Fee and the applicable Minimum Expense Deposit for processing fees as set forth below. The Minimum Expense Deposits listed below are based upon typical Commission costs in processing routine uncomplicated transactions, and may not cover the total cost of processing your application. Note: Large or complicated projects may require a larger deposit under a separate contract.

- A. **NON-REFUNDABLE FILING FEE:** \$25.00 (same fee required for all applications).
- B. **MINIMUM EXPENSE DEPOSITS FOR PROCESSING APPLICATIONS:** Use the chart below and the information in Section D to determine the amount of deposit required for your project.

Transaction Type	Minimum Expense Deposit
Right-of-Way Lease	\$2,500
Public Agency Lease	\$3,000
Recreational Lease	\$1,500
Protective Structure Lease	\$2,500
Grazing or Agricultural Lease	\$2,500
Dredging Lease	\$1,500
Consent to Encumber Leasehold	\$1,000
Assignment not involving amendment to Lease	\$1,000
Amendment of Lease	\$2,000
Sublease Approval	\$1,500
Most other transactions not listed above	\$1,500

- C. **AGREEMENT:** By signing below, Applicant agrees to reimburse the state for the staff costs incurred in processing this application. Staff costs include, but are not limited to, reviewing the application, environmental review, sea level rise analysis, public trust analysis, appraisals or determination of rent, land descriptions, verification of permits, negotiation of lease terms, drafting lease documents, preparing and reviewing a Commission staff report for the Commission’s consideration of the lease, and communication or coordination with the Applicant/lessee.
- D. **ADDITIONAL COSTS:** The staff costs of processing some applications may exceed the Minimum Expense Deposit. Processing costs will be higher for complex, environmentally sensitive, or otherwise more time-consuming applications. Applications that are amended may require more staff time to process. Costs in excess of the initial deposit shall be invoiced and mailed to the Applicant. Applicant shall notify Commission staff within thirty (30) days of being

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advised of any estimated cost increase if the Applicant wishes to dispute the costs or terminate the project application. Commission staff may stop processing an application if the costs are not reimbursed. Failure to reimburse staff costs may result in termination of an application by staff or denial of authorization by the Commission.

- E. **INVOICES AND PAYMENTS:** Payments shall be mailed to the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825, within 30 days of receipt of invoice.
- F. **REFUNDS:** Should the minimum expense deposit exceed actual costs, a refund will be mailed to the Applicant within ninety (90) days of completion of the transaction, or earlier termination as provided below.
- G. **TERM:** This agreement shall be effective for three (3) years from the date Commission staff receives the signed agreement, unless terminated earlier pursuant to paragraph H below.
- H. **TERMINATION:** This Reimbursement Agreement terminates once the transaction is finalized as determined by staff with written notification to the Applicant, withdrawn by the Applicant, or is terminated for inactivity or failure to reimburse staff costs. Additionally, the Applicant or Commission staff may terminate this agreement at any time upon ten (10) days written notice to the other party. Applicant agrees that in the event of termination of this Agreement by either party, it shall reimburse the state for all staff costs incurred by the Commission until the point of termination.

Applicant understands that payment and acceptance of the minimum expense deposit does not guarantee that the Application will be approved by the California State Lands Commission or any other state, local or federal permitting agency. The application is not considered complete without the receipt of funds and a signed reimbursement agreement.

**APPLICANT**

**BY:** \_\_\_\_\_  
**Name**

**DATE:** \_\_\_\_\_

**STATE OF CALIFORNIA**

**BY:** \_\_\_\_\_  
**Fiscal Officer**

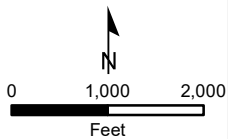
**DATE:** \_\_\_\_\_

Payments may be made via Credit Card through our Accounting Office  
by calling 916-574-0397.

# Attachment 1 -- Vicinity Map



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



### Legend

- Existing Mowry Bridge
- Proposed Mowry Bridge

### Figure 1

Mowry Bridge Locations

City of Mendota

## **Attachment 2**

### **Part I, Section B**

#### **Description of State Benefit from the Proposed Lease**

While the Mowry Bridge was originally constructed by the landowner east of the Fresno Slough to provide access to his property from the west, the City of Mendota became the primary beneficiary with the construction of the City's river wells in 1984. From that time until the bridge was closed to vehicular traffic in 2015, the bridge provided daily operational access to the wells for City Water Department staff.

In August of 2015, an evaluation by the structural engineering firm BSE Engineering recommended closure of the bridge to vehicular traffic due to unsafe conditions resulting from deterioration of many of the support piers caused by beavers gnawing at the piers over time. The City has been searching for sources of repair or replacement funding since that time.

In 2017, the State Lands Commission and the US Bureau of Reclamation approached the City about the possibility of rebuilding the Mowry Bridge to provide construction access to the Reach 2B section of the San Joaquin River Restoration Project. Reconstructing the Mowry Bridge would be very beneficial to the project because the City already has the right-of-way and easements needed to get from the public road system to the west end of the bridge, and then from the east end of the bridge through the Ward property (the landowner east of the Fresno Slough) to the south bank of the San Joaquin River. The bridge is at a favorable crossing point, allowing good access from Fresno, the south San Joaquin Valley and from I-5.

The City has applied to the Bureau for funding assistance and is looking forward to a favorable response within the next few months. If that is received, the new bridge would be constructed beginning the Fall of 2019 with completion in the Spring of 2020.

# Attachment 3

## Sea Level Rise and Climate Change

1. Since at least 1984, the Mowry Bridge across the Fresno Slough has been used by the City of Mendota to access its municipal well field, located approximately 1.5 miles to the east of the Fresno Slough. The City intends to continue use of the existing structure through 2020, by which time a new bridge structure, immediately downstream of the existing bridge, will have been completed. That new structure will be used by USBR in support of construction of the Reach 2B Project of the San Joaquin River Restoration Project, and will become the City's access to its wellfield. The Reach 2B use will be short term, probably 10 years or less. The City's use is expected to continue indefinitely.
2. According to FEMA FIRM No. 06019C1465H, the site is located within Zone A, with no base flood elevation determined. While water levels fluctuate depending upon flows in the Kings River to the south, the old structure itself is above high water level and not subject to inundation. The new structure will be higher still, with an additional 3.0 feet of clearance from the water surface to the bottom chord of the bridge deck. No new impacts are expected. Since the site is located over 100 miles inland, it is not subject to wave or tidal action of any kind. At elevation 100+ above MSL, the site is not subject to any adverse effects from sea level rise.
3. The Fresno Council of Governments (FCOG) is the Metropolitan Planning Organization primarily tasked with regional planning efforts, including climate change issues and greenhouse gas programs. In response to SB 375, FCOG has developed a Sustainable Communities Strategy (SCS) as part of its Regional Transportation Plan (RTP). Information about the SCS is available from FCOG's website at <http://www.fresnocog.org/sustainable-communities-strategy-development-and-outreach>. FCOG is also undertaking development of its 2018 RTP, which will contain updated information regarding greenhouse gases and climate change. The area is not affected by potential sea level rise.
4. The existing structure was constructed long before sea-level rise or climate change were of concern. The new structure will be constructed with 3.0 feet additional clearance above the water surface to the bottom chord of the bridge, providing greatly increased channel flow capacity. That said, the Fresno Slough is not directly affected by increased rainfall or flooding. Flows in the Fresno Slough are controlled by a diversion located in Kings County. The maximum flow through the Fresno Slough, as determined by the Kings River Water Association and other water management agencies in the area, is designed to be within the existing capacity of the channel, so as to not cause flooding. All water over and above the rated flow capacity of the Fresno Slough is diverted to the South Fork of the Kings River, where it collects in Tulare Lake. Tulare Lake has not extended to the project site in over 100 years and is not expected to ever extend so far again.
5. Potentially sensitive areas, particularly for the Giant Garter Snake, have been identified near the lease area. These have been studied as part of the environmental impact work for the Reach 2B project. The City of Mendota has agreed to perform site-specific biological studies in advance of the construction of the new bridge, at a time of year which will allow for construction of exclusion fencing if required to keep protected species out of the construction area.
6. See attached photographs of the existing bridge and its setting within state lands. Plans for the new bridge structure and its relationship to the old bridge are also attached.



## Attachment 4 -- Site and Area Photos



East end of bridge looking east



East end of bridge looking north



East end of bridge looking south



East end of bridge looking west



Middle of bridge looking east



Middle of bridge looking west



Middle of bridge looking upstream



Middle of bridge looking downstream



West end of bridge looking east



West end of bridge looking north

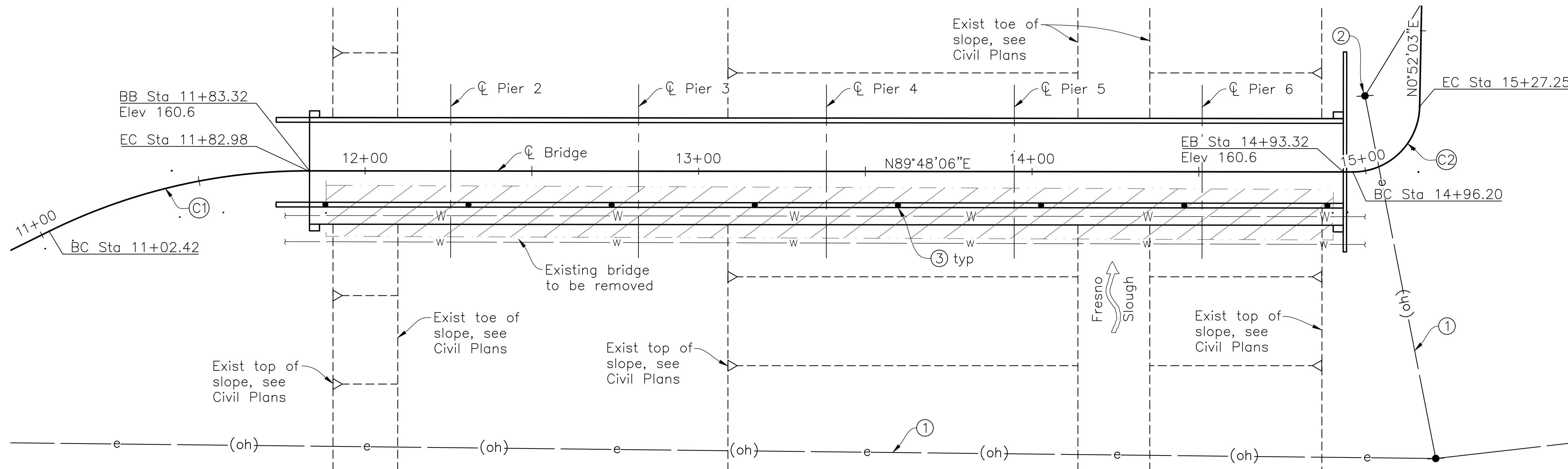
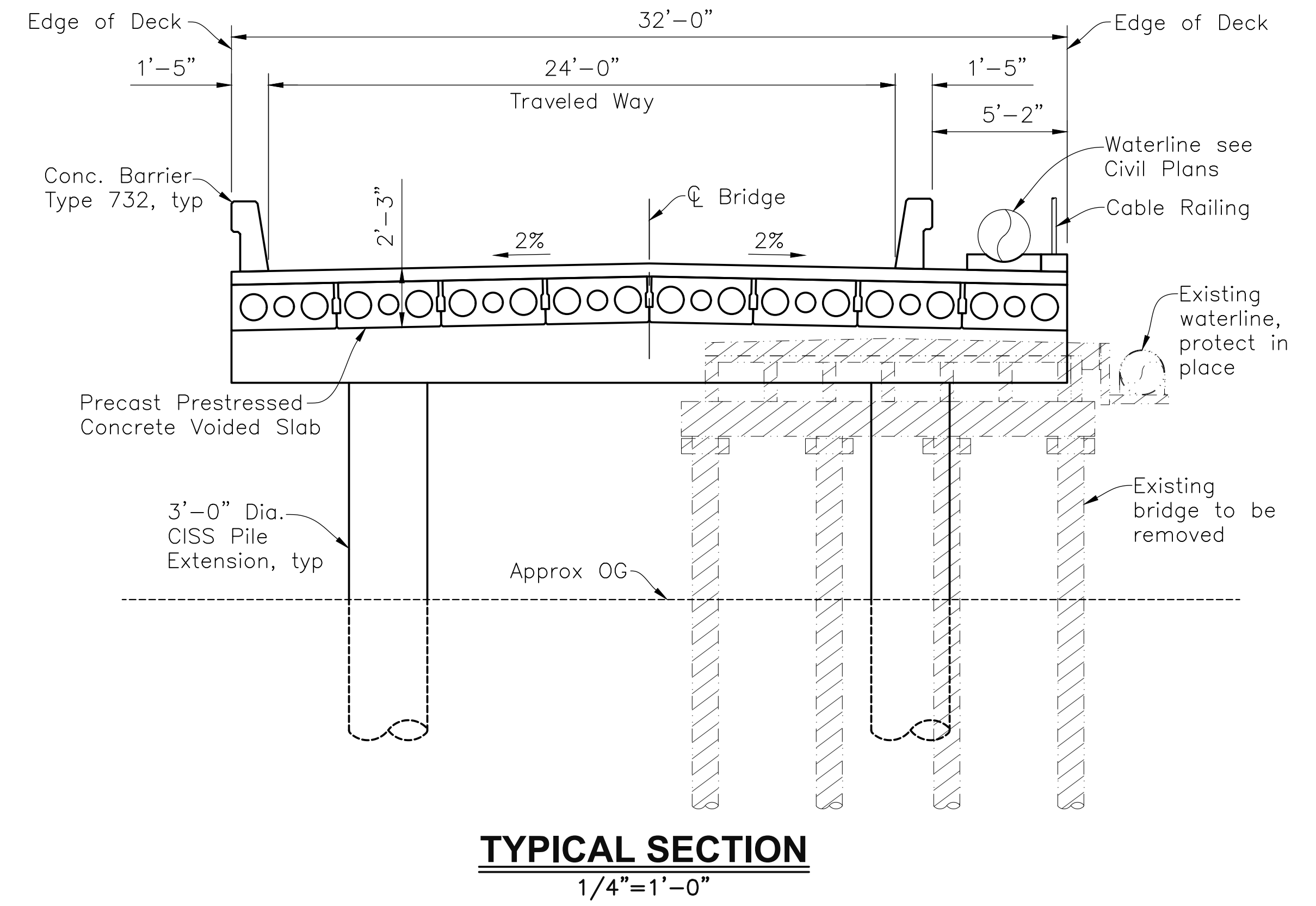
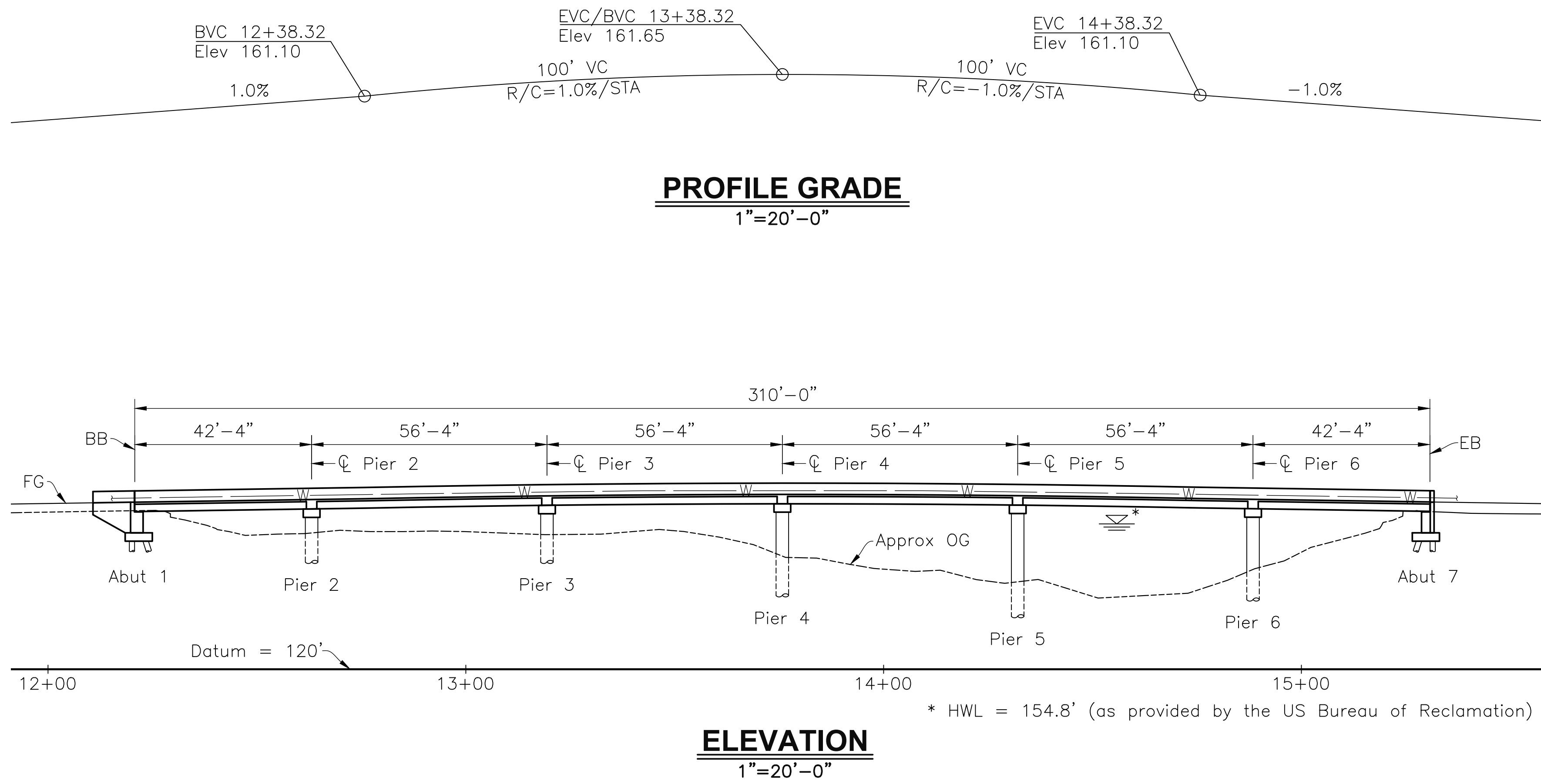


West end of bridge looking south



West end of bridge looking west

# Attachment 5 -- Site Plan from 30% Design of New Bridge



CURVE DATA			
CURVE	RADIUS	DELTA	LENGTH
(C1)	175.00'	26°22'36"	80.56'
(C2)	20.00'	8°56'2"	31.04'

- LEGEND:**
- ① Existing overhead electrical to be relocated, see Civil Plans
  - ② Existing utility pole to be relocated, see Civil Plans
  - ③ Solar footlight, see Civil Plans
  - w- Indicates existing waterline, protect in place, see Civil Plans
  - W- Indicates new waterline, see Civil Plans
  - ▨ Indicates existing bridge to be removed
  - (B0-3) Indicates Caltrans standard plan sheet no.
  - 3-1 Indicates detail no.
  - (A) Indicates section letter
  - (S5) Indicates sheet no. shown on
  - (1) Indicates detail no.
  - (S5) Indicates sheet no. shown on
- NOTES:**
1. These plans shall incorporate the State Standard Specifications dated 2015, the Standard Plans dated 2015, and the Special Provisions.
  2. The contractor shall verify all controlling field dimensions before ordering or fabricating any material.
  3. For Finish Grading, see Civil Plans
  4. See civil plans for additional details and notes.

DESIGNED BY: JPJ	DRAWN BY: SL	CHECKED BY:	DATE: 3/15/2018
			BY
			DATE
			REV.
			DESCRIPTION

**CORNERSTONE**  
structural engineering group

986 W. Allwood Ave., Suite 201  
Fresno, California 93711  
559.920.3200  
fax: 559.920.3201

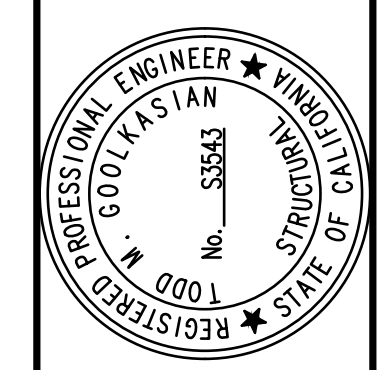
GENERAL PLAN  
**MOWRY BRIDGE OVER  
FRESNO SLOUGH**

SHEET NUMBER  
**S1**  
OF 2 SHEETS  
DRAWING NO.  
2015042S1

FRESNO COUNTY  
CALIFORNIA

TYPE SELECTION/NOT FOR CONSTRUCTION

W:\2015\2015042\_Mendota Pool Bridge\2015042S1.dwg - 3/6/2018 4:51 PM



## GENERAL NOTES LOAD AND RESISTANCE FACTOR DESIGN

DESIGN: AASHTO LRFD Bridge Design Specifications, 6th Edition, and corresponding Caltrans Amendments.

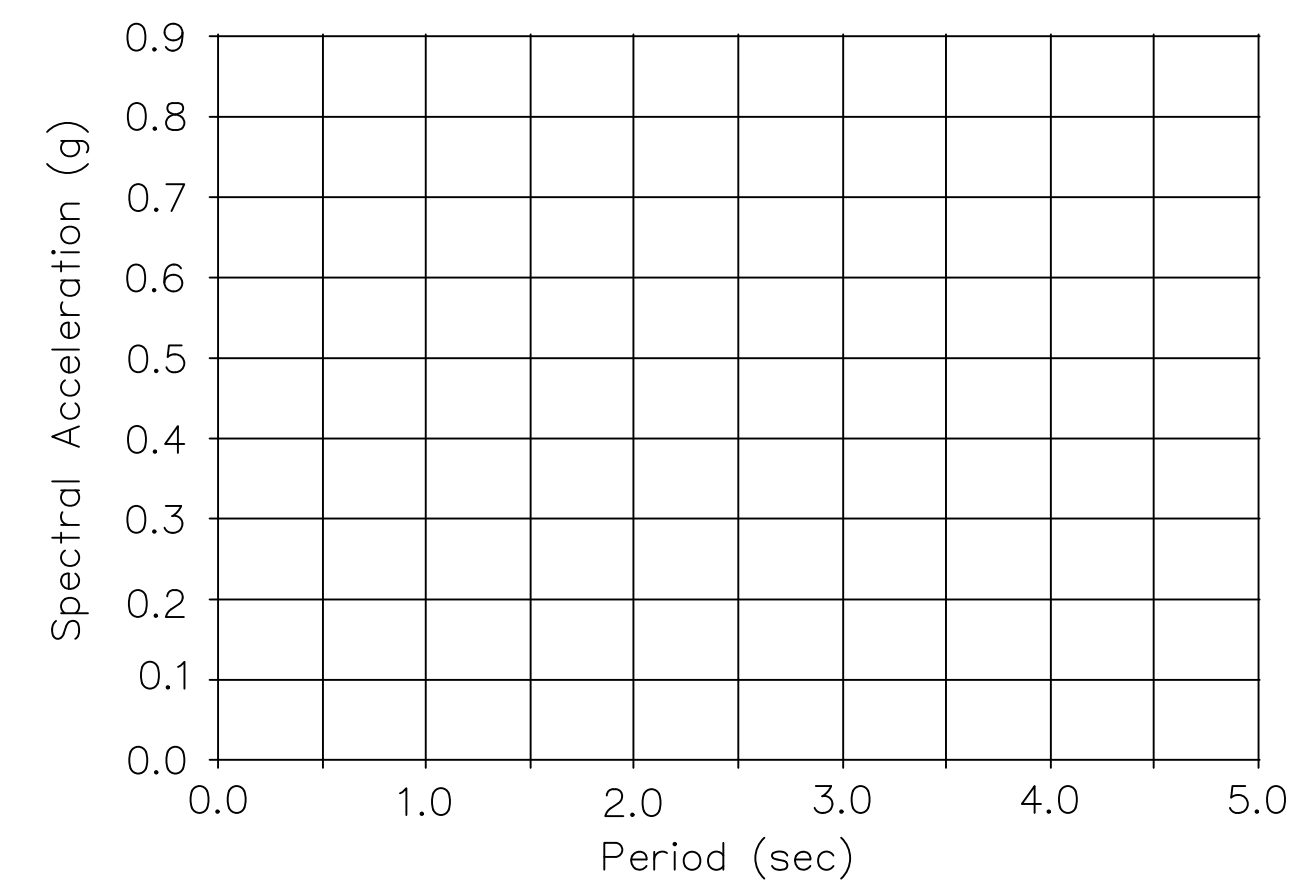
SEISMIC DESIGN: Caltrans Seismic Design Criteria (SDC), Version 1.7, dated April 2013

DEAD LOAD: Includes 35 psf for future wearing surface.

LIVE LOADING: HL93 Design Loading

SEISMIC LOADING: Per DRAFT Foundation Report prepared by XXXX dated X/XX/2018:

V = XXXm/s  
Moment Magnitude: X.X  
Peak Ground Acceleration = X.XXg  
5% Damping

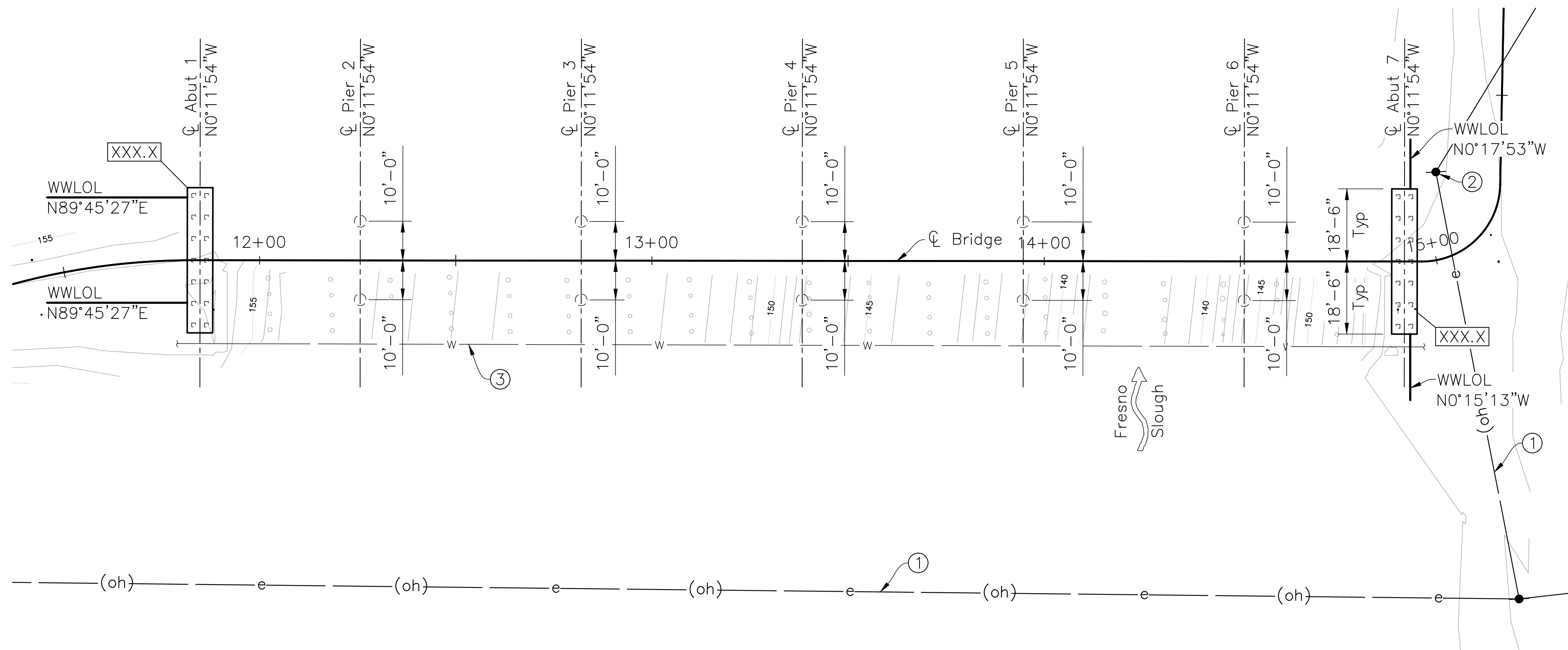


**ACCELERATION  
RESPONSE SPECTRUM**

REINFORCED CONCRETE:  $f_y = 60,000$  psi  
 $f'_c =$  See 'Concrete Strength and Type Limits' this sheet  
 $n = 8.0$

PRESTRESSED CONCRETE: See 'Prestressing Notes' on PRESTRESSED SLAB DETAILS sheet

SOIL CRITERIA FOR DESIGN: No site geotechnical exploration and subsequent laboratory testing have been completed as of the date of this drawing.



**FOUNDATION PLAN**  
1"=20'-0"

Legend and Notes:

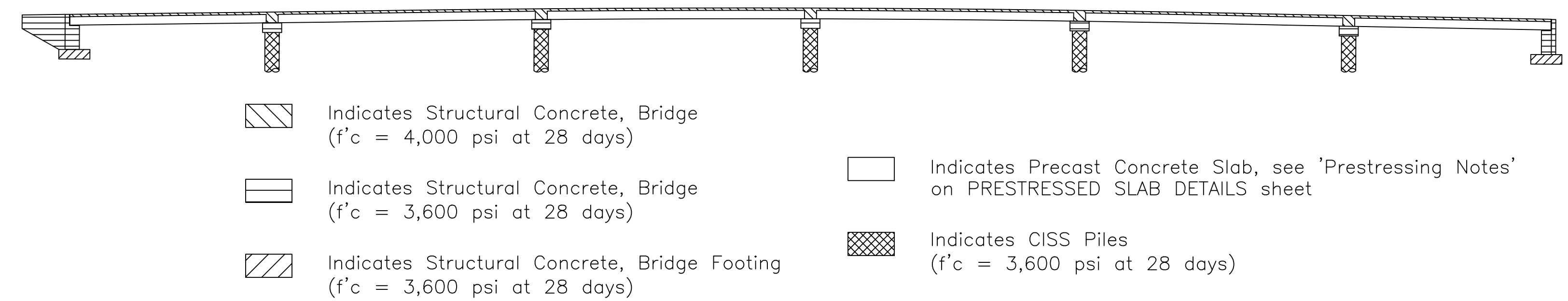
- Indicates CISS pile
  - ◻ Indicates Class 90 (Alt "X") pile
  - ◊ Indicates existing timber pile, to be removed
  - XXX.X Indicates Bottom of Abutment Footing elevation
1. A representative of the Geotechnical Engineer of Record shall be on site at all times during the pile installation operations. Upon completion, the Geotechnical Engineer of Record shall provide the Owner with a letter stating that the pile installation has met the project requirements.
  2. -150- Indicates contour elevation.
  3. Contour interval = 1'
  4. Contractor shall verify all existing controlling field dimensions before ordering or fabricating any material.
  5. Contours shown indicate existing conditions. For Finished Grade contours, see Civil Plans.
  6. See Civil Plans for elevation control.
- ① Existing overhead electrical to be relocated, see Civil Plans  
② Existing utility pole to be relocated, see Civil Plans  
③ Existing waterline, protect in place

**PILE DATA TABLE**

Support Location	Pile Type	Nominal Resistance (kips)		Cut-Off Elev (ft)	Design Tip Elev (ft)	Specified Tip Elev (ft)
		Compression	Tension			
Abut 1	Class 90 (Alt "X")	XXX	XXX	XXX.X	(1) XXX.X; (2) -; (3) -;	XXX.X
Pier 2	36" dia. CISS	XXX	XXX	XXX.X	(1) XXX.X; (2) -; (3) -;	XXX.X
Pier 3	36" dia. CISS	XXX	XXX	XXX.X	(1) XXX.X; (2) -; (3) -;	XXX.X
Pier 4	36" dia. CISS	XXX	XXX	XXX.X	(1) XXX.X; (2) -; (3) -;	XXX.X
Pier 5	36" dia. CISS	XXX	XXX	XXX.X	(1) XXX.X; (2) -; (3) -;	XXX.X
Pier 6	36" dia. CISS	XXX	XXX	XXX.X	(1) XXX.X; (2) -; (3) -;	XXX.X
Abut 7	Class 90 (Alt "X")	XXX	XXX	XXX.X	(1) XXX.X; (2) -; (3) -;	XXX.X

Notes:

1. Design tip elevation is controlled by the following demands: (1) Compression (2) Tension (3) Lateral
2. Required capacity is based on LRFD method at Abutments and Piers.



