



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

## AGENDA

### MENDOTA CITY COUNCIL

Regular City Council Meeting  
City Council Chambers  
643 Quince Street  
Mendota, California 93640  
August 8, 2023  
6:00 PM

VICTOR MARTINEZ  
Mayor

LIBERTAD "LIBERTY" LOPEZ  
Mayor Pro Tem

JOSE ALONSO

JOSEPH R. RIOFRIO

OSCAR ROSALES

CRISTIAN GONZALEZ  
City Manager

JOHN KINSEY  
City Attorney

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

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

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

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

## CALL TO ORDER

## ROLL CALL

## FLAG SALUTE

## INVOCATION

## FINALIZE THE AGENDA

1. Adjustments to Agenda
2. Adoption of final Agenda

## PRESENTATION

1. City Council to recognize the Mendota Junior High School students Anthony Trinidad Cisneros, Jimmy Fuentes-Hernandez, Gerardo Portillo Mendoza, and Jonathan Alfaro Sarabia for winning the MESA National Engineering Design Competition.

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

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

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

1. Minutes of the regular City Council meeting of July 25, 2023.
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 19, 2023 THROUGH JULY 31, 2023  
WARRANT LIST CHECK NOS. 53565 THROUGH 53649  
TOTAL FOR COUNCIL APPROVAL = \$1,389,801.29
2. Proposed adoption of **Resolution No. 23-61**, claiming Local Transportation Funds for Fiscal Year 2023-2024.
3. Proposed adoption of **Resolution No. 23-62**, concerning Local Transportation Purpose Funds (Measure "C" Extension Funds).
4. Proposed adoption of **Resolution No. 23-63**, approving the proposal submitted by Aqua Natural Solutions for treatment of the wastewater pond systems and authorizing the City Manager to execute all necessary documents to effectuate the proposal.

## **PUBLIC HEARING**

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

2. City Council to hold the Development Agreement Annual Review Hearing for Odyssey Agricultural Development LLC.
  - a. *Receive report from Assistant City Attorney Castro*
  - b. *Inquiries from City Council to staff*
  - c. *Mayor Martinez opens the public hearing*
  - d. *Once all comment has been received, Mayor Martinez closes the public hearing*
  - e. *City Council discusses Odyssey Agricultural Development LLC's performance under the development agreement and provides direction to staff*
  
3. Public hearing and proposed adoption of **Ordinance No. 23-02**, amending Title 15 of the Mendota Municipal Code related to adoption by reference of the 2022 California Building Code and Associated Trade Codes.
  - a. *Receive report from City Manager Gonzalez*
  - b. *Inquiries from City Council to staff*
  - c. *Mayor Martinez opens the public hearing*
  - d. *Once all comment has been received, Mayor Martinez closes the public hearing*
  - e. *Council considers waiving the second reading and adoption of Ordinance No. 23-02*

## **BUSINESS**

1. Discussion and consideration of **Resolution No. 23-64**, authorizing the formation of a City Council Ad Hoc Subcommittee to evaluate proposals received in response to the Request for Proposals for the Purchase and Potential Development of City-Owned Real Property.
  - a. *Receive report from City Clerk Cabrera-Garcia*
  - b. *Inquiries from City Council to staff*
  - c. *Mayor Martinez opens floor to receive any comment from the public*
  - d. *City Council appoints Subcommittee members and considers Resolution No. 23-64 for adoption*



2. Discussion and consideration of **Resolution No. 23-65**, authorizing the formation of a City Council Ad Hoc Subcommittee to discuss and consider the design and scope of the proposed Mendota Community Center.
  - a. *Receive report from City Clerk Cabrera-Garcia*
  - b. *Inquiries from City Council to staff*
  - c. *Mayor Martinez opens floor to receive any comment from the public*
  - d. *City Council appoints Subcommittee members and considers Resolution No. 23-65 for adoption*

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

1. Finance Director
  - a) Grant Update
2. City Engineer
  - a) Update
3. City Attorney
4. City Manager

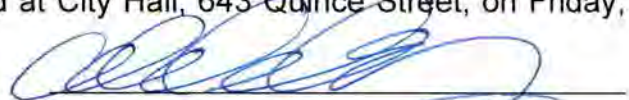
### **MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS**

1. Council Member(s)
2. Mayor

### **ADJOURNMENT**

### **CERTIFICATION OF POSTING**

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of August 8, 2023, was posted on the outside bulletin board located at City Hall, 643 Quince Street, on Friday, August 4, 2023, at 5:00 p.m.



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Celeste Cabrera-Garcia, City Clerk





## MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

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**Regular Meeting**

**July 25, 2023**

**Meeting called to order by Mayor Martinez at 6:00 PM.**

**Roll Call**

**Council Members Present:** Mayor Victor Martinez, Mayor Pro Tem Libertad “Liberty” Lopez, Council Members Jose Alonso, Joseph Riofrio, and Oscar Rosales

**Council Members Absent:** None

**Flag salute led by Police Officer Juan Gurrola**

**Invocation led by Police Chaplain Robert Salinas**

### **FINALIZE THE AGENDA**

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

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

### **PRESENTATION**

1. City Council to recognize Mendota Police Officer Juan Gurrola for outstanding work performance.

Mayor Martinez introduced the item and Chief of Police Smith recognized Officer Gurrola for an award he received from the Mothers Against Drunk Driving for have a significant amount of DUI arrests in 2022.

Officer Gurrola commented on the recognition and shared information on his background and goals as a police officer.

The City Council congratulated Officer Gurrola and thanked him for his work.

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

**Josh Babcock (Office of Congressman Duarte)** – presented City Manager Gonzalez with a certificate of recognition from the Office of Congressman John Duarte for his work as City Manager for the City.

**City Manager Gonzalez** – commented on the recognition and thanked the City Council, City staff and Office of Congressman Duarte for the recognition.

**Dino Perez** – thanked City staff for their work with the 2023 Mendota Firework's Show; commented on the food giveaway held by Westside Youth Inc. ("WSY") on the third Thursday of every month; the start of the Cobra cheer and football seasons; mobile food vendors in the City affecting revenue for WSY's open market and on the possibility of limiting traffic on Smoot Street during WSY's open market to avoid any possible traffic related hazards.

Discussion was held on the comments made by Mr. Perez.

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

1. Minutes of the regular City Council meeting of July 11, 2023.
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 Council Member Rosales to approve items 1 and 2, seconded by Council Member Alonso; unanimously approved (5 ayes).

### **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 5, 2023 THROUGH JULY 18, 2023  
WARRANT LIST CHECK NOS. 53497 THROUGH 53564  
TOTAL FOR COUNCIL APPROVAL = \$734,000.74
2. Proposed adoption of **Resolution No. 23-50**, authorizing the publication of a Request for Proposals for the Purchase and Potential Development of City-Owned Real Property.
3. Proposed adoption of **Resolution No. 23-51**, approving the Proposal and

Consultant Services Agreement from Provost & Pritchard Consulting Group, Inc. for planning services for the Phase 1: Mendota Airport Conceptual Land Plan and Authorizing the City Manager to execute all necessary documents.

4. Proposed adoption of **Resolution No. 23-52**, authorizing signature authority for items related to the Derrick and Oller Roundabout Project.
5. Proposed adoption of **Resolution No. 23-53**, approving the quote submitted by Mechanical Irrigation Solutions for the purchase of a SMG Motor Grader in the amount of \$234,877.74 and authorizing the City Manager to execute all documents necessary to effectuate the purchase.
6. Proposed adoption of **Resolution No. 23-54**, authorizing the City Manager to purchase two vehicles for the Public Utilities and Public Works Departments in an amount not to exceed \$116,000.00, and execute all documents necessary to effectuate the purchases.
7. Proposed adoption of **Resolution No. 23-55**, establishing an Honor Wall Fundraising Program.
8. Proposed adoption of **Resolution No. 23-56**, approving an amendment to the 401(K) profit sharing plan, and authorizing the City Manager to execute all documents necessary to effectuate the amendment.
9. Proposed adoption of **Resolution No. 23-57**, approving the quote submitted by Commerce Truck Equipment Sales, LLC, for the purchase of a Ram 4500 Bucket Truck in the amount of \$151,562.38, and authorizing the City Manager to execute all documents necessary to effectuate the purchase.
10. Proposed adoption of **Resolution No. 23-58**, approving the trust agreement and trustee designation for the City's 401(K) profit sharing plan.
11. Proposed adoption of **Resolution No. 23-59**, approving the quote submitted by Mechanical Irrigation Solutions for the purchase of a CLG2030 Forklift in the amount of \$34,319.99, and authorizing the City Manager to execute all documents necessary to effectuate the purchase.

A motion was made by Council Member Rosales to approve items 1 through 11, seconded by Council Member Riofrio; unanimously approved (5 ayes).

## **BUSINESS**

1. Proposed adoption of **Resolution No. 23-60**, approving the proposal submitted by RRM Design Group for Mendota Community Center Conceptual Programming Services, and authorizing the City Manager to execute all documents necessary to effectuate the proposal.



Mayor Martinez introduced the item and City Manager Gonzalez provided the report.

Discussion was held on the report provided by City Manager Gonzalez, including possible services that will be offered at the Community Center; building guidelines that the City will need to follow; and logistics regarding who will be managing the Community Center.

*Mayor Martinez opened the floor to receive public comment.*

**Joseph Amador** – commented on a trip that previous City Council members took to a community center; potential liabilities that the City may open itself to if a swimming pool is included in the new Community Center, and congratulated City Manager Gonzalez on receiving a certificate of recognition from the Office of Congressman Duarte.

**Albert Escobedo** – congratulated City Manager Gonzalez for receiving a certificate of recognition from the Office of Congressman Duarte; and stated that the Community Center should have an area for seniors and thanked the City Council for their work.

Discussion was held on the comments made by Mr. Escobedo.

**Dino Perez** – commented on WSY possibly partnering with the City to assist with managing the Community Center.

*Mayor Martinez closed the floor to receive public comment.*

A motion was made by Council Member Riofrio to adopt Resolution No 23-60, seconded by Council Member Rosales; unanimously approved (5 ayes).

2. Discussion and consideration of **Ordinance No. 23-02**, amending Title 15 of the Mendota Municipal Code related to adoption by reference of the 2022 California Building Code and Associated Trade Codes.

Mayor Martinez introduced the item and City Manager Gonzalez provided the report.

A motion was made by Council Member Riofrio to introduce and waive the first reading of Ordinance No. 23-02 and schedule its public hearing for August 8, 2023, seconded by Council Member Rosales; unanimously approved (5 ayes).

## **DEPARTMENT REPORTS AND INFORMATIONAL ITEMS**

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

Chief of Police Smith commended City staff for their work with the 2023 Mendota Fireworks Show; commended Andres Godoy for his public dance event; thanked the City Council for their work with an upcoming drag racing event; provided the monthly update for the Code

Enforcement Department for the month of June, including their ongoing work with weed abatement, a karaoke night held by them, a face painting booth held by them at the 2023 Mendota Firework's Show, commented on a recent trip taken by Mendota Police Department Explorers to the United States District Court - Eastern District of California and thanked Mayor Martinez for his assistance with the trip.

Discussion was held on the update and comments made by Chief Smith for the Code Enforcement Department.

Chief Smith provided the update for the Animal Control Department including monthly statistics, their ongoing work to address stray dogs in the City and a rising number of egret birds throughout the City.

Discussion was held on the update provided by Chief Smith for the Animal Control Department.

Chief Smith provided an update for the Police Department, including monthly statistics, a personnel update, their ongoing work to address public drinking, and expressed his concern with an inmate escaping from the Federal Correctional Institution, Mendota.

Discussion was held on the update provided by Chief Smith for the Police Department.

## 2. City Attorney

City Attorney Kinsey stated that he is happy to see everyone; that Assistant City Attorney Castro has been enjoying his work with the City; commented on the ongoing weed abatement process; and on the Mendota Police Department Explorers recent trip to a United States District Court - Eastern District of California.

## 3. City Manager

City Manager Gonzalez commended Chief Smith for his continuous recruitment efforts to increase personnel for the Mendota Police Department; provided an update on the status of the Mendota PD and City Council Chambers; commented on the funding received for a new Community Center; potential uses for the William Robert Johnston Municipal Airport (the "Airport"); the 2023 Mendota Firework's Show, and the upcoming drag racing event that will be held at the Airport.

Discussion was held on the update provided by City Manager Gonzalez.

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

### 1. Council Member(s)

Council Member Rosales wished Mayor Martinez a happy birthday; thanked City staff for their work and thanked everyone who attended the meeting.

Council Member Riofrio commented on mobile food vendor concerns in the City and on a pilot program being conducted by the City of Fresno to address sidewalk vendors.

Discussion was held on the comments made by Council Member Riofrio.

Mayor Pro Tem Lopez commented on the 2023 Mendota Fireworks Show, including feedback she received from community members; complaints she received due to semi-trailer trucks speeding through the roundabout on Bass Avenue and Barboza Street; on semi-trailer trucks parking on an empty lot near apartments on Oller Street; on a community member illegally dumping a refrigerator at Mendota Pool Park; on individuals smoking cannabis at the playground located at the AMOR Wellness Center; on stray dogs in the City and the improvement she has noticed; on backpack giveaways being held by Mendota Youth Recreation and Westside Youth Inc. on August 8<sup>th</sup> and Brother Jay and the Mendota Pentecostal Church of God on August 10<sup>th</sup>; thanked Phantom Fireworks and TNT Fireworks for their donation to the 2023 Mendota Fireworks Show and thanked the City Council and staff for the flowers she received while she was ill.

Council Member Alonso thanked the City Council and City staff for their work in securing funding for a Community Center; thanked City staff for their work with the 2023 Mendota Firework's Show; and commented on a ride along that he had with Chief Smith.

Council Member Rosales commented on an air conditioning class that he offers in Tranquility and expressed his disappointment in the lack of attendance by individuals.

## 2. Mayor

Mayor Martinez thanked the City Council, City staff and community members for their work and commented on the need to continue to work together to improve Mendota.

### **CLOSED SESSION**

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

At 7:35 p.m. the City Council moved into closed session.

At 7:58 p.m. the City Council reconvened in open session and City Attorney Kinsey stated that in regard to item 1 of the closed session there was no reportable action.

### **ADJOURNMENT**

With no more business to be brought before the Council, a motion for adjournment was made at 7:58 p.m. by Council Member Rosales, seconded by Council Member Riofrio; unanimously approved (5 ayes).



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Victor Martinez, Mayor

ATTEST:

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Celeste Cabrera-Garcia, City Clerk

DRAFT

CITY OF MENDOTA  
CASH DISBURSEMENTS  
07/19/23 - 07/31/23  
CK# 053565 - 053649

Check Date	Check Number	Check Amount	Vendor Name	Department	Description
July 19, 2023	53565	\$ 167,914.00	CITY OF MENDOTA PAYROLL	GENERAL	PAYROLL TRANSFER 07/03/23 - 07/16/23
July 21, 2023	53566	\$ 172,771.37	MENDOTA DESIGNATED LOCAL AUTHORITY	GENERAL	PAY-OFF RDA LOAN MDLA
July 25, 2023	53567	\$ 34.06	AGRI VALLEY IRRIGATION, INC.	WATER	(8) FULL FACED GASKET 4"
July 25, 2023	53568	\$ 46.80	AIRGAS USA, LLC	WATER	CYLINDER RENTAL SMALL CARBON DIOXIDE FOR JUNE 2023
July 25, 2023	53569	\$ 113.60	ALERT-0-LITE	REFUSE	(15) VEST MESH REF ORANGE - CITY CLEAN UP
July 25, 2023	53570	\$ 1,413.23	AT&T MOBILITY	GENERAL	POLICE DEPARTMENT CELL SERVICE 05/12/23 - 06/11/23
July 25, 2023	53571	\$ 26.75	AUTOZONE, INC.	GENERAL	(1) ARMOR TIRE FOAM, (1) WHEEL CLEANER, (1) WHEEL BRUSH (PD)
July 25, 2023	53572	\$ 1,125.00	MADERA DISPOSAL SYSTEMS INC.	GENERAL	TICKET # 436594, 438192 - ANIMAL CONTROL DISPOSAL
July 25, 2023	53573	\$ 324.00	BSK ASSOCIATES	WATER, SEWER	GENERAL EDT WEEKLY TREATMENT & DISTRIBUTION, WW WEEKLY GRAB SAMPLE BOD,TDS 06/27/23
July 25, 2023	53574	\$ 470.00	CENTRAL VALLEY TOXICOLGY INC	GENERAL	(1) ETHYL ALCOHOL, (1) COMPLETE DRUG - CASE # 23-01485, (1) ETHYL ALCOHOL, (1) COMPLETE DRUG - CASE # 23-1331 (PD)
July 25, 2023	53575	\$ 168.83	CORELOGIC INFORMATION	GENERAL, WATER, SEWER	REALQUEST SERVICES FOR JUNE 2023
July 25, 2023	53576	\$ 775.51	CORE & MAIN LP	WATER	(20) A34-NL METER ADPT
July 25, 2023	53577	\$ 200.00	DATA TICKET, INC.	GENERAL	DAILY CITATION, DAILY NOTICE FOR JUNE 2023
July 25, 2023	53578	\$ 1,112.81	DELTA SAND, GRAVEL & RECYCLING	GENERAL	(13.25) CLASS II AG BASE ROCK - INCLUSIVE PARK
July 25, 2023	53579	\$ 1,227.17	EINERSON'S PREPRESS	GENERAL, WATER, REFUSE	(10,000) UTILITY BILL PAPER
July 25, 2023	53580	\$ 504.00	FRESNO MOBILE RADIO INC.	GENERAL	(36) POLICE DEPARTMENT RADIOS SERV JUNE 2023
July 25, 2023	53581	\$ 260.03	HARBOR FREIGHT TOOLS	GENERAL	(1) GASOLINE AUGER DRILL
July 25, 2023	53582	\$ 1,403.75	ICAD INC.	WATER	SERVICE AGREEMENTS: 26483 & 26415 , 06/13/23 AND 06/29/23
July 25, 2023	53583	\$ 1,443.68	KOPPEL & GRUBER	GENERAL	CFD NO. 2006 - 1 ANNUAL ADMINISTRATION, L&L DISTRICT NO 2019-1 ADMIN SERV APRIL - JUNE 2023
July 25, 2023	53584	\$ 1,838.22	LOTUS GARDENS OUTDOOR LIVING C	WATER	(4) 15 GALLON TREES - FIRE GLOW RED JAPANESE MAPLE
July 25, 2023	53585	\$ 1,005.89	M.C REPAIRS FULL DIAGNOSTIC	GENERAL	2019 DODGE UNIT M85: MURRAY CLIMATE CONTROL, 2020 FORD K-9 M88: OIL CHANGE (PD)
July 25, 2023	53586	\$ 19,436.58	MADERA PUMPS, INC.	WATER	WELL #5 BASS AVE: PULL PUMP, VIDEO WELL, CRANE LABOR
July 25, 2023	53587	\$ 227.34	MENDOTA 1 SMOG	GENERAL	2018 FORD POLICE INTERCEPT- FRONT BRAKE PADS (PD)
July 25, 2023	53588	\$ 1,222.97	METRO UNIFORM	GENERAL	FY 22/23 (5) OFFICERS UNIFORM ITEMS: (1) BARS LIEUTENANT, SILICONE RING, (1) SS PDU RAPID SHIRT, (1) HYBRID LSSH (PD)
July 25, 2023	53589	\$ 7,405.40	MID VALLEY DISPOSAL, INC	REFUSE	SERVICE FOR JUNE 16-30 FOR CITY YARD, REFUSE SERVICE FOR JUNE 13 - 30 BASS AVE
July 25, 2023	53590	\$ 1,000.00	NETXPRTS LLC	GENERAL, WATER, SEWER	MANAGED MONTHLY SERVICES CONTRACT TECH SUPPORT
July 25, 2023	53591	\$ 350.00	NEXUS ADMINISTRATORS, INC.	GENERAL, WATER, SEWER	(1) RETIREMENT PLANS DOCUMENT AMENDMENTS
July 25, 2023	53592	\$ 2,050.68	NORTHSTAR CHEMICAL	WATER	(605) SODIUM HYPOCHLORITE - 12.5% MILL A
July 25, 2023	53593	\$ 229.50	OFFICE DEPOT	GENERAL, WATER, SEWER	(15) BANKER BOX MAGAZINE FILE, (1) ALL - PURPOSE CLEANER, (1)FEBREZE, (1) 24PK PENCIL, (1) 10 PK TAPE, (2) PAPER
July 25, 2023	53594	\$ 136.55	PLATT ELETRIC SUPPLY	STREETS	(2) SPECIFIER GRADE, (2) IMT LC4536C TWIST

CITY OF MENDOTA  
CASH DISBURSEMENTS  
07/19/23 - 07/31/23  
CK# 053565 - 053649

July 25, 2023	53595	\$ 1,031.00	PROVOST & PRITCHARD	GENERAL	PASS-THRU: ODYSSEY MARCH 2023, PROF SERVICE: HOUSING ELEMENT ANNUAL PROGRAM - APRIL 2023
July 25, 2023	53596	\$ 1,418.67	PROFORCE LAW ENFORCEMENT	GENERAL	(3) AGU 223 55GR FMJ 50RD/BX CASE (PD)
July 25, 2023	53597	\$ 2,036.07	PURL'S SHEETMETAL & AIR	GENERAL, WATER, SEWER	EDD OFFICE: REPLACE AND INSTALL THERMOSTAT, PUBLIC WORKS YARD: DIAGNOSTICS AND REPAIR CONNECT THERMOSTAT
July 25, 2023	53598	\$ 352.96	RAMON'S TIRE & AUTO	GENERAL, WATER, SEWER, STREETS	2018 JEEP GRAND CHEROKEE- TIRE REPAIR PATCH, 2018 JEEP GRAND CHEROKEE: OIL FILTER,MOTOR OIL(PD)
July 25, 2023	53599	\$ 1,717.03	ROSS RECREATION EQUIPMENT, INC	GENERAL	(1) FULL BUCKET SEAT W/ PROGUARD CHAINS - INCLUSIVE PARK
July 25, 2023	53600	\$ 20.10	SEBASTIAN	GENERAL	SECURITY SERVICE FOR 06/21/23 - 06/30/23 (PD)
July 25, 2023	53601	\$ 2,075.66	SITEONE LANDSCAPE SUPPLY LLC	GENERAL	(1) RAIN BIRD POTTED LATCHING, (2) HUNTER NODE CONTRL, (2)HUNTER NODE OUTDOOR CONTROLLER FOR PARKS
July 25, 2023	53602	\$ 3,549.19	SORENSEN MACHINE WORKS	GENERAL, WATER, SEWER, STREETS	CITYWIDE DEPARTMENT SUPPLIES FOR JUNE 2023
July 25, 2023	53603	\$ 974.89	VERIZON WIRELESS	GENERAL, WATER, SEWER	CITYWIDE CELL SERVICE FOR 06/07/23 - 06/30/23
July 25, 2023	53604	\$ 8,307.00	WANGER JONES HELSLEY PC ATTORNEY	GENERAL	PASS-THRU LEGAL SERVICE: ODYSSEY 04/15/23, PROF SERVICE: CITY ATTORNEY: SPECIAL LEGAL SERVICES JUNE 2023
July 25, 2023	53605	\$ 1,500.00	JOHN'S CONSTRUCTION CLEAN UP	GENERAL	WEED ABATEMENT 731 JUANITA ST 07/18/23
July 26, 2023	53606	\$ 20,296.86	SIERRA DISPLAY, INC.	GENERAL	REMAINDER BALANCE FOR CHRISTMAS DECORATIONS
July 26, 2023	53607	\$ 269,197.73	MECHANICAL IRRIGATION SOLUTION	GENERAL, WATER, SEWER, STREETS	UNIT: CLG2030, MODEL:CLG2023H-3 FORKLIFT 6K, SMG 200 MOTOR GRADER CUMMINS QSC 8.3
July 26, 2023	53608	\$ 2,900.00	OUTFRONT MEDIA INC.	REFUSE	SB1383 AND ILLEGAL DUMPING BILLBOARD
July 27, 2023	53609	\$ 151,562.38	COMMERCE TRUCK & EQUIPMENT SALES	STREETS	2022 RAM 4500 VIN#:3C7WRLEL4NG424825
July 27, 2023	53610	\$ 48,992.69	GEWEKE FORD,GEWEKE KIA,GEWEKE	WATER, SEWER	2022 FORD F250 4X4 REG.CAB VIN#:1FDBF2B67NEF66845
July 28, 2023	53611	\$ 1,850.00	DMV - DEPARTMENT OF MOTOR VEHI	GENERAL, WATER, SEWER, STREETS	TROPO REGISTRATION / TAXES
July 31, 2023	53612	\$ 887.14	ACME ROTARY BROOM SERVICE	STREETS	(1) 58" SCHWARZE AVALANCHE 4/3 HUB MAIN BROOM FOR SWEEPER
July 31, 2023	53613	\$ 30,690.94	AETNA LIFE INSURANCE COMPANY	GENERAL	MEDICAL INSURANCE FOR JULY 2023
July 31, 2023	53614	\$ 517.28	AFLAC	GENERAL	AFLAC INSURANCE FOR JULY 2023
July 31, 2023	53615	\$ 59.21	AG & INDUSTRIAL SUPPLY INC.	STREETS	(6) HYD HOSE 1/4 2WIRE, (2) GLOBAL FITTING
July 31, 2023	53616	\$ 23.24	AUTOZONE, INC.	GENERAL	(1) AMERICAN GOLD ANTIFREEZE / COOLANT
July 31, 2023	53617	\$ 4,277.00	AVIATION MARINE INSURANCE SERVICES	GENERAL	2023 LIABILITY INSURANCE 07/27/23 - 07/21/24
July 31, 2023	53618	\$ 1,522.00	BSK ASSOCIATES	WATER, SEWER	WW WEEKLY GRAB SAMPLE BOD,TDS- 07/06/23, WW WEEKLY GRAB SAMPLE BOD,TDS 07/11/23
July 31, 2023	53619	\$ 370.15	CHEMSEARCH	SEWER	(1) CHERRY FLOW 5 GL JULY 2023
July 31, 2023	53620	\$ 483.52	COMCAST BUSINESS	GENERAL	FRESNO COUNTY SHERRIFF TO MENDOTA PD CIRCUIT JULY 2023
July 31, 2023	53621	\$ 1,049.41	CORBIN WILLITS SY'S INC.	GENERAL, WATER, SEWER	ENHANCEMENTS AND SERVICE FEE MAINTENENCE JULY 2023 - MOMS
July 31, 2023	53622	\$ 81.26	EINERSON'S PREPRESS	GENERAL, WATER, SEWER	(500) FULL COLOR BUSINESS CARDS M.BANUELOS - PUBLIC WORKS
July 31, 2023	53623	\$ 121.67	FASTSIGNS	GENERAL	(1) 30"X60" POLE BANNER FULL COLOR PRINT
July 31, 2023	53624	\$ 4,847.00	GEMPLER'S INC.	WATER, SEWER	(1) 100 GAL TRAILER SPRAYER W 12FT
July 31, 2023	53625	\$ 177.21	JENSEN & PILEGARD	GENERAL	(1) O-RING, (1) BOLT FLANGE,(3) WOOD HANDLE HOE