**CONCRETE STRENGTH & TYPE LIMITS**  
No Scale

DESIGNED BY: JPU	DRAWN BY: SL	CHECKED BY:	DATE: 3/15/2018
REV.			DATE
DESCRIPTION			BY

986 W. Allwood Ave., Suite 201  
Fresno, California 93711  
559.320.3200  
fax: 559.320.3201

**CORNERSTONE**  
structural engineering group

FOUNDATION PLAN  
MOWRY BRIDGE OVER  
FRESNO SLOUGH  
FRESNO COUNTY, CALIFORNIA

TYPE SELECTION/NOT FOR CONSTRUCTION

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# Attachment 6 -- Land Description and Exhibit

## EXHIBIT A

That certain real property situate in the southeast quarter of Section 19, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, being more particularly described as follows:

1. COMMENCING at the northwest corner of Section 32, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, thence
2. North 01° 30' 59" East along the west line of Section 29, Township 13 South, Range 15 East, Mount Diablo Base and Meridian, a distance of 5,320.90 feet to the northwest corner of said Section 29; thence
3. North 02° 09' 33" West, a distance of 1,350.54 feet to the POINT OF BEGINNING; thence
4. North 89° 07' 51" West, a distance of 312.00 feet; thence
5. North 00° 52' 09" East, a distance of 46.00 feet; thence
6. South 89° 07' 51" East, a distance of 312.00 feet; thence
7. South 00° 52' 09" West, a distance of 46.00 feet to the POINT OF BEGINNING.

EXCEPTING therefrom any portion lying landward of the ordinary low water mark of the Fresno Slough.

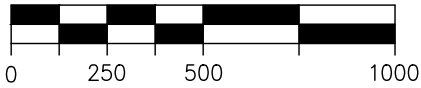
**END OF DESCRIPTION**



08/02/18



SCALE IN FEET



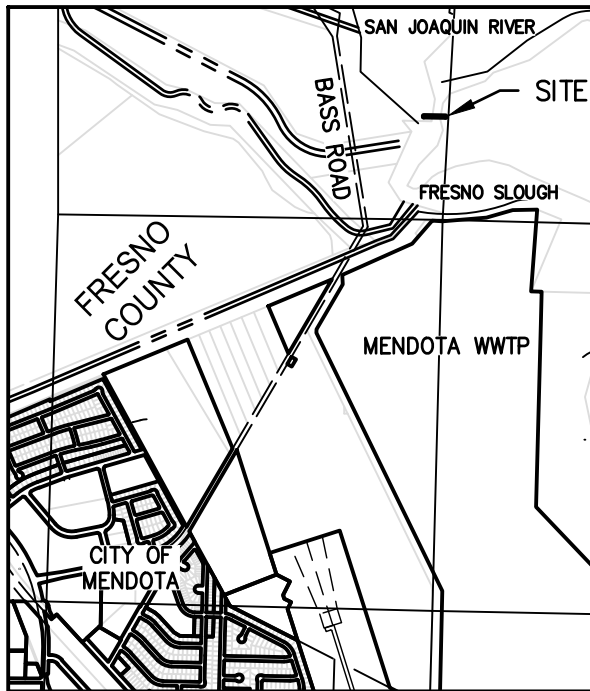
MOWRY BRIDGE  
SEE DETAIL

APPROX. GLO  
MEANDER LINE

POINT OF  
BEGINNING

APPROX. GLO  
MEANDER LINE

### VICINITY MAP



NORTHWEST CORNER  
OF SECTION 29-13/15.

NORTHWEST CORNER  
OF SECTION 32-13/15.  
POINT OF COMMENCEMENT

2. N02°09'33"W 1350.54'

1. N01°30'59"E 5320.90'

### DETAIL 1"=100'

4. N0°52'09"E 46.00'

5. S89°07'51"E 312.00'

3. N89°07'51"W 312.00'

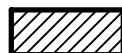
POINT OF BEGINNING

6. S0°52'09"W 46.00'



08/15/18

### LEGEND



LEASE AREA



EDGE OF BANK PER DEBRIS COMMISSION MAP  
"SAN JOAQUIN RIVER, HERNDON TO HEAD OF  
DELTA", PART 1, SHEET 40 PART 1, 1930.

## LICENSE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between CENTRAL CALIFORNIA IRRIGATION DISTRICT, an irrigation district formed pursuant to California law, hereinafter referred to as "DISTRICT," and THE CITY OF MENDOTA, a California municipal corporation, hereinafter referred to as "LICENSEE," who for full and adequate consideration and in recognition of the mutual promises, covenants, and conditions set forth herein, agree as follows:

### RECITALS:

- A. LICENSEE desires to construct, operate, repair and maintain an underground domestic water pipeline facilities within the DISTRICT'S Outside Canal right-of-way ("the Property") at the locations shown and in accordance with the engineering plans and specifications attached as Exhibits "A" and "B" and incorporated herein by this reference. The domestic water pipeline facilities ("the Facilities") shall consist of one 20-inch ductile iron pipeline, with proper valves, conduits and fittings, and devices for controlling electrolysis, and appurtenances for conveying domestic water, together with above-ground structures and equipment, marker posts and associated paving, fencing and other appurtenances related thereto.
- B. LICENSEE further desires to acquire ingress and egress to the Property for continued operation, inspection, repair, replacement, and removal of the Facilities in accordance with work schedules approved by DISTRICT.

NOW, THEREFORE, in consideration of the Recitals set forth above, and the mutual covenants, promises and conditions set forth herein, the parties agree as follows:

AGREEMENT:

1. DISTRICT grants to LICENSEE a nonexclusive license, including reasonable ingress and egress to the Property to construct, operate, repair and maintain the Facilities in conformity with the original engineering plans and specifications set forth in EXHIBIT "B" at the locations shown in EXHIBIT "A," ("the License Area") subject to the limitations hereinafter set forth, and payment by LICENSEE of the applicable fee as provided in the schedule attached as EXHIBIT "C." The License Area shall not be used for any other purposes and use shall be only in accordance with work schedules and terms established by DISTRICT in writing. Prior to the conduct of any maintenance or testing work, LICENSEE shall obtain written approval of the schedule for performance of work.
2. LICENSEE waives any claim for damages against DISTRICT, its employees or agents, as a result of injury or damages to the Facilities, including any interruption of its service resulting from DISTRICT'S operation or maintenance of its canals, rights of way and appurtenant facilities.
3. LICENSEE will at all times conduct its construction, operation and maintenance of the Facilities within the License Area as herein conferred so as not to interfere with the operations of DISTRICT. In the event that LICENSEE shall damage or injure any of

DISTRICT'S canals, canal banks, culverts or any other facility appurtenant to the operation of DISTRICT's canal system, LICENSEE shall promptly repair the same, in a manner and in accordance with the specifications of the DISTRICT'S engineer, or upon its failure to do so, DISTRICT may make necessary repairs and replacements and LICENSEE shall promptly repay DISTRICT for the cost of such repairs and replacements. DISTRICT will attempt to notify LICENSEE of the need to make necessary repairs and/or replacements.

4. LICENSEE acknowledges and recognizes that DISTRICT must maintain a functioning canal system for delivery of water to its customers and LICENSEE promises and agrees that in the course of installation, operation or any subsequent maintenance, repair, reconstruction, replacement or removal of said facilities, LICENSEE shall not interfere with DISTRICT'S ability to move necessary water through its canal system at the point involved. In the event that an interruption of water deliveries by DISTRICT'S water system is caused by an act or failure to act of LICENSEE or by LICENSEE'S facilities constructed, operated and maintained hereunder, LICENSEE shall indemnify and hold DISTRICT harmless of and from any and all liability, loss, damage, expense, demands, actions, causes of action, suits, claims or judgments arising by reason of interruption of the said water supply to the customers of the DISTRICT, including claims of consequential damages by customers of DISTRICT. LICENSEE shall immediately upon notice remove the encroaching facilities or structures that, in the sole discretion of the DISTRICT, interfere with the DISTRICT'S ability to deliver water to its customers.

5. LICENSEE agrees that no changes shall be made to the plans and specifications set forth in EXHIBIT "B," or the routing of the Facilities as set forth in EXHIBITS "A" and "B" or the terms of access or schedule of work unless approved in writing by the DISTRICT'S Engineer. LICENSEE shall develop plans for the maintenance, repair, reconstruction, replacement and removal of the Facilities, and such plans shall be provided to the DISTRICT'S Engineer at least 10 business days prior to any work being performed by Licensee or its Agents on the Facilities. Approval by the DISTRICT'S Engineer shall not be unreasonably withheld, conditioned or delayed. -Any additional costs resulting from changes requested by District to plans for work on the facilities shall be borne by LICENSEE.
  
6. If at any time during the term of this Agreement DISTRICT's operations require a change in the location of LICENSEE'S Facilities as shown on Exhibits "A" and "B", LICENSEE shall relocate the same at its own cost and expense.
  
7. LICENSEE agrees not to assign this Agreement or any interest therein without the written consent of DISTRICT first had and obtained. Any attempt to assign shall be void and of no force or effect.
  
8. LICENSEE shall assure and provide proof to DISTRICT that LICENSEE and LICENSEE'S prime contractor and all subcontractors for the installation of the Facilities and for any other work

to maintain, repair, reconstruct, replace or remove the Facilities, have insurance against claims for injuries to persons or damage to property that complies with the insurance provisions contained in Attachment 1 to this Agreement, and said insurance provisions are incorporated herein as if set forth in full.

9. LICENSEE will not store, treat or dispose of any hazardous material or hazardous waste in, on, or about the License Area or any part of the property. LICENSEE will not permit the License Area to be used or operated in a manner that may cause the property or any part of the property to be contaminated by any hazardous material or hazardous waste. As used herein, "Hazardous Materials" means asbestos, explosives, radioactive materials, hazardous waste, hazardous substances, or hazardous material including, without limitation, substances defined as "hazardous substances" in any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, wastes or substances now or at any time hereinafter in effect.
  
10. LICENSEE shall indemnify and hold DISTRICT, its directors, employees, and agents harmless from any and all claims, demands, actions, causes of action, or obligations resulting from, or in any manner arising out of LICENSEE'S construction, operations, maintenance or replacement of the Facilities or any portion of the Facilities installed hereunder, or LICENSEE'S occupation or use of the License Area. The indemnification hereunder shall include, but not be limited to, any claims, demands, actions or causes of action, including claims and actions involving toxic waste, toxic materials or any substance so defined pursuant to any state or federal law or administrative regulation,

including, but not limited to, any cleanup of toxic waste or toxic materials or substances which may be required by any agency, whether state, federal or local. This indemnification includes attorneys' fees in any action or proceeding arising out of matters set forth in this Agreement. This indemnification shall survive any termination of this Agreement. If LICENSEE'S negligent actions or unreasonable omissions shall cause damage to landowners or tenants due to interruption of water deliveries by DISTRICT or due to pollution of water received by customers of DISTRICT, LICENSEE shall pay all damages suffered by those persons and all reasonable expenses of DISTRICT and the persons damaged in attempting to mitigate the damages. Those landowners and tenants shall be a third-party beneficiary of this Agreement.

11. All notices in connection with this Agreement, or any performance thereof, shall be made as follows: To DISTRICT, by notifying Central California Irrigation District, District Engineer, Post Office 1231, Los Banos, CA 93635; To LICENSEE, by notifying City of Mendota, City Manager, 643 Quince Street, Mendota, CA 93640.
  
12. This agreement shall not terminate without cause. In the event of the failure of LICENSEE to abide by the conditions, restrictions, limitations, or covenants of this Agreement, DISTRICT shall give LICENSEE ninety (90) days written notice to correct the same. Upon LICENSEE'S failure to make the correction within the notice period, DISTRICT may, at its option, immediately and without further notice to LICENSEE, terminate this Agreement. Waiver by DISTRICT of any event or events of default shall not constitute waiver of any other event or events of default hereunder.



13. The license herein conferred shall cease and terminate at such time as the Facilities or any portion thereof shall no longer be used by LICENSEE for a period of five (5) years, and any interest of LICENSEE shall thereupon revert to DISTRICT.
  
14. This Agreement shall be binding upon the successors and assigns of the parties hereto. This Agreement and items incorporated herein contain all of the agreements of the parties hereto and with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matters shall be effective for any purpose. No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the parties.
  
15. This Agreement shall be construed under and shall be deemed to be governed by the laws of the State of California, without giving effect to any principles of conflicts of law if such principles would operate to construe this Agreement under the laws of any other jurisdiction. Venue for all disputes under this Agreement shall be the Superior Court for the County of Merced.
  
16. This Agreement may be signed in any number of counterparts by the parties hereto, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument. This Agreement, if executed in counterparts, shall be valid and binding on a party as if fully executed all on one copy.

IN WITNESS WHEREOF the parties have set their hands the day and year first above written.

DATE: \_\_\_\_\_

DATE: 8/14/2012

CENTRAL CALIFORNIA  
IRRIGATION DISTRICT

CITY OF MENDOTA

By: \_\_\_\_\_  
JAMES O'BANION, President

By: *Bryce Atkins*  
BRYCE ATKINS, City Manager

By: \_\_\_\_\_  
GREGG RICE, Secretary

By: *Gregg Rice*

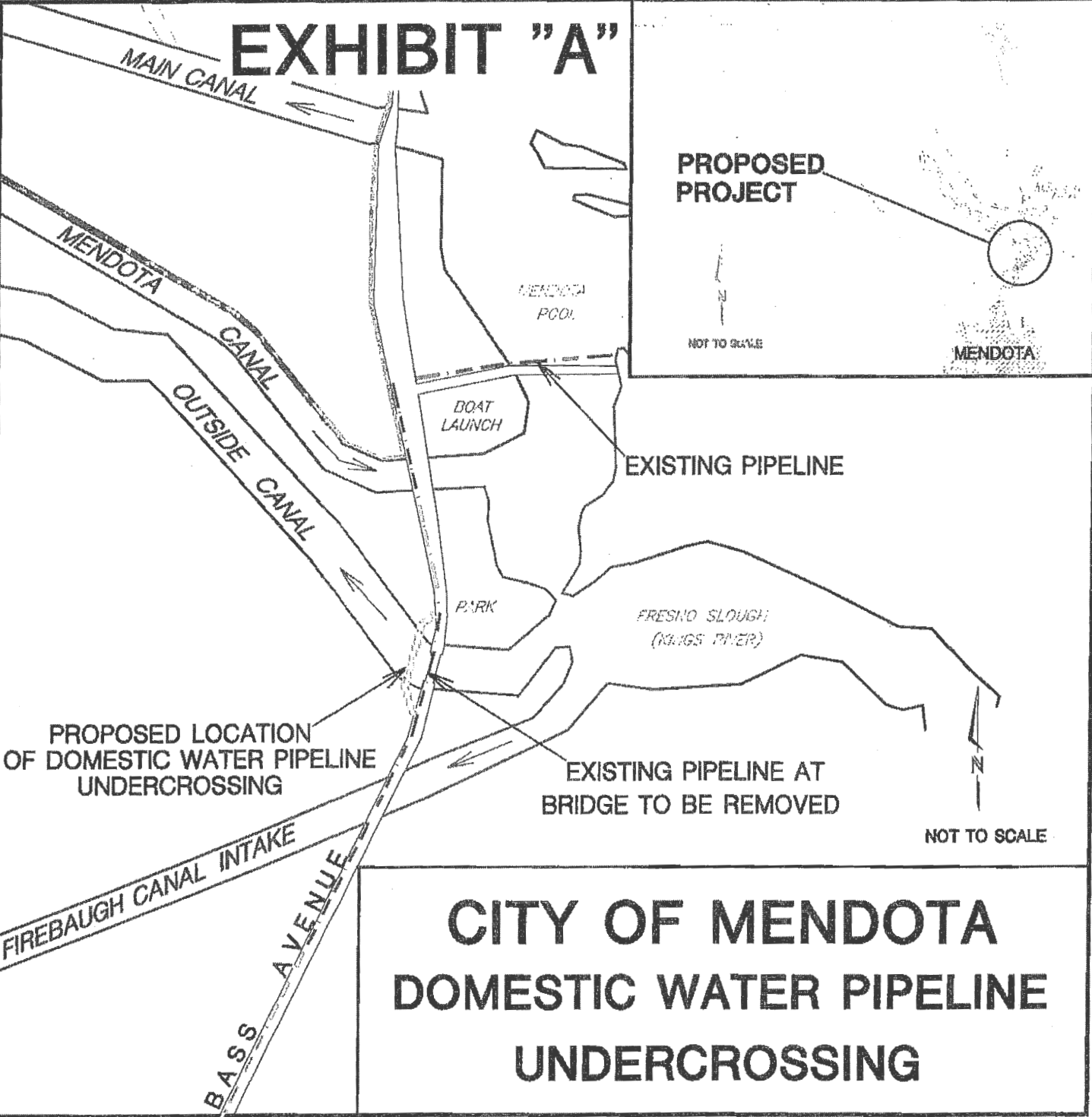


# EXHIBIT "A"

PROPOSED PROJECT

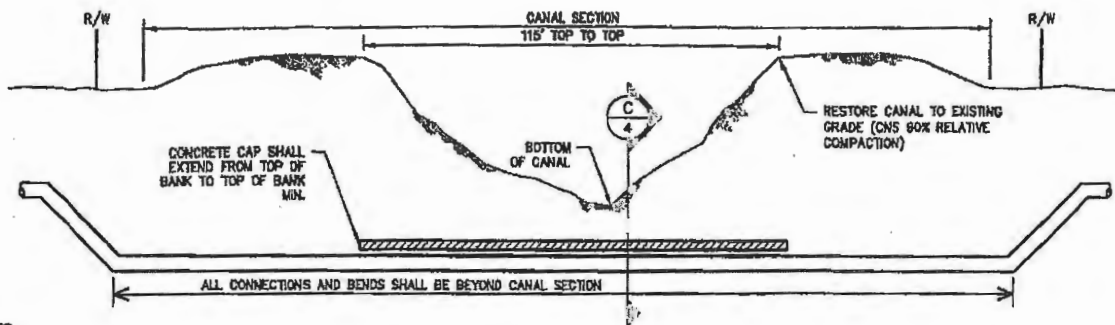
MENDOTA

NOT TO SCALE



## CITY OF MENDOTA DOMESTIC WATER PIPELINE UNDERCROSSING

# EXHIBIT "B"

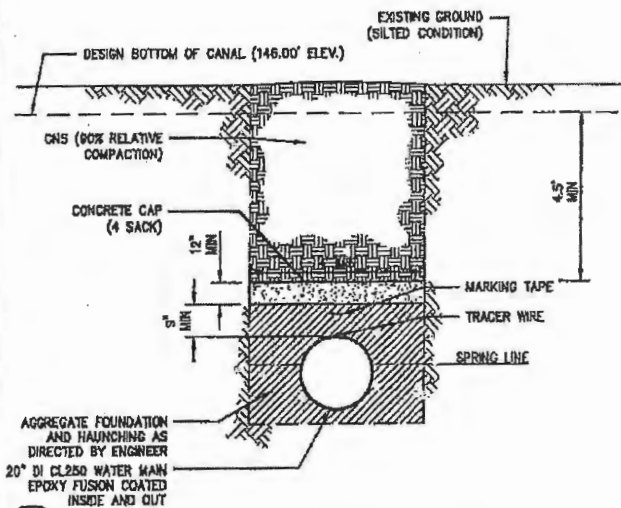


## NOTES

1. ALL JOINTS WITHIN THE CANAL SECTION SHALL BE RESTRAINED JOINTS.
2. DI PIPE FITTINGS AND RESTRAINED JOINTS SHALL BE WRAPPED WITH POLYETHYLENE WRAP AND SECURED PER THE SPECIFICATIONS.
3. ALL DI PIPE AND FITTINGS LOCATED WITHIN THE CANAL SECTION SHALL BE FUSION EPOXY COATED INSIDE AND OUT PER THE SPECIFICATIONS. DAMAGED COATING SHALL BE RESTORED PER THE MANUFACTURERS INSTRUCTIONS AND ACCEPTED BY THE CITY OF MENDOTA PRIOR TO PLACING BACKFILL.
4. ONLY STAINLESS STEEL FASTENERS MAY BE USED.



## CANAL UNDERCROSSING FOR WATER PIPELINE



## UNDERCROSSING SECTION

**CITY OF MENDOTA  
DOMESTIC WATER PIPELINE  
UNDERCROSSING**

# EXHIBIT "C"

## CENTRAL CALIFORNIA IRRIGATION DISTRICT

### License Agreement Encroachment Permit Fees To Outside Agencies

February 24, 1999

#### License Agreement:

Underground Crossing \$1,000

Above Ground Facility \$ 800

Overhead Crossing \$ 600

License Agreement Assignments \$ 500

Encroachment Permits \$ 200  
(If separate from a license)

NOTE: The above charges shall apply to encroachments that have no direct benefit to CCID.

## ATTACHMENT 1 – INSURANCE REQUIREMENTS

The Contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the operations, products and performance of work hereunder by Contractor, his agents, representatives, employees, or subcontractors.

**Section 1-01 Laws, Regulations and Permits** – The Contractor shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the work and premises. The Contractor shall be liable for all violations of the law in connection with the contract. If the Contractor observes that the drawings or specifications are at variance with any law or ordinance, rule or regulation, he shall promptly notify the engineer in writing and any necessary changes shall be made by written instruction or change order. If the Contractor or his subcontractors performs any work knowing it to be contrary to such laws, ordinances, rules or regulations and without giving notice to the engineer, the Contractor shall bear all costs arising therefrom.

**Section 1-02 Safety & Environmental Protection** – The Contractor shall execute and maintain the work and premises so as to avoid injury or damage to any person or property. The Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work.

In carrying out his work, the Contractor shall at all times, exercise all necessary precautions for the safety of employees and environmental protection of premises, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Safety (Cal/OSHA) regulations, Cal/EPA and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable).

If excavations or trench work requiring a Cal/OSHA permit are to be undertaken, the Contractor shall submit their excavation/trench work safety plan and permit before work begins.

**Section 1-03 Commercial General Liability and Automobile Liability Insurance** – The Contractor shall provide and maintain the following commercial general liability and automobile liability insurance:

**Section 1-03.01 Coverage** – Coverage for commercial general liability, and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
2. Insurance Services Office Form CA 0001 (ed 1/87) covering Automobile Liability, Symbol 1 (any auto)

**Section 1-03.02 Limits** – The Contract shall maintain limits no less than the following:

1. **General Liability** – One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with ISO CG 2501 or insurer's equivalent endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability** – One million dollars (\$1,000,000) per accident for bodily injury and property damage combine single limit.

**Section 1-03.03 Required Provisions** – The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, agents and volunteers.
2. For any claims related to this agreement, the Contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, agents and volunteers. Any insurance, pooled coverage or self-insurance maintained by the District, its directors, officers, employees, agents and volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, agents and volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

Such liability insurance shall indemnify the Contractor and his subcontractors against loss from liability imposed by law upon or assumed under contract by, the Contractor or his

subcontractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

Such insurance shall be provided on a policy form written by underwriters through an agency satisfactory to the District (see Section 1-03.05), which includes a cross liability clause, and covers bodily injury and property damage liability, owned, and non-owned vehicles and equipment, blanket contractual liability and completed operations liability.

Such liability insurance shall include explosion, collapse, underground excavation and removal of lateral support. The District, its directors, officers, employees, agents and volunteers shall be named as additional insured on any such policies. An additional insured endorsement (ISO CG 2010 or equivalent) (modified to include provisions 1 – 5 above) and a certificate of insurance (Accord Form 25-S or equivalent), shall be provided to the District.

**Section 1-03.04 Deductibles and Self-Insured Retentions** – Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions.

**Section 1-03.05 Acceptability of Insurers** – Insurance is to be placed with insurers having a current A.M. Best's rating of no less than A-:V11 or equivalent.

**Section 1-04 Workers' Compensation and Employer's Liability Insurance** – The Contractor and all subcontractors shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about construction site, regardless of whether such insurance is mandatory or merely elective under the law, and the Contractor shall defend, protect and save harmless the District, its directors, officers, employees, agents and volunteers from and against all claims, suits, and actions arising from any failure of the Contractor or any subcontractor to maintain such insurance. Before beginning work, the Contractor shall furnish to the District satisfactory proof that he has taken out, full compensation insurance for all persons employed directly by the Contractor or through subcontractors in carrying out the work contemplated under this contract, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.

The Contractor shall provide employer's liability insurance in the amount of, at least \$1,000,000 per accident for bodily injury and disease.

The Contractor shall provide the District with a certificate of Workers' Compensation and Employer's liability insurance coverage.

**Section 1-05 Evidences and Cancellation of Insurance** – Prior to execution of the contract, the Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the



insurer's representative and certificate of insurance (Accord Form 25-S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insurers, where appropriate, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the insurer will give by certified mail, written notice to the District at least thirty (30) days prior to the effective date of any cancellation, lapse or material change in the policy.

The Contractor shall, upon demand of the District, deliver to the District all such policy or policies of insurance and the receipts for payment of premiums thereon at any time over the duration of the contract.

# Attachment 8 -- B&B Ranch Lease Agreement

## LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into this 14<sup>th</sup> day of December, 1999, by and between BB LIMITED, a California limited partnership (hereinafter referred to as "Lessor") and the CITY OF MENDOTA, a Municipal corporation of the State of California (hereinafter referred to as "Lessee") with reference to the following facts:

A. Lessor is the owner of a 1172 acre ranch located in the County of Fresno, State of California, and has for many years been extracting ground water from sources lying beneath the ranch to irrigate its crops. Historically the ground water extracted by Lessor has been of a quality which would render it useable for domestic purposes after such treatment as may be required by applicable governmental regulations for such use.

B. The City of Mendota requires potable water for domestic supply purposes and possesses nonpotable water suitable for irrigation purposes to provide Lessor in exchange for the right to draw potable water from the property of Lessor.

C. The parties enter into this Lease Agreement with the intention of facilitating the withdrawal by Lessee of potable water from Lessor's property and the replacement of such water with nonpotable irrigation water, all pursuant to the terms and conditions hereof.

For and in consideration of the following terms and conditions, Lessor hereby Leases to Lessee the Property and Premises (hereinafter defined) located in the County of Fresno, California.

### ARTICLE I DEFINITIONS

**Section 1.1 "Bridge"** shall mean the facility to be acquired and maintained by Lessee under Section 6.6.

**Section 1.2 "Irrigation Water"** shall mean the water required to be delivered by Lessee to Lessor under Section 3.3.

**Section 1.3 "Lease Year"** shall mean a 12-month period beginning December 1 and ending the following November 30.

**Section 1.4 "Premises"** shall mean the right to construct, operate and maintain the facilities described in Article 6, to occupy portions of the Property necessary to construct, operate and maintain such facilities as such area is described in Exhibit B and to withdraw water from the Property.

**Section 1.5 "Property"** shall mean the entire property of which the Premises are a part consisting of a 1172 acre ranch more particularly described in Exhibit A attached hereto.

**Section 1.6 "RUS"** shall mean the Rural Utilities Service of the United States Department of Agriculture.

**Section 1.7 "Term"** shall mean the period defined in Section 2.1 and as extended pursuant to Section 2.2.

## ARTICLE 2 TERM OF LEASE

**Section 2.1 Term.** The term of this Lease shall be a period of twenty-five (25) years commencing on December 1, 1999 and ending on November 30, 2024, unless sooner terminated as provided herein, and subject to the further conditions as follow herein.

**Section 2.2 Option to Extend Term.** Lessee shall have the option to extend the Term for three additional periods of five (5) years each. Lessee may exercise such options by written notice to Lessor delivered at least 180 days prior to the expiration of the then existing Term. The rent for each additional five (5) year extension of the Term shall be subject to adjustment as provided in Section 3.6.

## ARTICLE 3 RENT

**Section 3.1 Rent.** Rent shall be payable from Lessee's "Enterprise Funds" as follows:

**3.1.1** Lessee shall pay to Lessor the base sum of \$77,000.00, as annual rent for the Premises; a sum equal to the first year's rent shall be paid concurrently with the signing of this Agreement.

**3.1.2** The remaining rent shall be paid in semi-annual installments beginning on the first day of December ~~1999~~ and continuing semi-annually on the first day of June and December thereafter. <sup>2000</sup>

**3.1.3** The additional rent due under Section 3.5 shall be calculated annually for each Lease Year of the Term, and to the extent that the rate of extraction of water exceeds 2,000 acre feet for any given Lease Year, the additional rent due under Section 3.5 shall be payable within thirty (30) days of the end of each respective Lease Year of the Term.

**3.1.4** If any payment of rent due under this section is not made within ten (10) days of its due date, a late penalty of five percent (5%) of the amount overdue shall be due and payable.

**Section 3.2 Place of Payment.** All rent that becomes due and payable under this Lease shall be paid to Lessor at the office of Lessor located at 2331 Honolulu Ave., Suite E, Montrose, California 91020, or at any other place or places that Lessor may designate by written notice to Lessee.

**Section 3.3 Additional Rent: Provision of Irrigation Water.** In addition to the cash rent provided for herein, Lessee agrees to provide to Lessor an amount of water from Lessee's wells at the City Wastewater Treatment Plant ("WWTP"), or alternate source, equivalent to the amount of water Lessee uses from the Premises, but not less than 2,000 acre-feet per year. Lessee shall not deliver water from its WWTP wells to any other party other than Lessor as required hereunder. Lessee shall provide the water from the WWTP wells or other source by delivering such water into the Fresno Slough to be withdrawn by Lessor through the surface water intake structure otherwise described herein. The timing of Lessee's delivery into the Fresno Slough shall be in accordance with a schedule furnished from time to time by Lessor. Lessee and Lessor agree that the water from the WWTP wells or other source as delivered through the Fresno Slough must be of a quality acceptable to the San Joaquin Exchange Contractors Collective Membership. Lessor may waive the delivery of Lessee's water hereunder in Lessor's absolute discretion. Failure of Lessee to deliver the water required as additional rent under this Section 3.3 is a material breach of this Lease unless Lessor elects to utilize the backup sources provided for in Section 4.8 below and is able to make up for the volume of water which Lessee fails to deliver under this provision from such alternate sources.

**Section 3.4 Cost of Living Adjustment.** The annual rent provided for in Section 3.1.1 above shall be subject to adjustment annually at the end of each Lease Year ("the Adjustment Date") as follows:

(a) The base for computing the adjustment is the Consumer Price Index for all urban consumers (base year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the San Francisco/Oakland/San Jose Metropolitan area, for the third month prior to the date of commencement of the Term for the first annual adjustment and for the third month prior to the commencement of each Lease Year which has just ended for all subsequent annual adjustments ("Beginning Index"). If the Index published three months prior to the Adjustment Date ("Extension Index") has increased over the Beginning Index, the annual rent for the following Lease Year (until the next rent adjustment) shall be set by multiplying the then current annual rent by a fraction, the numerator of which is the Extension Index, and the denominator of which is the Beginning Index. For example, if the Consumer Price Index for all urban consumers were 100 for September 1999 (Beginning Index) and 105 for September 2000 (Extension Index), then the base rent for the second year of the Lease (December 1, 2000, to November 30, 2001) would be \$80,850.00. See equation below:

$$\frac{105}{100} \times \$77,000 = \$80,850$$

On adjustment of the annual rent as provided in this Lease, Lessor shall give Lessee written notice stating the new annual rent.

(b) If the Index has changed so that the base year differs from that used as of the first of the month immediately preceding the month in which the Term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(c) Notwithstanding the provisions of subparagraphs (a) and (b) above to the contrary, if the adjustment to the annual rent provided for in subparagraphs (a) and (b) shall be less than a three and one half percent (3.5%) increase in the annual rent of the preceding Lease Year, then such annual rent shall be subject to an adjustment equal to an increase of three and one half percent (3.5%) of the annual rent of such preceding Lease Year. The first annual rent adjustment shall be made on December 1, 2000.

(d) In addition to the adjustment required above, the levels of additional rent provided for in Section 3.5 shall be subject to increase in the same manner as provided above in subparagraphs (a), (b) and (c).