CITY OF MENDOTA  
CASH DISBURSEMENTS  
07/19/23 - 07/31/23  
CK# 053565 - 053649

July 31, 2023	53626	\$ 306.79	LEAF	GENERAL, WATER, SEWER	(2) KYROCERA COPIER SYSTEMS PAYMENT JULY 2023
July 31, 2023	53627	\$ 319.20	M.C REPAIRS FULL DIAGNOSTIC	GENERAL	2015 FORD UNIT#M81: OIL CHANGE, 2018 FORD UNITM87: CANISTER PURGE SOLENOID (PD)
July 31, 2023	53628	\$ 350,747.12	MARKO CONSTRUCTION GROUP INC	GENERAL, WATER, SEWER	MENDOTA POLICE DEPT& COUNCIL CHAMBERS JUNE 2023
July 31, 2023	53629	\$ 50.00	MENDOTA PENTECOSTAL CHURCH	GENERAL	FIREWORK STAND DEPOSIT REIMBURSEMENT
July 31, 2023	53630	\$ 50.00	MENDOTA YOUTH RECREATION	GENERAL	FIREWORK STAND DEPOSIT REIMBURSEMENT
July 31, 2023	53631	\$ 50.00	MENDOTA HIGH SCHOOL FOOTBALL	GENERAL	FIREWORK STAND DEPOSIT REIMBURSEMENT
July 31, 2023	53632	\$ 79.20	MENDOTA 1 SMOG	GENERAL	2020 FORD POLICE INTERCEPT: OIL CHANGE (PD)
July 31, 2023	53633	\$ 389.94	METRO UNIFORM	GENERAL	(2) APEX PANT-NVY, (1) CYRUS BLK ICE, (1) QUICK KIT,(1) DROP FLEX, (1) HOLSTER, CREDIT FOR ULTRALIGHT- CHARGED TWICE (PD)
July 31, 2023	53634	\$ 499.79	MUNICIPAL MAINTENANCE EQUIPMENT	STREETS	(2) BEARING, 1-15/16" 2 BOLD FLANGE- SWEEPER
July 31, 2023	53635	\$ 1,916.77	MUTUAL OF OMAHA	GENERAL	LIFE AD&D LTD STD INSURANCE FOR AUGUST 2023
July 31, 2023	53636	\$ 4,935.19	NORTHSTAR CHEMICAL	WATER	(680) SODIUM HYPOCHLORITE - 12.5% MIL A, (775) SODIUM HYPOCHLORITE - 12.5& MILL A
July 31, 2023	53637	\$ 961.28	OFFICE DEPOT	GENERAL, WATER, SEWER	(1) KLEENEX TISSUE, (1) RUBBER BANDS, (1) POST-IT NOTES, (1) 50 PACK CERTIFICATES STATIONERY, (1) BLACK HP TONER
July 31, 2023	53638	\$ 9,090.91	PG&E	GENERAL, WATER, SEWER, STREETS	WATER UTILITIES 07/01/23-07/11/23
July 31, 2023	53639	\$ 1,090.04	PURCHASE POWER	GENERAL, WATER, SEWER	POSTAGE METER REFILL 07/03/23
July 31, 2023	53640	\$ 55.00	RAMON'S TIRE & AUTO	GENERAL	2021 FORD F-250 SUPER DUTY ANIMAL:TIRE REPAIR, 2008 FORD F-150:TIRE REPAIR INSIDE PATCH
July 31, 2023	53641	\$ 184.00	SACRAMENTO REGIONAL PUBLIC SAFETY	GENERAL	SUPERVISORY (POST/STC) 07/10-21/23 S JURADO,G.GALAVZ
July 31, 2023	53642	\$ 67,528.00	SIGNATURE PUBLIC FUNDING	WATER, SEWER	SOLAR GENERATING FACILITIES & INTERGRATED SWITCHGEAR
July 31, 2023	53643	\$ 386.80	UNION PACIFIC RAILROAD COMPANY	STREETS	PUBLIC ROADWAY ENCROACHMENT 10TH, MARIE, BELMONT
July 31, 2023	53644	\$ 74.21	STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION	STREETS	SIGNAL & LIGHTING BILLING APRIL- JUNE 2023
July 31, 2023	53645	\$ 800.48	HOME DEPOT CREDIT CARD	WATER, STREETS	(2) BEHR PPE 5340 SG DEEP 4.53 GAL, (1) SHADE FABRIC ROLL (6FT X 100 FT), (4) RB 1/2IN END CLOSURE 2PK, (2) 3/4"FHT X .700
July 31, 2023	53646	\$ 426.14	UNDERGROUND SERVICE ALERT OF NORTHERN CALIFORNIA AND NEVADA	WATER, SEWER	(268) TOTAL UNIQUE BILLABLE TICKETS - 2023 MEMBERSHIP
July 31, 2023	53647	\$ 253.62	USA BLUEBOOK	SEWER	(1) GALVANIC DO SENSOR FOR YSL PRO
July 31, 2023	53648	\$ 429.83	VULCAN MATERIALS COMPANY	STREETS	(3.36) ST 3/8 CM SC3000 AGG & ASPHALT - POTHOLES
July 31, 2023	53649	\$ 50.00	WESTSIDE YOUTH	GENERAL	FIREWORK STAND DEPOSIT REIMBURSEMENT

\$ 1,389,801.29

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** NANCY BANDA, FINANCE DIRECTOR  
**VIA:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** CLAIMING LOCAL TRANSPORTATION FUNDS FOR FISCAL YEAR 2022-2023  
**DATE:** AUGUST 8, 2023

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**ISSUE**

Shall the City Council adopt Resolution No. 23-61, claiming Local Transportation Funds for Fiscal Year 2023-2024?

**BACKGROUND**

The Fresno Council of Governments (“FCOG”) has the authority to review claims and allocate such funds in accordance with the Transportation Development Act (“TDA”) of 1971 and Chapter 3 of Title 21 of the California Administrative Code for the purposes allowed under Articles III, IV and VII which provides funding to be allocated to encourage inter-jurisdictional coordination of transportation needs and increased coordination of transportation implementation planning. This funding is allocated by the California Department of Tax and Fee Administration, which takes the amount of sales tax collected and returns the general sales tax revenue to the Council of Fresno County Governments. They in turn, allocate it to each City in the County based on population for the projects that were budgeted for the 2023-2024 fiscal year.

**ANALYSIS**

The attached resolution and claim forms for each applicable funding program are routine and required by FCOG to receive the funding for the Local Transportation Funds. With the funding provided under the TDA, the City can fund street projects approved during the budget for each fiscal year, rural transit and assist with regional transportation planning.

The total amount allocated for the City of Mendota is \$849,683.00. However, the City will be payable \$533,975.00 from the total allocation. The remaining \$315,708.00 will be distributed among four sections: Regional Transportation Planning, Community Transit Service, Article 4.5, Fresno County Rural Transit Agency LTF and Fresno County Rural Transit Agency STA. The following table displays each sections allocation:

FY 2023/2024	
Regional Transportation Planning	\$ 19,570.00
Community Transit Service, Article 4.5	\$ 34,278.00
Fresno County Rural Transit Agency LTF	\$ 112,812.00
Fresno County Rural Transit Agency STA	\$ 149,048.00
	\$ 315,708.00

Regional Transportation Planning is a long-term design of a region’s transportation system. The plan identifies and analyzes transportation needs of the metropolitan region and creates a framework for project priorities.

Community Transit Service, Article 4.5 is a transportation planning agency for community transit services for those disabled, who cannot use conventional transit services. Transportation services which connect intra-community origins and destinations in which needs are not being met in the community.

Fresno County Rural Transit is a transportation service offered in Fresno County to the 13 rural incorporated communities and many unincorporated rural communities with limited services to neighboring counties Kings County (Avenal and Hanford). There is a Demand Responsive or Fixed Route Basis for all passengers. The difference between LTF and STA funding is STA is specific to transit purposes.

**FISCAL IMPACT**

The amount of \$533,975.00 will be allocated to the City of Mendota’s “LTF” Fund.

**RECOMMENDATION**

Staff recommends that the City Council adopt Resolution No. 23-61, claiming Local Transportation Funds for Fiscal Year 2023-2024.

**Attachments:**

1. Transportation Funding Claim Forms for Fiscal Year 2023-2024
2. Resolution No. 23-61



Enter Date: **8/8/2023**

Claimant Name: **City of Mendota**

### TRANSPORTATION FUNDING CLAIM FOR FISCAL YEAR: 2023/24

Instructions: Please note that each page of this claim is a separate worksheet, please click through all tabs and complete. Also note that light yellow fields require an entry if applicable, light grey fields contain formulas that will automatically calculate based on corresponding entries. A date and claimant name field is at the top of the first page, and automatically repeats on following pages, (date should be formatted 00/00/0000)

**When completed, please print, sign and send signed original via mail to:**

**Les Beshears, Director of Finance, Fresno Council of Governments, 2035 Tulare Street, Suite 201,  
Fresno, CA 93721**

From: Applicant:	<b>City of Mendota</b>
Address:	<b>643 Quince Street</b>
City/State/Zip:	<b>Mendota, CA 93640</b>
Contact Phone/email:	<b>(559) 655-3291/nancy@cityofmendota.com</b>

*This applicant is an eligible claimant pursuant to Section 99203 of the Public Utilities Code and certifies that the following transportation funds are available to be claimed:*

#### Local Transportation Fund

Apportionment:	<b>\$ 700,635.00</b>
Unexpended, Held by Claimant:	
Other Agency:	

#### State Transit Assistance Fund

Estimate:	<b>\$ 148,677.00</b>
Unexpended, Held in Trust:	<b>\$ 371.00</b>

#### Other

Other:	
--------	--

<b>Eight Hundred Forty-Nine Thousand Six Hundred Eighty-Three Dollars &amp; 00/100</b>	<b>TOTAL</b>
	<b>\$ 849,683.00</b>

*spell out total amount in above cell*

for the purposes and respective amounts specified in the attached claim be drawn from the Local Transportation Fund and State Transit Assistance Fund.

*Please print and sign after completing form*

Authorized Signature:	
Name/Title:	<b>Cristian Gonzalez/City Manager</b>
Date:	<b>8/8/2023</b>



2035 Tulare St., Ste. 201 tel 559-233-4148  
Fresno, California 93721 fax 559-233-9645

[www.fresnocog.org](http://www.fresnocog.org)

Enter Date: **8/8/2023**

Claimant Name: **City of Mendota**

**TRANSPORTATION FUNDING CLAIM DETAIL FOR FISCAL YEAR: 2023/24**

PURPOSE	AMOUNT	SUBTOTAL
<b>1. Bicycle &amp; Pedestrian Facilities:</b>		
Article 3:	\$ 14,014.00	
Article 8a:		
Audit Exceptions (General Fund Payback);		
Unexpended Funds, Held by Claimant:		
		\$ 14,014.00
<b>2. Regional Transportation Planning:</b>		
	\$ 19,570.00	\$ 19,570.00
<b>3. Public Transportation</b>		
State Transit Assistance Funds (STA):	\$ -	
Other:		
		\$ -
<b>4. Community Transit Service CTSA, Article 4.5:</b>		
	\$ 34,278.00	\$ 34,278.00
<b>5. Streets &amp; Roads:</b>		
Article 8a:	\$ 519,961.00	
Unexpended Funds, Held by Claimant:		
		\$ 519,961.00
<b>6. To Be Claimed By:</b>		
Fresno County Rural Transit Agency LTF:	\$ 112,812.00	
Fresno County Rural Transit Agency STA:	\$ 149,048.00	
Other:	\$ -	
		\$ 261,860.00
<b>7. Reserve in Fund Pending Further Claiming</b>		
		\$ -
<b>GRAND TOTAL</b>		<b>\$ 849,683.00</b>
<b>Claim Total Must Agree With Total on First Page</b>		<b>\$ 849,683.00</b>
<b>Minus Non Transit Claims</b>		<b>\$ 315,708.00</b>
<b>GRAND TOTAL PAYABLE TO CLAIMANT</b>		<b>\$ 533,975.00</b>

*Allocation instructions and payment by the Fresno County Auditor-Controller to the applicant is subject to such monies being available for distribution, and to the provisions that such monies will be used only in accordance with the rules and regulations of the Transportation Development Act.*

Enter Date: **8/8/2023**

Claimant Name: **City of Mendota**

### BICYCLE AND PEDESTRIAN FACILITIES FOR FISCAL YEAR: 2023/24

Two percent (2%) of the claimant's Local Transportation Fund apportionment must be spent on bicycle and pedestrian facilities (PUC 99233.3 and 99234); such claims are to be filed as Article 3. Claims for projects in excess of 2% may be filed as Article 8a (PUC 99400(a)). If other funding is to be used with Local Transportation Funds to implement projects, such funding should be shown on the claim form.

PROJECT TITLE & BRIEF DESCRIPTION	PROJECT COST
1. Various Bicycle & Pedestrian Facilities throughout the claimant's jurisdiction:	\$ 14,014.00
<i>AND/OR:</i>	
Other - describe briefly if applicable:	\$ -
Other - describe briefly if applicable:	\$ -
Other - describe briefly if applicable:	\$ -
<b>TOTAL PROJECT COSTS</b>	<b>\$ 14,014.00</b>

### STREETS AND ROADS CLAIM FOR FISCAL YEAR: 2023/24

Local Transportation Funds coming to claimants within Fresno County may be used for streets and roads improvements and maintenance pursuant to Article 8 (PUC 99400), but only after Fresno COG makes a finding that public transportation needs within the claimant's jurisdiction are reasonably met by satisfying the service requirements set forth by the Regional Transportation Plan (PUC 99401.5).