**Section 3.5 Additional Rent.** Lessor and Lessee agree that the annual rent called for herein is based upon, among other things, Lessee's right to construct water service facilities and thereafter pump water from the Premises. The annual rent of \$77,000.00 shall be considered a base rent for Lessee's right to pump up to 2,000 acre-feet per year from the Premises. For each 100 acre-feet, or portion thereof, over and above 2,000 acre-feet per Lease Year pumped by Lessee, Lessee's rent shall be increased by \$5,000.00, in accordance with the following schedule:

<u>Water Pumped Per Year</u>	<u>Annual Rent</u>
0 to-2,000 acre-feet	\$77,000
2,001 to 2,100 acre-feet	\$82,000
2,101 to 2,200 acre-feet	\$87,000
2,201 to 2,300 acre-feet	\$92,000
2,301 to 2,400 acre-feet	\$97,000

**Section 3.6 Adjustment to Rent on Extension of Term.** Upon each exercise of Lessee's option under Section 2.2, The rent due under Sections 3.1 and 3.5 ("Cash Rent") during such additional term shall be adjusted to reflect the fair market rental value of the Premises at the time such option is exercised by Lessee as provided in this Section.

**3.6.1** The fair market rental value shall be the price at which a willing seller and a willing buyer would purchase the water which the Lessee can take from the Premises and shall consider the following matters:

(a) This lease involves the delivery of high quality ground water suitable for domestic purposes in exchange for the cash rent provided for herein and the delivery by Lessee to Lessor of lower quality water suitable for agricultural irrigation purposes. The Cash Rent payable hereunder is the difference in value between the water being exchanged.

(b) Sales of water by other purveyors in California, such as the Metropolitan Water District or CCID, shall be considered.

(c) For the purposes of determining such fair market rental value, it shall be assumed that Lessee will not require that any improvements be made to the Premises in connection with its occupancy; therefore no consideration shall be given to any factors relative to expenses incurred by the Lessee to extract and deliver the water being exchanged hereunder.

(d) In no event shall the Cash Rent for any extended period of the Term as adjusted under this Section be less than that applicable for the then expiring period of the Term.

**3.6.2** Lessee and Lessor shall attempt to agree upon the fair market rental value for the Premises, and if they are able to so agree, the Cash Rent during the renewal period shall be the fair market rental value as determined by them.

**3.6.3** If Lessee and Lessor fail to agree upon the fair market rental value within thirty (30) days from the date Lessee gives notice of his option to renew the Lease, then within ten (10) days following the expiration of such thirty (30) day period, the parties shall determine the fair market Cash Rent pursuant to Section 3.6.8 of this Agreement. The trier of fact shall determine the fair market Cash Rent within sixty (60) days following the submission of the matter for resolution. The trier of fact shall consider the matters set forth in Section 3.6.1 in making a determination of the fair market Cash Rent.

**3.6.4** If neither party disputes the determination of the Cash Rent (pursuant to section 3.6.8) within fifteen (15) days of the notice of the decision by the arbitrators, the Cash Rent so determined shall be the Cash Rent for the applicable extension of the term subject to adjustment under Section 3.4 and 3.6.6. In such event, the fees and costs of the arbitrators shall be borne equally by the Lessor and Lessee.

**3.6.5** If either party finds that the final arbitrated determination of fair market Cash Rent is unacceptable, that party may terminate this Lease upon notice to the other party within fifteen (15) days of the notice of the arbitrators decision. Upon such termination, the party terminating the Lease shall pay all fees and costs of the

arbitrators incurred in connection with the above-described arbitration. If Lessor elects to terminate this Lease under this section, Lessor shall pay to Lessee the unamortized portion of the costs incurred by Lessee in repairing the Bridge as required by Section 6.1.5 based upon straight line depreciation scheduled over a period of forty years. If Lessee elects to terminate this Lease under this section, Lessee shall not have the right to recover the unamortized portion of the costs incurred by Lessee in repairing the Bridge as required by Section 6.1.5.

**3.6.6** Upon the adjustment of the Cash Rent under this provision, that Cash Rent for the first year of the extended Term shall be subject to adjustment under Section 3.4, and the Beginning Index for the first adjustment shall be the Index for the third month prior to the commencement of the extended Term.

**3.6.7** If the final determination of the adjustment in the Cash Rent does not occur until after the commencement of the extended Term, Lessee shall pay the Cash Rent then applicable until such final determination at which time any additional Cash Rent due for the extended Term by virtue of such determination shall be due and payable within thirty (30) days of the final determination of Cash Rent.

**3.6.8** This Lease is made and entered into in the State of California and shall in all respects be interpreted and governed under the laws of said State. Any dispute or controversy between the parties regarding the interpretation or application of the terms of this Lease, including the fair market Cash Rent, or regarding any act which allegedly has or would violate any provisions of this Lease, if not settled by direct discussion, shall be submitted to mediation administered by the American Arbitration Association under its Commercial Rules before resorting to arbitration. Thereafter, any remaining disputes shall be resolved by final and binding arbitration under the Commercial Rules of the American Arbitration Association ("AAA") and Title 9, Chapters 1-5 of the California Code of Civil Procedure (Code Civ. Proc. §1280 et seq.) including the rules for selection of an arbitrator, as they may exist at the time of demand for arbitration, except to the extent said provisions are in conflict with this Lease, and excluding Code Civil Procedure section 1282.2(a)(1), provided either party gives written notice to the other and the to AAA of this Lease and intent to arbitrate. Such notice to be given by facsimile and U.S. mail to the parties referred to in paragraphs 12.3 and 12.4 of this Lease. The mediation and arbitration shall occur in Mendota, California, or elsewhere if all parties so agree, and, if arbitration is required, the arbitrator shall have full authority to award any relief authorized in law or equity, or both, for any breach of this Lease. Nothing herein shall bar the parties to this Lease or any of them from introducing this Lease in any judicial, administrative, or other proceeding in seeking dismissal or other appropriate remedies based thereon.

If any action or proceeding is brought to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

## ARTICLE 4 USE OF PREMISES

**Section 4.1 Lessee's Use of Premises.** Except as otherwise provided herein, the Premises may, during the Term of this Lease, be used by Lessee for the purpose of installing up to three (3) domestic water wells, appurtenant equipment, and conveyance pipelines for Lessee's exclusive use. Lessee's wells shall be limited to the pumping of not more than a combined total of 2,400 acre-feet per year. The installation of the three domestic water wells, appurtenant equipment and conveyance pipelines shall be at locations as may be approved by Lessor, such approval not to be withheld unreasonably. Lessee agrees that such water shall be solely for the use or consumption of the citizens of the City of Mendota and will not be resold or reconveyed to any third party outside the limits of the City, except as required by regulation for domestic use.

**Section 4.2 Standard of Lessee's Operations.** Lessee's operations hereunder shall be conducted in a way so as to minimize any disruption of or damage to the agricultural operations existing from time to time on the Property. Lessee shall install the conveyance pipelines so as not to interfere with Lessor's farming operations and shall bury the pipelines at a depth of at least thirty-six (36) inches from the top of the pipelines to the surface of the surrounding ground.

**Section 4.3 Lessee's Access.** Lessee shall enjoy the right of reasonable ingress and egress across the Premises for the purpose of constructing, operating, maintaining, and inspecting Lessee's facilities. Lessee will provide Lessor with a license or easement, as required, across the Bridge. The use of the Bridge shall be limited to Lessee's employees and agents, Lessor and Lessors employees, agents, tenants and invitees. Lessee shall not authorize the Bridge to be used by the general public.

**Section 4.4 Compliance with Law.** Lessee shall not use or permit the Premises, or any portion thereof, to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance, as now or hereafter defined by any statutory or decisional law applicable to the Premises, on the Premises or any part thereof.

**Section 4.5 Permits and Consents.** Lessee agrees to obtain and maintain, on the parties' behalf, all necessary written authorization and permits to allow Lessee to transport the domestic water from the Property for Lessee's use. In addition, Lessee shall secure and maintain the consent of the Exchange Contractors and/or any other public agencies, which may have an interest in the exchange of water taking place under this Lease, and notify adjoining landowners and the Columbia Canal Company for the delivery of the Irrigation Water from Lessee to Lessor. Lessee shall provide Lessor with copies of all effective permits, notices and consents required under this section prior to taking delivery of any water from the Property. Should any government or other agency intercede upon the ability of Lessor to take delivery of the Irrigation Water, other than due to Lessor's acts or omissions, Lessee shall be solely responsible to rectify the situation or to provide water through the domestic system or other source as provided in Section 4.8.



**Section 4.6 Lessor's Right to Take Water From Property.** Lessor agrees to reduce the pumping of wells on the Property by an amount equivalent to the volume of water produced by Lessee's wells. Lessee agrees that this will be accomplished by Lessor selling to Lessee two of Lessor's existing agricultural wells on the Property. The transfer of ownership of these wells will occur simultaneously with the signing of this Lease. The price of the wells is included in the Rent. Lessor shall retain the right to operate these wells for agricultural use up until the time the anticipated surface water delivery system described in Sections 6.1.3 and 6.1.4 herein are completed and operational. Lessor shall also have the right to use these wells in emergency situations where the surface water delivery system is inoperable or inadequate as provided in Section 4.8. Lessor agrees not to develop any new agricultural wells on the Property during the Term of this Lease. Lessor may continue to use its existing well adjacent to the Property for agricultural purposes only. Lessor reserves the right to develop a new domestic well to serve the existing residences on the Property.

#### **Section 4.7 Pumping Activities Reports**

**4.7.1** Lessee shall, on the fifteenth day of each month during which the wells on the property are operated, deliver to Lessor and to Burkhart Farms, records showing all amounts of the groundwater pumped from the Property during the previous month. Measurements for all metering and reports shall be in acre-feet. Lessee shall also permit Lessor to conduct its own tests on the quality and quantity of water pumped from the Property.

**4.7.2** Lessee shall be responsible for the payment of all costs incurred in conducting California Title 22 General Mineral, Physical, and Inorganic Analysis for the wells on the property.

**4.7.3** Copies of all reports, tests, analyses on the operation of the wells on the property, and the quality and quantity of water pumped in the wells shall be sent to the State Department of Health Services by Lessee.

**4.7.4** Lessee shall provide the same reports, and provide and allow the same testing for water pumped from the City Wastewater Treatment Plant wells, or alternate source, as set out in Section 4.7.1.

**Section 4.8 Failure of Exchange Water System.** If the supply of Irrigation Water to Lessor is for any reason not timely or not in sufficient quantities to fulfill the requirements of Section 3.3, Lessor shall be entitled to obtain sufficient water to make up any such shortfall from Lessee's water system on the Premises. In that connection, Lessee agrees to maintain in operational condition the two agricultural wells described in Section 3.3 throughout the Term so that Lessor may draw water from them to make up for any shortfall in Lessee's delivery of Irrigation Water. Lessee shall conduct bi-annual inspections and operation of the agricultural wells to assure their availability for Lessor's exclusive use as a back up source during the Term. If for any reason the agricultural wells are inoperative or inadequate to provide sufficient water to make up such shortfall, Lessor shall be entitled to draw water from Lessee's system at the point of connection required by Section 6.1.2;

provided that in no event shall Lessor's taking of water from Lessee's domestic water system impair Lessee's compliance with applicable regulations and conditions regarding the supply of domestic water to Lessee's customers. If Lessee cannot deliver the Irrigation Water or water from either of the two back up sources provided above, Lessee shall be in a material breach of this Lease and, among other matters, liable for any resultant losses to the agricultural crops of Lessor and/or Lessor's tenants or assigns.

**4.8.1** If Lessee's failure to deliver the agricultural water continues for a period of one hundred twenty (120) days, Lessee is in violation of the EIR and also in breach of this Lease even though Lessor is able to obtain water from one of the alternate sources described above for significant damage will occur to the aquifer underlying the Property.

**Section 4.9 Lessee's Obligation to Recharge Lessor's Groundwater.** Lessee shall construct the recharge facilities required by Section 6.1.6. Upon completion of construction of the recharge facilities, Lessee shall operate the recharge system to recharge the groundwater basin underlying the Property with an amount of water necessary to maintain the aquifer underlying the Property, such determination to be based in part on standing water levels from time to time throughout the Term. Lessee shall install a sufficient number of monitoring wells to facilitate the measuring of standing water levels in the aquifer underlying the Property. Lessee shall monitor the standing water level in the existing monitoring well and such additional monitoring wells as may be installed with the recharge facilities, such readings to be made quarterly throughout the Term and written notice thereof given to Lessor by Lessee within thirty (30) days of each such test. The parties understand that the data developed from measuring the standing water level in the monitoring wells prior to construction and operation of the recharge facilities shall determine the baseline for determining the standing water level necessary to meet Lessee's recharge obligations hereunder. The facility shall be operated by Lessee whenever there are flood flows available which can be acquired by Lessee. If over a period of five (5) years the aquifer declines, as the result of Lessee's water extraction activities under this Lease, without any available flood flow, Lessee shall acquire alternative sources of water sufficient to recharge the aquifer. Lessee shall operate the recharge facility in such a way so as to prevent any damage to the agricultural crops existing from time to time on the Property.

**Section 4.10 Rights Reserved to Lessor.** Except for the express uses permitted by Lessee hereunder, all use and occupancy of the Property is reserved unto Lessor and/or Lessor's assignees. Lessee agrees that this Lease does not include any water rights that may be attached to the Property, nor does the Lease include the transfer of any water rights (surface or otherwise) not specifically included in this Lease; furthermore, this Lease simply provides for the exchange of water as provided herein.

## ARTICLE 5 TAXES AND UTILITIES

**Section 5.1 Taxes.** In addition to the rents required to be paid under this Lease, Lessee shall pay, and Lessee hereby agrees to pay, any and all taxes, assessments, and

other charges of any description levied or assessed during the Term of this Lease by any governmental agency or entity on or against the improvements made and owned by Lessee on the Premises.

**Section 5.2 Payment of Taxes.** Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid by Lessee at least ten (10) days before each such tax, assessment, or installment of tax or assessment becomes delinquent and the official and original receipt for the payment of such tax, assessment, or installment shall immediately be given to Lessor by certified mail.

**Section 5.3 Utilities.** Lessee shall pay or cause to be paid, and hold Lessor and its Property, free and harmless from, all charges for the furnishing of gas, water, electricity, and other public utilities to the Premises during the Term of this Lease.

**Section 5.4 Advance by Lessor.** Should Lessee fail to pay within the times specified in this Article any taxes, assessments, or other charges required by this Article to be paid by Lessee, Lessor may, without notice to or demand on Lessee, pay, discharge, or adjust such tax, assessment, or other charge for the benefit of Lessee. In such event, Lessee shall promptly on written demand of Lessor reimburse Lessor for the full amount paid by Lessor in paying, discharging, or adjusting such tax, assessment, or other charge together with a penalty equal to ten percent (10%) of the delinquent amount not to exceed Five Hundred Dollars (\$500) for any single delinquent amount. Where no time within which any charge required by this Article to be paid by Lessee is specified in this Article, such charge must be paid by Lessee before it becomes delinquent.

## ARTICLE 6 CONSTRUCTION BY LESSEE

**Section 6.1 Lessee's Improvements.** Lessee shall, at Lessee's sole cost and expense, construct or cause to be constructed on the Premises the following improvements:

**6.1.1** Three domestic water wells and appurtenances for Lessee's benefit and use, the approximate location and size of which are shown on the attached Exhibit B, which location should be consistent with the Final Environmental Impact Report for Water System Improvement Project for the City of Mendota - State Clearing House Number 98051133 ("EIR") and in proximity to the future recharge facility required under Section 6.1.6.

**6.1.2** Conveyance pipeline for Lessee's benefit and use, the approximate location of which is shown on the attached Exhibit B. Such pipeline shall be designed with a blind 12" "T" with an appropriate back flow preventer for emergency use by Lessor as provided in Section 4.8.

**6.1.3** One surface water intake structure to deliver the Irrigation Water with a minimum capacity of 10.0 cfs, to be located along the San Joaquin River for use

by the Lessor, but designed so that it is capable of delivery of lesser amounts at discretion of Lessor/operator, at the location as shown on Exhibit B.

**6.1.4** Surface water conveyance pipeline, capable of delivering 10.0 cfs from the intake structure to Lessor's existing distribution system for use by Lessor at the location shown on Exhibit B.

**6.1.5** Reconstruct the deck of the Bridge and supporting structure and install a heavy duty electrically controlled security gate for use by Lessor and Lessee to be located on the Bass Avenue side of the Bridge. Any modifications and improvements to the Bridge, including the required access control gate, shall be designed for the ease of passage of farm equipment and shall not include handrails or vertical extensions above the deck of the Bridge.

**6.1.6** Lessee agrees, consistent with the mitigation requirements of the EIR for its pending water project, to construct sufficient recharge facilities including injection wells on the Property in an area of approximately thirty (30) acres located in the northeast corner of the Property as delineated on Exhibit B, the precise site to be selected by Lessor, and Lessee, and to provide acceptable source(s) of water for recharge use. Lessee shall construct pumps located adjacent to the San Joaquin River capable of pumping flood flows from the river to the recharge facilities.

Such recharge facilities shall be constructed within five (5) years from the effective date of this Lease. Lessee shall be responsible for the design, construction, operation, and maintenance of the recharge facility, all at no cost to Lessor. Such recharge facility shall be of adequate design and capacity to assure adequate maintenance of the Property's groundwater supply pursuant to Section 4.9. If said recharge facility is not constructed within the specified five (5) year period, Lessee agrees to pay to Lessor a penalty of \$40,000 for each year during which the recharge facility is not constructed after December 1, 2004.

**6.1.7** One all-weather road from the Bridge to the new well field for the mutual use of Lessor and Lessee, the approximate location of which is shown on the attached Exhibit B.

**6.1.8** Should Flood waters be unavailable to meet the recharge requirements necessitating expansion of the recharge facility, any other mitigation alternative, such as purchase of other water for recharge or fallowing of the farm, this shall be the financial responsibility of the Lessee.

**Section 6.2 Approval by Lessor.** No structure or other improvement of any kind shall be erected or maintained on the Premises unless and until the plans, specifications, and proposed location of such structure or improvement have been approved in writing by Lessor. No structure or other improvements shall be erected or maintained on the Premises that do not comply with plans, specifications, and locations approved in writing by Lessor. Furthermore, no material addition to or structural alteration of any structure or

improvement on the Premises shall be commenced until and unless plans and specifications for such addition or alteration shall be approved in writing by Lessor which approval will not be withheld unreasonably.

**Section 6.3 Compliance with Law; Permits; Quality of Construction.** All structures and improvements shall be constructed, and all work performed on the Premises in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county, or local government agencies or entities having jurisdiction over the Premises. Lessee shall obtain at Lessee's expense all necessary permits to construct any improvements or alterations to the Premises and shall provide Lessor with copies of all such permits prior to commencing any work for which any permit is required. All work performed on the Premises pursuant to this Lease, or authorized by this Lease, shall be done in a good workmanlike manner and only with new materials of good quality and high standards.

**Section 6.4 Mechanic's Liens.** At all times during the Term of this Lease, Lessee shall keep the Property and improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, suppliers, or equipment performed on or furnished to the Premises. Should Lessee fail to pay and discharge or cause the Property to be released from any such lien or claim of lien within 20 days after service on Lessee of written request from Lessor to do so, Lessor may pay, adjust, compromise, and discharge any such lien or claim of lien on such terms and manner as Lessor may deem appropriate. In such event, Lessee shall, on or before the first day of the next calendar month following any such payment by Lessor, reimburse Lessor for the full amount paid by lessor in paying, adjusting, compromising, and discharging such lien or claim of lien, including any attorney's fees or other costs expended by Lessor, together with interest at the rate of ten percent (10%) per annum from the date of payment by Lessor to the date of repayment by Lessee. All of Lessee's contractors shall be licensed and bonded. Lessee shall provide Lessor with copies of all contractor bonds and insurance certificates.

**Section 6.5 Ownership of Improvements Constructed by Lessee.** Any and all improvements placed or erected on the Premises as part of Lessee's construction as well as any and all other alterations, additions, improvements, and fixtures, except furniture and trade fixtures, made or placed in or on the Premises by Lessee shall, subject to the provisions of Section 11.7, be solely owned by Lessee.

**Section 6.6 Access Bridge.** Lessee agrees to purchase from Lessor, the existing wooden Bridge crossing the Fresno Slough providing access to the Premises for its fair market value, which value is currently appraised at \$60,000.00. The purchase shall be consummated by separate agreement and funded concurrently with the City's grant/loan agreement with the United States Department of Agriculture. Within one year of the commencement of the Term, Lessee shall construct the improvements to the Bridge required by Section 6.1.5. Upon expiration of the Term, the Bridge with all its appurtenances and improvements along with the gate required under Section 6.1.5 shall revert to Lessor. Lessor shall have the right of ingress and egress over the Bridge. Lessee shall pay all costs of maintenance of the Bridge, keeping it in reasonable repair and

safe for Lessor's uses, and Lessor shall not be obligated to contribute to the maintenance, repair or replacement costs of the Bridge.

## ARTICLE 7 ENCUMBRANCE OF LEASEHOLD ESTATE

**Section 7.1 Encumbrances** Except as otherwise stated herein, Lessee may not, at any time during the Term of this Lease, encumber to any person or entity, by deed of trust or mortgage or other security instrument any of Lessee's interest under this Lease or the Leasehold estate hereby created in Lessee for any purpose or purposes without the consent of Lessor.

**7.1.1** Pursuant to RUS Instruction 1780.62(f), Lessor and Lessee agree that this Agreement shall serve as security for Lessee's loan from RUS.

## ARTICLE 8 REPAIRS AND RESTORATION

**Section 8.1 Maintenance.** At all times during the Term of this Lease, and except as otherwise set out herein, Lessee shall at Lessee's own cost and expense, keep and maintain all of its improvements now or hereafter on the Premises as well as all of its facilities now or hereafter appurtenant to the Premises in good order and repair and in a safe and clean condition. Furthermore, Lessee shall at Lessee's own cost and expense, maintain at all times during the Term of this Lease any of its improvements, landscaping, or facilities thereon in a clean, sanitary, neat, tidy, orderly, and attractive condition.

Lessor shall be responsible to keep, operate, and maintain the surface water intake structure and surface water conveyance pipeline.

**Section 8.2 Compliance With Law.** At all times during the Term of this Lease, Lessee, at Lessee's own cost and expense, shall:

(a) Make all alterations, additions, or repairs to the improvements or facilities on the Premises required by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity; except that Lessor shall be responsible to keep, operate, and maintain the surface water intake structure and surface water conveyance pipeline.

(b) Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Property or the improvements or facilities on the Premises by any federal, state, county, local, or other governmental agency or entity.

(c) Indemnify and hold Lessor, the property of Lessor, Lessor's employees, management, owners, and agents, and Burkhart Farms, and its employees, management owners, and agents, including the Property, free and

harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Lessee's failure to comply with and perform the requirements of this section.

**Section 8.3 Damage or Destruction.** Should, at any time during the Term of this Lease, any improvements now or hereafter on the Premises be destroyed in whole or in part by fire, theft, the elements, or any other cause, this Lease shall continue in full force and effect and Lessee, at Lessee's own cost and expense, shall repair and restore the damaged or destroyed improvements according to the original plan thereof or according to any such modified plans and shall be completed with due diligence not longer than two months after the work is commenced. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Premises set forth in Article 6 of this Lease.

**Section 8.4 Lessor's Liability.** Lessor, its agents, employees, lessees and/or sublessees, or their agents or employees shall not be liable to Lessee for any damage to the leasehold or any of Lessee's improvements based upon their negligence or gross negligence. They shall only be responsible for damage caused by their intentional acts.

## ARTICLE 9 INDEMNITY AND INSURANCE

**Section 9.1 Indemnity.** The parties shall reciprocally indemnify each other as to claims by third parties as follows:

**9.1.1** Lessee shall indemnify and hold Lessor, the property of Lessor, and Lessor's employees, management, owners, and agents, and Burkhart Farms, and its employees, management, owners, and agents including the Property and any improvements now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Lessee's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including Lessee or any person who is an employee or agent of Lessee, or by reason of the damage to or destruction of any property, including property owned by Lessee or by any person who is an employee or agent of Lessee, from any cause whatever while such person or property is in or on the Property or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including Lessee or any person who is an employee or agent of Lessee, or the damage to or destruction of any property, including property owned by Lessee or any person who is an employee or agent of Lessee, caused or allegedly caused by either (a) the condition of the Premises or some improvement on the Premises, or (b) some act or omission on the Property of Lessee or any person in, on, or about the Property with or without the permission and consent of Lessee;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Lessee or any person or entity acting for or on behalf of Lessee; or

(d) Lessee's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Lessee or the Premises by any duly authorized governmental agency or political subdivision.

**9.1.2** Lessor shall indemnify and hold Lessee, the property of Lessee, and Lessee's employees, management, owners, and agents, and any improvements of Lessee now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from third party claims arising in connection with Lessor's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including Lessor or any person who is an employee or agent of Lessor, or by reason of the damage to or destruction of any property, including property owned by Lessor or by any person who is an employee or agent of Lessor, from any cause whatever while such person or property is in or on the Property or in any way connected with the Premises or with any of the improvements or personal property on the Premises; or

(b) The death or injury of any person, including Lessor or any person who is an employee or agent of Lessor, or the damage to or destruction of any property, including property owned by Lessor or any person who is an employee or agent of Lessor, caused or allegedly caused by either (a) the condition of the Property or some improvement on the Property, or (b) some act or omission on the Property of Lessor or any person in, on, or about the Property with or without the permission and consent of Lessor; or

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Lessor or any person or entity acting for or on behalf of Lessor.

**Section 9.2 Liability Insurance.** Lessor specifically acknowledges that it has been informed, and is aware, that Lessee is partially self insured and a public entity member of the Central San Joaquin Valley Risk Management Authority. Certificates of coverage and limits will be provided to Lessor naming Lessor and Burkhart Farms as additional insureds. Lessor and Burkhart Farms will be provided with 30 days written notice of any changes in Lessee's insurance coverage. A copy of the declaration of Lessee's current coverage limits is attached herewith as Exhibit D.

## ARTICLE 10 ASSIGNMENT AND SUBLEASING



**Section 10.1 Assignment.** Lessee shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Property or the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of Lessor first had and obtained. Any assignment or transfer by Lessee without the prior written consent of Lessor, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Lessor, terminate this Lease. A consent by Lessor to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by Lessee. The consent of Lessor to any assignment of Lessee's interest in this Lease, however, shall not be unreasonably withheld. Any assignment shall require the assumption of each and every obligation of Lessee, and Lessee must prove to the reasonable satisfaction of Lessor that the proposed assignee has the financial, legal and technical capacity to perform the obligations of Lessee hereunder.

**Section 10.2 Sublease.** Lessee shall not have the right to sublease all or any portion of the Property or the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

## ARTICLE 11 DEFAULT AND TERMINATION

**Section 11.1 Termination by Lessee.** If, at any time during the Term of this Lease, the quality of water provided to Lessee from the Premises does not meet applicable standards for potability or cannot be treated to meet such standards in a cost effective manner or Lessee is unable to extract the quantity of water to be delivered to Lessee hereunder, Lessee with the concurrence of RUS may terminate this Lease; provided, however, that Lessee may not terminate this Lease if such lack of water quality or quantity is caused by Lessee's extraction activities or by its failure to perform recharge activities required under Section 4.9. Such termination shall be by written notice given to Lessor at least one hundred eighty (180) days prior to the effective date thereof. Upon such termination, Lessee shall have the obligation to continue any recharge of the aquifer required under Section 4.9 until the aquifer is restored to the "baseline" to be established pursuant to Section 4.9. Such obligation to continue the recharge under Section 4.9 shall continue until the first to occur of completion of the restoration to the "baseline" or the expiration of three "flood year" periods in which there is excess flood water available from the San Joaquin River to permit recharge under Section 4.9. Lessee shall continue to have access to the recharge facilities on the Property for purposes of fulfilling its obligations hereunder. Upon the termination of Lessee's recharge responsibilities hereunder, Lessee shall surrender the recharge facilities constructed under 6.1.6 or remove them as Lessor may elect. If Lessor elects to accept the reversion of the recharge facilities, Lessee shall assign to Lessor any right it has to flood or other waters appropriate to use to recharge the aquifer under the Property.

**Section 11.2 Breach.** Should Lessee otherwise breach this Lease or abandon the Premises prior to the natural expiration of the Term of this Lease, Lessor may continue this Lease in effect by not terminating Lessee's right to possession of the Premises, in which event Lessor shall be entitled to enforce all Lessor's rights and remedies under this

Lease including the right to recover the rent specified in this Lease as it becomes due under this Lease.

**Section 11.3 Lessor's Remedies.** All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the Term hereby demised to the Lessee. Should Lessee default in the performance of any covenant, condition, or agreement contained in this Lease and the default not be cured within one hundred twenty (120) days after written notice of the default is served on Lessee and RUS by Lessor, then Lessor may terminate this Lease and;

(a) Bring an action to recover from Lessee any amount necessary to compensate Lessor for the worth at the time of award of all detriment proximately caused by Lessee's failure to perform his obligations under this Lease less the amount of such rental loss for the same period that the Lessee proves could be reasonably avoided; and

(b) Bring an action, in addition to or in lieu of the action described in subsection 11.3.1(a) of this Section, to reenter and regain possession of the Premises and the Property in the manner provided by the laws of unlawful detainer of the State of California then in effect.

**Section 11.4 Lessee's Insolvency.** Should Lessee become insolvent as defined in this section, Lessor may, by giving One Hundred Twenty (120) days written notice to Lessor or to the person appointed to manage Lessee's affairs at the address for such person appearing in the official records of the court that appointed him and to RUS, terminate this Lease and forfeit Lessee's interest in the Premises and the Property and in any improvements or facilities in, on, or appertaining to the Premises. For purposes of this section, Lessee shall be conclusively presumed to have become insolvent if Lessee:

(a) Has a receiver appointed to take possession of all or substantially all of Lessee's Property because of insolvency;

(b) Makes a general assignment for the benefit of creditors; or

(c) Allows any judgment against Lessee to remain unsatisfied and unbounded for a period of thirty (30) days or longer.

**Section 11.5 Remedies Cumulative.** The remedies given to Lessor in this Article shall not be exclusive but shall be cumulative with, and in addition to, all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

**Section 11.6 Waiver.** The waiver by Lessor of any breach by Lessee of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or a different provision of this Lease.

**Section 11.7 Condition of Premises on Surrender; Removal of Facilities and Equipment.** On expiration or sooner termination of this Lease, Lessee shall surrender the

Premises and the Property to lessor in as good, safe, and clean condition as practicable, reasonable wear and tear excepted, except as follows:

**11.7.1** Lessee may remove for its own use, all equipment appurtenant to the domestic water wells, and conveyance pipelines as listed in Exhibit C attached hereto. Such removal must be completed within thirty (30) days of the expiration of the Term.

**11.7.2** Lessor may require the removal of any and all of Lessee's equipment and facilities installed in the Premises pursuant to this Lease. With respect to wells and well casings, such removal may be accomplished by proper abandonment accomplished in accordance with governmental regulations. To require such removal, Lessor must notify Lessee of the facilities and equipment Lessor desires removed at least ninety (90) days prior to the expiration of the Term.

**11.7.3** With respect to the transmission pipeline, Lessee may, at its option, abandon the pipeline in place without removal.

**11.7.4** Lessee shall regrade the recharge facility to the grade existing upon commencement of the Term subject to the provisions of Section 11.1 regarding recharge obligations of Lessee.

## ARTICLE 12 MISCELLANEOUS

**Section 12.1 Force Majeure.** Except as otherwise expressly provided in this Lease, should the performance of any act required by this Lease to be performed by either Lessor or Lessee be prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused, provided, however, that nothing contained in this section shall excuse the prompt payment of rent by Lessee as required by this Lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party, Lessor or Lessee, required to perform the act.

**Section 12.2 Attorneys' Fees.** Should any litigation be commenced between the parties to this Lease concerning the Premises, the Property, this Lease, or the rights and duties of either in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation, to a reasonable sum as and for his attorney's fees in such litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

**Section 12.3 Notice to Lessor.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or any law to be served on or given to Lessor by Lessee shall be in writing and shall be deemed duly

served and given when personally delivered to Lessor, to any managing employee of Lessor, or in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, addressed to Lessor at:

BB LIMITED  
Attention: Bill Ward  
2331 Honolulu Avenue, Suite E  
Montrose, California 91020

BURKHART FARMS  
Attention: Darrell Vincent  
Post Office Box 6  
Firebaugh, California 93622

Lessor may change Lessor's address for the purpose of this section by giving written notice of such change to Lessee.