PROJECT TITLE & BRIEF DESCRIPTION	PROJECT COST
1. Development, Construction & Maintenance Facilities throughout the claimant's jurisdiction:	\$ 519,961.00
<i>AND/OR:</i>	
Other - describe briefly if applicable:	\$ -
Other - describe briefly if applicable:	\$ -
Other - describe briefly if applicable:	\$ -
<b>TOTAL PROJECT COSTS</b>	<b>\$ 519,961.00</b>

Enter Date:

Claimant Name:

## CONTINGENCY PROJECT LISTING FOR FISCAL YEAR: 2023/24

*CHECK ALL THAT APPLY (Enter "X" in yellow box)*

**BICYCLE AND PEDESTRIAN FACILITIES**

Article 3

**PUBLIC TRANSPORTATION**

Article 4

**STREETS & ROADS**

Article 8a

### STANDARD ASSURANCES FOR CLAIMANTS

*CLAIMANT ASSURANCES: (initial yellow box all that apply)*

- A. Claimant certifies that it has submitted a satisfactory, independent fiscal audit, with required certification statement, to the RTPA and to the State Controller, pursuant to PUC 99245 and 21 Cal. Code of Regulations Section 6664 for the prior fiscal year (project year minus two). Claimant assures that this audit requirement will be completed for the current fiscal year (project year minus one).
- B. Claimant certifies that it has submitted a State Controller Report to the RTPA and to the State Controller, pursuant to PUC 99243.

**The undersigned hereby certifies that the above statements are true and correct.**

Please print and sign after completing form

Authorized Signature:

Name/Title:

Date:

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA CLAIMING  
LOCAL TRANSPORTATION FUNDS FOR  
FISCAL YEAR 2023-2024**

**RESOLUTION NO. 23-61**

**WHEREAS**, the City of Mendota (“City”) hereby submits a Local Transportation Fund Claim from the Local Transportation Fund of Fresno County for Fiscal Year 2023-2024; and

**WHEREAS**, the Fresno Council of Governments (“FCOG”) encourages interjurisdictional coordination of transportation needs and increased coordination of transportation implementation plans; and

**WHEREAS**, FCOG has the authority to review claims and allocate Local Transportation Funds in accordance with the Transportation Development Act of 1971 and Chapter 3 of Title 21 of the California Administrative Code.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Mendota that the City hereby requests FCOG allocate \$849,683.00 from the Local Transportation Fund to the named applicant for the Fiscal Year 2023-2024 for the purposes allowed under Articles III, IV, and VIII of the Transportation Development Act of 1971, as identified in the attached claim and in accordance with the adopted Regional Transportation Plan.

**BE IT FURTHER RESOLVED**, that the City Council authorizes the City Manager to execute all associated agreements and documents required to submit the attached claim for the requested Local Transportation Fund allocation.

**BE IT FURTHER RESOLVED**, that the City of Mendota hereby requests that the City’s total Transportation Fund apportionment for Fiscal Year 2023-2024, said amount being \$849,683.00, be allocated from the Local Transportation Fund to FCOG for the purpose of conducting Regional Transportation Planning.

\_\_\_\_\_  
Victor Martinez, Mayor



ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 8<sup>th</sup> day of August, 2023, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Celeste Cabrera-Garcia, City Clerk

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** NANCY BANDA, FINANCE DIRECTOR  
**VIA:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** CONCERNING LOCAL TRANSPORTATION PURPOSE FUNDS (MEASURE “C” EXTENSION FUNDS)  
**DATE:** AUGUST 8, 2023

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**ISSUE**

Shall the City Council adopt Resolution No. 23-62, in the matter concerning Local Transportation Purpose Funds (Measure “C” Extension Funds)?

**BACKGROUND**

The Transportation Development Act (“TDA”) of 1971 provides funding to be allocated to transit and non-transit related purposes that comply with regional transportation plans. This funding is allocated by the California Department of Tax and Fee Administration., which takes the amount of sales tax collected and returns the general sales tax revenue to the Council of Fresno County Governments. They in turn, allocate it to each city in the County of Fresno based on population for the projects that were budgeted for the 2023-2024 fiscal year.

**ANALYSIS**

The attached resolution, certification and claim forms for each applicable funding program are routine and required by the Fresno County Transportation Authority in order to receive the funding for Measure C Pass-Through Funds. With the funding provided by Fresno County Transportation Authority, the City of Mendota is able to fund street projects approved during the budget for each fiscal year.

**FISCAL IMPACT**

\$485,866.00 to the City of Mendota Measure “C” Fund.

**RECOMMENDATION**

Staff recommends that the City Council adopt Resolution No. 23-62, concerning Local Transportation Purpose Funds (Measure “C” Extension Funds).

**Attachments:**

1. Resolution No. 2023-02, in the matter of Fresno County Transportation Improvement Act California Public Utilities Code Section 142257 – Retail Transactions and Use Tax Funds for Extension Local Transportation Purposes Pass-Through Projects and Programs for FY 2023-24
2. Measure “C” Extension Local Transportation Pass-Through Revenues Certification and Claim for FY 2023-24 – Street Maintenance

3. Measure “C” Extension Local Transportation Pass-Through Revenues Certification and Claim for FY 2023-24 – ADA Compliance
4. Measure “C” Extension Local Transportation Pass-Through Revenues Certification and Claim for FY 2023-24 – Flexible Funding
5. Resolution No. 23-62

**BEFORE THE  
FRESNO COUNTY TRANSPORTATION AUTHORITY BOARD  
RESOLUTION NO 2023-02**

In the Matter of:	)	
FRESNO COUNTY TRANSPORTATION	)	RETAIL TRANSACTIONS AND USE
IMPROVEMENT ACT	)	TAX FUNDS FOR EXTENSION
CALIFORNIA PUBLIC UTILITIES	)	LOCAL TRANSPORTATION
<u>CODE SECTION 142257</u>	)	PURPOSES PASS-THROUGH
	)	PROJECTS AND PROGRAMS FOR
	)	<u>FY 2023-24</u>

**WHEREAS**, the Fresno County Transportation Authority is the administrator of the Retail Transactions and Use Tax (1/2 cent) Funds collected pursuant to the Fresno County Transportation Improvement Act as provided by Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Public Utilities Code Sections 142000, et seq.,

**WHEREAS**, California Public Utilities Code Section 142257 provides that the 2006 Measure C Extension Expenditure Plan, which was approved prior to and provided the basis for the ballot measure considered by the voters at the November 7, 2006, election, shall specify the amount and the formula by which the retail transactions and use tax shall be allocated to each participating jurisdiction for Measure C Extension Program and Project Funds Local Transportation Purposes determined to be priority projects by local governments to which funds are allocated, and

**WHEREAS**, the 2006 Measure C Extension Expenditure Plan creates a number of transportation programs to be funded by participating jurisdictions with Measure C funds passed through from the Authority to the jurisdiction submitting eligible project claims, and

**WHEREAS**, these various programs have differing requirements, exemptions, and formulas for calculating pass-through funding levels, and

**WHEREAS**, the programs and subprograms identified below are eligible for pass-through funding,

Regional Public Transit Program

- Public Transit Agencies
- Public Transportation Infrastructure Study (PTIS)
- ADA/Seniors/Paratransit
- Ag-worker/Car/Van Pools

Local Transportation Program

- Local Allocation
- Pedestrian/Trails
- Bicycle Facilities

Regional Transportation Program  
Fresno Airports

Administration/Planning Program  
Council of Fresno County Governments

and

**WHEREAS**, the program requirements and exemptions for these programs may change from time to time as local jurisdiction population changes or mandated programs are satisfied, and

**WHEREAS**, in an effort to fully explain the various program provisions, the Authority, together with the Fresno Council of Governments, created and will update as needed the Measure C Extension Strategic Implementation Plan which among other things discusses each pass-through program in detail and provides the basis for calculating pass-through funding levels for each program in the 2023-24 fiscal year, and

**WHEREAS**, the Authority procedures for administration of funds for local transportation purposes as identified in the Measure C Extension Administrative Code calls for an annual Resolution of Apportionment to determine the percentage and amount of funds to be available within the forthcoming fiscal year, and

**WHEREAS**, the attached schedule of apportionment for FY 2023-24 is based upon the Measure C Extension Strategic Implementation Plan.

**NOW THEREFORE, BE IT RESOLVED** that the Fresno County Transportation Authority hereby approves the attached schedule of apportionment for FY 2023-24 as indicated in the Measure C Extension Strategic Implementation Plan, which schedule is hereby made a part of this resolution, and approves the allocations, to be distributed as they are received and in accordance with claims submitted by eligible claimants.

**BE IT FURTHER RESOLVED** that the Fresno County Auditor-Controller/Treasurer-Tax Collector cause the revised Resolution of Apportionment to be paid in the manner and time directed by the Executive Director of the Fresno County Transportation Authority.

**THE FOREGOING RESOLUTION** was passed and adopted by the Fresno County Transportation Authority Board this 14th day of June 2023.


AYES: (7) Mendes, Ashbeck, Beltran, Brandau, Harris, Perez, Sihota

NOES:

ABSTAIN:

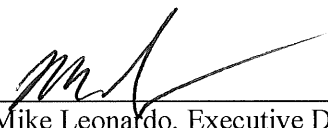
ABSENT: (2) Arias, Dyer

VACANT:

SIGNED:   
Ernest "Buddy" Mendes, Chairman  
Fresno County Transportation Authority

**ATTEST:**

I hereby certify that the foregoing is a true copy of a resolution of the Fresno County Transportation Authority duly adopted at a regular meeting thereof held on June 14, 2023.

SIGNED:   
Mike Leonardo, Executive Director  
Fresno County Transportation Authority

/dd/reso/PassThru-Allocation-2023-02

**RESOLUTION OF ALLOCATION 2023-02  
 FY2023-24 MEASURE C EXTENSION ESTIMATED ALLOCATIONS**

**Table 1  
 Measure C Sales Tax Revenue  
 2023/24**

Approved by the FCTA Board 06/14/23

Sales Tax Estimate		\$112,421,541
Program Services and Supplies		\$797,084
Net Distributed Sales Tax Estimate		\$111,624,457
<b>Funding Allocation Programs</b>	<b>Percent</b>	<b>Allocation</b>
<b>Regional Public Transit Program</b>		
Public Transit Agencies		
Fresno Area Express (FAX)	13.70%	15,292,551
Clovis Transit	1.97%	2,199,001
Fresno County Rural Transit Agency (FCRTA)	3.99%	4,453,816
Public Transportation Infrastructure Study (PTIS)	0.29%	323,711
ADA / Seniors / Paratransit	0.79%	881,833
Farmworker / Car / Van Pools		
Farmworker Van Pools	0.58%	647,422
Car/Van Pools	0.58%	647,422
New Technology Reserve	2.10%	2,344,113
<b>Local Transportation Program</b>		
Local Allocation	30.60%	34,157,084
Pedestrian/Trails		
Urban (Fresno/Clovis)	2.15%	2,399,926
Rural	0.95%	1,060,432
Bicycle Facilities	0.90%	1,004,621
<b>Regional Transportation Program</b>		
Urban	14.70%	16,408,795
Rural	14.70%	16,408,795
Airports	1.00%	1,116,245
<b>Alternative Transportation Program</b>		
Grade Separation	6.00%	6,697,467
<b>Environmental Enhancement</b>		
School Bus Replacement	2.30%	2,567,363
Transit Oriented Infrastructure for Infill	1.20%	1,339,493
<b>Administration/Planning Program</b>		
Fresno County Transportation Authority (FCTA)	1.00%	1,116,245
Fresno Council of Governments (FCOG)	0.50%	558,122
<b>Total</b>	<b>100.00%</b>	<b>111,624,457</b>

**RESOLUTION OF ALLOCATION 2023-02  
LOCAL TRANSPORTATION SUB PROGRAM FY2023-2024 ALLOCATIONS**

**Table 2  
FRESNO COUNTY TRANSPORTATION AUTHORITY  
MEASURE C FUND APPORTIONMENT  
Local Allocation Sub Program  
FY2023/24**

6/14/2023 Approved by the FCTA Board

	Street Maintenance	ADA Compliance	Flexible Funding	Ped/Trails Urban	Ped/Trails Rural	Bicycle Facilities	Total
Clovis	1,790,535	10.48%	1,727,866	17.57%	0	107,416	4,110,123
Coalinga	288,984	1.69%	353,999	2.07%	0	0	653,097
Firebaugh	187,505	1.10%	219,186	1.28%	0	0	413,253
Fowler	156,451	0.92%	182,654	1.07%	0	0	344,580
Fresno	7,602,293	44.51%	7,336,213	76.67%	0	466,085	17,510,730
Huron	133,948	0.78%	155,893	0.91%	0	0	294,529
Kerman	286,093	1.68%	350,043	2.05%	0	0	646,149
Kingsburg	235,486	1.38%	283,757	1.66%	0	0	527,484
Mendota	215,646	1.26%	261,978	1.54%	0	0	485,171
Orange Cove	180,707	1.06%	215,598	1.26%	0	0	402,630
Parlier	243,007	1.42%	296,863	1.74%	0	0	548,374
Reedley	404,580	2.37%	390,420	2.29%	88,908	21,883	919,950
San Joaquin	101,308	0.59%	113,567	0.67%	0	0	218,421
Sanger	420,534	2.46%	405,815	2.38%	91,921	22,867	955,855
Selma	393,396	2.30%	485,941	2.85%	0	0	893,105
County of Fresno	4,438,074	25.99%	4,282,741	25.10%	413,428	270,808	9,698,612
	17,078,542	597,750	17,062,529	2,399,926	594,257	889,059	38,622,063
							38,622,063