**Section 12.4 Notice to Lessee.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Lessee shall be in writing and shall be deemed duly served and given when personally delivered to Lessee, any managing employee of Lessee, or in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, addressed to Lessee at:

CITY OF MENDOTA  
Attention: City Manager  
643 Quince Street  
Mendota, California 93640

with a copy to RUS at:

RURAL UTILITIES SERVICE  
United States Department of Agriculture  
430 G Street, Dept. 4169  
Davis, California 95616-4169

Lessee and RUS may change its address for the purpose of this section by giving written notice of such change to Lessor.

**Section 12.5 Governing Law.** This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises.

**Section 12.6 Binding on Successors.** This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, Lessor and Lessee, but nothing in this section shall be constructed as a

consent by Lessor to any assignment of this Lease or any interest therein by Lessee except as provided in Article 10 of this Lease.

**Section 12.7 Severability.** Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

**Section 12.8 Sole Agreement.** This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the Premises and the Property, the leasing of the Premises to Lessee, the construction of the improvement described in this Lease on the Premises, or the Lease terms herein specified, and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. Any agreements or representations respecting the Premises, their leasing to Lessee by Lessor, or any other matter discussed in this Lease not expressly set forth in this instrument are null and void.

**Section 12.9 Time of Essence.** Time is expressly declared to be the essence of this Lease.

**Section 12.10 Memorandum.** Lessor and Lessee shall, at the request of either at any time during the Term of this Lease, execute a memorandum or "short form" of this Lease for purposes of, and in a form suitable for, being recorded. The memorandum or "short form" of this Lease shall describe the parties, Lessor and Lessee, set forth a description of the Premises, specify the Term of this Lease, and shall incorporate this Lease by reference.

This Lease shall be executed with duplicate originals, either of which shall constitute the Lease Agreement.

Executed on December 14, 1999, at Mendota, California.

**CITY OF MENDOTA**  
("Lessee")

By: Joseph Amador  
Joseph Amador, Mayor

**BB LIMITED**  
("Lessor")

By: William Ward  
William Ward, General Partner

## EXHIBITS

- Exhibit A    Legal Description
- Exhibit B    Map
- Exhibit C    List of Equipment
- Exhibit D    Lessee's Declaration of Insurance

**AGREEMENT FOR  
SALE OF  
ACCESS BRIDGE**

THIS AGREEMENT is made as of the date last executed below, by and between BB LIMITED, a California limited partnership ("Seller"), and the CITY OF MENDOTA, a Municipal Corporation of the State of California ("Buyer"), with reference to the following facts:

**RECITALS**

A. Seller is the owner of an 1172 acre ranch (the "Property") located in the County of Fresno, State of California.

B. On December 14, 1999, Buyer and Seller entered into an agreement ("Lease Agreement") wherein Buyer (then "Lessee") would withdraw potable water from the Property in exchange for the replacement of such potable water with nonpotable irrigation water for use by Seller (then "Lessor"). Under Section 6.6 of the Lease Agreement, Buyer agreed to buy and Seller agreed to sell, at a future date, the wooden access bridge ("Access Bridge") crossing the Kings River Slough providing access to the Property.

C. The parties now wish to consummate the sale of the Access Bridge under the following terms and conditions:

**ARTICLE I**

***Purchase and Sale***

1.01 Subject to the terms and conditions set forth in this Agreement, Seller will transfer and convey its interest in the Access Bridge to Buyer by providing a Grant Deed to Buyer in the form attached hereto as Exhibit A.

1.02 As consideration for the above, Buyer shall pay a total of Sixty Thousand Dollars (\$60,000), paid to Seller in the form of a cashier's check.

1.03 Buyer and Seller acknowledge that upon Buyer's acquisition Access Bridge that notwithstanding its ownership of the Access Bridge, it is still subject to all other terms and conditions of the Lease Agreement.

**ARTICLE II**

***Representations and Warranties***

2.01 Buyer represents and warrants that it has thoroughly inspected the Access Bridge, and agrees to accept the Access Bridge in its current condition, "as is".

2.02 Seller makes no representations as to the structural integrity or current condition of the Access Bridge, and further makes no warranties or representations whatsoever as to any other matter relating to the Access Bridge.

### ARTICLE III

#### *Escrow*

3.01 The parties appoint David Weiland, Esq. to act as escrow holder in consummating the transaction contemplated hereby.

3.02 Seller shall deposit a grant deed of the Access Bridge, executed and acknowledged in the form of that attached hereto as Exhibit A.

3.03 Buyer shall deposit the sum of Sixty Thousand Dollars (\$60,000) in cash along with such additional sums as are required to record the grant deed and otherwise comply with this Agreement.

3.04 Upon the deposit required under the foregoing two sections, escrow holder shall cause the grant deed to be recorded in the Office of the County Recorder of Fresno County, California, and forward the sum of \$60,000 to Seller.

3.05 There shall be no title insurance required in connection with this transaction.

3.06 This escrow shall close and the foregoing actions of the escrow holder completed on or before June 15, 2002.

### ARTICLE IV

#### *Miscellaneous*

4.01 Buyer and Seller shall each pay their own costs and expenses incurred in connection with the purchase and sale described herein.

4.02. This Agreement constitutes the entire agreement between Buyer and Seller concerning their rights and obligations with respect to the sale and purchase of the Access Bridge.

4.03. This Agreement may be amended or modified at any time with respect to any provision by a written instrument executed by Buyer and Seller.

4.04. If Buyer or Seller brings any legal action or seeks arbitration regarding any provision of this Agreement, the prevailing party in the litigation or arbitration shall be entitled to recover all expenses, including reasonable attorneys fees, from the other party, in addition to any other relief that may be granted.



4.05. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Buyer and Seller.

4.06. This Agreement shall be governed by and construed in accordance with California law.

4.07. This Agreement may be signed in counterpart, which when taken together shall constitute the original document.

Dated: June 25, 2002

BUYER:

City of Mendota, a Municipal Corporation of the State of California

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

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

Its: Joseph R. Ruffalo

6/25/02

Dated: June 4, 2002

SELLER:

BB Limited, a California limited partnership

By: William Ward

William Ward  
General Partner

E-mail: [kkimbell@aklaw.net](mailto:kkimbell@aklaw.net)

May 16, 2002

VIA EMAIL [dweiland@daklaw.com](mailto:dweiland@daklaw.com)

David J. Weiland, Esq.  
Dowling, Aaron & Keeler, Inc.  
6051 North Fresno Street, Suite 200  
Fresno, California 93710

RE: ***BB Ltd./City of Mendota***

Dear Dave:

Enclosed please find the Agreement for Sale of Access Bridge drafted to incorporate what we have discussed. Appended to that agreement is the form of grant deed that I propose be prepared to convey the bridge. Please look at the grant deed carefully, for this is an unusual piece of real estate to be dealing with. I have left the reference to the Revenue and Taxation Code in the grant deed blank for you to complete, for I am sure off the top of your head what the code section is under which transfers to public agencies are exempt from documentary transfer tax. Also you may want to complete the tax statement box. Since this is emailed, you can modify it.

We look forward to completing this transaction as quickly as the City can do so.

Yours very truly,

ALLEN & KIMBELL, LLP

By  
Charles D. Kimbell

CDK/db  
Enclosure  
Cc: Mr. Leonadi Ward via email  
Document in ProLaw 6420 37-42-04

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SALE OF  
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1.03 Buyer and Seller acknowledge that upon Buyer's acquisition Access Bridge that notwithstanding its ownership of the Access Bridge, it is still subject to all other terms and conditions of the Lease Agreement.

**ARTICLE II**

***Representations and Warranties***

2.01 Buyer represents and warrants that it has thoroughly inspected the Access Bridge, and agrees to accept the Access Bridge in its current condition, "as is".

2.02 Seller makes no representations as to the structural integrity or current condition of the Access Bridge, and further makes no warranties or representations whatsoever as to any other matter relating to the Access Bridge.

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3.02 Seller shall deposit a grant deed of the Access Bridge, executed and acknowledged in the form of that attached hereto as Exhibit A.

3.03 Buyer shall deposit the sum of Sixty Thousand Dollars (\$60,000) in cash along with such additional sums as are required to record the grant deed and otherwise comply with this Agreement.

3.04 Upon the deposit required under the foregoing two sections, escrow holder shall cause the grant deed to be recorded in the Office of the County Recorder of Fresno County, California, and forward the sum of \$60,000 to Seller.

3.05 There shall be no title insurance required in connection with this transaction.

3.06 This escrow shall close and the foregoing actions of the escrow holder completed on or before June 15, 2002.

### **ARTICLE IV**

#### ***Miscellaneous***

4.01 Buyer and Seller shall each pay their own costs and expenses incurred in connection with the purchase and sale described herein.

4.02. This Agreement constitutes the entire agreement between Buyer and Seller concerning their rights and obligations with respect to the sale and purchase of the Access Bridge.

4.03. This Agreement may be amended or modified at any time with respect to any provision by a written instrument executed by Buyer and Seller.

4.04. If Buyer or Seller brings any legal action or seeks arbitration regarding any provision of this Agreement, the prevailing party in the litigation or arbitration shall be entitled to recover all expenses, including reasonable attorneys' fees, from the other party, in addition to any other relief that may be granted.

4.05. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Buyer and Seller.

4.06. This Agreement shall be governed by and construed in accordance with California law.

4.07. This Agreement may be signed in counterpart, which when taken together shall constitute the original document.

**Dated: June \_\_\_\_\_, 2002**

**BUYER:**

**City of Mendota, a Municipal Corporation of the State of California**

By:       **DRAFT**        
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Dated: June \_\_\_\_\_, 2002**

**SELLER:**

**BB Limited, a California limited partnership**

By:       **DRAFT**        
William Ward  
General Partner

EXHIBIT "A"

A.P. Nos.

WHEN RECORDED MAIL TO:  
Charles D. Kimbell, Esq.  
ALLEN & KIMBELL, LLP  
317 East Carrillo Street  
Santa Barbara, California

MAIL TAX STATEMENTS TO:

City of Mendota  
\*\*\*

Space Above For Recorder's Use  
No Documentary Transfer Tax due  
Revenue and Taxation Code § \_\_\_\_\_

**GRANT DEED**

FOR VALUABLE CONSIDERATION receipt of which is hereby acknowledged,

**BB Limited, a California limited partnership**

hereby GRANT(s) to

**City of Mendota, a Municipal Corporation of the State of California**

the following described real property in the County of Fresno, State of California:

That certain bridge and all supporting structures and appendages connected to Grantor's real property described in attached Exhibit "A" and extending westerly across the Kings River Slough/Mendota Pool to City of Mendota owned lands situated between Bass Avenue and the southern branch of the Mendota Pool just north of Delta Mendota Canal.

Dated: \_\_\_\_\_, 2002.

BB Limited, a California limited partnership

**DRAFT**

By: William Ward  
Its: General Partner

[Signatures Must Be Acknowledged]

Grant Deed BB Ltd./City of Mendota

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF SANTA BARBARA         )        ss.

On \_\_\_\_\_, before me, the undersigned Notary Public, personally appeared **William Ward** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

**DRAFT** \_\_\_\_\_  
Notary's Signature

**EXHIBIT "A"**

Grantor's Real Property



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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** NANCY M. DIAZ, FINANCE ADMINISTRATIVE SUPERVISOR  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** RESOLUTION NO. 18-60: APPROVING AN UPDATE TO THE WESTAMERICA BANK SIGNATURE CARD  
**DATE:** AUGUST 10, 2018

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**ISSUE**

Should the City Council approve Resolution No. 18-60 to update the Westamerica Bank signature card?

**BACKGROUND**

With the recent hire of Interim City Manager, our current signature card held at the City's bank, Westamerica Bank, needs to be updated to reflect the changes that have occurred. Given that we will be making changes to the signature card, we are recommending adding a total of six signees.

**ANALYSIS**

Westamerica Bank has requirements that need to be satisfied in order to update the information on a signature card for an account. Meeting Minutes or a minute order is required to include the following: name of the business entity; names and titles of all officers of the business entity; names and titles of all authorized signers on the account. A Personal Information Sheet and copy of identification card is required for all signers on account. After the information is provided to Westamerica Bank, a signature card with information is provided to the City to be signed by the authorized signers.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Staff recommends that the City Council adopt Resolution No. 18-60 approving an update to the signature card at Westamerica Bank.

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
AN UPDATE TO THE WESTAMERICA  
BANK SIGNATURE CARD**

**RESOLUTION NO. 18-60**

**WHEREAS**, the City of Mendota (City) has authorized signees for a signature card with Westamerica Bank (Signature Card); and

**WHEREAS**, the City's former City Manager, Vince DiMaggio, has resigned from that position and the City has appointed Cristian Gonzalez as Interim City Manager; and

**WHEREAS**, the signees for the Signature Card need to be updated to reflect the above personnel changes; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Mendota hereby approves an update to the Westamerica Bank signature card by removing Vincent DiMaggio and adding Cristian Gonzalez to be on file as Interim City Manager and adding Robert Silva to be on file as an alternative as an authorized signee and stated in Exhibit A.

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

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 14th day of August, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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

**EXHIBIT A**

Organization: City of Mendota  
City Council: Rolando Castro – Mayor  
Victor Martinez – Mayor Pro Tempore  
Robert Silva – Councilmember  
Jesse Mendoza – Councilmember  
Oscar Rosales - Councilmember

**Authorized Signers:**

Rolando Castro – Mayor  
Victor Martinez – Mayor Pro Tempore  
Robert Silva - Councilmember  
Cristian Gonzalez – Interim City Manager  
Rudy Marquez – Finance Officer  
Matthew S. Flood – City Clerk

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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** KARL SCHOETTLER, CITY PLANNING CONSULTANT  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** LA COLONIA PROJECT  
**DATE:** AUGUST 14, 2018

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**DISCUSSION:**

The project proposes several land use actions for the 18.7 acre site, located on the south side of Bass Avenue, east of State Highway 180 (see Maps 1 and 2). These include:

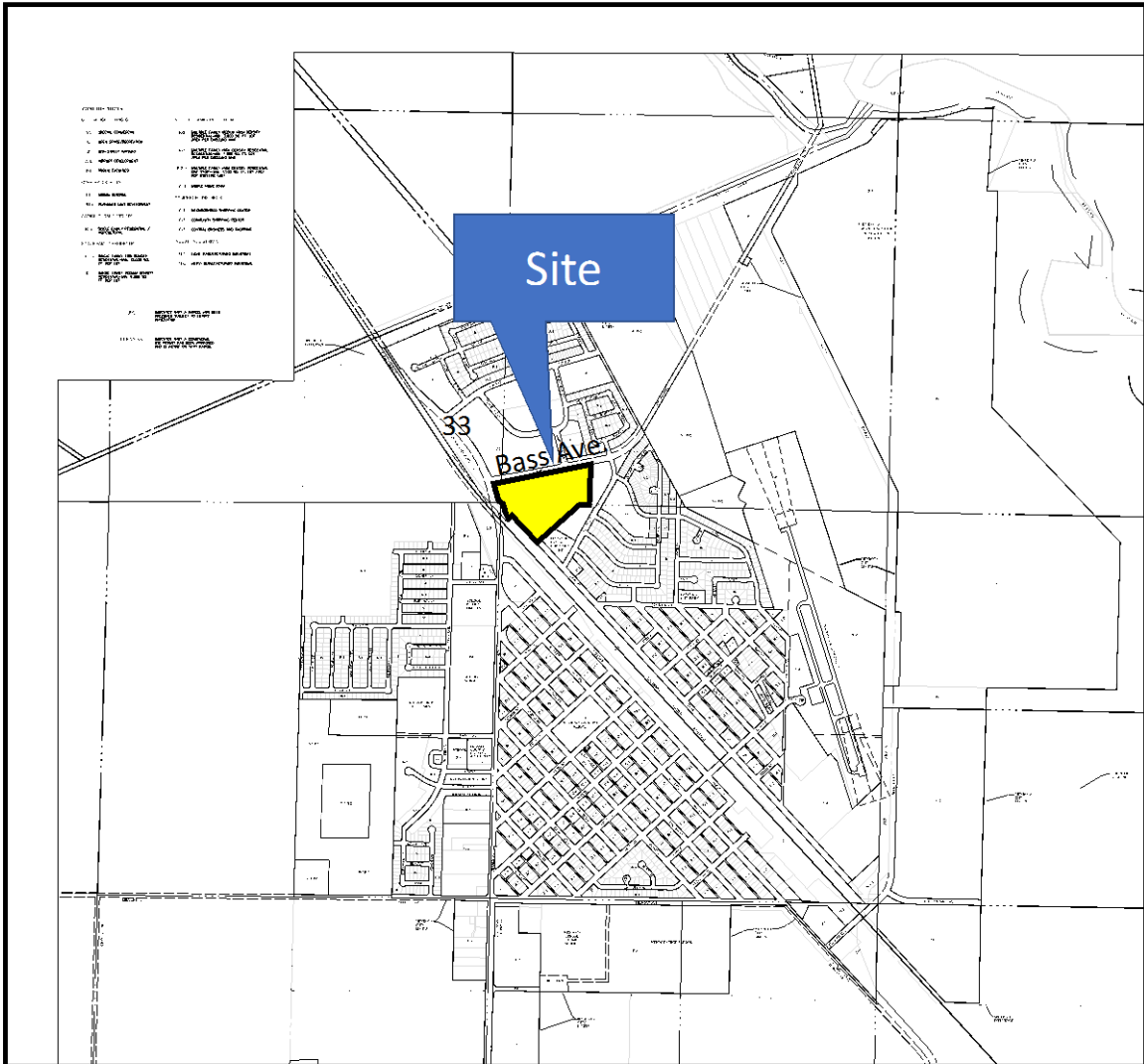
1. An amendment of the Mendota General Plan land use map from “Community Commercial” and “High Density Residential” to “Medium Density Residential”, “Community Commercial” and “Recreational”
2. A zone change to change the zoning of the site from C-2 and R-3 to R-1 (PUD), C-2 and O
3. A Vesting Tentative Subdivision Map to create 86 single family residential lots, a 1.7-acre site for commercial development and a 0.4-acre park. Associated improvements include the installation of streets, utilities, walls, and common landscape areas.
4. A Development Agreement to establish conditions and requirements of the project.
5. A “Mitigated Negative Declaration” as the environmental finding for the project.

**Subdivision Design**

Figure 1 shows the proposed subdivision design. As noted previously, the subdivision proposes 86 single family residential lots, a site for future commercial development (at the southeast corner of Bass and Highway 33) and a small park within the subdivision.

The applicant is seeking to apply the PUD (Planned Development) overlay to the site, which allows flexibility with respect to certain zoning standards, like lot size, setbacks, etc. Specifically, the Zoning Ordinance indicates that the PUD overlay allows lot sizes down to 4,000 square feet in the R-1 zone. Lot sizes in the proposed subdivision will range from a minimum of 4,781 square feet to a maximum of 12,007 square feet. The average lot size will be 6,326 square feet.

Map 1: Project Location



Map 2: Aerial Photo



The subdivision leaves a 1.7-acre parcel at the southeast corner of Bass and Highway 33 for future commercial development. Though no project is proposed at the current time, the parcel is sized for a use such as a pharmacy.

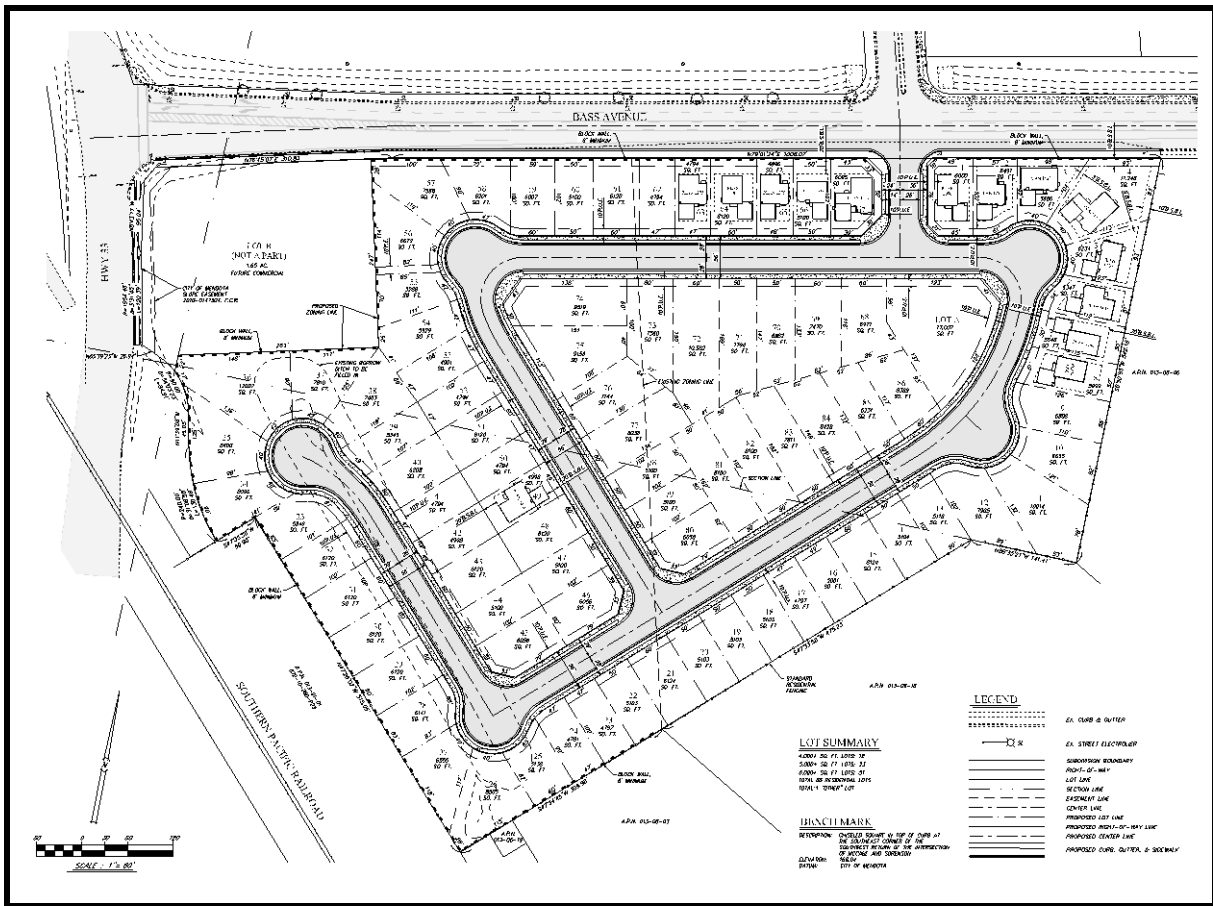
The project also proposes a small mini-park within the subdivision. The City is requiring this park be landscaped by the developer with turf, shrubs and trees for use by residents.

#### Traffic/Circulation

Access to the site would be from a street connection to Bass Avenue, aligned with the existing Barboza Street to the north. Streets within the subdivision are designed to loop together and return to Barboza, with one cul-de-sac extending with one turn along the west side of the subdivision.

Streets will be designed consistent with the City's new residential street standards, which require a landscaped parkway between the curb and sidewalk. Many cities are embracing this standard, as it provides for a more pleasant environment for pedestrians, as they are separated from traffic by the tree-lined parkway.

Figure 1: Proposed Subdivision Map



Staff is also recommending the applicant be required to install antique-style street lamps (in place of standard “cobra-head” lamps). Antique-style street lamps further improve the pedestrian oriented character of the streets.

The entry to the subdivision at Barboza Street will be designed with a landscaped median divider.

The intersection of Bass and Barboza can become congested, particularly during peak morning and evening travel times, and when school is in session at nearby Mendota Elementary School. For this reason, the project is being required to install a traffic signal at this intersection prior to completion of the final phase of development.

In order to promote walking and other forms of active transportation, the subdivision has been designed with a pedestrian connection from the site to the future commercial development. This connection will be ten feet wide and will be located between lots 55 and 56. The applicant will

install a paved sidewalk here. This will allow residents of the subdivision the ability to walk or bicycle to future commercial development – thereby reducing the need to drive. This can result in a reduction in air pollution, as well as a benefit to fitness and health. The connection will be lighted for safety at night.

The project will be required to install 6-foot high masonry block walls around the perimeter of the site, including along the frontage along Bass Avenue and the sideyards of lots 55, 56, 68 & 86, adjacent to the park and the pedestrian connection. To improve the appearance of the site, a landscape strip will be required along the wall along Bass Avenue.

### Utilities

The site will connect to the City's water, sewer and storm drain systems. There are both water and sewer lines that run past the site under Bass Avenue. The water line is an 8-inch water line. There is a 24-inch sewer main that runs past the site. Finally, the project will channel storm drain waters via an existing ditch along the south side of Bass Avenue, to a basin at the City's wastewater treatment plant located northeast of the City. The applicant will be required to excavate and expand the ditch to ensure there is adequate capacity, and will be required to construct necessary basin capacity at the WWTP.

The Public Works Department and City Engineer report that there is adequate capacity in all utility systems to serve the project. However, one concern is that the development of the project could exceed the capacity of the City's water system in a "maximum-day" scenario (such as on a hot summer day) as calculated under the Department of Drinking Water Waterworks Standards, which assume the largest well is out of service; a worst-case situation. State law requires the City to be able to provide adequate water supply in such a scenario.

In order to address this situation, the City is proposing to reactivate one of its backup wells (City Well No. 5, located on Bass Avenue near the wastewater treatment plant) to provide stand-by service. Should there be a shortfall in water supply due to failure of a primary well, water from the stand-by well would be blended with water produced by the primary wells, at the Water Treatment Plant. The City would need to obtain approval from the State Department of Water Resources for the reactivation of Well No. 5. The City Engineer has contacted DDW and has discussed the proposal. DDW has approved the concept, pending some additional water quality testing at Well No. 5. Some mechanical work would be needed to reactivate Well No. 5, but no additional water treatment equipment or facilities would be needed. A mitigation measure for this issue is listed in the resolution for the subdivision, and also as an environmental mitigation measure.

### Offsite Improvements

In exchange for approval of the Planned Development, the City has negotiated with the project developer to construct a soccer field at Rojas Pierce Park. This field has been a long-term goal of the community and the applicant is willing to make this improvement, in exchange for the benefits (including increased density) of the proposed subdivision.



## Development Agreement

The City and the applicant have agreed to enter into a Development Agreement for the project. The agreement will include all conditions of approval and requirements to ensure the project is developed properly and to City code. This is particularly important with the requirement for off-site improvements of the project, including the traffic signal, soccer field and storm drain improvements along Bass Avenue and at the Wastewater Treatment Plant.

## Community Facilities District and Landscape and Lighting District

The project will be required to enter into the City's Community Facilities District – similar to that formed for the recently-completed Las Palmas subdivision. Property owners will be taxed to pay for emergency services, including police, fire and paramedic services.

A Landscape and Lighting District will also be formed to pay for maintenance of improvements along the project's frontage along Bass Avenue, including landscaping, walls and street lamps – as well as landscaping and related improvements within the mini park. The formation of these districts is provided for in the resolution for the subdivision and also the Development Agreement.

## Planned Development findings

In order to consider application of the Planned Development (PD) overlay in the R-1 zone, the Planning Commission must make several findings that are listed in the Mendota Zoning Ordinance. These findings essentially indicate that the project, as designed, is superior to what could be achieved with standard zoning. The findings and an analysis of each are listed below (and also in the resolution approving the zone change).

*A. The proposed planned development is consistent with the general plan and any applicable specific or community plan, including the density and intensity limitations that may apply;*

**Analysis:** The project is consistent with the General Plan (as amended) as well as General Plan policies regarding density. The project is utilizing the PUD zone, which allows single family residential lots as small as 4,200 square feet. The average lot size of the project is 6,326 square feet – larger than the standard R-1 zone minimum lot size of 6,000 square feet.

*B. The subject site is physically suitable for the type and intensity of the development being proposed;*

**Analysis:** The project site is suitable for the type and intensity of the project. It will serve as a buffer to more dense residential development to the east. Further, the commercial site at the southeast corner of Bass and Highway 33 will function to buffer the residential portions of the project from the highway.

*C. Adequate transportation facilities, utilities, and public services exist or will be provided in accordance with the approval of the planned development to serve the proposed development, and approval of the planned development will not result in adverse impacts to existing facilities, utilities, or services so as to be a detriment to the public health, safety, or welfare;*

**Analysis:** The project (as conditioned) will provide adequate transportation, utility facilities and public services. Conditions have been established that will require the project to install adequate utilities and transportation facilities, including a traffic signal and provisions for water, sewer and storm drainage.

*D. The proposed development will not have a substantial adverse impact on surrounding land uses, and will be compatible with the existing and planned land use character of the surrounding area;*

**Analysis:** The project will be compatible with surrounding development, which consists of a mix of low- and high-density residential, public facilities, and commercial development. The project will include walls, landscaping and setbacks to enhance compatibility.

*E. The proposed development generally complies with any adopted design guidelines; and*

**Analysis:** There are no adopted design guidelines in the City, however the project complies with applicable zoning standards. In addition, the project is being conditioned to install additional public landscaping and pedestrian-scale lighting, for a more attractive environment.

*F. The proposed development is demonstrably superior to the development that could occur utilizing the standards applicable to the subject zone district, and will achieve superior community design, environmental preservation, and/or substantial public benefit. In making this determination, factors to be considered shall include, but not be limited to:*

- 1. Appropriateness of the use(s) at the proposed location;*
- 2. The mix of uses, housing types, and housing price levels;*
- 3. Provision of infrastructure improvements;*
- 4. Provision of usable active or passive open space;*
- 5. Compatibility of uses within the planned development area;*
- 6. Creativity in design and use of land;*
- 7. Quality of design, and adequacy of light and air into the interior spaces of buildings;  
and*
- 8. Overall enhancement of neighborhood character and the built and natural environments of the city.*

**Analysis:** The project will provide a mix of residential and commercial uses geared toward buyers and customers in the Mendota market. The project will be conditioned to make infrastructure improvements to serve the site and to establish open space. The Development Agreement will include installation of a new soccer field in an existing City park. Uses within the site are compatible via the implementation of setbacks, walls and landscaping. The project

has been designed through a creative process with City input that will ensure quality of design, resulting in an enhancement of this part of the community.

### **Environmental Assessment**

The City has prepared an Initial Environmental Study to analyze potential environmental impacts of the project as required by CEQA (the California Environmental Quality Act ). The study determined that the project will have no significant impacts, provided that certain measures are incorporated into the project's design and operation. These measures are listed under the "Background Conditions" section at the end of this report and are related to:

- A. Greenhouse Gases
- B. Hydrology and Water Quality
- C. Noise
- D. Transportation/Traffic
- E. Utilities and Service Systems

The environmental analysis was circulated for public review and comment for a period of twenty days, as required by CEQA. At the close of the comment period, letters and emails were received from the following agencies:

- Fresno County Health Department
- Caltrans
- San Joaquin Valley Air Pollution Control District

The County and Air District concurred with findings of the environmental study. Caltrans initially requested a traffic study be prepared for the project. However, staff contacted Caltrans and pointed out that the proposed project would likely be generating significantly less traffic than development that could have occurred under the project's existing zoning (C-2 and R-3).

With this information, Caltrans concurred that a full traffic study was not needed, but they did request the City require the project to prepare a one-page technical memorandum from a traffic consultant, comparing the existing zoning trip generation to the proposed zoning trip generation. This has been made a condition of approval of the project.

### **Planning Commission Action**

The Planning Commission conducted a public hearing to consider the project on June 19, 2018. No members of the public expressed concerns about the project. Following discussion, the Planning Commission voted to recommend approval of the project, including the General Plan amendment, zone change, subdivision map, Development Agreement and environmental finding.

**FISCAL IMPACT:**

The project will be required to pay development impact fees to the City for each dwelling, upon issuance of a building permit.

**RECOMMENDATION:**

It is recommended that the City Council conduct a public hearing and vote to approve the project via the following:

- Resolution 18-61 to adopt the environmental finding for the project
- Resolution 18-62 to approve General Plan Amendment 2018-01
- Introduce Ordinance 18-03 approving Zone Change 2018-01
- Resolution 18-63 to Vesting Tentative Subdivision map 2018-01
- Introduce Ordinance 18-04 approving Development Agreement 2018-01

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

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AMENDING  
THE OFFICIAL ZONING MAP OF THE  
CITY OF MENDOTA, RELATING TO  
THE CLASSIFICATION OF THE ZONE  
OF PARTICULAR PARCELS OF REAL  
PROPERTY**

**ORDINANCE NO. 18-03**

The City Council of the City of Mendota does ordain as follows:

**SECTION 1.** Section 17.04.040 of the Municipal Code of the City of Mendota is amended by changing the Zoning Map to redesignate two parcels (Assessor Parcel Numbers 013-061-015 and 012-160-039) occupying approximately 18.7 acres on the south side of Bass Avenue, east of State Highway 33 and the Southern Pacific railroad as shown on Map 1, attached hereto as Exhibit "A" and incorporated herein by this reference.