**RESOLUTION OF ALLOCATION 2023-02  
LOCAL TRANSPORTATION PROGRAM SUB PROGRAM FY2023-2024 CALCULATIONS**

Table 3  
FRESNO COUNTY TRANSPORTATION AUTHORITY  
MEASURE C FUND APPORTIONMENT CALCULATIONS  
Local Allocation Sub Program  
FY2023/24 6/14/2023 Approved by the FCTA Board

	2023		2020		Miles	25% Percent	Percent	Formula Above Minimum	Local Allocation		Street Maint. 50% of Local Allocation	Total Allocable to Program	1.75% of Local Alloc		48.25% of Local Alloc		Total	
	Population	Road	Population	Road					ADA	Compliance			Flexible Funding	Ped/Trails	Urban	Rural		Bicycle
Clovis	124,523	384.8	0.092330541	0.014591477	10.69%	100,000	3,481,069	3,581,069	1,790,535	1,790,535	4,110,123	0	62,669	1,727,866	421,638	0	107,416	4,110,123
Coalinga	17,237	50.1	0.012780784	0.001900153	1.47%	100,000	477,968	577,968	288,984	288,984	653,097	60,380	14,749	353,999	0	0	0	653,097
Firebaugh	8,495	56.7	0.00629882	0.002148148	0.84%	100,000	275,009	375,009	187,505	187,505	413,253	29,758	8,486	219,186	0	0	0	413,253
Fowler	7,168	32.3	0.005314884	0.001224425	0.65%	100,000	212,901	312,901	156,451	156,451	344,580	25,109	6,570	182,654	0	0	0	344,580
Fresno	543,428	1,608.6	0.40253762	0.061003976	46.39%	100,000	15,104,566	15,204,566	7,602,293	7,602,293	17,510,730	0	266,080	7,336,213	1,840,059	0	466,085	17,510,730
Huron	6,124	16.3	0.004540786	0.000516194	0.52%	100,000	167,896	267,896	133,948	133,948	294,529	21,452	5,181	155,893	0	0	0	294,529
Kerman	16,955	50.9	0.012571688	0.001831626	1.45%	100,000	472,186	572,186	286,093	286,093	646,149	59,393	14,570	350,043	0	0	0	646,149
Kingsburg	12,865	48.9	0.00953906	0.001855408	1.4%	100,000	370,971	470,971	235,486	235,486	527,484	45,066	11,447	283,757	0	0	0	527,484
Mendota	12,463	24.7	0.009240988	0.000934719	1.02%	100,000	331,291	431,291	215,646	215,646	485,171	43,657	10,223	261,978	0	0	0	485,171
Orange Cove	9,463	26.7	0.007016567	0.001012834	0.80%	100,000	261,414	361,414	180,707	180,707	402,630	33,149	8,067	215,598	0	0	0	402,630
Parlier	14,402	31.1	0.010578706	0.001177784	1.19%	100,000	386,013	486,013	243,007	243,007	546,374	50,450	11,911	296,863	0	0	0	546,374
Reedley	25,381	78.1	0.018819346	0.002962661	2.18%	100,000	709,159	809,159	404,580	404,580	919,950	0	0	390,420	0	88,908	21,883	919,950
San Joaquin	3,608	12.6	0.002675237	0.00047665	0.32%	100,000	102,616	202,616	101,308	101,308	216,421	12,639	3,166	113,667	0	0	0	216,421
Sanger	26,241	87.2	0.019457014	0.003305076	2.28%	100,000	741,067	841,067	420,534	420,534	955,855	0	0	405,815	0	91,921	22,867	955,855
Selma	24,300	81.2	0.018017813	0.003071779	2.11%	100,000	686,791	786,791	393,396	393,396	893,105	85,122	21,182	485,941	0	0	0	893,105
County of Fresno	158,846	4,002.7	0.117780146	0.151781682	26.98%	100,000	8,776,147	8,876,147	4,438,074	4,438,074	9,698,612	0	0	4,282,741	138,229	413,428	270,808	9,698,612
TOTAL	1,011,489	6,692.9	0.750000	0.250000	100.00%	1,600,000	32,557,064	34,157,064	17,078,542	17,078,542	38,622,063	466,175	115,562	17,062,529	2,399,826	594,257	889,059	38,622,063

MEASURE C EXTENSION  
 LOCAL TRANSPORTATION PASS THROUGH REVENUES  
 CERTIFICATION AND CLAIM FOR FY2023-24

TO: Fresno County Transportation Authority

FROM: City of Mendota  
*Local Agency Name*

Address: 643 Quince Street, Mendota, CA 93640

Contact: Cristian Gonzalez, City Manager

Telephone: (559) 655-3291 x107

FAX: \_\_\_\_\_

Email Address: cristian@cityofmendota.com

1. Applicable Funding Program: (Check One)

***Regional Public Transit Program***

- Fresno Area Express
- Clovis Transit
- FCRTA
- PTIS/Transit Consolidation
- ADA/Seniors/Paratransit
- Farmworker Van Pools
- Car/Van Pools
- New Technology Reserve

***Local Transportation Program***

- Street Maintenance
- ADA Compliance
- Flexible Funding
- Pedestrian/Trails Urban
- Pedestrian/Trails Rural
- Bicycle Facilities
- Regional Transportation Program***
- Fresno Airports

***Alternative Transportation Program***

- Rail Consolidation Subprogram

***Environmental Enhancement Program***

- School Bus Replacement
- Transit Oriented Infrastructure for In-Fill

***Administrative/Planning Program***

- Fresno COG

2. The City of Mendota ("claimant") is an eligible claimant of funds for local transportation purposes pursuant to *Local Agency Name* California Public Utilities Code Section 142257.

3. The Fresno County Transportation Authority has adopted a Resolution of Apportionment for Fiscal Year 2023-2024 setting 1.26% of \$17,078,542 (or \$215,646) for the Subprogram or Category of funds checked above and available to the claimant. On behalf of claimant, I hereby request release of the funds to claimant in accordance with:

- (a) Monthly payments consistent with adopted percentage, based on actual receipts
- (b) Compliance with Steps A and B of the Strategic Implementation Plan (SIP) – Local Agency Pass-Through Funding programs and Other Revenue Program Funding

4. On behalf of claimant, I hereby certify as follows:

- (a) That the Subprogram or Category of funds checked above are not being used to substitute for property tax funds which claimant had previously used for local transportation purposes. Such substitution of property tax funds is prohibited by California Public Utilities Code Section 142257.
- (b) That claimant has segregated property tax revenues from claimant's other general fund revenues used to support the Subprogram or Category of funds checked above so that verification of non-substitution can be proved through audit or that the non-substitution of funds shall apply to claimant's entire general fund.
- (c) That claimant shall account for Subprogram or Category of funds checked above and received pursuant to Public Utilities Code Section 142257. Claimant shall maintain current records in accordance with generally accepted accounting principles and shall separately record expenditures for each type of eligible purpose. Claimant shall make such records available to the Authority for inspection or audit at any time.

5. Claimant understands that should financial or compliance audit exceptions be found, the Fresno County Transportation Authority will take immediate steps to resolve the exceptions in accordance with its adopted procedures.

Authorized Signature:

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

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

\_\_\_\_\_  
 Finance Director

ATTACHMENT: Evidence of Formal Action for Approval and Submittal

Approved by: Fresno County Transportation Authority Board on: \_\_\_\_\_

**MEASURE C EXTENSION  
LOCAL TRANSPORTATION PASS THROUGH REVENUES  
CERTIFICATION AND CLAIM FOR FY2023-24**

TO: Fresno County Transportation Authority

FROM: City of Mendota  
*Local Agency Name*

Address: 643 Quince Street, Mendota, CA 93640

Contact: Cristian Gonzalez, City Manager

Telephone: (559) 655-3291 x107

FAX: \_\_\_\_\_

Email Address: cristian@cityofmendota.com

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- New Technology Reserve

***Local Transportation Program***

- Street Maintenance
- ADA Compliance
- Flexible Funding
- Pedestrian/Trails Urban
- Pedestrian/Trails Rural
- Bicycle Facilities
- Regional Transportation Program***
- Fresno Airports

***Alternative Transportation Program***

- Rail Consolidation Subprogram

***Environmental Enhancement Program***

- School Bus Replacement
- Transit Oriented Infrastructure for In-Fill

***Administrative/Planning Program***

- Fresno COG

2. The City of Mendota ("claimant") is an eligible claimant of funds for local transportation purposes pursuant to *Local Agency Name* California Public Utilities Code Section 142257.

3. The Fresno County Transportation Authority has adopted a Resolution of Apportionment for Fiscal Year 2023-2024 setting 1.26% of \$597,750 (or \$8,242) for the Subprogram or Category of funds checked above and available to the claimant. On behalf of claimant, I hereby request release of the funds to claimant in accordance with:

- (a) Monthly payments consistent with adopted percentage, based on actual receipts
- (b) Compliance with Steps A and B of the Strategic Implementation Plan (SIP) – Local Agency Pass-Through Funding programs and Other Revenue Program Funding

4. On behalf of claimant, I hereby certify as follows:

- (a) That the Subprogram or Category of funds checked above are not being used to substitute for property tax funds which claimant had previously used for local transportation purposes. Such substitution of property tax funds is prohibited by California Public Utilities Code Section 142257.
- (b) That claimant has segregated property tax revenues from claimant's other general fund revenues used to support the Subprogram or Category of funds checked above so that verification of non-substitution can be proved through audit or that the non-substitution of funds shall apply to claimant's entire general fund.
- (c) That claimant shall account for Subprogram or Category of funds checked above and received pursuant to Public Utilities Code Section 142257. Claimant shall maintain current records in accordance with generally accepted accounting principles and shall separately record expenditures for each type of eligible purpose. Claimant shall make such records available to the Authority for inspection or audit at any time.

5. Claimant understands that should financial or compliance audit exceptions be found, the Fresno County Transportation Authority will take immediate steps to resolve the exceptions in accordance with its adopted procedures.

Authorized Signature:

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

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

\_\_\_\_\_  
Finance Director

ATTACHMENT: Evidence of Formal Action for Approval and Submittal

Approved by: Fresno County Transportation Authority Board on: \_\_\_\_\_

**MEASURE C EXTENSION  
LOCAL TRANSPORTATION PASS THROUGH REVENUES  
CERTIFICATION AND CLAIM FOR FY2023-24**

TO: Fresno County Transportation Authority

FROM: City of Mendota  
*Local Agency Name*

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Contact: Cristian Gonzalez, City Manager

Telephone: (559) 655-3291 x107

FAX: \_\_\_\_\_

Email Address: cristian@cityofmendota.com

1. Applicable Funding Program: (Check One)

***Regional Public Transit Program***

- Fresno Area Express
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***Local Transportation Program***

- Street Maintenance
- ADA Compliance
- Flexible Funding
- Pedestrian/Trails Urban
- Pedestrian/Trails Rural
- Bicycle Facilities
- Regional Transportation Program***
- Fresno Airports

***Alternative Transportation Program***

- Rail Consolidation Subprogram

***Environmental Enhancement Program***

- School Bus Replacement
- Transit Oriented Infrastructure for In-Fill

***Administrative/Planning Program***

- Fresno COG

2. The City of Mendota ("claimant") is an eligible claimant of funds for local transportation purposes pursuant to *Local Agency Name* California Public Utilities Code Section 142257.

3. The Fresno County Transportation Authority has adopted a Resolution of Apportionment for Fiscal Year 2023-2024 setting 1.54% of \$17,062,259 (or \$261,978) for the Subprogram or Category of funds checked above and available to the claimant. On behalf of claimant, I hereby request release of the funds to claimant in accordance with:

- (a) Monthly payments consistent with adopted percentage, based on actual receipts
- (b) Compliance with Steps A and B of the Strategic Implementation Plan (SIP) – Local Agency Pass-Through Funding programs and Other Revenue Program Funding

4. On behalf of claimant, I hereby certify as follows:

- (a) That the Subprogram or Category of funds checked above are not being used to substitute for property tax funds which claimant had previously used for local transportation purposes. Such substitution of property tax funds is prohibited by California Public Utilities Code Section 142257.
- (b) That claimant has segregated property tax revenues from claimant's other general fund revenues used to support the Subprogram or Category of funds checked above so that verification of non-substitution can be proved through audit or that the non-substitution of funds shall apply to claimant's entire general fund.
- (c) That claimant shall account for Subprogram or Category of funds checked above and received pursuant to Public Utilities Code Section 142257. Claimant shall maintain current records in accordance with generally accepted accounting principles and shall separately record expenditures for each type of eligible purpose. Claimant shall make such records available to the Authority for inspection or audit at any time.

5. Claimant understands that should financial or compliance audit exceptions be found, the Fresno County Transportation Authority will take immediate steps to resolve the exceptions in accordance with its adopted procedures.