**SECTION 2.** Severability. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, as if such invalid portion thereof had been deleted.

**SECTION 3.** This ordinance shall take effect thirty (30) days after its passage.

**SECTION 4.** The City Clerk is hereby ordered and directed to certify the passage of this Ordinance and to cause the same to be published once in a newspaper of general circulation, published in the County of Fresno.

\* \* \* \* \*

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:  
NOES:  
ABSENT:  
ABSTAIN:**

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

ATTEST:

---

Matt Flood, City Clerk

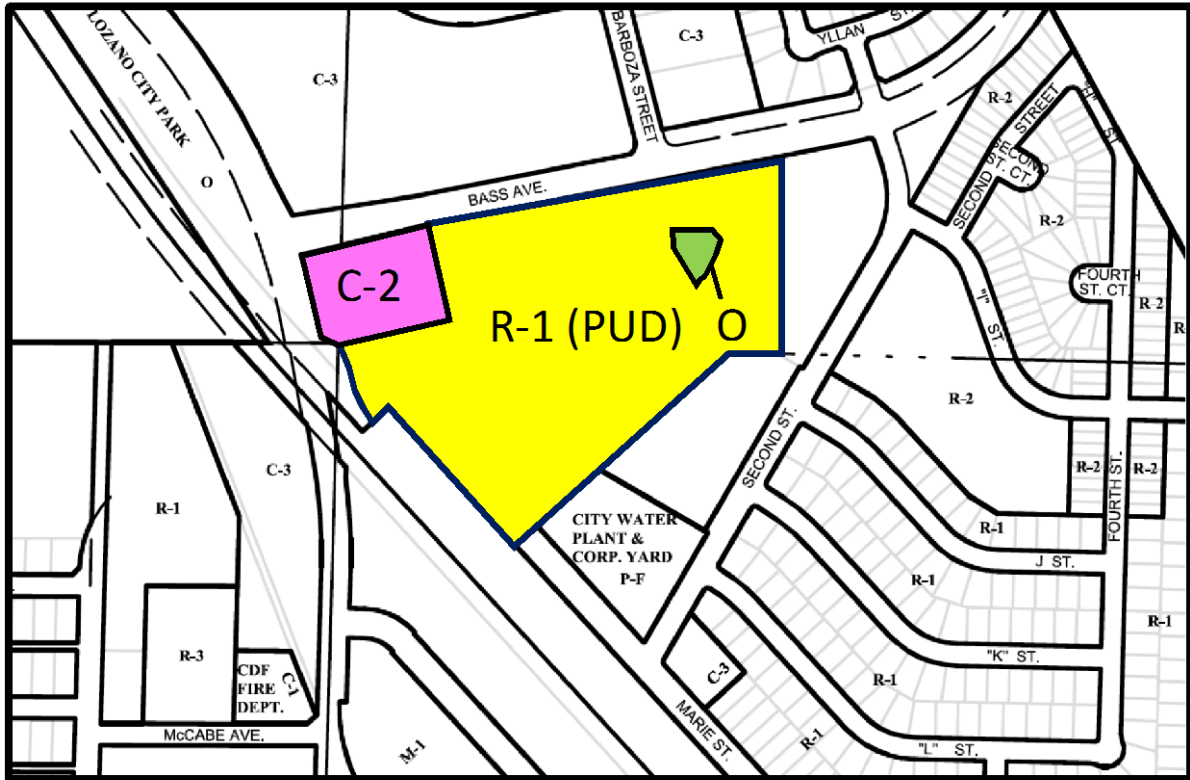
APPROVED AS TO FORM:

---

John Kinsey, City Attorney

Exhibit A

Map 1: Zone Changes



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

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

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 \_\_\_\_ day of \_\_\_\_\_, 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. 2018-61). 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. 2018-\_\_\_).
3. Zone Change 2018-01, changing the zoning of the Site, adopted by the City Council. (Ordinance No. 2018-03).
4. This Development Agreement approved by the City Council (**Ordinance** No. 2018-\_\_\_, adopted on \_\_\_\_\_ \_\_, 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 \_\_\_\_\_, 2018, the City Council adopted **Ordinance** No. 2018-04 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** 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** 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** 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 \_\_\_\_\_ per year but not greater than \_\_\_\_\_ 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 \_\_\_\_\_ per year but not greater than \_\_\_\_\_ 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, 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 contractor 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**, 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:**

CITY OF MENDOTA,  
a Municipal Corporation

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

**DEVELOPER:**

KSA HOMES, INC.,  
a California corporation

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

Name: STEPHEN W. HAIR

Its: President

**ATTEST:**

MATT FLOOD  
City Clerk

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

**APPROVED AS TO FORM:**

JOHN KINSEY  
City Attorney

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

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

**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.

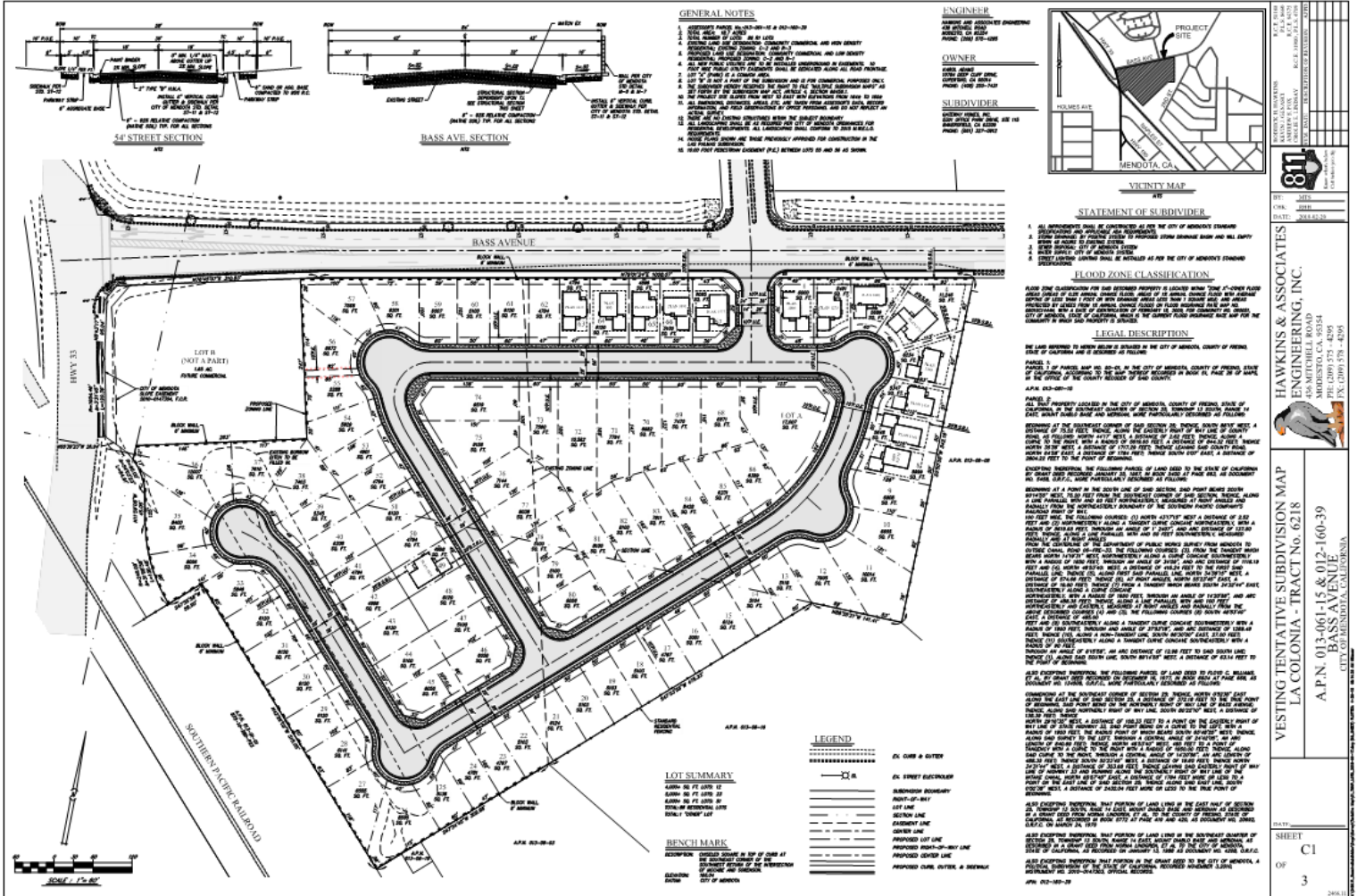
APN: 012-160-39

# EXHIBIT "B"



**Location of the La Colonia Subdivision.**

# EXHIBIT "C"



La Colonia Tentative Subdivision Map

**HAWKINS & ASSOCIATES**  
 ENGINEERING, INC.  
 1500 AVENUE 100  
 MENLO PARK, CA 94025  
 PHONE: (415) 321-1000

**VESTING TENTATIVE SUBDIVISION MAP**  
 LA COLONIA - TRACT NO. 6218  
 APN 013-061-15 & 012-160-39  
 BASS AVENUE  
 MENLO PARK, CALIFORNIA

**SHEET**  
 C1  
 OF  
 3

## **EXHIBIT "D"**

**In the Final Development Agreement, Exhibit D will be the City Ordinance approving the Agreement itself.**

**Since that has not occurred yet, this Exhibit is just a placeholder.**



## **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 December 31, 2018.
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>

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CELESTE CABRERA, DEPUTY CITY CLERK  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION  
**DATE:** AUGUST 14, 2018

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**ISSUE**

Shall the City Council conduct the first reading and public hearing of Ordinance No. 18-05, imposing a Transactions and Use Tax to be administered by the California Department of Tax and Fee Administration?

**BACKGROUND**

California Revenue and Taxation Code Section 7285.9 authorizes the City to adopt an ordinance to increase the Transactions and Use Tax if the measure is approved by a majority of the voters.

At its June 12, 2018 meeting, the City Council adopted two resolutions that authorized the submittal of a ballot measure to voters for the increase of the current sales and use tax for general purposes. The measure will be considered at the next General Municipal Election that will be held on November 6, 2018.

Staff has been actively working with the California Department of Tax and Fee Administration (CDTFA) to ensure that all necessary documents related to the measure are submitted so the agency will administer the tax if it is approved by voters.

CDTFA requests that certain documents be considered before the election in order to expedite the completion of all necessary documents to facilitate the tax.

**ANALYSIS**

The adoption of the attached ordinance is required by California Revenue and Taxation Code Section 7285.9 to impose the Transactions and Use Tax and so that the CDTFA can administer the tax.

If the measure is approved by a majority of the voters, the agency will provide additional documents that will need to be completed to implement the tax.

**FISCAL IMPACT**

None at this time.

**RECOMMENDATION**

Staff recommends that the City Council discuss the proposed ordinance, have the Mayor perform the public hearing, conduct the first reading of Ordinance No. 18-05, and set the second hearing for the August 28<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 IMPOSING A  
TRANSACTIONS AND USE TAX TO BE  
ADMINISTERED BY THE CALIFORNIA  
DEPARTMENT OF TAX AND FEE  
ADMINISTRATION**

**ORDINANCE NO. 18-05**

Section 1. TITLE. This ordinance shall be known as the General Purposes Sales and Use Tax Ordinance. The city of Mendota hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 2. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

Section 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax for general purposes at an election.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of



collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

Section 4. CONTRACT WITH STATE. Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 5. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 1% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 6. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

Section 7. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of 1% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 8. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

Section 10. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

Section 11. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under

a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 12. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part

1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 13. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 14. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 15. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

Section 16. TERM. The authority to levy the tax imposed by this ordinance shall continue in perpetuity.

Section 17. NOTICING. Within fifteen (15) days of the adoption of this Ordinance, a summary thereof, including the names of the City Council Members voting for and against it, shall be prepared by the City Attorney for publication in the *Firebaugh-Mendota Journal*, and a certified copy of the Ordinance shall be posted in the office of the City Clerk.

\*\*\*\*\*

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
A MITIGATED NEGATIVE DECLARATION  
FOR THE LA COLONIA PROJECT**

**RESOLUTION NO. 18-61**

**WHEREAS**, an application for a General Plan amendment, zone change, Vesting Tentative Subdivision Map and Development Agreement was submitted by KSA Homes (Steve Hair), 3401 Office Park Drive, Suite 115, Bakersfield, CA 93309 with the ultimate result being an 86-lot single family residential subdivision, a 1.7-acre site for future commercial development and a 0.4-acre park, on two parcels containing approximately 18.7 acres located on the south side of Bass Avenue, east of State Highway 33 in the City of Mendota. The Assessor Parcel Numbers of the site are 013-061-015 and 012-160-039.

**WHEREAS**, the applicant's requests include:

1. A General Plan Amendment to change the Mendota General Plan's land use designation for the site from "High Density Residential" and "Community Commercial" to a combination of "Medium Density Residential", "Community Commercial" and "Recreational".
2. A zone change to change the zoning of the site from C-2 (Community Shopping Center) and R-3 (High Density Multi Family Residential) to R-1 (Single Family Residential with Planned Development provisions), C-2 and O (Open Space)
3. A Vesting Tentative Subdivision Map to subdivide the site into 86 single family residential lots, a 1.7-acre site for future commercial development and a 0.4-acre mini park, along with streets and utility connections, among other improvements, and
4. A Development Agreement to establish certain development rights for the project.

**WHEREAS**, the planning requests are considered a "project" under the Guidelines of the California Environmental Quality Act (CEQA) and accordingly the City has prepared an Initial Environmental Study consistent with CEQA, and

**WHEREAS**, the Initial Environmental Study determined that the proposed project would not result in significant impacts to the environment, provided that mitigation measures are incorporated into the project design and operation, and

**WHEREAS**, the City advertised and circulated the Initial Environmental Study for public review and comment, with a closing date of May 28, 2018 for comments to be submitted, and

**WHEREAS**, by the end of the comment period several comment letters were received by the City, including:

- County of Fresno Department of Public Health
- Caltrans
- San Joaquin Valley Air Pollution Control District

None of the letters challenged the proposed adoption of a Mitigated Negative Declaration, and

**WHEREAS**, the Planning Department has prepared a staff report on the project, attached hereto as Exhibit "A" and incorporated herein by this reference.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council, after considering all the evidence presented, has determined the following findings are relevant in evaluating this action:

1. The proposed project is consistent with the goals, objectives and policies of the 2025 Mendota General Plan and the Mendota Zoning Ordinance.

2. The City has prepared an Initial Environmental Study, consistent with the requirements of CEQA. The study determined the project will not have significant impacts on the environment, provided that mitigation measures are incorporated into the project construction and operation. Accordingly, a Mitigated Negative Declaration, attached hereto as Exhibit "B" and incorporated herein by this reference, has been prepared.

3. The proposed action will not have an adverse impact on the health, safety and welfare of residents in the neighborhood or community.

4. The Mendota Planning Commission voted to recommend adoption of the Mitigated Negative Declaration at a public hearing conducted on June 19, 2018.

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Rolando Castro, Mayor

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 14<sup>th</sup> day of August, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

Matt Flood, City Clerk



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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** KARL SCHOETTLER, CITY PLANNING CONSULTANT  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** LA COLONIA PROJECT  
**DATE:** AUGUST 14, 2018

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**DISCUSSION:**

The project proposes several land use actions for the 18.7 acre site, located on the south side of Bass Avenue, east of State Highway 180 (see Maps 1 and 2). These include:

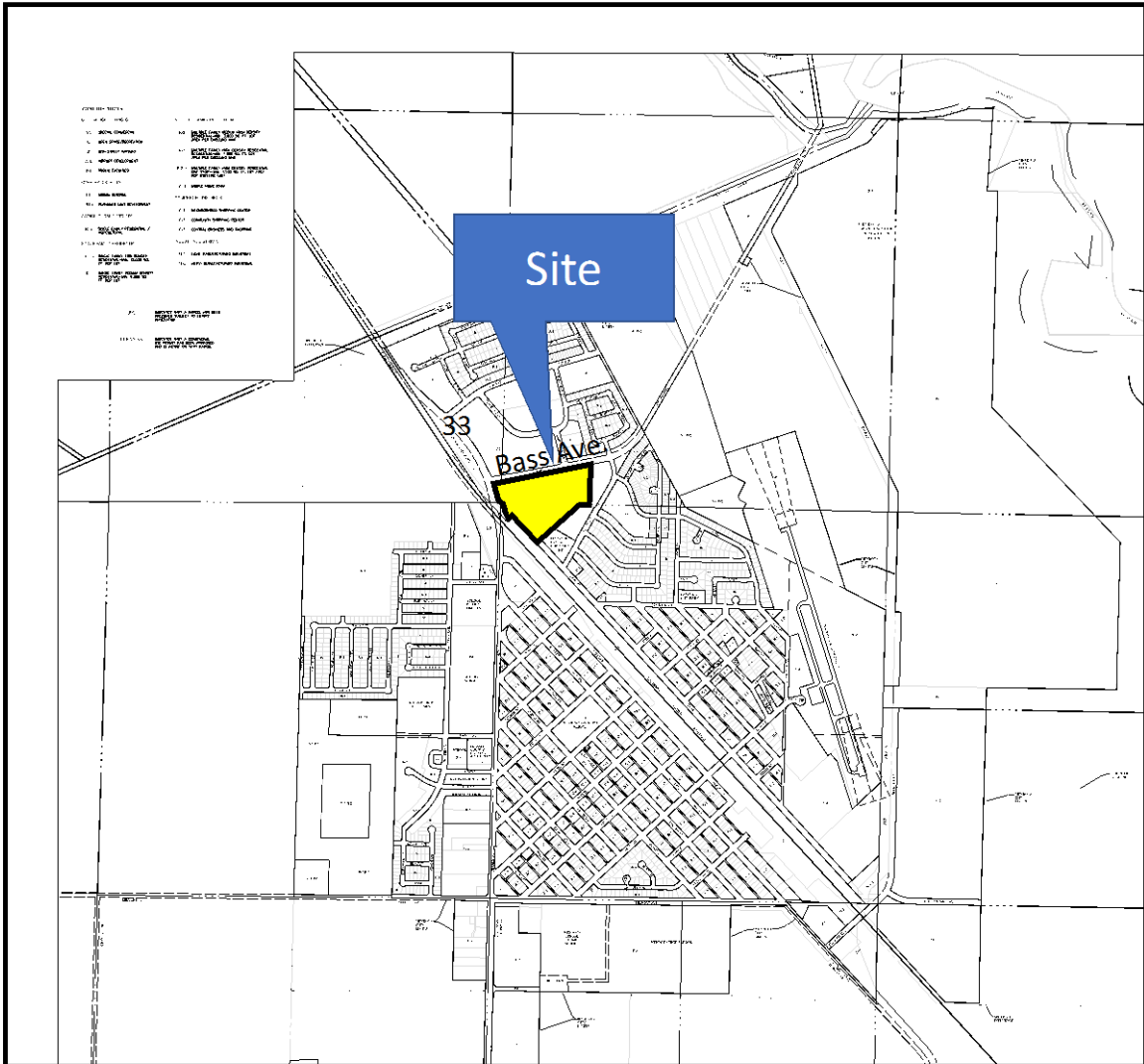
1. An amendment of the Mendota General Plan land use map from “Community Commercial” and “High Density Residential” to “Medium Density Residential”, “Community Commercial” and “Recreational”
2. A zone change to change the zoning of the site from C-2 and R-3 to R-1 (PUD), C-2 and O
3. A Vesting Tentative Subdivision Map to create 86 single family residential lots, a 1.7-acre site for commercial development and a 0.4-acre park. Associated improvements include the installation of streets, utilities, walls, and common landscape areas.
4. A Development Agreement to establish conditions and requirements of the project.
5. A “Mitigated Negative Declaration” as the environmental finding for the project.

**Subdivision Design**

Figure 1 shows the proposed subdivision design. As noted previously, the subdivision proposes 86 single family residential lots, a site for future commercial development (at the southeast corner of Bass and Highway 33) and a small park within the subdivision.

The applicant is seeking to apply the PUD (Planned Development) overlay to the site, which allows flexibility with respect to certain zoning standards, like lot size, setbacks, etc. Specifically, the Zoning Ordinance indicates that the PUD overlay allows lot sizes down to 4,000 square feet in the R-1 zone. Lot sizes in the proposed subdivision will range from a minimum of 4,781 square feet to a maximum of 12,007 square feet. The average lot size will be 6,326 square feet.

Map 1: Project Location



Map 2: Aerial Photo



The subdivision leaves a 1.7-acre parcel at the southeast corner of Bass and Highway 33 for future commercial development. Though no project is proposed at the current time, the parcel is sized for a use such as a pharmacy.

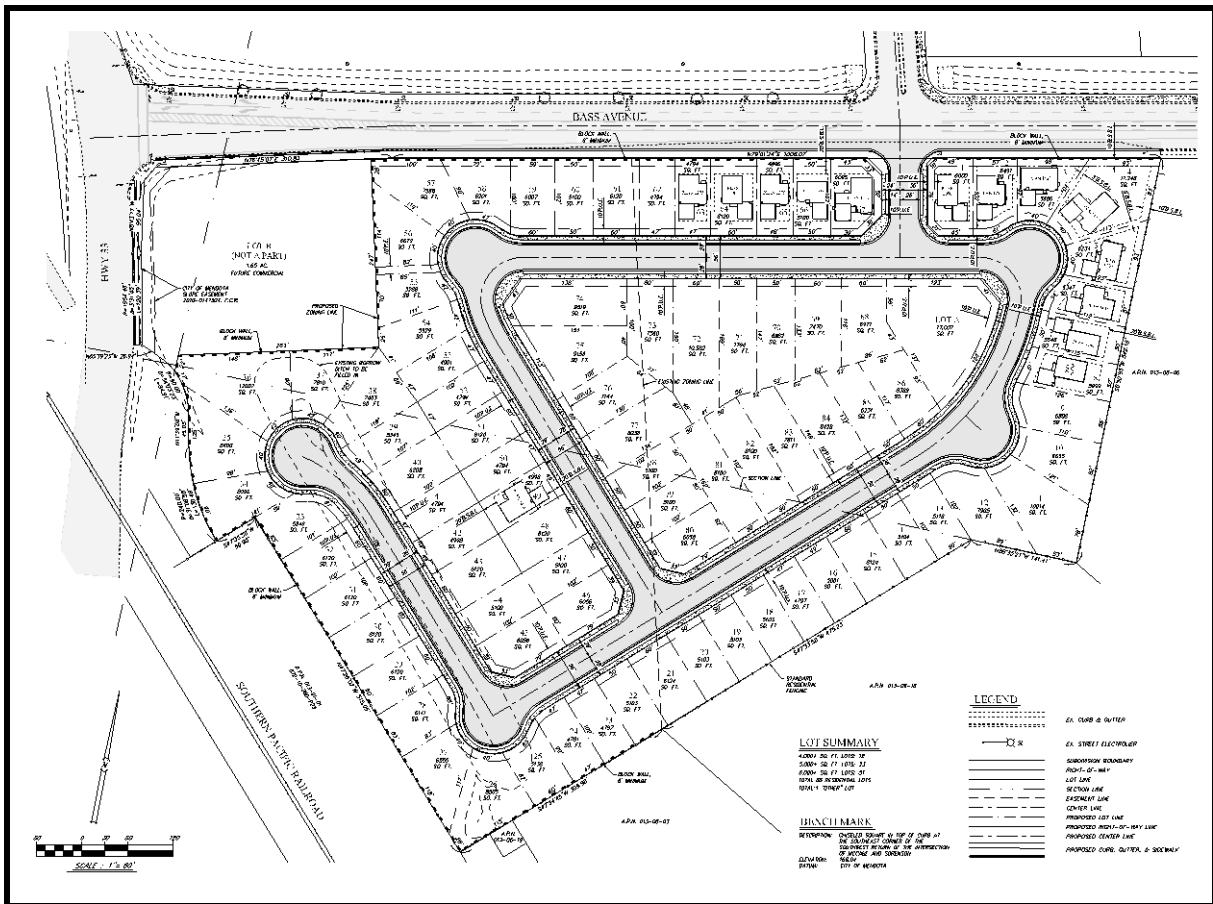
The project also proposes a small mini-park within the subdivision. The City is requiring this park be landscaped by the developer with turf, shrubs and trees for use by residents.

#### Traffic/Circulation

Access to the site would be from a street connection to Bass Avenue, aligned with the existing Barboza Street to the north. Streets within the subdivision are designed to loop together and return to Barboza, with one cul-de-sac extending with one turn along the west side of the subdivision.

Streets will be designed consistent with the City's new residential street standards, which require a landscaped parkway between the curb and sidewalk. Many cities are embracing this standard, as it provides for a more pleasant environment for pedestrians, as they are separated from traffic by the tree-lined parkway.

Figure 1: Proposed Subdivision Map



Staff is also recommending the applicant be required to install antique-style street lamps (in place of standard “cobra-head” lamps). Antique-style street lamps further improve the pedestrian oriented character of the streets.

The entry to the subdivision at Barboza Street will be designed with a landscaped median divider.

The intersection of Bass and Barboza can become congested, particularly during peak morning and evening travel times, and when school is in session at nearby Mendota Elementary School. For this reason, the project is being required to install a traffic signal at this intersection prior to completion of the final phase of development.

In order to promote walking and other forms of active transportation, the subdivision has been designed with a pedestrian connection from the site to the future commercial development. This connection will be ten feet wide and will be located between lots 55 and 56. The applicant will

install a paved sidewalk here. This will allow residents of the subdivision the ability to walk or bicycle to future commercial development – thereby reducing the need to drive. This can result in a reduction in air pollution, as well as a benefit to fitness and health. The connection will be lighted for safety at night.

The project will be required to install 6-foot high masonry block walls around the perimeter of the site, including along the frontage along Bass Avenue and the sideyards of lots 55, 56, 68 & 86, adjacent to the park and the pedestrian connection. To improve the appearance of the site, a landscape strip will be required along the wall along Bass Avenue.

### Utilities

The site will connect to the City's water, sewer and storm drain systems. There are both water and sewer lines that run past the site under Bass Avenue. The water line is an 8-inch water line. There is a 24-inch sewer main that runs past the site. Finally, the project will channel storm drain waters via an existing ditch along the south side of Bass Avenue, to a basin at the City's wastewater treatment plant located northeast of the City. The applicant will be required to excavate and expand the ditch to ensure there is adequate capacity, and will be required to construct necessary basin capacity at the WWTP.

The Public Works Department and City Engineer report that there is adequate capacity in all utility systems to serve the project. However, one concern is that the development of the project could exceed the capacity of the City's water system in a "maximum-day" scenario (such as on a hot summer day) as calculated under the Department of Drinking Water Waterworks Standards, which assume the largest well is out of service; a worst-case situation. State law requires the City to be able to provide adequate water supply in such a scenario.

In order to address this situation, the City is proposing to reactivate one of its backup wells (City Well No. 5, located on Bass Avenue near the wastewater treatment plant) to provide stand-by service. Should there be a shortfall in water supply due to failure of a primary well, water from the stand-by well would be blended with water produced by the primary wells, at the Water Treatment Plant. The City would need to obtain approval from the State Department of Water Resources for the reactivation of Well No. 5. The City Engineer has contacted DDW and has discussed the proposal. DDW has approved the concept, pending some additional water quality testing at Well No. 5. Some mechanical work would be needed to reactivate Well No. 5, but no additional water treatment equipment or facilities would be needed. A mitigation measure for this issue is listed in the resolution for the subdivision, and also as an environmental mitigation measure.

### Offsite Improvements

In exchange for approval of the Planned Development, the City has negotiated with the project developer to construct a soccer field at Rojas Pierce Park. This field has been a long-term goal of the community and the applicant is willing to make this improvement, in exchange for the benefits (including increased density) of the proposed subdivision.

## Development Agreement

The City and the applicant have agreed to enter into a Development Agreement for the project. The agreement will include all conditions of approval and requirements to ensure the project is developed properly and to City code. This is particularly important with the requirement for off-site improvements of the project, including the traffic signal, soccer field and storm drain improvements along Bass Avenue and at the Wastewater Treatment Plant.

## Community Facilities District and Landscape and Lighting District

The project will be required to enter into the City's Community Facilities District – similar to that formed for the recently-completed Las Palmas subdivision. Property owners will be taxed to pay for emergency services, including police, fire and paramedic services.

A Landscape and Lighting District will also be formed to pay for maintenance of improvements along the project's frontage along Bass Avenue, including landscaping, walls and street lamps – as well as landscaping and related improvements within the mini park. The formation of these districts is provided for in the resolution for the subdivision and also the Development Agreement.

## Planned Development findings

In order to consider application of the Planned Development (PD) overlay in the R-1 zone, the Planning Commission must make several findings that are listed in the Mendota Zoning Ordinance. These findings essentially indicate that the project, as designed, is superior to what could be achieved with standard zoning. The findings and an analysis of each are listed below (and also in the resolution approving the zone change).

*A. The proposed planned development is consistent with the general plan and any applicable specific or community plan, including the density and intensity limitations that may apply;*

**Analysis:** The project is consistent with the General Plan (as amended) as well as General Plan policies regarding density. The project is utilizing the PUD zone, which allows single family residential lots as small as 4,200 square feet. The average lot size of the project is 6,326 square feet – larger than the standard R-1 zone minimum lot size of 6,000 square feet.

*B. The subject site is physically suitable for the type and intensity of the development being proposed;*

**Analysis:** The project site is suitable for the type and intensity of the project. It will serve as a buffer to more dense residential development to the east. Further, the commercial site at the southeast corner of Bass and Highway 33 will function to buffer the residential portions of the project from the highway.

*C. Adequate transportation facilities, utilities, and public services exist or will be provided in accordance with the approval of the planned development to serve the proposed development, and approval of the planned development will not result in adverse impacts to existing facilities, utilities, or services so as to be a detriment to the public health, safety, or welfare;*

**Analysis:** The project (as conditioned) will provide adequate transportation, utility facilities and public services. Conditions have been established that will require the project to install adequate utilities and transportation facilities, including a traffic signal and provisions for water, sewer and storm drainage.

*D. The proposed development will not have a substantial adverse impact on surrounding land uses, and will be compatible with the existing and planned land use character of the surrounding area;*

**Analysis:** The project will be compatible with surrounding development, which consists of a mix of low- and high-density residential, public facilities, and commercial development. The project will include walls, landscaping and setbacks to enhance compatibility.

*E. The proposed development generally complies with any adopted design guidelines; and*

**Analysis:** There are no adopted design guidelines in the City, however the project complies with applicable zoning standards. In addition, the project is being conditioned to install additional public landscaping and pedestrian-scale lighting, for a more attractive environment.

*F. The proposed development is demonstrably superior to the development that could occur utilizing the standards applicable to the subject zone district, and will achieve superior community design, environmental preservation, and/or substantial public benefit. In making this determination, factors to be considered shall include, but not be limited to:*

- 1. Appropriateness of the use(s) at the proposed location;*
- 2. The mix of uses, housing types, and housing price levels;*
- 3. Provision of infrastructure improvements;*
- 4. Provision of usable active or passive open space;*
- 5. Compatibility of uses within the planned development area;*
- 6. Creativity in design and use of land;*
- 7. Quality of design, and adequacy of light and air into the interior spaces of buildings;  
and*
- 8. Overall enhancement of neighborhood character and the built and natural environments of the city.*

**Analysis:** The project will provide a mix of residential and commercial uses geared toward buyers and customers in the Mendota market. The project will be conditioned to make infrastructure improvements to serve the site and to establish open space. The Development Agreement will include installation of a new soccer field in an existing City park. Uses within the site are compatible via the implementation of setbacks, walls and landscaping. The project

has been designed through a creative process with City input that will ensure quality of design, resulting in an enhancement of this part of the community.

### **Environmental Assessment**

The City has prepared an Initial Environmental Study to analyze potential environmental impacts of the project as required by CEQA (the California Environmental Quality Act ). The study determined that the project will have no significant impacts, provided that certain measures are incorporated into the project's design and operation. These measures are listed under the "Background Conditions" section at the end of this report and are related to:

- A. Greenhouse Gases
- B. Hydrology and Water Quality
- C. Noise
- D. Transportation/Traffic
- E. Utilities and Service Systems

The environmental analysis was circulated for public review and comment for a period of twenty days, as required by CEQA. At the close of the comment period, letters and emails were received from the following agencies:

- Fresno County Health Department
- Caltrans
- San Joaquin Valley Air Pollution Control District

The County and Air District concurred with findings of the environmental study. Caltrans initially requested a traffic study be prepared for the project. However, staff contacted Caltrans and pointed out that the proposed project would likely be generating significantly less traffic than development that could have occurred under the project's existing zoning (C-2 and R-3).