Authorized Signature:

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

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

\_\_\_\_\_  
Finance Director

ATTACHMENT: Evidence of Formal Action for Approval and Submittal

Approved by: Fresno County Transportation Authority Board on: \_\_\_\_\_

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA CONCERNING  
LOCAL TRANSPORTATION PURPOSE FUNDS  
(MEASURE “C” EXTENSION FUNDS)**

**RESOLUTION NO. 23-62**

**WHEREAS**, the City of Mendota (“City”) is an eligible claimant of funds for Measure C Extension Local Transportation Pass-Through Projects and Program Funds pursuant to Public Utilities Code section 142257; and

**WHEREAS**, the Fresno County Transportation Authority has adopted Resolution No. 2023-02 designating Apportionments for FY 2023-2024 Measure C Extension Local Transportation Pass-Through Projects and Program Funds, and setting the City’s percentages at the following amounts:

- 1.26% of \$17,078,542 (or \$215,646) for the Local Transportation Program, Local Allocation – Street Maintenance Category sub-program
- 1.26% of \$597,750 (or \$8,242) for the Local Transportation Program, Local Allocation – ADA Compliance sub-program
- 1.54% of \$17,062,259 (or \$261,978) for the Local Transportation Program, Local Allocation – Flexible Funding Category sub-program

**WHEREAS**, the amounts listed above shall be the proportionate share of Measure C Extension Local Transportation Pass-Through Projects and Program Funds that the City is entitled to within the fiscal year; and

**WHEREAS**, the City wishes to claim these available Measure C funds.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mendota as follows:

- 1) The City of Mendota hereby submits its Local Transportation Purposes Certification and Claims for Fiscal Year 2023-2024 Measure C Extension Local Transportation Pass-Through Projects and Program Funds.
- 2) The City of Mendota hereby requests the release of funds to the City on a monthly payment basis consistent with the adopted percentages listed above, based on actual receipts.
- 3) The City Council of the City of Mendota further certifies:

- a) That Local Transportation Purpose Funds will not be used to substitute for property tax funds which the City of Mendota had previously used for local transportation purposes; and
  - b) That the City of Mendota has and will segregate property tax revenues used to support local transportation purposes so that verification of non-substitution can be proved through audit; and
  - c) That the City of Mendota shall separately account for Local Transportation Purposes Funds received, pursuant to Public Utilities Code section 142257. The City of Mendota shall maintain records in accordance with generally accepted accounting principles, shall separately record expenditures for each type of eligible purpose, shall file a separate claim form for each sub-program allocation, and shall make such records available to the Fresno County Transportation Authority for inspection or audit at any time; and
  - d) The City of Mendota shall complete the reporting requirements no later than November 15, 2023, when claim forms are submitted.
- 4) The City of Mendota understands that should a financial or compliance audit reveal that it violated any of the requirements set forth in Paragraph 3, subdivisions (a), (b), or (c), above, that the Fresno County Transportation Authority may seek to take immediate steps to resolve the violation in accordance with its adopted procedures.
- 5) The City Council of the City of Mendota hereby authorizes the City Manager or Finance Director to submit and execute any and all related documents required to effect this arrangement.

\_\_\_\_\_  
Victor Martinez, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 8<sup>th</sup> day of August, 2023, by the following vote:

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

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

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND CITY COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** APPROVING THE PROPOSAL SUBMITTED BY AQUA NATURAL SOLUTIONS FOR TREATMENT OF THE WASTEWATER POND SYSTEMS AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS TO EFFECTUATE THE PROPOSAL  
**DATE:** AUGUST 8, 2023

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**ISSUE**

Shall the City Council adopt Resolution No. 23-63, approving the proposal submitted by Aqua Natural Solutions for treatment of the wastewater pond systems and authorizing the City Manager to execute all necessary documents to effectuate the proposal.

**BACKGROUND**

The City of Mendota (“City”) is responsible for maintaining its infrastructure and authorizing its Public Utilities Departments (“Department”) to acquire contract services to maintain its facilities in accordance with the purchasing procedures outlined in Chapter 2.48 of the Mendota Municipal Code (“MMC”).

**ANALYSIS**

The Department needs contact treatment sludge and odor treatment services for the City’s wastewater ponds located at the Wastewater Treatment Plant. Due to the specific biologic augmentation treatment that the Facilities need, it is increasingly difficult to effectively obtain proposals in accordance with the City’s purchasing procedures in Chapter 2.48 of the Mendota Municipal Code (“MMC”). As such, staff is requesting that the City Council approve the proposal submitted by Aqua Natural Solutions for the treatment of the City’s wastewater treatment ponds in the amount of \$42,672.54.

**FISCAL IMPACT**

The fiscal impact for this item is \$42,672.54. Funding for this item was included in the approved budget for Fiscal Year 2023-2024 and will be expended from the Sewer Fund.

**RECOMMENDATION**

Staff recommends that the City Council adopt Resolution No. 23-63, approving the proposal submitted by Aqua Natural Solutions for treatment of the wastewater pond systems and authorizing the City Manager to execute all necessary documents to effectuate the proposal.

**Attachments:**

1. Proposal submitted by Aqua Natural Solutions
2. Resolution No. 23-63





February 14, 2023

Jerry Angel Jr.  
Public utilities director  
City of Mendota  
643 Quince Street  
Mendota, CA 93640

#### Municipal Lagoons Treatment Schedule/Proposal

The following proposal addresses the items discussed on October 29, 2021, to include excessive sludge buildup in the settlement ponds.

Historical, Traditional wastewater pond systems including the system in use in Mendota, were designed to increase biological activity to break down the solids entering the system from the plant and allow the suspended solids to settle out of the wastewater stream as it travels through the series of ponds, until it can finally be discharged. This process while effective creates, over time sludge layers in the bottom of the lagoons, as the layers rise the pond becomes less able to break down the solids and more pass through to the downstream ponds reducing efficiency and, in this case, releasing foul odors. There are two approaches to removing sludge and maintaining healthy levels of biological activity. First is the mechanical dredge and haul away method, this is very expensive and provides no mechanism for minimizing future accumulation. Second is through bio augmentation, the addition of specific bacteria cultures blended to ingest the volatile solids present in the sludge layer and keep the future accumulations at acceptable levels. This method is far more cost effective.

After site review our company recommends the following treatment regimen to address the problems listed above.

- 1) Lagoon systems - We suggest a combination of our Microbe Lift/IND and our Microbe Lift Sludge Away for the treatment of the municipal wastewater lagoon systems to mitigate the existing sludge buildup and minimize future accumulations. ELI's Microbe Lift/IND has demonstrated the capability to enhance the degradation of slow to degrade compounds and specifically address and mitigate FOG accumulations. When combined with Microbe Lift Sludge Away we have seen noted improvements in 90 to a maximum of 120 days from start of treatment, and a significant reduction of sludge buildup. We have demonstrated 1" to 3" of sludge reduction per month in several studies, while providing a reduction in final effluent and ongoing odor control throughout the process.



2) Odor abatement is achieved through the microbial products facultative capability to function anoxically in the low oxygen areas of the lagoon blocking odor causing sulfate pathways, and the ability of the formulation purple-non sulfur microorganisms to effectively mitigate hydrogen sulfide from the system through their biological process.

Primary treatment lagoons #1 and #2 with capacities of 20 million each, Accounting for free board the amount to be treated @70% of total is 14 million gallons each. Once treated, the cultures will continue to grow and move downstream helping to minimize accumulation in the downstream ponds.

1) Treatment at startup, apply 140 gallons MICROBE-LIFT IND and 70 gallons of Microbe Lift Sludge Away to each lagoon

2) Following initial treatment add 30 gallons MICROBE-LIFT IND and 15 gallons of Microbe Lift Sludge Away to each lagoon once per week for four weeks. Monthly maintenance will be as follows: 30 gallons MICROBE-LIFT IND and 15 gallons of Microbe Lift Sludge Away to each lagoon once per month

Initial treatment of both ponds will be provided at no charge by Aqua Natural Solutions.

\* Maintain a pH in the range of 6.5 to 7.9,

Pricing: For 12 months treatment per pond,

360 Gallons Microbe Lift IND @ \$36.95 per gallon =	\$13,302.00
180 Gallons Microbe Lift Sludge Away@ \$36.95 per gallon=	\$6,651.00
Tax	<u>\$1,383.27</u>
Total per pond	\$21,336.27
Total both ponds @ \$21,336.27 x 2 =	\$42,672.54

Respectfully

Brian Griggs  
Aqua Natural Solutions  
SBE # 1758659

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA APPROVING  
THE PROPOSAL SUBMITTED BY AQUA  
NATURAL SOLUTIONS FOR TREATMENT  
OF THE WASTEWATER POND SYSTEMS  
AND AUTHORIZING THE CITY MANAGER TO  
EXECUTE ALL NECESSARY DOCUMENTS  
TO EFFECTUATE THE PROPOSAL**

**RESOLUTION NO. 23-63**

**WHEREAS**, the City of Mendota (“City”) is responsible for maintaining the City’s infrastructure; and

**WHEREAS**, the City Council allocated funding in the City’s approved Budget for Fiscal Year 2023-2024 for the Public Utilities Department (the “Department”) to contract services for the treatment of the City’s wastewater ponds (the “Facilities”); and

**WHEREAS**, due to the specific biologic augmentation treatment that the Facilities need, it is increasingly difficult to effectively obtain proposals in accordance with the City’s purchasing procedures in Chapter 2.48 of the Mendota Municipal Code (“MMC”); and

**WHEREAS**, pursuant to MMC section 2.48.090, subdivision (E), City staff may dispense with competitive bidding requirements where there are “limitations on the source of supply, necessary restrictions in specifications, necessary standardization, quality considerations or other valid reasons for proceeding without competitive bidding. . . .”; and

**WHEREAS**, in order to ensure that the Department is able to adequately maintain the Facilities and ensure the health, safety, and welfare of the community, it is imperative that the City Council approve the proposal submitted by Aqua Natural Solutions for the treatment of the City’s wastewater treatment ponds in the amount of \$42,672.54.

**NOW, THEREFORE, BE IT RESOLVED**, proposal submitted by Aqua Natural Solutions for the treatment of the City’s wastewater treatment ponds.

**BE IT FURTHER RESOLVED**, that the City Manager, or his designee, is authorized to execute such additional documents as may be necessary to effectuate the proposal.

\_\_\_\_\_  
Victor Martinez, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 8<sup>th</sup> day of August, 2023, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** HOLDING THE DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING FOR BOCA DEL RIO AGRICULTURE LLC  
**DATE:** AUGUST 8, 2023

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**ISSUE**

The City Council must hold a Development Agreement Annual Review Hearing for Boca Del Rio Agriculture LLC.

**BACKGROUND**

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

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

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

On Friday, July 28, 2023, the City of Mendota provided Developer a Notice of Annual Review of Development Agreement (the “Notice”). The Notice included the Development Agreement and all supporting documentation regarding the Developer’s performance within the past year.

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

The Developer remains current as of the date of this hearing and has paid all Public Benefit Fees due to the City.

**RECOMMENDATION**

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

**Attachments:**

1. Notice of Annual Review Hearing
2. Annual Review Hearing Supporting Documents



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

## NOTICE OF DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING Government Code § 65865.1

### VIA U.S. MAIL:

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

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

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

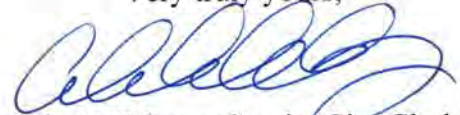
To Whom It May Concern:

On Tuesday, August 8, 2023, at 6:00 p.m., the City of Mendota shall host an annual review hearing to determine the extent of your good faith, substantial compliance with the Development Agreement dated January 26, 2021, between you and the City of Mendota (the "Hearing"). This annual review hearing is scheduled pursuant to Government Code section 65865.1 and Section 8.2 of the Development Agreement. During the Hearing, you shall be permitted an opportunity to be heard orally or in writing regarding your performance under the Development Agreement.

Pursuant to Section 8.2 of the Development Agreement, the City of Mendota has enclosed copies of documents related to your performance over the past year.

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

Very truly yours,



Celeste Cabrera-Garcia, City Clerk

Dated: July 28, 2023



43



FRESNO County Recorder  
Paul Dictos, CPA  
Friday, Apr 16, 2021 01:48:33 PM  
Titles: 1 Pages: 43  
Fees: \$0.00  
CA SB2 Fee: \$0.00  
Taxes: \$0.00  
Total: \$0.00  
CITY OF MENDOTA

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:

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

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

### DEVELOPMENT AGREEMENT

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

### RECITALS

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

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

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

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

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

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

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

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

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



cannabis facility to be located at the Site.

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

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

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

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

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

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

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

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

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

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

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

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

hereby acknowledged, the Parties do hereby agree as follows:

## AGREEMENT

### ARTICLE 1

#### GENERAL PROVISIONS

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

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

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

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

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

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

Developer to the City.

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



powers.

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

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

60

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

**ARTICLE 2  
DEVELOPMENT OF PROPERTY**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

from time to time to the California Building Standards Codes.

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

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

### **ARTICLE 3 ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS**

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



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

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

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

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

#### **ARTICLE 4 PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT**

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

**Section 4.2. Public Benefit.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

## ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

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

**ARTICLE 6  
INSURANCE AND INDEMNITY**

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

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

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

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

**(iii)** Contain standard separation of insured provisions.

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

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

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

**(iii)** Contain standard separation of insured provisions.

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



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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 7 MORTGAGEE PROTECTION**

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

## **ARTICLE 8 DEFAULT**

### **Section 8.1. General Provisions.**

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

proceedings for the breach of this Agreement.

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

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

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

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

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

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

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



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

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

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

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

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

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

## ARTICLE 9 TERMINATION

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

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

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

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

## **ARTICLE 10 OTHER GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

**Section 10.11. Standard Terms and Conditions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

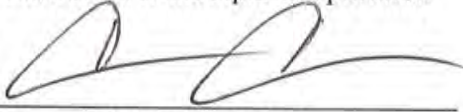


IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer, Odyssey, and City as of the Effective Date of the Agreement, as defined above.