With this information, Caltrans concurred that a full traffic study was not needed, but they did request the City require the project to prepare a one-page technical memorandum from a traffic consultant, comparing the existing zoning trip generation to the proposed zoning trip generation. This has been made a condition of approval of the project.

### **Planning Commission Action**

The Planning Commission conducted a public hearing to consider the project on June 19, 2018. No members of the public expressed concerns about the project. Following discussion, the Planning Commission voted to recommend approval of the project, including the General Plan amendment, zone change, subdivision map, Development Agreement and environmental finding.



**FISCAL IMPACT:**

The project will be required to pay development impact fees to the City for each dwelling, upon issuance of a building permit.

**RECOMMENDATION:**

It is recommended that the City Council conduct a public hearing and vote to approve the project via the following:

- Resolution 18-61 to adopt the environmental finding for the project
- Resolution 18-62 to approve General Plan Amendment 2018-01
- Introduce Ordinance 18-03 approving Zone Change 2018-01
- Resolution 18-63 to Vesting Tentative Subdivision map 2018-01
- Introduce Ordinance 18-04 approving Development Agreement 2018-01

**Exhibit "B"**

**CITY OF MENDOTA  
PROPOSED MITIGATED NEGATIVE DECLARATION**

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MENDOTA PLANNING DEPARTMENT      643 QUINCE ST.      MENDOTA, CA 93640      (559) 643-4298

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**APPLICANT:**            KSA Homes  
                                 5301 Office Park Drive, Suite 115  
                                 Bakersfield, CA 93309

**PROJECT TITLE:**    La Colonia Project

**PROJECT LOCATION:**    The project includes two parcels containing approximately 18.7 acres located on the south side of Bass Avenue east of State Highway 33 in the City of Mendota.

**PROJECT DESCRIPTION:**    The project is proposing a General Plan Amendment, zone change and Tentative Subdivision Map for a 86-lot single family residential subdivision, a 0.4-acre park and a 1.65 acre lot for future commercial development. The project also includes a Development Agreement.

**FINDINGS OF NO SIGNIFICANCE:**

1.     The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory.
  
2.     The project does not have the potential to achieve short-term economic gain, to the disadvantage of long-term environmental goals.
  
3.     The project does not have the potential to have impacts which are individually limited but cumulatively considerable.
  
4.     The project will not cause substantial adverse effects on people, either directly or indirectly.

**DETERMINATION:**

On the basis of an initial environmental assessment and the findings mentioned above, the City of Mendota determines that the project will not have a significant impact on the environment.

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City Planner

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Date Adopted

## MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

### A. Greenhouse Gases

1. The project applicant shall demonstrate compliance with the applicable BPS (Best Performance Standards) to the Planning Division prior to the issuance of a building permit. The following BPS strategies are considered to be applicable, feasible, and effective in reducing greenhouse gas emissions generated by the project:
  - The project applicant shall provide a pedestrian access network that internally links all residential units and connects to the existing surrounding external streets and pedestrian facilities.
  - The project applicant shall ensure site design and building placement minimize barriers to pedestrian access and interconnectivity. Physical barriers such as walls, berms, landscaping, and slopes between residential uses that impede bicycle or pedestrian circulation shall be eliminated. In addition, barriers to pedestrian access of neighboring facilities and sites shall be minimized.
  - Any transit stops associated with the project shall be provided with safe and convenient bicycle/pedestrian access and provide essential transit stop improvements (i.e., shelters, route information, benches, and lighting).
  - The project applicant shall install energy efficient roofing materials.
  - The project applicant shall plant trees to provide shade.
  - The project applicant shall install only natural gas or electric stoves in residences. The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.
  - Require truck idling to be restricted during construction and operational phases of the project. During construction, the site shall be posted with signs that restrict truck idling to fifteen minutes or less.
  - Reuse and recycle construction and demolition waste;
  - Use low or zero-emission vehicles where practical, including construction vehicles;
  - Conservative use of both potable and non-potable water to the maximum extent practicable;
  - Use graywater where practical. (Graywater is untreated household waste water from bathtubs, showers, bathroom wash facilities, and water from washing machines).

Time Frame: Prior to construction

Responsible Party: Project Contractor and City Planner

## **B. Hydrology and Water Quality**

1. Prior to development of the site, the City shall undertake actions to ensure the use of a backup well is approved by the State Department of Water Resources.
2. Water hoses used during construction shall be equipped with automatic shut-off (e.g. spray gun).
3. Landscaping shall feature drought-tolerant species, and irrigation shall be a low-flow drip (or equivalent) automatic system with soil moisture and rain shut-off sensors. A landscaping and irrigation plan shall be submitted for review and approval by the City, prior to installation.

Time Frame: Prior to construction

Responsible Party: Project Contractor and City Planner

## **C. Noise**

1. Noise-generating construction activities at the site shall be limited to daylight hours, Monday through Saturdays.

Time Frame: During construction

Responsible Party: Project Contractor

## **D. Transportation/Traffic**

1. The project shall pay a traffic impact mitigation fee toward installation of a signal at the intersection of Bass Avenue and Barboza. This shall be incorporated into a Development Agreement that is prepared and processed for the project.

Time Frame: Prior to occupancy

Responsible Party: Project Contractor and City Engineer

## **E. Utilities and Service Systems**

1. The developer shall provide engineering calculations demonstrating the existing and proposed capacities of the Bass Avenue ditch and the storage basin at the Wastewater Treatment Plant, to the satisfaction of the City Engineer. Prior to completion of Phase 1 of the project, the developer shall construct improvements necessary to provide capacity in the ditch and the basin sufficient to handle the existing demands, plus demands exhibited by the project.

Time Frame: Engineering calculations must be supplied prior to the start of construction. Construction of improvements shall occur prior to completion of Phase 1.

Responsible Party: Project Contractor and City Engineer

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
GENERAL PLAN AMENDMENT 2018-01  
(LA COLONIA PROJECT)**

**RESOLUTION NO. 18-62**

**WHEREAS**, an application for a General Plan amendment, zone change, Vesting Tentative Subdivision Map and Development Agreement was submitted by KSA Homes (Steve Hair), 3401 Office Park Drive, Suite 115, Bakersfield, CA 93309 with the ultimate result being an 86-lot single family residential subdivision, a 1.7-acre site for future commercial development and a 0.4-acre park, on two parcels containing approximately 18.7 acres located on the south side of Bass Avenue, east of State Highway 33 in the City of Mendota. The Assessor Parcel Numbers of the site are 013-061-015 and 012-160-039.

**WHEREAS**, the applicant's requests include:

1. A General Plan Amendment to change the Mendota General Plan's land use designation for the site from "High Density Residential" and "Community Commercial" to a combination of "Medium Density Residential", "Community Commercial" and "Recreational".
2. A zone change to change the zoning of the site from C-2 (Community Shopping Center) and R-3 (High Density Multi Family Residential) to R-1 (Single Family Residential with Planned Development provisions), C-2 and O (Open Space (Recreation))
3. A Vesting Tentative Subdivision Map to subdivide the site into 86 single family residential lots, a 1.7-acre site for future commercial development and a 0.4-acre mini park, along with streets and utility connections, among other improvements, and
4. A Development Agreement to establish certain development rights for the project.

**WHEREAS**, the site is currently designated "High Density Residential" and "Community Commercial" on the Land Use Map of the 2025 Mendota General Plan, and further, the site is zoned R-3 (High Density Multi Family Residential) and C-2 (Community Shopping Center) on the official zoning map of the City of Mendota, and

**WHEREAS**, the applicant is requesting the site be re-designated "Medium Density Residential" "Community Commercial" and "Recreational" on the Land Use Map of the General Plan, and to be zoned "R-1 (Single Family Residential with Planned Development provisions), C-2 and O (Open Space), and

**WHEREAS**, the purpose of these amendments is to facilitate development of an 86-lot single family residential subdivision, a park and a site for future commercial development, and

**WHEREAS**, the applicant is seeking application of the Planned Development (PD) provisions to facilitate flexibility with respect to development standards such as minimum lot size, and the PD requires that special findings be made by the Planning Commission and City Council, and

**WHEREAS**, the Planning Commission conducted a public hearing on June 19, 2018 and voted to recommend approval of the General Plan Amendment, and

**WHEREAS**, property owners within 300 feet of the subject site were notified of the meeting and a public hearing notice was published ten (10) days prior to the City Council's meeting, and

**WHEREAS**, the Planning Department has prepared a staff report and environmental finding, attached hereto as Exhibit "A" and incorporated herein by this reference; and

**WHEREAS**, the City Council held a public hearing on August 14, 2018 on the General Plan Amendment and accepted testimony.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Mendota, after considering all the evidence presented, determined the following findings were relevant in evaluating this request:

1. The proposed request will not have an adverse impact on the health, safety or welfare of surrounding residents or on the community.
2. The proposed request is consistent with the goals, objectives and policies of the Mendota General Plan.
3. The City has conducted an Initial Environmental Study consistent with the requirements of CEQA (California Environmental Quality Act) which found that the proposed project will not have a significant impact on the environment, provided that mitigation measures are incorporated into the project. Accordingly, a Mitigated Negative Declaration has been prepared for adoption, attached hereto as Exhibit "B" and incorporated herein by this reference
4. General Plan Amendment 2018-01 is shown in Map 1, attached hereto as Exhibit "C" and incorporated herein by this reference.

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Rolando Castro, Mayor

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 14<sup>th</sup> day of August, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Matt Flood, City Clerk

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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** KARL SCHOETTLER, CITY PLANNING CONSULTANT  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** LA COLONIA PROJECT  
**DATE:** AUGUST 14, 2018

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**DISCUSSION:**

The project proposes several land use actions for the 18.7 acre site, located on the south side of Bass Avenue, east of State Highway 180 (see Maps 1 and 2). These include:

1. An amendment of the Mendota General Plan land use map from “Community Commercial” and “High Density Residential” to “Medium Density Residential”, “Community Commercial” and “Recreational”
2. A zone change to change the zoning of the site from C-2 and R-3 to R-1 (PUD), C-2 and O
3. A Vesting Tentative Subdivision Map to create 86 single family residential lots, a 1.7-acre site for commercial development and a 0.4-acre park. Associated improvements include the installation of streets, utilities, walls, and common landscape areas.
4. A Development Agreement to establish conditions and requirements of the project.
5. A “Mitigated Negative Declaration” as the environmental finding for the project.

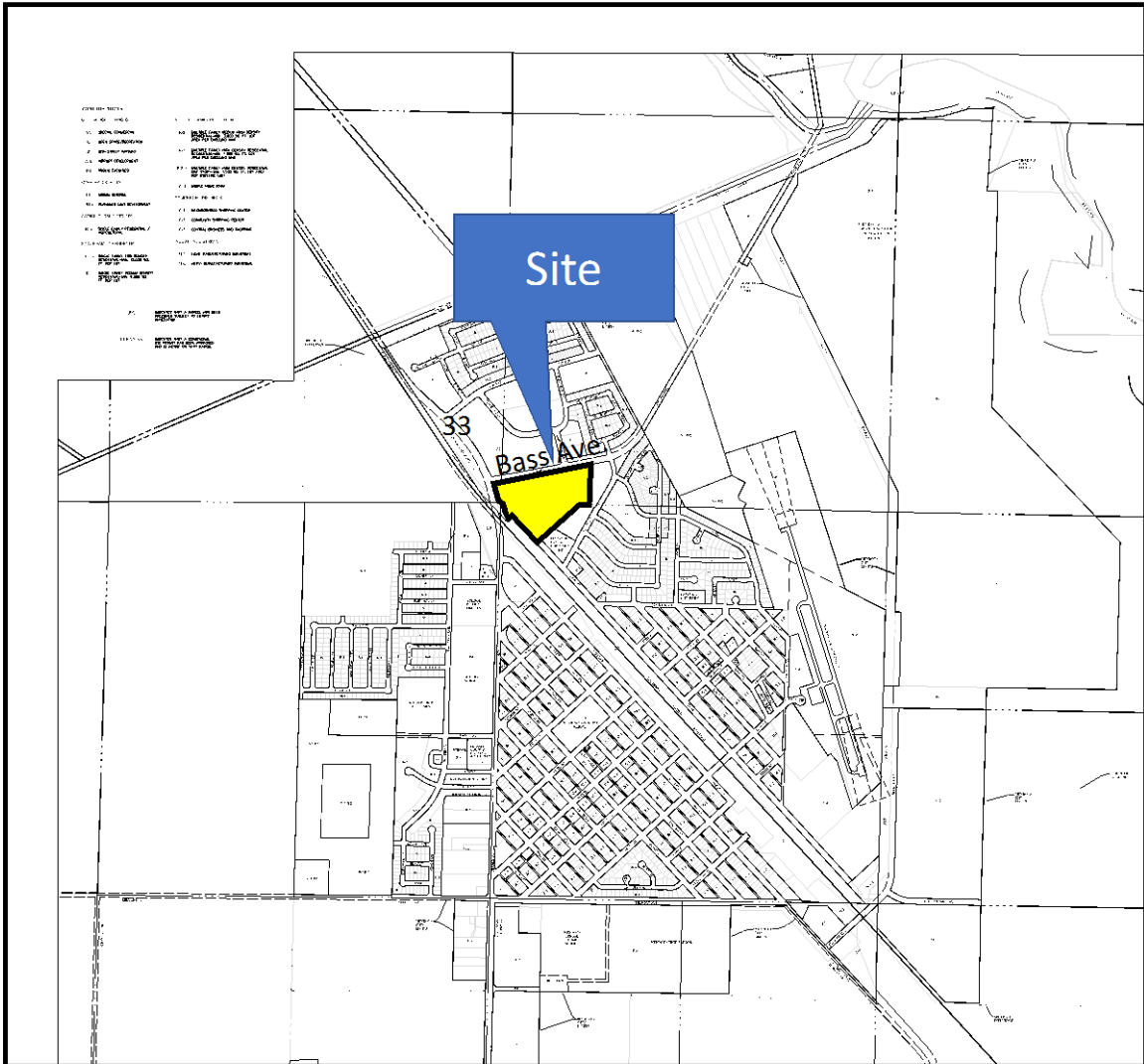
**Subdivision Design**

Figure 1 shows the proposed subdivision design. As noted previously, the subdivision proposes 86 single family residential lots, a site for future commercial development (at the southeast corner of Bass and Highway 33) and a small park within the subdivision.

The applicant is seeking to apply the PUD (Planned Development) overlay to the site, which allows flexibility with respect to certain zoning standards, like lot size, setbacks, etc. Specifically, the Zoning Ordinance indicates that the PUD overlay allows lot sizes down to 4,000 square feet in the R-1 zone. Lot sizes in the proposed subdivision will range from a minimum of 4,781 square feet to a maximum of 12,007 square feet. The average lot size will be 6,326 square feet.



Map 1: Project Location



Map 2: Aerial Photo



The subdivision leaves a 1.7-acre parcel at the southeast corner of Bass and Highway 33 for future commercial development. Though no project is proposed at the current time, the parcel is sized for a use such as a pharmacy.

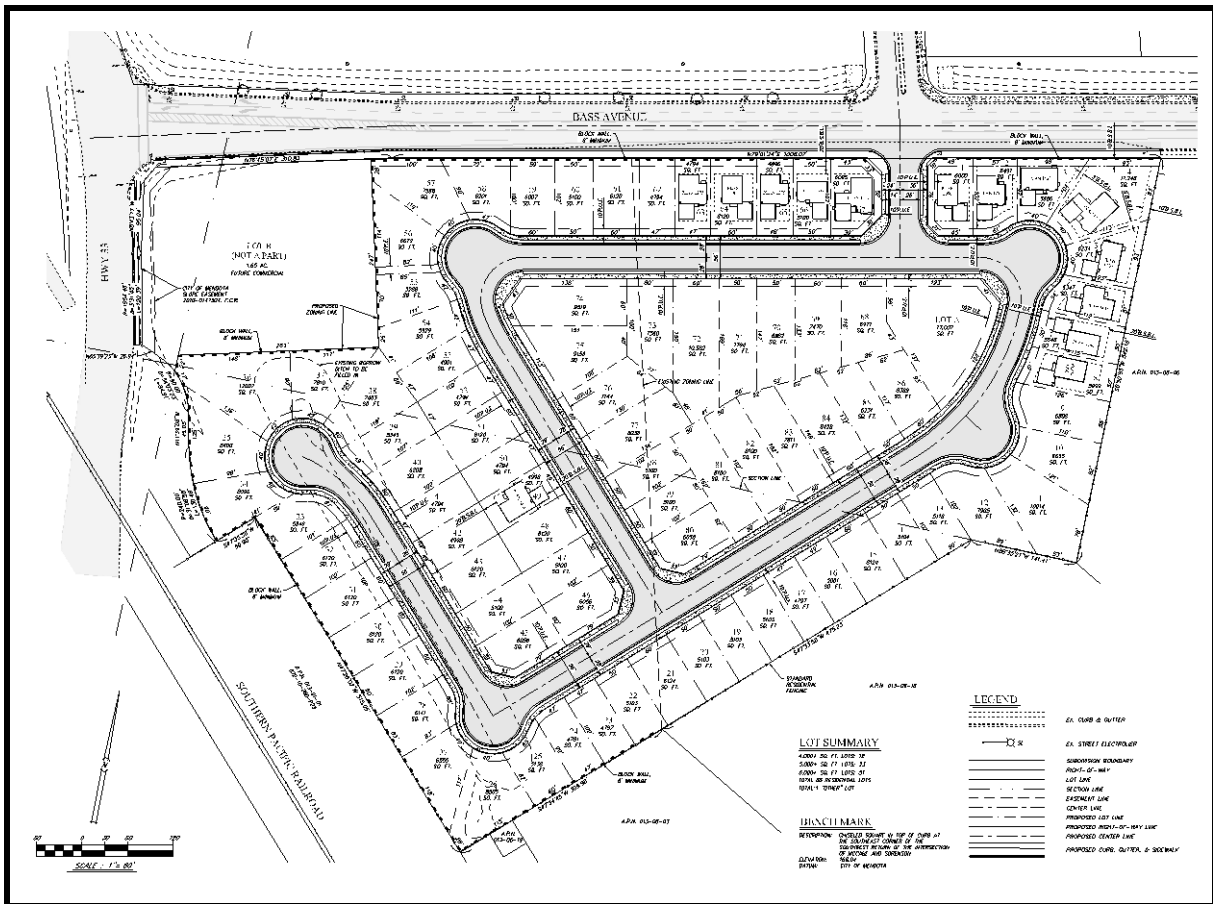
The project also proposes a small mini-park within the subdivision. The City is requiring this park be landscaped by the developer with turf, shrubs and trees for use by residents.

#### Traffic/Circulation

Access to the site would be from a street connection to Bass Avenue, aligned with the existing Barboza Street to the north. Streets within the subdivision are designed to loop together and return to Barboza, with one cul-de-sac extending with one turn along the west side of the subdivision.

Streets will be designed consistent with the City's new residential street standards, which require a landscaped parkway between the curb and sidewalk. Many cities are embracing this standard, as it provides for a more pleasant environment for pedestrians, as they are separated from traffic by the tree-lined parkway.

Figure 1: Proposed Subdivision Map



Staff is also recommending the applicant be required to install antique-style street lamps (in place of standard “cobra-head” lamps). Antique-style street lamps further improve the pedestrian oriented character of the streets.

The entry to the subdivision at Barboza Street will be designed with a landscaped median divider.

The intersection of Bass and Barboza can become congested, particularly during peak morning and evening travel times, and when school is in session at nearby Mendota Elementary School. For this reason, the project is being required to install a traffic signal at this intersection prior to completion of the final phase of development.

In order to promote walking and other forms of active transportation, the subdivision has been designed with a pedestrian connection from the site to the future commercial development. This connection will be ten feet wide and will be located between lots 55 and 56. The applicant will

install a paved sidewalk here. This will allow residents of the subdivision the ability to walk or bicycle to future commercial development – thereby reducing the need to drive. This can result in a reduction in air pollution, as well as a benefit to fitness and health. The connection will be lighted for safety at night.

The project will be required to install 6-foot high masonry block walls around the perimeter of the site, including along the frontage along Bass Avenue and the sideyards of lots 55, 56, 68 & 86, adjacent to the park and the pedestrian connection. To improve the appearance of the site, a landscape strip will be required along the wall along Bass Avenue.

### Utilities

The site will connect to the City's water, sewer and storm drain systems. There are both water and sewer lines that run past the site under Bass Avenue. The water line is an 8-inch water line. There is a 24-inch sewer main that runs past the site. Finally, the project will channel storm drain waters via an existing ditch along the south side of Bass Avenue, to a basin at the City's wastewater treatment plant located northeast of the City. The applicant will be required to excavate and expand the ditch to ensure there is adequate capacity, and will be required to construct necessary basin capacity at the WWTP.

The Public Works Department and City Engineer report that there is adequate capacity in all utility systems to serve the project. However, one concern is that the development of the project could exceed the capacity of the City's water system in a "maximum-day" scenario (such as on a hot summer day) as calculated under the Department of Drinking Water Waterworks Standards, which assume the largest well is out of service; a worst-case situation. State law requires the City to be able to provide adequate water supply in such a scenario.

In order to address this situation, the City is proposing to reactivate one of its backup wells (City Well No. 5, located on Bass Avenue near the wastewater treatment plant) to provide stand-by service. Should there be a shortfall in water supply due to failure of a primary well, water from the stand-by well would be blended with water produced by the primary wells, at the Water Treatment Plant. The City would need to obtain approval from the State Department of Water Resources for the reactivation of Well No. 5. The City Engineer has contacted DDW and has discussed the proposal. DDW has approved the concept, pending some additional water quality testing at Well No. 5. Some mechanical work would be needed to reactivate Well No. 5, but no additional water treatment equipment or facilities would be needed. A mitigation measure for this issue is listed in the resolution for the subdivision, and also as an environmental mitigation measure.

### Offsite Improvements

In exchange for approval of the Planned Development, the City has negotiated with the project developer to construct a soccer field at Rojas Pierce Park. This field has been a long-term goal of the community and the applicant is willing to make this improvement, in exchange for the benefits (including increased density) of the proposed subdivision.

## Development Agreement

The City and the applicant have agreed to enter into a Development Agreement for the project. The agreement will include all conditions of approval and requirements to ensure the project is developed properly and to City code. This is particularly important with the requirement for off-site improvements of the project, including the traffic signal, soccer field and storm drain improvements along Bass Avenue and at the Wastewater Treatment Plant.

## Community Facilities District and Landscape and Lighting District

The project will be required to enter into the City's Community Facilities District – similar to that formed for the recently-completed Las Palmas subdivision. Property owners will be taxed to pay for emergency services, including police, fire and paramedic services.

A Landscape and Lighting District will also be formed to pay for maintenance of improvements along the project's frontage along Bass Avenue, including landscaping, walls and street lamps – as well as landscaping and related improvements within the mini park. The formation of these districts is provided for in the resolution for the subdivision and also the Development Agreement.

## Planned Development findings

In order to consider application of the Planned Development (PD) overlay in the R-1 zone, the Planning Commission must make several findings that are listed in the Mendota Zoning Ordinance. These findings essentially indicate that the project, as designed, is superior to what could be achieved with standard zoning. The findings and an analysis of each are listed below (and also in the resolution approving the zone change).

*A. The proposed planned development is consistent with the general plan and any applicable specific or community plan, including the density and intensity limitations that may apply;*

**Analysis:** The project is consistent with the General Plan (as amended) as well as General Plan policies regarding density. The project is utilizing the PUD zone, which allows single family residential lots as small as 4,200 square feet. The average lot size of the project is 6,326 square feet – larger than the standard R-1 zone minimum lot size of 6,000 square feet.

*B. The subject site is physically suitable for the type and intensity of the development being proposed;*

**Analysis:** The project site is suitable for the type and intensity of the project. It will serve as a buffer to more dense residential development to the east. Further, the commercial site at the southeast corner of Bass and Highway 33 will function to buffer the residential portions of the project from the highway.

*C. Adequate transportation facilities, utilities, and public services exist or will be provided in accordance with the approval of the planned development to serve the proposed development, and approval of the planned development will not result in adverse impacts to existing facilities, utilities, or services so as to be a detriment to the public health, safety, or welfare;*

**Analysis:** The project (as conditioned) will provide adequate transportation, utility facilities and public services. Conditions have been established that will require the project to install adequate utilities and transportation facilities, including a traffic signal and provisions for water, sewer and storm drainage.

*D. The proposed development will not have a substantial adverse impact on surrounding land uses, and will be compatible with the existing and planned land use character of the surrounding area;*

**Analysis:** The project will be compatible with surrounding development, which consists of a mix of low- and high-density residential, public facilities, and commercial development. The project will include walls, landscaping and setbacks to enhance compatibility.

*E. The proposed development generally complies with any adopted design guidelines; and*

**Analysis:** There are no adopted design guidelines in the City, however the project complies with applicable zoning standards. In addition, the project is being conditioned to install additional public landscaping and pedestrian-scale lighting, for a more attractive environment.

*F. The proposed development is demonstrably superior to the development that could occur utilizing the standards applicable to the subject zone district, and will achieve superior community design, environmental preservation, and/or substantial public benefit. In making this determination, factors to be considered shall include, but not be limited to:*

- 1. Appropriateness of the use(s) at the proposed location;*
- 2. The mix of uses, housing types, and housing price levels;*
- 3. Provision of infrastructure improvements;*
- 4. Provision of usable active or passive open space;*
- 5. Compatibility of uses within the planned development area;*
- 6. Creativity in design and use of land;*
- 7. Quality of design, and adequacy of light and air into the interior spaces of buildings;  
and*
- 8. Overall enhancement of neighborhood character and the built and natural environments of the city.*

**Analysis:** The project will provide a mix of residential and commercial uses geared toward buyers and customers in the Mendota market. The project will be conditioned to make infrastructure improvements to serve the site and to establish open space. The Development Agreement will include installation of a new soccer field in an existing City park. Uses within the site are compatible via the implementation of setbacks, walls and landscaping. The project

has been designed through a creative process with City input that will ensure quality of design, resulting in an enhancement of this part of the community.

### **Environmental Assessment**

The City has prepared an Initial Environmental Study to analyze potential environmental impacts of the project as required by CEQA (the California Environmental Quality Act ). The study determined that the project will have no significant impacts, provided that certain measures are incorporated into the project's design and operation. These measures are listed under the "Background Conditions" section at the end of this report and are related to:

- A. Greenhouse Gases
- B. Hydrology and Water Quality
- C. Noise
- D. Transportation/Traffic
- E. Utilities and Service Systems

The environmental analysis was circulated for public review and comment for a period of twenty days, as required by CEQA. At the close of the comment period, letters and emails were received from the following agencies:

- Fresno County Health Department
- Caltrans
- San Joaquin Valley Air Pollution Control District

The County and Air District concurred with findings of the environmental study. Caltrans initially requested a traffic study be prepared for the project. However, staff contacted Caltrans and pointed out that the proposed project would likely be generating significantly less traffic than development that could have occurred under the project's existing zoning (C-2 and R-3).

With this information, Caltrans concurred that a full traffic study was not needed, but they did request the City require the project to prepare a one-page technical memorandum from a traffic consultant, comparing the existing zoning trip generation to the proposed zoning trip generation. This has been made a condition of approval of the project.

### **Planning Commission Action**

The Planning Commission conducted a public hearing to consider the project on June 19, 2018. No members of the public expressed concerns about the project. Following discussion, the Planning Commission voted to recommend approval of the project, including the General Plan amendment, zone change, subdivision map, Development Agreement and environmental finding.

**FISCAL IMPACT:**

The project will be required to pay development impact fees to the City for each dwelling, upon issuance of a building permit.

**RECOMMENDATION:**

It is recommended that the City Council conduct a public hearing and vote to approve the project via the following:

- Resolution 18-61 to adopt the environmental finding for the project
- Resolution 18-62 to approve General Plan Amendment 2018-01
- Introduce Ordinance 18-03 approving Zone Change 2018-01
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**Exhibit "B"**

**CITY OF MENDOTA  
PROPOSED MITIGATED NEGATIVE DECLARATION**

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MENDOTA PLANNING DEPARTMENT      643 QUINCE ST.      MENDOTA, CA 93640      (559) 643-4298

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**PROJECT DESCRIPTION:**    The project is proposing a General Plan Amendment, zone change and Tentative Subdivision Map for a 86-lot single family residential subdivision, a 0.4-acre park and a 1.65 acre lot for future commercial development. The project also includes a Development Agreement.

**FINDINGS OF NO SIGNIFICANCE:**

1.     The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory.
  
2.     The project does not have the potential to achieve short-term economic gain, to the disadvantage of long-term environmental goals.
  
3.     The project does not have the potential to have impacts which are individually limited but cumulatively considerable.
  
4.     The project will not cause substantial adverse effects on people, either directly or indirectly.

**DETERMINATION:**

On the basis of an initial environmental assessment and the findings mentioned above, the City of Mendota determines that the project will not have a significant impact on the environment.

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City Planner

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Date Adopted

## MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

### A. Greenhouse Gases

1. The project applicant shall demonstrate compliance with the applicable BPS (Best Performance Standards) to the Planning Division prior to the issuance of a building permit. The following BPS strategies are considered to be applicable, feasible, and effective in reducing greenhouse gas emissions generated by the project:
  - The project applicant shall provide a pedestrian access network that internally links all residential units and connects to the existing surrounding external streets and pedestrian facilities.
  - The project applicant shall ensure site design and building placement minimize barriers to pedestrian access and interconnectivity. Physical barriers such as wells, berms, landscaping, and slopes between residential uses that impede bicycle or pedestrian circulation shall be eliminated. In addition, barriers to pedestrian access of neighboring facilities and sites shall be minimized.
  - Any transit stops associated with the project shall be provided with safe and convenient bicycle/pedestrian access and provide essential transit stop improvements (i.e., shelters, route information, benches, and lighting).
  - The project applicant shall install energy efficient roofing materials.
  - The project applicant shall plant trees to provide shade.
  - The project applicant shall install only natural gas or electric stoves in residences. The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.
  - Require truck idling to be restricted during construction and operational phases of the project. During construction, the site shall be posted with signs that restrict truck idling to fifteen minutes or less.
  - Reuse and recycle construction and demolition waste;
  - Use low or zero-emission vehicles where practical, including construction vehicles;
  - Conservative use of both potable and non-potable water to the maximum extent practicable;
  - Use graywater where practical. (Graywater is untreated household waste water from bathtubs, showers, bathroom wash facilities, and water from washing machines).

Time Frame: Prior to construction

Responsible Party: Project Contractor and City Planner

**B. Hydrology and Water Quality**

1. Prior to development of the site, the City shall undertake actions to ensure the use of a backup well is approved by the State Department of Water Resources.
2. Water hoses used during construction shall be equipped with automatic shut-off (e.g. spray gun).
3. Landscaping shall feature drought-tolerant species, and irrigation shall be a low-flow drip (or equivalent) automatic system with soil moisture and rain shut-off sensors. A landscaping and irrigation plan shall be submitted for review and approval by the City, prior to installation.

Time Frame: Prior to construction

Responsible Party: Project Contractor and City Planner

**C. Noise**

1. Noise-generating construction activities at the site shall be limited to daylight hours, Monday through Saturdays.

Time Frame: During construction

Responsible Party: Project Contractor

**D. Transportation/Traffic**

1. The project shall pay a traffic impact mitigation fee toward installation of a signal at the intersection of Bass Avenue and Barboza. This shall be incorporated into a Development Agreement that is prepared and processed for the project.

Time Frame: Prior to occupancy

Responsible Party: Project Contractor and City Engineer

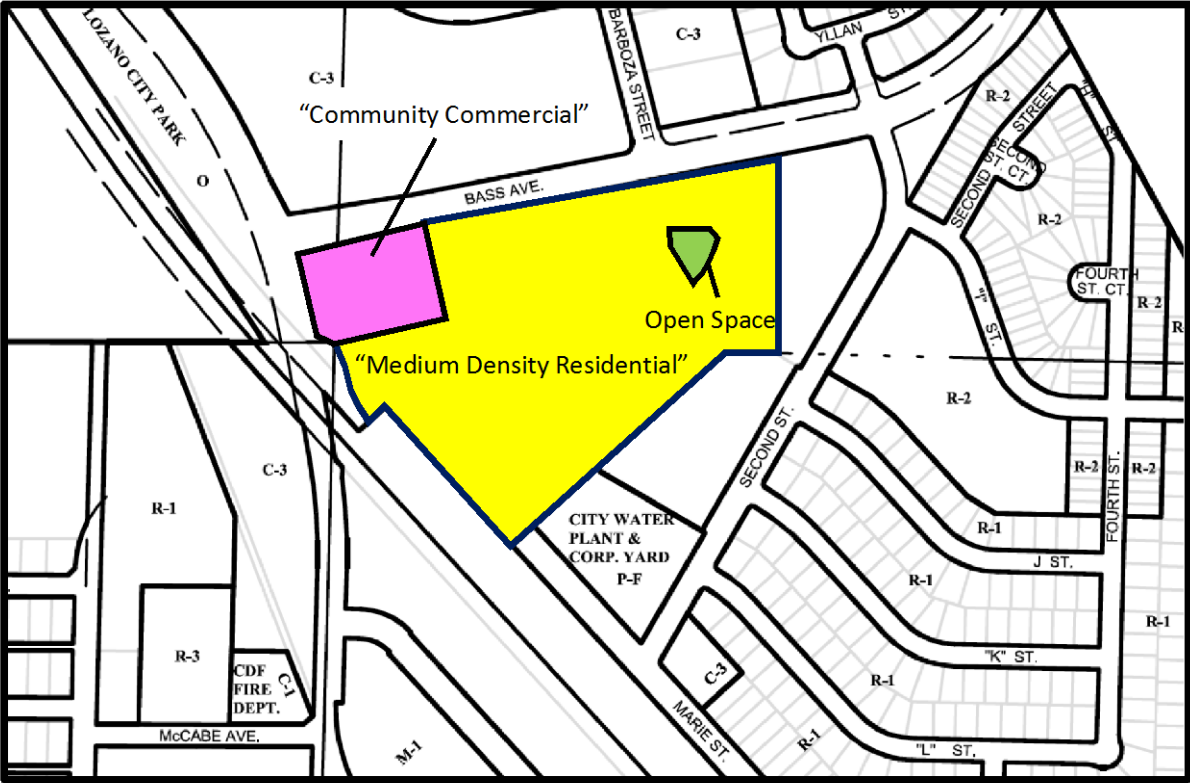
**E. Utilities and Service Systems**

1. The developer shall provide engineering calculations demonstrating the existing and proposed capacities of the Bass Avenue ditch and the storage basin at the Wastewater Treatment Plant, to the satisfaction of the City Engineer. Prior to completion of Phase 1 of the project, the developer shall construct improvements necessary to provide capacity in the ditch and the basin sufficient to handle the existing demands, plus demands exhibited by the project.

Time Frame: Engineering calculations must be supplied prior to the start of construction. Construction of improvements shall occur prior to completion of Phase 1.

Responsible Party: Project Contractor and City Engineer

**Exhibit C**  
**Map 1: Proposed General Plan Land Use Designations**



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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
VESTING TENTATIVE SUBDIVISION MAP  
2018-01 (LA COLONIA PROJECT)**

**RESOLUTION NO. 18-63**

**WHEREAS**, an application for a General Plan amendment, zone change, Vesting Tentative Subdivision Map and Development Agreement was submitted by KSA Homes (Steve Hair), 3401 Office Park Drive, Suite 115, Bakersfield, CA 93309 with the ultimate result being an 86-lot single family residential subdivision, a 1.7-acre site for future commercial development and a 0.4-acre park, on two parcels containing approximately 18.7 acres located on the south side of Bass Avenue, east of State Highway 33 in the City of Mendota. The Assessor Parcel Numbers of the site are 013-061-015 and 012-160-039.

**WHEREAS**, the applicant's requests include:

1. A General Plan Amendment to change the Mendota General Plan's land use designation for the site from "High Density Residential" and "Community Commercial" to a combination of "Medium Density Residential", "Community Commercial" and "Recreational".
2. A zone change to change the zoning of the site from C-2 (Community Shopping Center) and R-3 (High Density Multi Family Residential) to R-1 (Single Family Residential with Planned Development provisions), C-2 and O (Open Space (Recreation))
3. A Vesting Tentative Subdivision Map to subdivide the site into 86 single family residential lots, a 1.7-acre site for future commercial development and a 0.4-acre mini park, along with streets and utility connections, among other improvements, and
4. A Development Agreement to establish certain development rights for the project.

**WHEREAS**, the Vesting Tentative Subdivision map proposes 86 single family residential lots, a 1.7-acre site for future commercial development and a 0.4-acre park, and

**WHEREAS**, the applicant has requested application of the Planned Development (PD) provisions to the R-1 residential portion of the site to facilitate flexibility with respect to development standards, including lot sizes, and

**WHEREAS**, lot sizes for the proposed single family residential lots range from 4,781 square feet to 12,007 square feet, with an average lot size of 6,326 square feet, and

**WHEREAS**, additional improvements within the subdivision will include streets, utilities, walls, landscaping, lighting and other improvements, and

**WHEREAS**, the Planning Commission conducted a public hearing to consider the project on June 19, 2018 and voted unanimously to recommend approval of the project, and

**WHEREAS**, property owners within 300 feet of the subject site were notified of the City Council's meeting and a public hearing notice was published ten (10) days prior to the City Council's meeting, and

**WHEREAS**, the Planning Department has prepared a staff report and environmental finding, attached hereto as Exhibit "A" and incorporated herein by this reference, and

**WHEREAS**, the City Council held a public hearing on August 14, 2018 on this application and accepted testimony.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Mendota, after considering all the evidence presented, determined the following findings were relevant in evaluating this project:

1. The project is consistent with the Mendota General Plan, Land Use Element, as amended.
2. This proposal will result in an improved project which is consistent with the regulations and provisions of the Mendota General Plan.
3. The project will not have a significant impact on the environment provided that mitigation measures are incorporated into the project; a Mitigated Negative Declaration has been adopted, consistent with the Guidelines of the California Environmental Quality Act, attached hereto as Exhibit "B" and incorporated herein by this reference.
4. The project will not have an adverse impact on the health, safety and welfare of residents in the neighborhood or community.

**NOW, THEREFORE BE IT RESOLVED** that the Vesting Tentative Subdivision Map 2018-01, as shown in Figure 1, attached hereto as Exhibit "C" and incorporated herein by this reference, is approved subject to the following conditions:

1. There may be multiple final maps prepared based upon this map. The City will retain right of approval over the specific configuration of each final map.

2. All infrastructure shall be constructed in accordance with the current version of the City of Mendota Standard Specifications and Standard Drawings, as well as other appurtenant state and federal agency requirements.
3. With the first phase, the developer shall construct a 6-foot tall block wall along the outside property lines of the project wherever it is adjacent to other properties zoned with designations other than R-1, and along the Bass Avenue frontage. Height is measured from finish grade inside the lot to the top of the wall.
4. A 6-foot tall block wall shall be constructed along each side of the 10' wide pedestrian easement between Lots 55 & 56 as well as along the property line between the proposed park (Lot A, zoned O) and Lots 68 & 86
5. Sanitary sewer service shall be connected to the existing 24" City sewer running parallel to Bass Avenue.
6. Water Service shall be connected to the existing 8" City water distribution pipeline in Bass Avenue. Prior to construction of the Bass Avenue improvements, developer shall extend the 8" water distribution pipeline in Bass Avenue approximately 700 linear feet west of the tee at Barboza Street to serve the future commercial lot (Lot B.)
7. Storm Drainage is to be conveyed to an open ditch along the southerly and easterly side of Bass Avenue, where it will flow to a pond on the site of the City's wastewater treatment plant (WWTP). Improvements to the storm drainage system will be required all along that route, and at the WWTP. See conditions 16 through 18 below.
8. In-Tract streets shall be designed for a Traffic Index of 5.0 using a soil R-Value derived from on-site soil testing by a qualified geotechnical laboratory. The entrance road shall be designed for a Traffic Index of 6.0.
9. The entrance road shall have a 5' wide center median. The residential street in front of Lots 9 through 12 shall have an arch-shaped median constructed to allow through traffic on the main street and 20' width of travel in front of the lots. All medians shall have red painted curbs and be landscaped per condition 13 below.
10. Temporary turnarounds (bulbs) shall be constructed for all interior streets which are dead ends as a result of phased Final Map boundaries. The bulbs shall be a minimum 75 feet in diameter to facilitate operation of trash trucks. Final Maps shall create temporary road easements for the benefit of the public for such turnarounds, which will be abandoned with the next mapping phase.
11. With the first phase of development, the south half Bass Avenue shall be widened to its full half-width over the full frontage of the entire tract. The street section shall be a variation on City Standard Drawing ST-6 (Arterial Street) with the following characteristics:
  1. The half-right-of-way width shall be 42 feet.
  2. Width from centerline to face of curb shall be 27 feet, leaving 15 feet for sidewalk and landscape.
  3. No parking lane will be provided.
  4. Sidewalk shall be a minimum of 5 feet wide and shall be parkway pattern.
  5. Location of sidewalk shall provide a 5-foot parkway and a 5-foot landscape strip between the back of walk and the concrete block wall.
  6. Construction shall include application of new centerline and lane striping.

7. Signage shall include "No Parking" signs along the frontage.
8. Design Traffic Index shall be 7.0.
9. Street pavement section shall be designed based on a soil R-Value derived from on-site soil testing by a qualified geotechnical laboratory.
10. Transition paving shall be provided outside the limits of the subdivision and shall provide widening and narrowing of the pavement to match the existing southerly edge of Bass Avenue. The lengths of the widening and narrowing shall be set in accordance with the requirements of the current edition of the Caltrans Highway Design Manual. Appropriate fog line and lane-drop striping shall be applied, in accordance with Caltrans standards.
12. Prior to the release of the 60'th building permit, the intersection of Bass Avenue and Barboza Street shall be fully signalized. Developer's Engineer shall submit traffic signal plans for approval by the City.
13. The parkway and landscape strip along Bass Avenue shall be landscaped to the satisfaction of the City. The developer shall provide an automatic drip irrigation system, subject to approval of the City Engineer, to water all proposed landscaping, which shall conform to current Model Water Efficient Landscape Ordinance (MWELo) requirements for maximum water use. Landscaping shall consist of shrubs, trees and perennial groundcover. No turf shall be used. Calculations demonstrating MWELo compliance for Bass Avenue landscape shall be submitted along with the improvement drawings.
14. Developer's Engineer shall provide engineering calculations demonstrating the ability of the proposed water system to provide a minimum 1,500 gpm fire flow at the hydrant most distant from the water connection to the City system, while simultaneously meeting Maximum Day Demand. Water pressure at the point of connection, for use in these calculations, will be provided by the City.
15. Developer's Engineer shall submit information demonstrating the required volume of water and residual pressure required to operate the necessary in-home fire sprinkler system and shall demonstrate that the proposed mains and house services provide that volume and pressure under the same conditions as in condition 15 above.
16. Developer's Engineer shall provide calculations demonstrating the volume of storm drainage expected from the development, using the City of Mendota's storm drainage design criteria and procedures. Calculations shall demonstrate the adequacy of the Bass Avenue side ditch to convey the proposed storm drainage in addition to the drainage from the additional tributary area from the developments north of Bass Avenue and off 2nd Street, and including the water coming from the storm drain lift station at 2nd Street and Naples Street. The City will provide the extent of the tributary areas to this system and flow rates of the lift station.
17. Site grading shall provide for storm drain breakover to Bass Avenue with a minimum 1.0- foot freeboard to the lowest finish floor elevation.
18. The storm drainage basin located at the WWTP shall be designed as a retention basin, in accordance with City of Mendota storm drainage design standards. The City will determine the location of the proposed basin within the WWTP site.



19. To the extent required to meet the requirements in conditions 16, 17 and 18, the developer shall completely construct improvements to the Bass Avenue side ditch, the basin at the WWTP, and the connection between the ditch and the basin prior to City's acceptance of the public improvements for Phase 1 of the development.
20. Street trees (species to be approved by the City Planner) shall be planted at approximately 25-foot intervals within parkways along all streets, and along the landscape planter adjacent to the proposed masonry wall and within the parkway along Bass Avenue.
21. Street lamps shall be pedestrian-scale antique-style street lamps, to be approved by the City Engineer and City Planner. Minimum luminance shall be 1.0 foot-candle along the backs of sidewalks and at street centerlines.
22. All street sign poles and traffic signal poles and arms shall be painted gloss black.
23. On corner lots, fencing along the street side yard shall be set back from the sidewalk at least five feet, and landscaping shall be established within that area by the developer.
24. The applicant shall install landscaping and irrigation improvements in the mini park prior to the completion of 20 homes. Landscaping shall comply with current Model Water Efficient Landscape Ordinance (MWELo) requirements for maximum water use.
25. Prior to construction, the applicant shall provide Caltrans a one page technical memorandum from a traffic consultant comparing the existing zoning trip generation to the proposed zoning trip generation.
26. The project shall form a Community Facilities District and a Landscape and Lighting District as provided for in the project's Development Agreement.
27. Mitigation measures identified in the Mitigated Negative Declaration prepared for the project shall be implemented, as follows:

#### **A. Greenhouse Gases**

The project applicant shall demonstrate compliance with the applicable BPS ( Best Performance Standards )strategies to the Planning Division prior to the issuance of a building permit. The following PBS strategies are considered to be applicable, feasible, and effective in reducing greenhouse gas emissions generated by the project:

- The project applicant shall provide a pedestrian access network that internally links all residential units and connects to the existing surrounding external streets and pedestrian facilities.
- The project applicant shall ensure site design and building placement minimize barriers to pedestrian access and interconnectivity. Physical barriers such as wells, berms, landscaping, and slopes between residential uses that impede bicycle or pedestrian circulation shall be eliminated. In addition, barriers to pedestrian access of neighboring facilities and sites shall be minimized.

- Any transit stops associated with the project shall be provided with safe and convenient bicycle/pedestrian access and provide essential transit stop improvements (i.e., shelters, route information, benches, and lighting).
- The project applicant shall install energy efficient roofing materials.
- The project applicant shall incorporate bike lanes and routes into the street system.
- The project applicant shall plant trees to provide shade.
- The project applicant shall install only natural gas or electric stoves in residences. The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.
- Require truck idling to be restricted during construction and operational phases of the project. During construction, the site shall be posted with signs that restrict truck idling to fifteen minutes or less.
- Reuse and recycle construction and demolition waste;
- Use low or zero-emission vehicles where practical, including construction vehicles;
- Conservative use of both potable and non-potable water to the maximum extent practicable;
- Use graywater where practical. (Graywater is untreated household waste water from bathtubs, showers, bathroom wash facilities, and water from washing machines).

Time Frame: Prior to construction

Responsible Party: Project Contractor and City Planner

## **B. Hydrology and Water Quality**

- a. Prior to development of the site, the City shall undertake actions to ensure the use of a backup well is approved by the State Department of Water Resources.
- b. Water hoses used during construction shall be equipped with automatic shut-off (e.g. spray gun).
- c. Landscaping shall feature drought-tolerant species, and irrigation shall be a low-flow drip (or equivalent) automatic system with soil moisture and rain shut-off sensors. A landscaping and irrigation plan shall be submitted for review and approval by the City, prior to installation.

Time Frame: Prior to construction

Responsible Party: Project Contractor and City Planner

## **C. Noise**

- a. Noise-generating construction activities at the site shall be limited to daylight hours, Monday through Saturdays.

Time Frame: During construction

Responsible Party: Project Contractor

**D. Transportation/Traffic**

- a. Prior to issuance of the 60<sup>th</sup> building permit, the intersection of Bass Avenue and Barboza Street shall be fully signalized. Developer's Engineer shall submit traffic signal plans for approval by the City.

Time Frame: Prior to occupancy

Responsible Party: Project Contractor and City Engineer

**E. Utilities and Service Systems**

- a. The developer shall provide engineering calculations demonstrating the existing and proposed capacities of the Bass Avenue ditch and the storage basin at the Wastewater Treatment Plant, to the satisfaction of the City Engineer. Prior to completion of Phase 1 of the project, the developer shall construct improvements necessary to provide capacity in the ditch and the basin sufficient to handle the existing demands, plus demands exhibited by the project.

Time Frame: Engineering calculations must be supplied prior to the start of construction. Construction of improvements shall occur prior to completion of Phase 1.

Responsible Party: Project Contractor and City Engineer

***NOW, THEREFORE BE IT FURTHER RESOLVED*** that the City Council of the City of Mendota hereby approves Vesting Tentative Subdivision Map 2018-01, as shown in Map 1, attached hereto as Exhibit "C" and on file at Mendota City Hall.

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

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 14<sup>th</sup> day of August, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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

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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** KARL SCHOETTLER, CITY PLANNING CONSULTANT  
**VIA:** CRISTIAN GONZALEZ, INTERIM CITY MANAGER  
**SUBJECT:** LA COLONIA PROJECT  
**DATE:** AUGUST 14, 2018

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**DISCUSSION:**

The project proposes several land use actions for the 18.7 acre site, located on the south side of Bass Avenue, east of State Highway 180 (see Maps 1 and 2). These include:

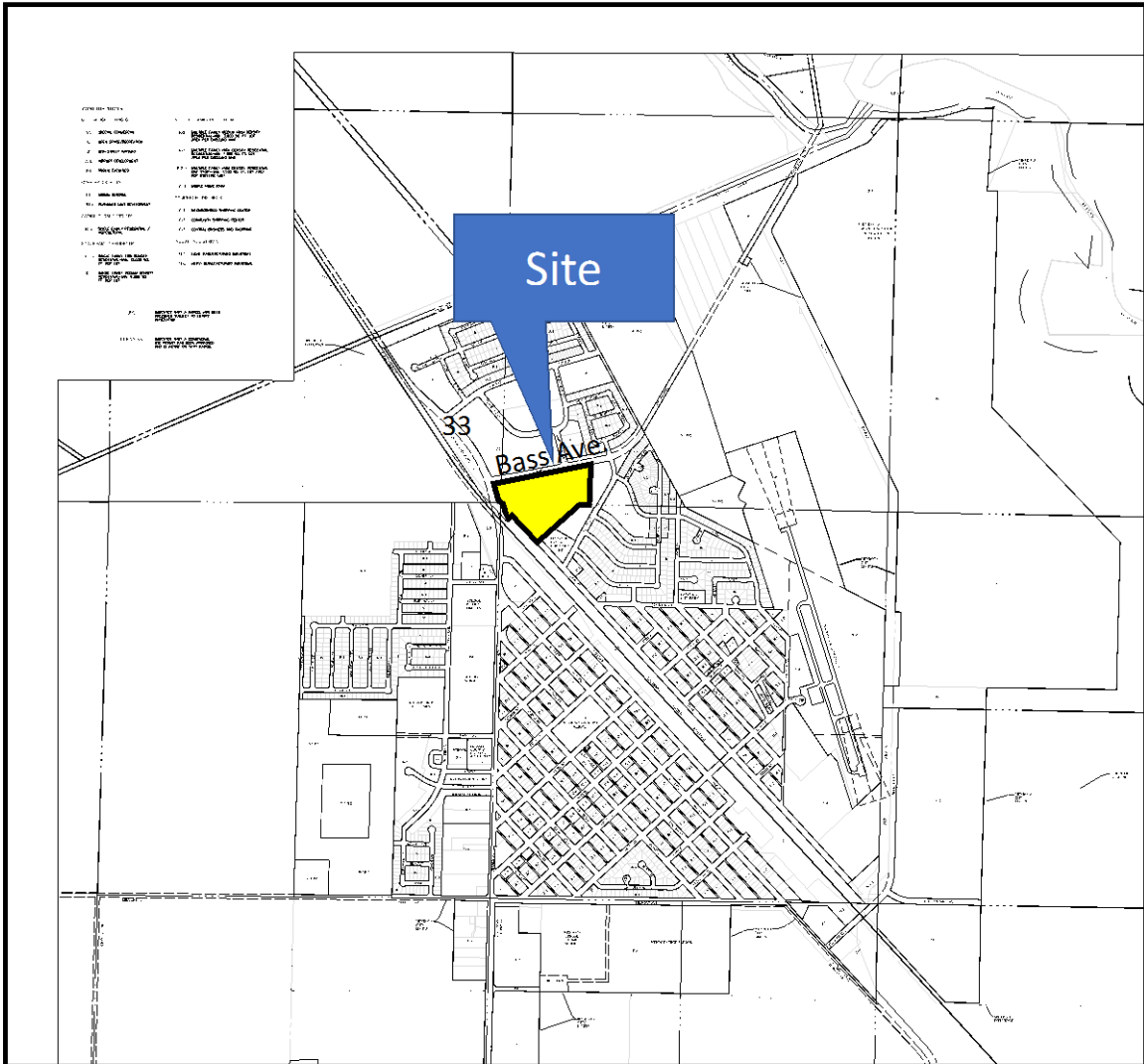
1. An amendment of the Mendota General Plan land use map from “Community Commercial” and “High Density Residential” to “Medium Density Residential”, “Community Commercial” and “Recreational”
2. A zone change to change the zoning of the site from C-2 and R-3 to R-1 (PUD), C-2 and O
3. A Vesting Tentative Subdivision Map to create 86 single family residential lots, a 1.7-acre site for commercial development and a 0.4-acre park. Associated improvements include the installation of streets, utilities, walls, and common landscape areas.
4. A Development Agreement to establish conditions and requirements of the project.
5. A “Mitigated Negative Declaration” as the environmental finding for the project.

**Subdivision Design**

Figure 1 shows the proposed subdivision design. As noted previously, the subdivision proposes 86 single family residential lots, a site for future commercial development (at the southeast corner of Bass and Highway 33) and a small park within the subdivision.

The applicant is seeking to apply the PUD (Planned Development) overlay to the site, which allows flexibility with respect to certain zoning standards, like lot size, setbacks, etc. Specifically, the Zoning Ordinance indicates that the PUD overlay allows lot sizes down to 4,000 square feet in the R-1 zone. Lot sizes in the proposed subdivision will range from a minimum of 4,781 square feet to a maximum of 12,007 square feet. The average lot size will be 6,326 square feet.

Map 1: Project Location



Map 2: Aerial Photo



The subdivision leaves a 1.7-acre parcel at the southeast corner of Bass and Highway 33 for future commercial development. Though no project is proposed at the current time, the parcel is sized for a use such as a pharmacy.

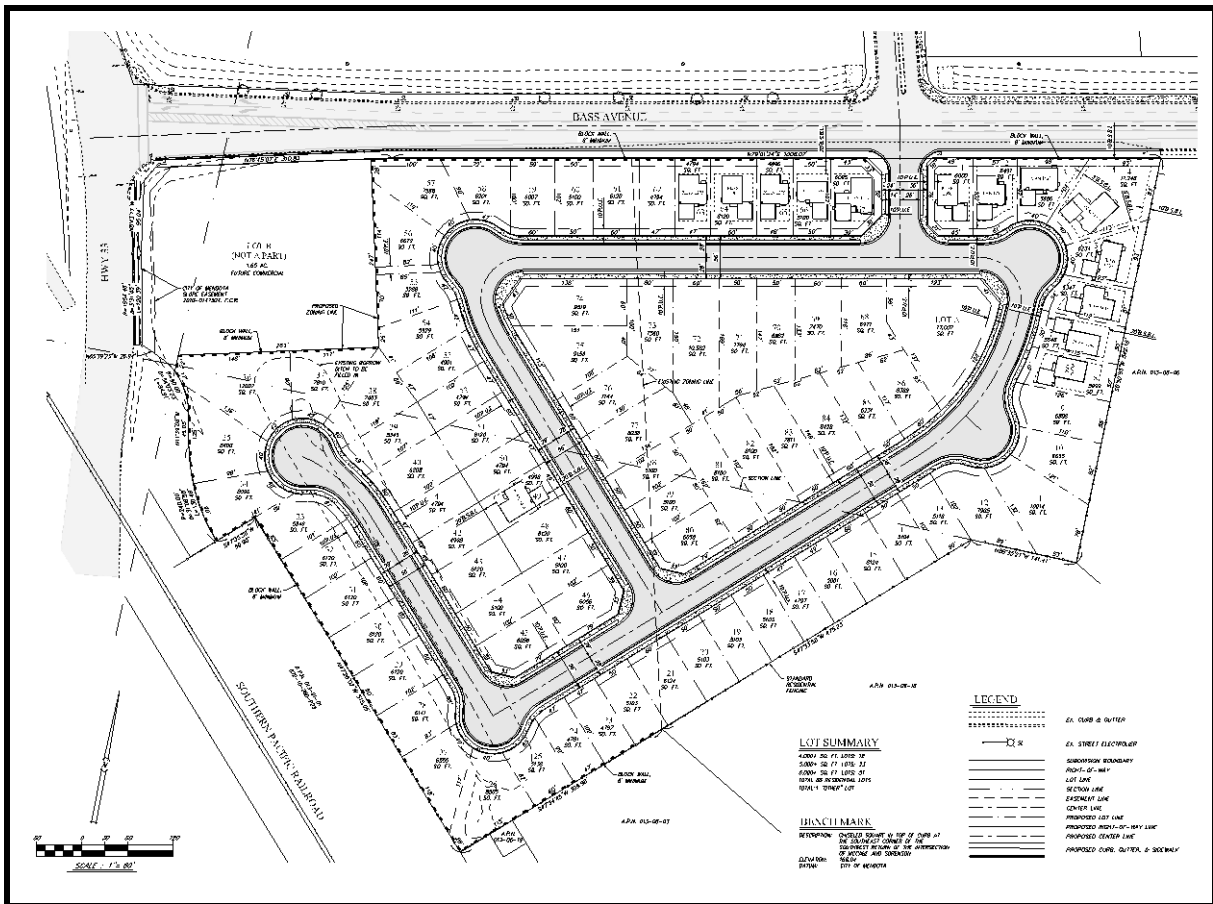
The project also proposes a small mini-park within the subdivision. The City is requiring this park be landscaped by the developer with turf, shrubs and trees for use by residents.

#### Traffic/Circulation

Access to the site would be from a street connection to Bass Avenue, aligned with the existing Barboza Street to the north. Streets within the subdivision are designed to loop together and return to Barboza, with one cul-de-sac extending with one turn along the west side of the subdivision.

Streets will be designed consistent with the City's new residential street standards, which require a landscaped parkway between the curb and sidewalk. Many cities are embracing this standard, as it provides for a more pleasant environment for pedestrians, as they are separated from traffic by the tree-lined parkway.

Figure 1: Proposed Subdivision Map



Staff is also recommending the applicant be required to install antique-style street lamps (in place of standard “cobra-head” lamps). Antique-style street lamps further improve the pedestrian oriented character of the streets.

The entry to the subdivision at Barboza Street will be designed with a landscaped median divider.

The intersection of Bass and Barboza can become congested, particularly during peak morning and evening travel times, and when school is in session at nearby Mendota Elementary School. For this reason, the project is being required to install a traffic signal at this intersection prior to completion of the final phase of development.

In order to promote walking and other forms of active transportation, the subdivision has been designed with a pedestrian connection from the site to the future commercial development. This connection will be ten feet wide and will be located between lots 55 and 56. The applicant will

install a paved sidewalk here. This will allow residents of the subdivision the ability to walk or bicycle to future commercial development – thereby reducing the need to drive. This can result in a reduction in air pollution, as well as a benefit to fitness and health. The connection will be lighted for safety at night.

The project will be required to install 6-foot high masonry block walls around the perimeter of the site, including along the frontage along Bass Avenue and the sideyards of lots 55, 56, 68 & 86, adjacent to the park and the pedestrian connection. To improve the appearance of the site, a landscape strip will be required along the wall along Bass Avenue.

### Utilities

The site will connect to the City's water, sewer and storm drain systems. There are both water and sewer lines that run past the site under Bass Avenue. The water line is an 8-inch water line. There is a 24-inch sewer main that runs past the site. Finally, the project will channel storm drain waters via an existing ditch along the south side of Bass Avenue, to a basin at the City's wastewater treatment plant located northeast of the City. The applicant will be required to excavate and expand the ditch to ensure there is adequate capacity, and will be required to construct necessary basin capacity at the WWTP.

The Public Works Department and City Engineer report that there is adequate capacity in all utility systems to serve the project. However, one concern is that the development of the project could exceed the capacity of the City's water system in a "maximum-day" scenario (such as on a hot summer day) as calculated under the Department of Drinking Water Waterworks Standards, which assume the largest well is out of service; a worst-case situation. State law requires the City to be able to provide adequate water supply in such a scenario.

In order to address this situation, the City is proposing to reactivate one of its backup wells (City Well No. 5, located on Bass Avenue near the wastewater treatment plant) to provide stand-by service. Should there be a shortfall in water supply due to failure of a primary well, water from the stand-by well would be blended with water produced by the primary wells, at the Water Treatment Plant. The City would need to obtain approval from the State Department of Water Resources for the reactivation of Well No. 5. The City Engineer has contacted DDW and has discussed the proposal. DDW has approved the concept, pending some additional water quality testing at Well No. 5. Some mechanical work would be needed to reactivate Well No. 5, but no additional water treatment equipment or facilities would be needed. A mitigation measure for this issue is listed in the resolution for the subdivision, and also as an environmental mitigation measure.

### Offsite Improvements

In exchange for approval of the Planned Development, the City has negotiated with the project developer to construct a soccer field at Rojas Pierce Park. This field has been a long-term goal of the community and the applicant is willing to make this improvement, in exchange for the benefits (including increased density) of the proposed subdivision.



## Development Agreement

The City and the applicant have agreed to enter into a Development Agreement for the project. The agreement will include all conditions of approval and requirements to ensure the project is developed properly and to City code. This is particularly important with the requirement for off-site improvements of the project, including the traffic signal, soccer field and storm drain improvements along Bass Avenue and at the Wastewater Treatment Plant.

## Community Facilities District and Landscape and Lighting District

The project will be required to enter into the City's Community Facilities District – similar to that formed for the recently-completed Las Palmas subdivision. Property owners will be taxed to pay for emergency services, including police, fire and paramedic services.

A Landscape and Lighting District will also be formed to pay for maintenance of improvements along the project's frontage along Bass Avenue, including landscaping, walls and street lamps – as well as landscaping and related improvements within the mini park. The formation of these districts is provided for in the resolution for the subdivision and also the Development Agreement.

## Planned Development findings

In order to consider application of the Planned Development (PD) overlay in the R-1 zone, the Planning Commission must make several findings that are listed in the Mendota Zoning Ordinance. These findings essentially indicate that the project, as designed, is superior to what could be achieved with standard zoning. The findings and an analysis of each are listed below (and also in the resolution approving the zone change).

*A. The proposed planned development is consistent with the general plan and any applicable specific or community plan, including the density and intensity limitations that may apply;*

**Analysis:** The project is consistent with the General Plan (as amended) as well as General Plan policies regarding density. The project is utilizing the PUD zone, which allows single family residential lots as small as 4,200 square feet. The average lot size of the project is 6,326 square feet – larger than the standard R-1 zone minimum lot size of 6,000 square feet.

*B. The subject site is physically suitable for the type and intensity of the development being proposed;*

**Analysis:** The project site is suitable for the type and intensity of the project. It will serve as a buffer to more dense residential development to the east. Further, the commercial site at the southeast corner of Bass and Highway 33 will function to buffer the residential portions of the project from the highway.

*C. Adequate transportation facilities, utilities, and public services exist or will be provided in accordance with the approval of the planned development to serve the proposed development, and approval of the planned development will not result in adverse impacts to existing facilities, utilities, or services so as to be a detriment to the public health, safety, or welfare;*

**Analysis:** The project (as conditioned) will provide adequate transportation, utility facilities and public services. Conditions have been established that will require the project to install adequate utilities and transportation facilities, including a traffic signal and provisions for water, sewer and storm drainage.

*D. The proposed development will not have a substantial adverse impact on surrounding land uses, and will be compatible with the existing and planned land use character of the surrounding area;*

**Analysis:** The project will be compatible with surrounding development, which consists of a mix of low- and high-density residential, public facilities, and commercial development. The project will include walls, landscaping and setbacks to enhance compatibility.

*E. The proposed development generally complies with any adopted design guidelines; and*

**Analysis:** There are no adopted design guidelines in the City, however the project complies with applicable zoning standards. In addition, the project is being conditioned to install additional public landscaping and pedestrian-scale lighting, for a more attractive environment.