**“CITY”**

Date: March 29, 2021

CITY OF MENDOTA,  
a California Municipal Corporation



By: Cristian Gonzalez  
Its: City Manager

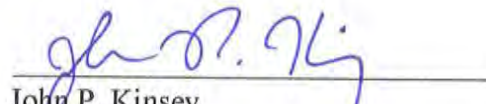
Attest:

  
Celeste Cabrera  
City Clerk



Date: <sup>April</sup> March 6, 2021

Approved to as Form:

  
John P. Kinsey  
City Attorney

**“DEVELOPER”**

Date: March 25, 2021

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



By: Dustin Moore  
Its: Authorized Signatory

**“BDR”**

Date: March 25, 2021

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



By: Dustin Moore  
Its: Authorized Signatory

**“VA”**

Date: March 25, 2021

VALLEY AGRICULTURAL HOLDINGS,  
LLC, a California limited liability company



By: Dustin Moore

**California All-Purpose Acknowledgment**

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

State of California )

County of Sacramento )

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

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

Witness my hand and official seal.

Hivayat Ali  
(Signature)



(Seal)

**California All-Purpose Acknowledgment**

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

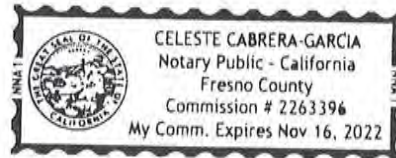
State of California )  
County of Fresno )

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

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

Witness my hand and official seal.

  
(Signature)



(Seal)



## EXHIBIT "A"

### Legal Description

#### Entire Site:

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

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

South  $1^{\circ}30'52''$  West, along the West line of said Section 32, a distance of 736.94 feet; thence

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

South  $89^{\circ}00'35''$  East, along the North line of said parcel, 1401.95 feet to the Northeast corner of said parcel and the TRUE POINT OF BEGINNING; thence

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

South  $1^{\circ}30'52''$  West, along said East line, 1610.64 feet, more or less, to the Southeast corner of last said parcel; thence

North  $89^{\circ}00'35''$  West, along the South line of last said parcel, 1622.75 feet, more or less, to the Southeast corner of said parcel described in Document 2009-0093031; thence

North  $1^{\circ}30'46''$  East, along the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

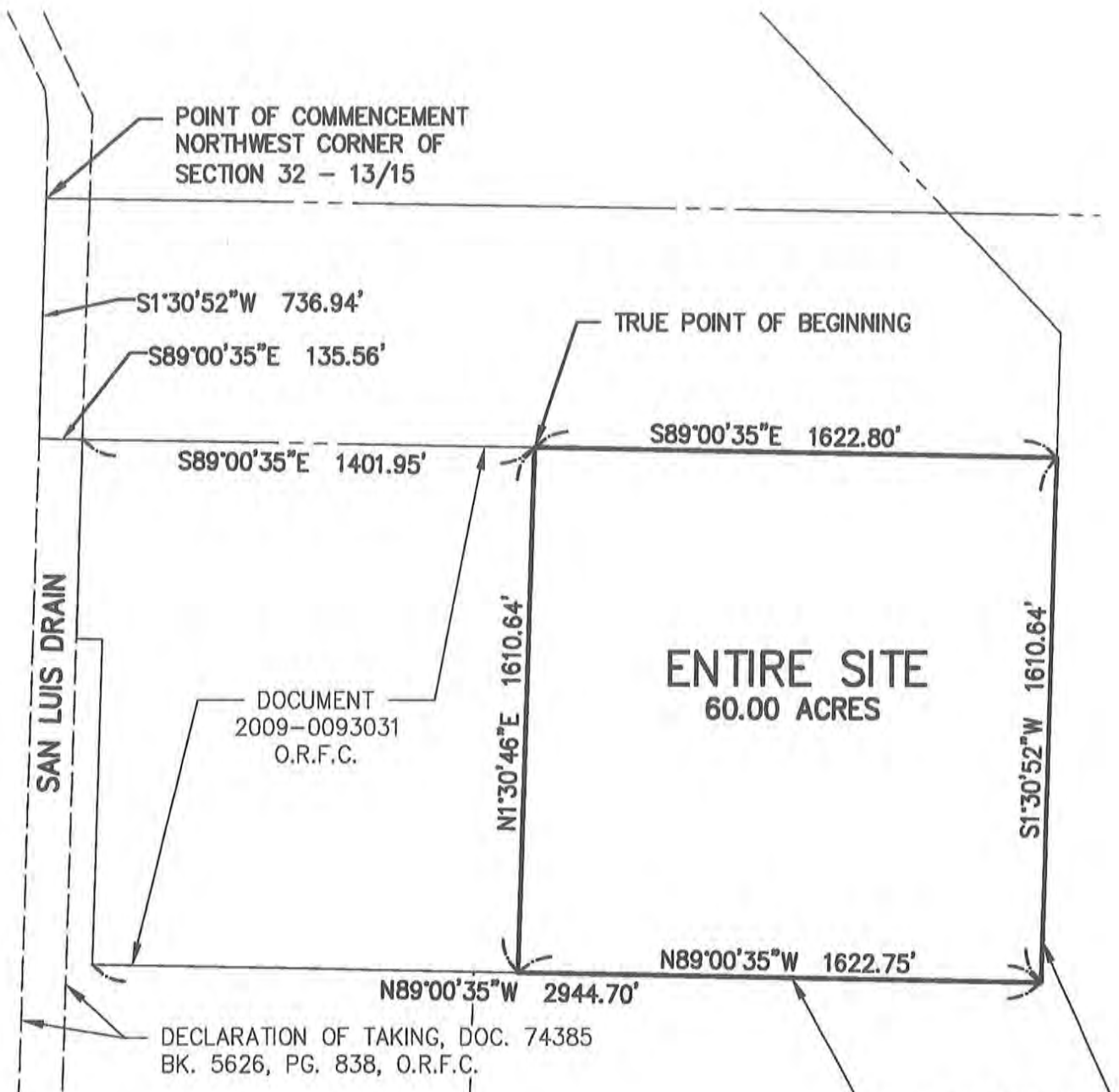
Containing an area of 60.00 acres, more or less.

END OF DESCRIPTION



2/1/21

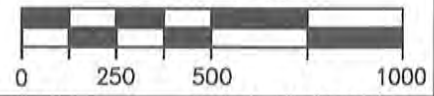
2/1/2021 10:55 AM G:\Mendota\_City\_of\_Mendota\_Planning\_Services\City Project Files\333620013-2023 - 20-23 - Valley Ag Holdings (A200M)\Survey\Background & Working Docs\Exhibit B - Entire Site measuring -Tim Odom



2/1/21



SCALE IN FEET



EST. 1963  
**PROVOST & PRITCHARD**  
 CONSULTING GROUP  
 An Employee Owned Company

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

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

## EXHIBIT "C"

### Legal Description

#### BDR Parcel:

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

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

South  $1^{\circ}30'52''$  West, along the West line of said Section 32, a distance of 736.94 feet; thence

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

South  $89^{\circ}00'35''$  East, along the North line of said parcel, 1401.95 feet to the Northeast corner of said parcel; thence

South  $89^{\circ}00'35''$  East, along the easterly prolongation of said North line, 973.67 feet to the TRUE POINT OF BEGINNING; thence

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

South  $1^{\circ}30'52''$  West, along said East line, 1610.64 feet, more or less, to the Southeast corner of last said parcel; thence

North  $89^{\circ}00'35''$  West, along the South line of last said parcel, 649.08 feet; thence

North  $1^{\circ}30'46''$  East, parallel with the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

Containing an area of 24.00 acres, more or less.

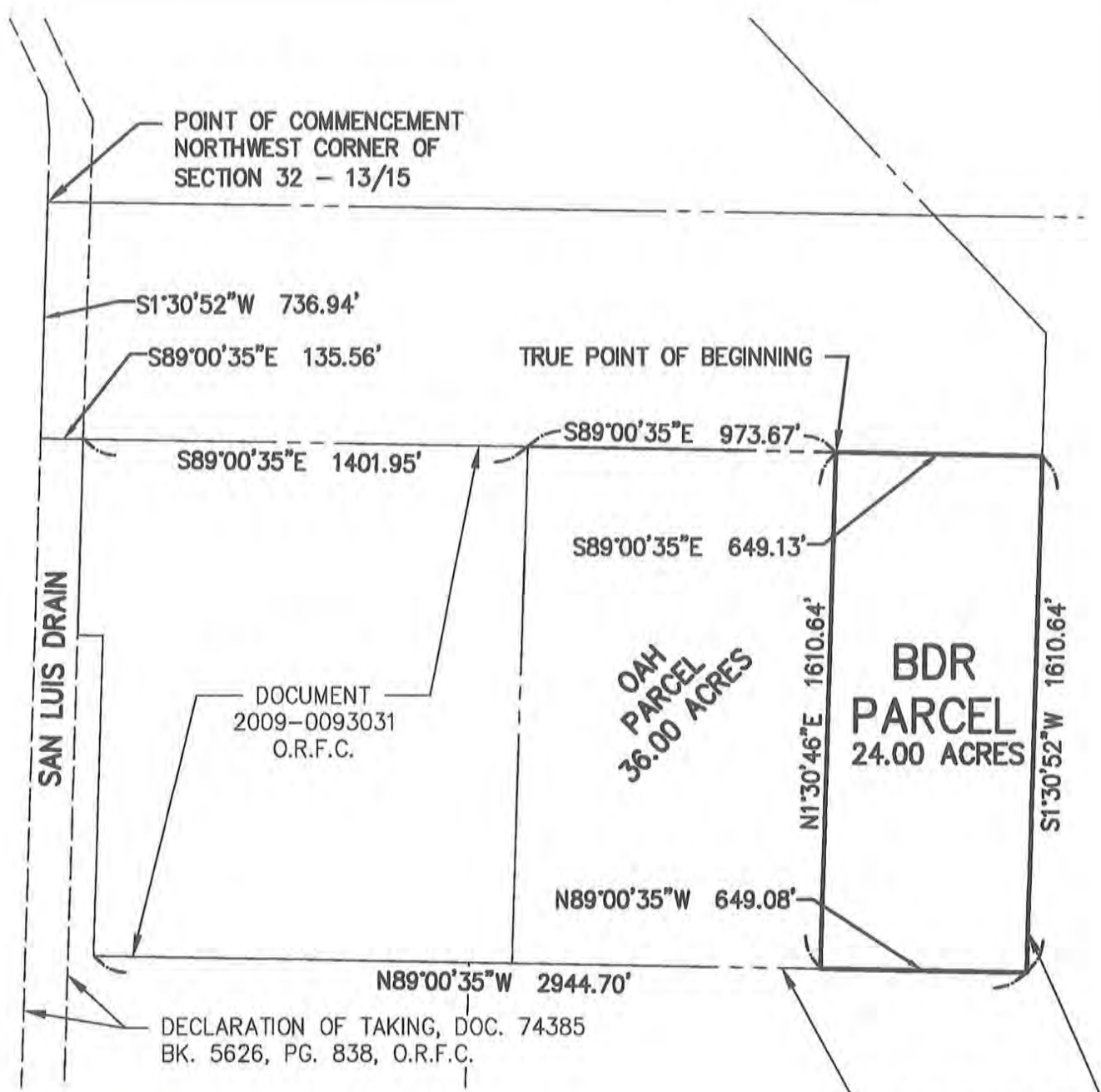
END OF DESCRIPTION



2/4/21



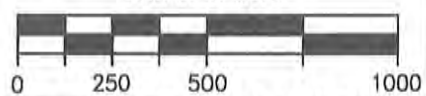
2/4/2021 3:58 PM C:\Mendota\_City\_01-1336\1336 Or-Going Planning Services\City Project Files\333620013-2023 - 2D-23 - Valley Ag Holdings (A000)\Survey\Background & Working Docs\Exhibit D - Parcel 2-BDR map.dwg - Tim Odom



2/4/21



SCALE IN FEET



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

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

**EXHIBIT D**

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

**Exhibit E**

**Notice of Non-Performance Late Fee**

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and BOCA DEL RIO AGRICULTURE LLC, a California limited liability company ("Developer"), BOCA DEL RIO HOLDINGS LLC, a California limited liability company ("BDR"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at \_\_\_\_\_, Mendota, California 93640 ("Agreement"), if Developer, BDR, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, BDR, and VA that Developer, BDR, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is \_\_\_\_\_. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \_\_\_\_\_ ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by \_\_\_\_\_.

\_\_\_\_\_  
City Manager  
City of Mendota

\_\_\_\_\_  
Date

**Exhibit F**

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

City of Mendota  
643 Quince St, Mendota, CA 93640  
Attention: City Manager

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §6103

**Notice of Termination**

Pursuant to Article 9, Section 9.1 of the Development Agreement by and between the City of Mendota ("City") and BOCA DEL RIO AGRICULTURE LLC, a California limited liability company ("Developer"), BOCA DEL RIO HOLDINGS LLC, a California limited liability company ("BDR"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at \_\_\_\_\_, Mendota, California 93640 ("Agreement"), \_\_\_\_\_ informs \_\_\_\_\_ that the Agreement is hereby terminated, in accordance with the terms and conditions as stated therein, pursuant to Article \_\_, Section \_\_\_\_.

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

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

\_\_\_\_\_  
Date



## Exhibit G

### Assignment and Assumption Agreement

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California (“City”), and **BOCA DEL RIO AGRICULTURE LLC**, a California limited liability company (“Developer”), **BOCA DEL RIO HOLDINGS LLC**, a California limited liability company (“BDR”), and **VALLEY AGRICULTURAL HOLDINGS LLC**, a California limited liability company (“VA”) (Developer, OAH, and VA collectively, “Assignors”), and \_\_\_\_\_, a \_\_\_\_\_ (“Assignee”). City, Assignors, or Assignee may be referred to herein individually as a “Party” or collectively as the “Parties.” There are no other parties to this Agreement.