*F. The proposed development is demonstrably superior to the development that could occur utilizing the standards applicable to the subject zone district, and will achieve superior community design, environmental preservation, and/or substantial public benefit. In making this determination, factors to be considered shall include, but not be limited to:*

- 1. Appropriateness of the use(s) at the proposed location;*
- 2. The mix of uses, housing types, and housing price levels;*
- 3. Provision of infrastructure improvements;*
- 4. Provision of usable active or passive open space;*
- 5. Compatibility of uses within the planned development area;*
- 6. Creativity in design and use of land;*
- 7. Quality of design, and adequacy of light and air into the interior spaces of buildings;  
and*
- 8. Overall enhancement of neighborhood character and the built and natural environments of the city.*

**Analysis:** The project will provide a mix of residential and commercial uses geared toward buyers and customers in the Mendota market. The project will be conditioned to make infrastructure improvements to serve the site and to establish open space. The Development Agreement will include installation of a new soccer field in an existing City park. Uses within the site are compatible via the implementation of setbacks, walls and landscaping. The project

has been designed through a creative process with City input that will ensure quality of design, resulting in an enhancement of this part of the community.

### **Environmental Assessment**

The City has prepared an Initial Environmental Study to analyze potential environmental impacts of the project as required by CEQA (the California Environmental Quality Act ). The study determined that the project will have no significant impacts, provided that certain measures are incorporated into the project's design and operation. These measures are listed under the "Background Conditions" section at the end of this report and are related to:

- A. Greenhouse Gases
- B. Hydrology and Water Quality
- C. Noise
- D. Transportation/Traffic
- E. Utilities and Service Systems

The environmental analysis was circulated for public review and comment for a period of twenty days, as required by CEQA. At the close of the comment period, letters and emails were received from the following agencies:

- Fresno County Health Department
- Caltrans
- San Joaquin Valley Air Pollution Control District

The County and Air District concurred with findings of the environmental study. Caltrans initially requested a traffic study be prepared for the project. However, staff contacted Caltrans and pointed out that the proposed project would likely be generating significantly less traffic than development that could have occurred under the project's existing zoning (C-2 and R-3).

With this information, Caltrans concurred that a full traffic study was not needed, but they did request the City require the project to prepare a one-page technical memorandum from a traffic consultant, comparing the existing zoning trip generation to the proposed zoning trip generation. This has been made a condition of approval of the project.

### **Planning Commission Action**

The Planning Commission conducted a public hearing to consider the project on June 19, 2018. No members of the public expressed concerns about the project. Following discussion, the Planning Commission voted to recommend approval of the project, including the General Plan amendment, zone change, subdivision map, Development Agreement and environmental finding.

**FISCAL IMPACT:**

The project will be required to pay development impact fees to the City for each dwelling, upon issuance of a building permit.

**RECOMMENDATION:**

It is recommended that the City Council conduct a public hearing and vote to approve the project via the following:

- Resolution 18-61 to adopt the environmental finding for the project
- Resolution 18-62 to approve General Plan Amendment 2018-01
- Introduce Ordinance 18-03 approving Zone Change 2018-01
- Resolution 18-63 to Vesting Tentative Subdivision map 2018-01
- Introduce Ordinance 18-04 approving Development Agreement 2018-01

**Exhibit "B"**

**CITY OF MENDOTA  
PROPOSED MITIGATED NEGATIVE DECLARATION**

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MENDOTA PLANNING DEPARTMENT      643 QUINCE ST.      MENDOTA, CA 93640      (559) 643-4298

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**APPLICANT:**            KSA Homes  
                                 5301 Office Park Drive, Suite 115  
                                 Bakersfield, CA 93309

**PROJECT TITLE:**    La Colonia Project

**PROJECT LOCATION:**    The project includes two parcels containing approximately 18.7 acres located on the south side of Bass Avenue east of State Highway 33 in the City of Mendota.

**PROJECT DESCRIPTION:**    The project is proposing a General Plan Amendment, zone change and Tentative Subdivision Map for a 86-lot single family residential subdivision, a 0.4-acre park and a 1.65 acre lot for future commercial development. The project also includes a Development Agreement.

**FINDINGS OF NO SIGNIFICANCE:**

1.     The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory.
  
2.     The project does not have the potential to achieve short-term economic gain, to the disadvantage of long-term environmental goals.
  
3.     The project does not have the potential to have impacts which are individually limited but cumulatively considerable.
  
4.     The project will not cause substantial adverse effects on people, either directly or indirectly.

**DETERMINATION:**

On the basis of an initial environmental assessment and the findings mentioned above, the City of Mendota determines that the project will not have a significant impact on the environment.

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City Planner

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Date Adopted

## MITIGATION MEASURES AND MITIGATION MONITORING PROGRAM

### A. Greenhouse Gases

1. The project applicant shall demonstrate compliance with the applicable BPS (Best Performance Standards) to the Planning Division prior to the issuance of a building permit. The following BPS strategies are considered to be applicable, feasible, and effective in reducing greenhouse gas emissions generated by the project:
  - The project applicant shall provide a pedestrian access network that internally links all residential units and connects to the existing surrounding external streets and pedestrian facilities.
  - The project applicant shall ensure site design and building placement minimize barriers to pedestrian access and interconnectivity. Physical barriers such as walls, berms, landscaping, and slopes between residential uses that impede bicycle or pedestrian circulation shall be eliminated. In addition, barriers to pedestrian access of neighboring facilities and sites shall be minimized.
  - Any transit stops associated with the project shall be provided with safe and convenient bicycle/pedestrian access and provide essential transit stop improvements (i.e., shelters, route information, benches, and lighting).
  - The project applicant shall install energy efficient roofing materials.
  - The project applicant shall plant trees to provide shade.
  - The project applicant shall install only natural gas or electric stoves in residences. The project applicant shall install energy efficient heating and cooling systems, appliances and equipment, and control systems.
  - Require truck idling to be restricted during construction and operational phases of the project. During construction, the site shall be posted with signs that restrict truck idling to fifteen minutes or less.
  - Reuse and recycle construction and demolition waste;
  - Use low or zero-emission vehicles where practical, including construction vehicles;
  - Conservative use of both potable and non-potable water to the maximum extent practicable;
  - Use graywater where practical. (Graywater is untreated household waste water from bathtubs, showers, bathroom wash facilities, and water from washing machines).

Time Frame: Prior to construction

Responsible Party: Project Contractor and City Planner

## **B. Hydrology and Water Quality**

1. Prior to development of the site, the City shall undertake actions to ensure the use of a backup well is approved by the State Department of Water Resources.
2. Water hoses used during construction shall be equipped with automatic shut-off (e.g. spray gun).
3. Landscaping shall feature drought-tolerant species, and irrigation shall be a low-flow drip (or equivalent) automatic system with soil moisture and rain shut-off sensors. A landscaping and irrigation plan shall be submitted for review and approval by the City, prior to installation.

Time Frame: Prior to construction

Responsible Party: Project Contractor and City Planner

## **C. Noise**

1. Noise-generating construction activities at the site shall be limited to daylight hours, Monday through Saturdays.

Time Frame: During construction

Responsible Party: Project Contractor

## **D. Transportation/Traffic**

1. The project shall pay a traffic impact mitigation fee toward installation of a signal at the intersection of Bass Avenue and Barboza. This shall be incorporated into a Development Agreement that is prepared and processed for the project.

Time Frame: Prior to occupancy

Responsible Party: Project Contractor and City Engineer

## **E. Utilities and Service Systems**

1. The developer shall provide engineering calculations demonstrating the existing and proposed capacities of the Bass Avenue ditch and the storage basin at the Wastewater Treatment Plant, to the satisfaction of the City Engineer. Prior to completion of Phase 1 of the project, the developer shall construct improvements necessary to provide capacity in the ditch and the basin sufficient to handle the existing demands, plus demands exhibited by the project.

Time Frame: Engineering calculations must be supplied prior to the start of construction. Construction of improvements shall occur prior to completion of Phase 1.

Responsible Party: Project Contractor and City Engineer





Address	Type of Case	1st Notice	Deadline	Status	Fine Amount
4TH ST/ QUINCE ST	MUNI CODE/ BANNERS	7/3/2018	N/A	ADVISED	\$0.00
100 BLK HOLMES	FIREWORKS	7/4/2018	N/A	COMPLETE	\$0.00
654 LOZANO ST	FIREWORKS	7/4/2018	N/A	COMPLETE	\$0.00
326 BLANCO	FIREWORKS	7/4/2018	N/A	WARNING	\$0.00
5TH ST/ DERRICK AVE	FIREWORKS	7/4/2018	N/A	WARNING	\$0.00
5TH ST/ RIO FRIO	FIREWORKS	7/4/2018	N/A	CITED	N/A
7TH ST/ LOLITA ST	VEHICLE TAGGED FOR 72 HR TAG	7/5/2018	7/8/2018	CLEARED	\$0.00
1000 2ND ST	VEHICLE TAGGED FOR 72 HR TAG	7/5/2018	7/8/2018	CLEARED	\$0.00
624 4TH ST	VEHICLE TAGGED FOR 72 HR TAG	7/5/2018	7/8/2018	CLEARED	\$0.00
277 L ST	VEHICLE TAGGED FOR 72 HR TAG	7/5/2018	7/8/2018	CLEARED	\$0.00
1269 MARIE ST	MUNI CODE/ ABANDONED HOUSE	7/5/2018	N/A	COMPLETE	\$0.00
1000 AIRPORT BLVD.	VEHICLE TAGGED FOR 72 HR TAG	7/6/2018	N/A	ADVISED	\$0.00
657 4TH ST	PARKING VIOLATION/ EXPIRED REGISTRATION	7/6/2018	N/A	TOWED	\$0.00
4TH ST/ I ST	VEHICLE TAGGED FOR 72 HR TAG	7/6/2018	7/9/2018	CLEARED	\$0.00
1000 AIRPORT BLVD.	VEHICLE TAGGED FOR 72 HR TAG	7/6/2018	N/A	ADVISED	\$0.00
2167 7TH ST	MUNI CODE/ PARKING VIOLATION	7/7/2018	N/A	CLEARED	\$0.00
116 ROWE	MUNI CODE/ PARKING VIOLATION	7/7/2018	N/A	CITED	\$50.00
2ND ST/ K ST	72 HR TAG/ FOLLOW UP	7/10/2018	N/A	TOWED	\$0.00
600 BLK STAMOULES	VEHICLE TAGGED FOR 72 HR TAG	7/10/2018	7/13/2018	CLEARED	\$0.00
295 NAPLES	MUNI CODE/ BANNERS	7/10/2018	N/A	ADVISED	\$0.00
141 LOCUST	MUNI CODE/ PARKING VIOLATION	7/10/2018	N/A	WARNING	\$0.00
MARIE ST/ 5TH ST	MUNI CODE/ HOMELESS	7/10/2018	N/A	WARNING	\$0.00
251 SAN PEDRO	MUNI CODE/ TRAILER	7/11/2018	N/A	WARNING	\$0.00
200 BLK BLACK AVE	VEHICLE TAGGED FOR 72 HR TAG	7/11/2018	7/14/2018	COMPLETE	\$0.00
623 GAXIOLA ST	VEHICLE TAGGED FOR 72 HR TAG	7/11/2018	7/14/2018	COMPLETE	\$0.00
628 DE LA CRUZ ST	VEHICLE TAGGED FOR 72 HR TAG	7/11/2018	7/14/2018	COMPLETE	\$0.00
1100 BLK 7TH ST	MUNI CODE/ PARKING VIOLATION	7/11/2018	N/A	CITED	\$100.00
1700 BLK JENNINGS	MUNICODE/ PARKING VIOLATION	7/11/2018	N/A	ADVISED	\$0.00
200 BLK TUFT ST	MUNICODE/ PARKING VIOLATION	7/12/2018	N/A	CITED	\$50.00
100 BLK TUFT ST	VEHICLE TAGGED FOR 72 HR TAG	7/12/2018	7/15/2018	COMPLETE	\$0.00
818 STAMOULES ST	VEHICLE TAGGED FOR 72 HR TAG	7/12/2018	7/15/2018	COMPLETE	\$0.00
452 4TH ST	VEHICLE TAGGED FOR 72 HR TAG	7/13/2018	7/16/2018	COMPLETE	\$0.00
142 ELM ST	MUNICODE/ PARKING VIOLATION	7/13/2018	N/A	ADVISED	\$0.00

LOCUST/ PEACH ST	MUNICODE/ PARKING VIOLATION	7/13/2018	N/A	WARNING	\$0.00
1828 JENNINGS ST	72 HR TAG	7/13/2018	7/16/2018	COMPLETE	\$0.00
1709 JENNINGS ST	72 HR TAG	7/13/2018	7/16/2018	COMPLETE	\$0.00
447 K ST	MUNICODE/ PARKING VIOLATION	7/13/2018	N/A	WARNING	\$0.00
601 GAXIOLA ST	72 HR TAG	7/13/2018	7/16/2018	COMPLETE	\$0.00
175 ASH ST	MUNICODE/ PARKING VIOLATION	7/13/2018	N/A	CITED	\$100.00
411 SILVA ST	MUNICODE/ PARKING VIOLATION	7/13/2018	N/A	TOWED/ CITED	\$50.00
600 STAMOULES	MUNICODE/ PARKING VIOLATION	7/14/2018	N/A	TOWED	\$0.00
6TH ST/ JUANITA ST	72 HR TAG	7/14/2018	7/17/2018	COMPLETE	\$0.00
4TH ST/ QUINCE ST	72 HR TAG	7/14/2018	7/17/2018	COMPLETE	\$0.00
RIO FRIO/ 6TH ST	72 HR TAG	7/14/2018	7/17/2018	COMPLETE	\$0.00
280 ARNAUDON ST	MUNICODE/ PARKING VIOLATION	7/14/2018	N/A	ADVISED	\$0.00
250 SANTA CRUZ ST	MUNICODE/ PARKING VIOLATION	7/14/2018	N/A	WARNING	\$0.00
6TH ST/ STAMOULES	COMMUNITY CONTACT	7/14/2018	N/A	ADVISED	\$0.00
1958 7TH ST	COMMUNITY CONTACT	7/14/2018	N/A	ADVISED	\$0.00
295 NAPLES ST	MUNICODE/ BANNERS	7/14/2018	N/A	WARNING	\$0.00
1808 JENNINGS	72 HR TAG/ FOLLOW UP	7/17/2018	N/A	TOWED/ CITED	\$50.00
217 ESPINOZA ST	72 HR TAG	7/17/2018	7/20/2018	COMPLETE	\$0.00
539 CASTANEDA	MUNICODE/ PUBLIC URINATION	7/17/2018	N/A	WARNING	\$0.00
231 BLACK ST	72 HR TAG	7/17/2018	7/20/2018	COMPLETE	\$0.00
5 SORENSEN AVE/ ARNAUDON	COMMUNITY CONTACT	7/17/2018	N/A	ADVISED	\$0.00
519 LOLITA	COMMUNITY CONTACT	7/17/2018	N/A	WARNING	\$0.00
BELMONT/ PEACH	MUNICODE/ PARKING VIOLATION	7/17/2018	N/A	CITED	\$100.00
840 KATE ST	VEHICLE TAGGED FOR 72 HR TAG	7/18/2018	7/21/2018	COMPLETE	\$0.00
JUANITA ST/ L ST	VEHICLE TAGGED FOR 72 HR TAG	7/18/2018	7/21/2018	COMPLETE	\$0.00
632 L ST	VEHICLE TAGGED FOR 72 HR TAG	7/18/2018	7/21/2018	COMPLETE	\$0.00
611 OXNARD ST	VEHICLE TAGGED FOR 72 HR TAG	7/18/2018	7/21/2018	COMPLETE	\$0.00
200 BLK TUFT ST	MUNICODE/ PARKING VIOLATION	7/18/2018	N/A	CITED	\$50.00
1054 PUCHEU ST	VEHICLE TAGGED FOR 72 HR TAG	7/18/2018	7/21/2018	COMPLETE	\$0.00
1125 PUCHEU ST	VEHICLE TAGGED FOR 72 HR TAG	7/18/2018	7/21/2018	COMPLETE	\$0.00
PEREZ ST/ LOZANO ST	VEHICLE TAGGED FOR 72 HR TAG	7/19/2018	7/22/2018	COMPLETE	\$0.00
240 HOLMES AVE	MUNICODE/ PARKING VIOLATION	7/19/2018	N/A	TOWED/ CITED	\$50.00
365 K ST	VEHICLE TAGGED FOR 72 HR TAG	7/19/2018	7/22/2018	COMPLETE	\$0.00
305 J ST	VEHICLE TAGGED FOR 72 HR TAG	7/19/2018	7/22/2018	COMPLETE	\$0.00

KATE CT.	VEHICLE TAGGED FOR 72 HR TAG	7/19/2018	7/22/2018	COMPLETE	\$0.00
KATE CT.	VEHICLE TAGGED FOR 72 HR TAG	7/19/2018	7/22/2018	COMPLETE	\$0.00
PEREZ ST/ BARBOZA ST	72 HR TAG/ FOLLOW UP	7/19/2018	N/A	TOWED	\$0.00
300 BLK RIOS	MUNICODE/ PARKING VIOLATION	7/24/2018	N/A	WARNING	\$0.00
647 PEREZ ST	MUNICODE/ PARKING VIOLATION	7/24/2018	N/A	CITED	\$50.00
926 2ND ST.	VEHICLE TAGGED FOR 72 HR TAG	7/25/2018	7/28/2018	COMPLETE	\$0.00
721 H ST.	VEHICLE TAGGED FOR 72 HR TAG	7/25/2018	7/28/2018	COMPLETE	\$0.00
304 J ST.	MUNICODE/ PARKING VIOLATION	7/25/2018	N/A	TOWED	\$0.00
748 TULE	VEHICLE TAGGED FOR 72 HR TAG	7/26/2018	7/29/2018	COMPLETE	\$0.00
271 ESPINOZA ST.	VEHICLE TAGGED FOR 72 HR TAG	7/26/2018	7/29/2018	COMPLETE	\$0.00
270 ESPINOZA ST.	VEHICLE TAGGED FOR 72 HR TAG	7/26/2018	7/29/2018	COMPLETE	\$0.00
AMADOR ST/ SILVA ST.	VEHICLE TAGGED FOR 72 HR TAG	7/26/2018	7/29/2018	COMPLETE	\$0.00
685 LOZANO	VEHICLE TAGGED FOR 72 HR TAG	7/26/2018	7/29/2018	COMPLETE	\$0.00
286 MALDONADO ST.	VEHICLE TAGGED FOR 72 HR TAG	7/28/2018	7/31/2018	COMPLETE	\$0.00
122 ELM ST.	VEHICLE TAGGED FOR 72 HR TAG	7/28/2018	7/31/2018	COMPLETE	\$0.00
550 SILVA ST	VEHICLE TAGGED FOR 72 HR TAG	7/28/2018	7/31/2018	COMPLETE	\$0.00
586 SORENSEN AVE	VEHICLE TAGGED FOR 72 HR TAG	7/28/2018	7/31/2018	COMPLETE	\$0.00
615 GAXIOLA ST.	VEHICLE TAGGED FOR 72 HR TAG	7/28/2018	7/31/2018	COMPLETE	\$0.00
270 SANTA CRUZ	VEHICLE TAGGED FOR 72 HR TAG	7/30/2018	8/2/2018	COMPLETE	\$0.00
PEACH/LOCUST	MUNICODE/ PARKING VIOLATION	7/30/2018	N/A	TOWED	\$0.00
966 PUCHEU ST.	VEHICLE TAGGED FOR 72 HR TAG	7/30/2018	8/2/2018	COMPLETE	\$0.00
305 BLANCO ST.	VEHICLE TAGGED FOR 72 HR TAG	7/30/2018	8/2/2018	COMPLETE	\$0.00
1558 4TH ST.	VEHICLE TAGGED FOR 72 HR TAG	7/31/2018	8/3/2018	COMPLETE	\$0.00
1633 11TH ST.	VEHICLE TAGGED FOR 72 HR TAG	7/31/2018	8/3/2018	COMPLETE	\$0.00
690 PUCHEU ST.	VEHICLE TAGGED FOR 72 HR TAG	7/31/2018	8/3/2018	COMPLETE	\$0.00
286 MALDONADO ST	72 HR TAG/ FOLLOW UP	7/31/2018	N/A	TOWED	\$0.00
				<b>TOTAL</b>	<b>\$650.00</b>



# POLICE

M E N D O T A

## MEMORANDUM

**Date:** August 1, 2018  
**To:** Cristian Gonzalez, Interim- City Manager  
Mendota City Council Members  
**From:** Gregg L. Andreotti, Chief of Police  
**Subject:** Monthly Report for July 2018

### **Significant Cases:**

Subject check by Rio Frio/6<sup>th</sup> discovered he recently moved to Mendota. He was FI'ed for information.

Subject check by Quince/6<sup>th</sup> discovered he was in possession of an open container of alcohol. He was cited and released.

An unknown suspect stole construction equipment from a truck parked on Castro Street.

A vehicle possibly caused damage to the school fence on Perez Street.

Subject check in the alley along Quince Street discovered warrants for his arrest. He was arrested, cited and released.

An unknown suspect purchased a vehicle from the victim and paid with a bad check.

Non-injury traffic collision at Naples/9<sup>th</sup>. Both parties remained on scene.

Non-injury traffic collision at bass/Hwy 33 discovered the driver causing ran into the rear of the victim. Both parties remained on scene.

Subject check in an alley along Rio Frio discovered he was in possession of a meth pipe. He was cited and released.

Disturbance at a residence on Lozano discovered a known suspect hit the victim and then fled the scene. Officers were unable to locate him.

Subject check by Marie/2<sup>nd</sup> discovered he was wanted on active warrants. He was arrested, cited and released.

Vehicle stop resulted in an FI for information on the driver.

Subject check on Lolita discovered a meth pie. He was arrested, cited and released.

Bicycle stop on Lolita resulted in an FI for information.

Officers were flagged down by the victim of a prior restraining order violation. The victim reported the restrained party came to her residence and would not leave, so she left. He was gone when officers checked.

Bicycle stop discovered he was in possession of methamphetamine and a meth pipe and wanted on outstanding warrants. He was arrested, cited and released.

An unknown suspect stole the victim's vehicle while it was parked in an apartment complex parking stall on I Street.

City Hall staff discovered a replica \$20 bill was received as payment. Suspect unknown at this time.

Officers handled two auto theft investigations (one pickup truck and one utility trailer) from a business in the county just outside the city. Both vehicles were recovered in the City of Mendota. One was located in the backyard of a residence where the suspect was contacted and arrested. He then confessed to stealing both vehicles and was transported to Jail.

A vehicle stolen a day prior in Mendota was recovered and returned to the owner.

An unknown suspect broke into the victim's vehicle while it was parked on Perez Street and stole property.

Subject check in an alley by a local food store discovered he was in possession of an open container of alcohol. He was cited and released.

Officers located a subject by Rio Frio/5<sup>th</sup> Street setting off Illegal Fireworks. He was cited and released.

Officers responded to areas where possible illegal fireworks were being set off, but were unable to locate any.

Offices responded to a report of a drunken subject by the fire station on McCabe Street. Upon contact the discovered he was very intoxicated. He admitted to driving the vehicle parked nearby and then trying to drive away in it before being contacted by officers. He was found to be on probation for DUI and have a restricted CDL. Officers were able to arrest him for DUI and transport him to Jail.

Trespassers were discovered at a property on J Street reoccupying a residence they had been evicted from. Both violators were arrested and found to be in possession of methamphetamine. One was also in violation of his probation. They were transported to Jail.

Disturbance at a residence on Sorenson discovered the suspect damaged the victim's vehicle then attached the victim with a pipe. He was contacted at his residence, arrested and transported to JJC.

An unknown suspect stole the victim's vehicle while parked by his residence on Cantu Street.

Disturbance at a residence on Quince discovered a known suspect attacked another with a knife. Minor injury reported. Officers located the suspect, arrested him and transported him to Jail.

Non-injury hit and run on Blanco Street. An unknown suspect caused damage to the victim's vehicle and then fled the scene.

Disturbance at a residence discovered the suspect hit the victim and then fled prior to officers arriving.

Subject check in a park resulted in an FI for information.

Bicycle stop at Oller/6<sup>th</sup> discovered a meth pipe in the rider's possession. He was arrested, cited and released.

Subject check on a vacant lot on Lolita discovered outstanding warrants for his arrest. He was arrested and transported to Jail for extradition.

An unknown suspect stole the victim's vehicle while it was parked on 4<sup>th</sup> Street.

An unknown suspect stole the front rim and tire from the victim's vehicle while parked on Espinosa Street.

Subject check by Rio Frio/6<sup>th</sup> discovered he was in possession of an open container of alcohol. He was cited and released.

Unwanted subject at a residence on 4<sup>th</sup> Street. Officers arrived and located the subject who was found to be restrained from the person on the property. He was arrested for violation of a restraining order and transported to Jail.

Trespasser in the back yard of a residence on I Street. Officers located the subject who refused to leave when confronted by the property owner. He was arrested by the property owner and transported to Jail.

During the evening hours an unknown suspect stole the victim's vehicle from in front of his 4<sup>th</sup> Street residence.

Subject check of two in an empty lot on Lolita Street. Both were FI'ed for information.

Subject check in an alley along Quince discovered he was wanted on an outstanding warrant. He was arrested, cited and released.

Subject check by Quince/6<sup>th</sup> discovered he was in possession of an open container of alcohol. He was cited and released.

Unknown suspect(s) broke into the victim's vehicle twice during one week on 7<sup>th</sup> Street and stole his personal identification and registration paperwork.

Two unknown suspects contacted the victim by Oller/7<sup>th</sup> and had him get in to their vehicle. They took money from his wallet as they drove him around. They then released him and fled the city.

Subject check in an alleyway on Quince Street discovered she was on probation, wanted on outstanding warrants and in possession of a meth pipe. She was arrested, cited and released.

Subject check on Marie and 9<sup>th</sup> Streets discovered he was wanted on outstanding warrants. He was arrested, cited and released.

An unknown suspect stole the victim's vehicle while it was parked on 4<sup>th</sup> Street.

Subject check of two by Marie/9th. Both were FI'ed for information.

Vehicle stop by Oller/8<sup>th</sup> discovered the driver was intoxicated. He was arrested for DUI, cited and released to a sober family member.

Disturbance at a residence discovered the suspect hit the victim. The suspect fled prior to officers arriving.

Officers located a person trespassing on Airport property. She was contacted, cited and released.

Disturbance at a residence on K Street found the subject causing in possession of two meth pipes and wanted on an active warrant. He was arrested, cited and released.

Disturbance between two adults resulted in one pulling out a knife and attacking the other. The suspect cut the victim on a finger. Both remained on scene for officers. The suspect was arrested and transported to Jail.

Bicycle stop by Kate/7<sup>th</sup> discovered the rider was on probation for GTA and found in possession of shaved keys. He was arrested and transported to Jail.

A known suspect vandalized an apartment door on I Street. He was discovered to be a parolee and fled the scene prior to officers arriving.

A victim contacted officers and reported approx one week prior she got into a physical altercation with a known suspect. She does not know why and admitted they were both intoxicated at the time. She is reporting the incident because she received injuries.

Unwanted subject on 9<sup>th</sup> Street. Officers arrived and contacted a known subject on probation. She was found to be in possession of a meth pipe, arrested, cited and released.

An unknown suspect stole the victim's cell phone while he was in a parking lot on Oller. The suspect fled on a bicycle.

Non-injury hit and run. An unknown suspect damaged the victim's vehicle while it was parked on Lozano Street.

Unwanted subject at a residence on Straw fled prior to officers arriving. The known suspect returned and was found to be a wanted parolee. He was arrested and transported to Jail.

Non-injury hit and run on Garcia Street. An unknown suspect damaged the victim's vehicle while it was parked.

Vehicle stop on Garcia and Blanco discovered the driver was intoxicated. She was arrested for DUI, cited and released.

The victim of a lost wallet reported her credit card was fraudulently used to purchase gas at a locate station.

A wanted parolee reported he was attacked and beaten by suspects he refused to identify or pursue charges against. He was transported to CRMC for treatment prior to jail for booking.

An unknown suspect entered the victim's vehicle while it was parked on Espinosa and stole property from inside.

A known suspect attacked the victim with a knife and inflicted minor injury to his hand. The suspect was arrested and transported to Jail. The victim fled the scene prior to officers arriving.

A known suspect trespassed on the victim's property on 9<sup>th</sup> Street and refused to leave. Officers arrived and arrested the suspect. She was cited and released.

Disturbance on Lozano Street discovered the subject causing was intoxicated. He was arrested and transported to Jail.



An unknown suspect damaged the victim's vehicle while it was parked on Lozano Street.

Bicycle stop at 9<sup>th</sup>/Marie Street discovered the rider was in possession of a meth pipe and wanted on outstanding warrants. He was arrested cited and released.

Vehicle stop at Oller/10<sup>th</sup> discovered the driver was in possession of a meth pipe. He was arrested, cited and released.

Subject check at 6<sup>th</sup>/Pucheu discovered outstanding warrants for his arrest. He was arrested, cited and released.

Vehicle stop at 9<sup>th</sup>/Belmont discovered an outstanding warrant. She was cited and released.

An unknown suspect cut a hole in a fence at a business on Naples and stole a bag of recyclable plastic.

Unwanted subject in the parking lot of a local mini-mart on Oller discovered he was under the influence of drugs and wanted on an outstanding warrant. He was arrested and transported to Jail.

An identity theft victim on Valenzuela received three credit cards in the mail in her name that she did not apply for.

A known suspect vandalized vehicles on De La Cruz. Officers arrived and contacted him. He was uncooperative, fought with officers and then fled into a residence. Sheriff's Deputies assisted and a Sheriff's K9 was deployed to affect the arrest. The suspect was transported to Jail.

Subject check by the runway on Airport Property. He was arrested for Trespassing, cited and released.

Vehicle check in a parking lot on Airport Blvd discovered the subject was under the influence of a drug. He was arrested, cited and released.

An unknown suspect entered the victim's vehicle on Garcia Street and stole documents and property.

Subject check on 7<sup>th</sup> Street discovered he was in possession of an open container of Alcohol. He was cited and released.

Subject check at Bass/2<sup>nd</sup> discovered a meth pipe in the person's possession. He was arrested, cited and released.

A known suspect stole the victim's cell phone while at a gathering on Oller Street. The suspect was gone when officers arrived.

Officers contacted five subjects in possession of alcoholic beverages by Marie/2<sup>nd</sup> Street. Two of the subjects were also wanted on outstanding warrants. All were cited and released.

Officers assisted Sheriff's Deputies with follow-up investigations on an assault case that originated in the County.

An unknown suspect stole the victim's vehicle while it was parked by 9<sup>th</sup>/Pucheu.

An unknown suspect damaged the victim's car window while it was parked at a store on Oller Street.

Vehicle stop by Oller/9<sup>th</sup> discovered the driver was intoxicated and wanted on outstanding warrants. He was arrested for DUI and the warrants and transported to Jail.

Non-injury traffic collision at Oller/Belmont. Both parties remained on scene.

Vandalism to property in front of a business on Oller. Upon arriving officers discovered the suspects were some of the parties involved in the prior non-injury traffic collision. Officer discovered the suspects were in-route Los Banos Hospital. LBPD was notified to assist.

Subject check on Rowe Street discovered the subject was intoxicated. He was arrested for Public Intoxication and turned over to a responsible adult.

Subject check on Rio Frio/7<sup>th</sup> discovered the person to be intoxicated. He was arrested and transported to Jail.

A known suspect was trespassing in the victim's back yard on 9<sup>th</sup> Street. He fled prior to officers arriving.

Owner reported four subjects in the carport of apartments on Oller drinking alcoholic beverages. Officers arrived and discovered two were in possession of alcoholic beverages. None were residents. All four were FI'ed and admonished to not trespass or return. Two were cited for possession of open containers of alcohol in public then released.

An unknown suspect took the victim's cell phone by force by Lolita/7<sup>th</sup> Street. No injuries.

**Strategic Planning:**

- Recruited for police officer vacancies.
- Designated personnel attended advanced officers training
- Purchased equipment to up-fit two new SRO positions

**Personnel Information:**

- The following Police Department positions remain vacant and frozen:
  - Two Police Officer

- One Administrative Assistant
- Met with Police Officer candidate who accepted a job offer.
- New Code Enforcement Officer began training
- Hired Three new Police Officers
  - Two for SRO expansion
  - One to fill vacancy
  - All entered training