### RECITALS

A. City and Assignors entered into a development agreement, dated \_\_\_\_\_, for the development of property located at \_\_\_\_\_, in the City of Mendota, County of Fresno, State of California, Assessor’s Parcel Number 013-030-68ST (“Development Agreement”), attached hereto as Exhibit “1” and incorporated herein by this reference;

B. Pursuant to Article 10, Section 10.1 of the Development Agreement, Assignors may transfer all or part of its rights, title, and/or interests in all or a portion of Site, or Project, as those terms are defined in the Development Agreement, to any person, firm, corporation, or entity during the Term of the Development Agreement only with the advance written consent of the City Manager, who shall not unreasonably withhold or condition such consent;

C. Assignors desire to transfer to Assignee some or all of Assignors’ rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

D. Assignee desires to assume some or all of Assignors’ rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

E. The City Manager has agreed to permit Assignors’ transfer of some or all of Assignor’s rights and obligations under the Development Agreement to Assignee, and to Assignee’s assumption of same, subject to the terms and conditions specified in this Agreement;

F. The Parties intend through this Agreement to allow Assignors to transfer, and Assignee to assume, some or all of Assignors’ rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement.

G. The City Council has conducted all necessary proceedings in accordance with City’s Municipal Code for the approval of this Agreement.

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

which are hereby acknowledged, the Parties do hereby agree as follows:

## **AGREEMENT**

**Section 1. Assignment.** Assignors hereby assign to Assignee (all/some) of Assignors' rights and obligations under the Development Agreement. If Assignor is transferring only some of Assignor's rights and obligations under the Development Agreement, then the specific rights and obligations subject to transfer shall be specified in Exhibit "1," attached hereto and incorporated herein by this reference.

**Section 2. Assumption.** Assignee hereby accepts and assumes the foregoing transfer or assignment of (all/some) of Assignors' rights and obligations under the Development Agreement.

**Section 3. Consent.** In accordance with Article 10, Section 10.1 of the Development Agreement, the City Manager hereby consents to Assignors' transfer of, and Assignee's assumption of, Assignor's rights and obligations under the Development Agreement, as specified herein, subject to any reasonable terms and conditions the City Manager may require, as set forth in Exhibit "2," attached hereto and incorporated herein.

**Section 4. Conditions of Assignment.** The Parties hereby agree to abide by the terms or conditions of assignment, if any, set forth in Exhibit 2, and acknowledge that City's consent would not have been provided but for the Parties' agreement to abide by the terms or conditions of assignment.

**Section 4. Effective Date.** The assignment and assumption of rights and obligations as specified herein shall be effective on \_\_\_\_\_.

**Section 5. Terms of the Development Agreement.** The terms of the Development Agreement are incorporated herein by this reference. Assignors acknowledge and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Development Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.

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

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

**“CITY”**

Date: January \_\_\_\_\_, 2021

CITY OF MENDOTA,  
a California Municipal Corporation

\_\_\_\_\_  
By: Cristian Gonzalez  
Its: City Manager  
Attest:

\_\_\_\_\_  
\_\_\_\_\_  
City Clerk

Date: January \_\_\_\_\_, 2021

Approved to as Form:

\_\_\_\_\_  
John P. Kinsey  
City Attorney

**“DEVELOPER”**

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

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

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

**“BDR”**

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

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

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

**“VA”**

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

VALLEY AGRICULTURAL HOLDINGS,  
LLC, a California limited liability company

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

**“ASSIGNEE”**

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

Name:  
Corporate Status:

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

**Exhibit 1**  
**(Interest Subject to Transfer)**

**Exhibit 2**  
**(Conditions of Consent)**



**BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENDOTA APPROVING A CONDITIONAL USE PERMIT FOR APPLICATION NO. 20-23, THE VALLET AGRICULTURAL HOLDINGS, LLC PROJECT (PORTION OF APN 013-030-68ST) RESOLUTION NO. PC 20-07**

**WHEREAS**, on October 13, 2020 the City of Mendota received Application No. 20-23, submitted Valley Agricultural Holdings, LLC and proposing the construction and operation of commercial cannabis facilities on approximately 59 acres of Fresno Co. APN 013-030-68ST, said APN currently owned in fee by the City of Mendota; and

**WHEREAS**, the project site is designated Public/Quasi-Public Facilities by the City of Mendota 2005-2025 General Plan and is zoned P-F/CO (Public Facilities/Commercial Cannabis Overlay District); and

**WHEREAS**, Application No. 20-23 proposes to amend the General Plan Land Use designation of the project site to Light Industrial and amend the zoning to M-1/CO (Light Manufacturing/ Commercial Cannabis Overlay District); and

**WHEREAS**, the proposed use is permitted in the M-1/CO zone subject to approval of a conditional use permit and entrance into a development agreement as described in Mendota Municipal Code Chapters 8.37 and 17.99; and

**WHEREAS**, on December 4, 2020 a notice of public hearing was published in *The Business Journal*, similar notices were individually mailed to property owners within 300 feet of the project site, and a copy of the notice was posted in the Mendota City Hall bulletin window; and

**WHEREAS**, on December 29, 2020 the Mendota Planning Commission conducted a public hearing at a special meeting to consider Application No. 20-23; and

**WHEREAS**, approval of the project consists of a "lease, permit, license, certificate, or other entitlement for use", and is therefore a "project" pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* ("CEQA") and the CEQA Guidelines, California Code of Regulations Title 14, Chapter 3, Section 15000, *et seq.*; and

**WHEREAS**, as the agency primarily responsible for carrying out or approving said project, the City of Mendota assumes the role of lead agency pursuant to CEQA; and

**WHEREAS**, the Planning Commission, via adoption of Resolution No. PC 20-05, has determined that, with mitigation incorporated, the Project will not have a significant

effect on the environment and that the provisions of the California Environmental Quality Act have been met; and

**WHEREAS**, the Planning Commission has made the following findings pursuant to Mendota Municipal Code Section 17.84.050, said findings substantiated in the record:

- a. The site for the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping and other features to adjust such use with the land and uses in the neighborhood;
- b. That the site for proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
- c. That the proposed use will have no adverse effect on abutting property or the permitted use thereof;
- d. That the conditions stated in the project approval are deemed necessary to protect the public health, safety and general welfare.

**NOW, THEREFORE, BE IT RESOLVED** that the Mendota Planning Commission hereby approves the conditional use permit proposed within Application No. 20-23 substantively as illustrated in Exhibit "A" hereto subject to the Conditions of Approval contained in Exhibit "B" hereto

  
\_\_\_\_\_  
Juan Luna, Chairperson

ATTEST:

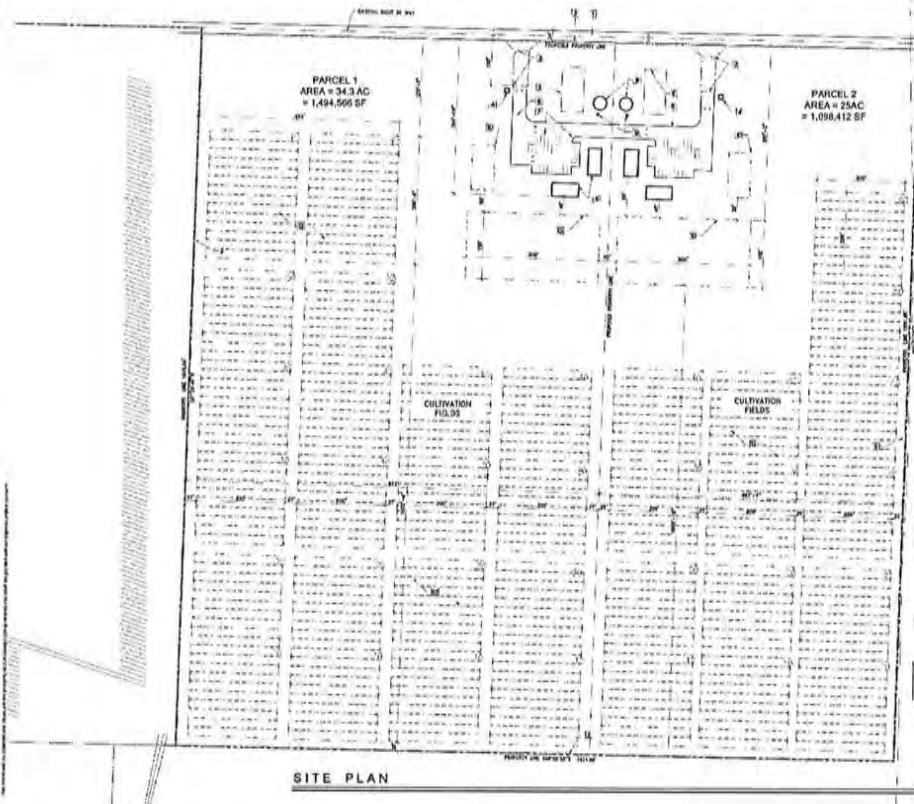
I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the Planning Commission at a special meeting of said Commission, held at Mendota City Hall on the 29<sup>th</sup> day of December 2020, by the following vote:

**AYES: 5 – Chairperson Luna, Vice-Chairperson Escobedo, Commissioners Gutierrez, Leiva, and Romero**  
**NOES: 0**  
**ABSENT: 0**  
**ABSTAIN: 0**

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



EXHIBIT "A" TO RESOLUTION NO. PC 20-07  
 SITE PLAN FOR APPLICATION NO. 20-23



**PROJECT DATA**

OWNER: Valley Agricultural Holdings, LLC  
 1113 GARDNER ROAD  
 DUNES CA 93511  
 PHONE: 562 255 1000

DATE: 09/23/2020  
 DRAWN BY: SIA  
 PROJECT NO: 20-23

**Code Analysis**

AGRICULTURE (AG) ZONING  
 PARCEL 1: 24.0 AC  
 PARCEL 2: 25.0 AC

**Site Keynotes**

No.	Description
1	EXISTING BUILDING
2	EXISTING DRIVE
3	EXISTING FIELDS
4	EXISTING FENCE
5	EXISTING UTILITY
6	EXISTING ROAD
7	EXISTING WALKWAY
8	EXISTING SIGN
9	EXISTING LIGHTING
10	EXISTING LANDSCAPE
11	EXISTING TREES
12	EXISTING BUSHES
13	EXISTING GRASS
14	EXISTING SOIL
15	EXISTING WATER
16	EXISTING SEWER
17	EXISTING GAS
18	EXISTING CABLE
19	EXISTING TELEPHONE
20	EXISTING POWER
21	EXISTING FUEL
22	EXISTING OIL
23	EXISTING GASOLINE
24	EXISTING DIESEL
25	EXISTING LUBRICANTS
26	EXISTING CHEMICALS
27	EXISTING PESTICIDES
28	EXISTING FERTILIZERS
29	EXISTING HERBICIDES
30	EXISTING FUNGICIDES
31	EXISTING INSECTICIDES
32	EXISTING MITICIDES
33	EXISTING NEMATOCIDES
34	EXISTING GROWTH REGULATORS
35	EXISTING PLANT GROWTH REGULATORS
36	EXISTING ANTI-HERBICIDES
37	EXISTING ANTI-FUNGICIDES
38	EXISTING ANTI-INSECTICIDES
39	EXISTING ANTI-MITICIDES
40	EXISTING ANTI-NEMATOCIDES
41	EXISTING ANTI-GROWTH REGULATORS
42	EXISTING ANTI-PLANT GROWTH REGULATORS
43	EXISTING ANTI-ANTI-HERBICIDES
44	EXISTING ANTI-ANTI-FUNGICIDES
45	EXISTING ANTI-ANTI-INSECTICIDES
46	EXISTING ANTI-ANTI-MITICIDES
47	EXISTING ANTI-ANTI-NEMATOCIDES
48	EXISTING ANTI-ANTI-GROWTH REGULATORS
49	EXISTING ANTI-ANTI-PLANT GROWTH REGULATORS
50	EXISTING ANTI-ANTI-ANTI-HERBICIDES

**SIA**  
 Design Group

1113 Gardner Road  
 Dunes CA 93511  
 PH: 562 255 1000

**Valley Agricultural Holdings, LLC**  
 W. Belmont Ave.  
 Mendota, CA. 93640

DATE: 09/23/2020  
 DRAWN BY: SIA  
 PROJECT NO: 20-23

**Proposed Site Plan**

REVISION 4  
 8/8

DIRECT NO.  
**A1**



EXHIBIT "B" TO RESOLUTION NO. PC 20-07  
CONDITIONS OF APPROVAL  
APPLICATION NO. 20-23; PORTION OF APN 013-030-68ST  
VALLEY AGRICULTURAL HOLDINGS, LLC

As may be used herein, the words "applicant", "owner," "operator", and "developer" shall be interchangeable, excepting when the word is indicated in ***bold italics***. In that event, the condition of approval is specific to the entity named.

Operations

1. The operator shall acquire and maintain any licenses, approvals, waivers, or similar that may be issued by the State of California requisite to cannabis operations and shall comply with all provisions of any State regulatory agency that may have oversight over said operations.
2. The operator shall acquire and maintain all City of Mendota licenses pursuant to Mendota Municipal Code Chapter 8.37, including payment of applicable fees.
3. The contractor and any subcontractor(s) shall acquire a City of Mendota business license, including payment of any applicable business license fees, prior to commencing construction.
4. The City will monitor the operation for violations of conditions of approval. Penalty for violation may include but is not limited to warnings, fines, and/or permit revocation.

General & Site

5. Approval of this conditional use permit is contingent upon of additional processes contained within Application No. 20-23, to wit:
  - a. City Council approval of a proposed amendment to the General Plan Land Use designation of the site from Public/Quasi-Public Facilities to Light Industrial.
  - b. City Council approval of a proposed amendment to the zoning of the site from P-F/CO (Public Facilities with the Commercial Cannabis Overlay District) to M-1/CO (Light Manufacturing with the Commercial Cannabis Overlay District).
  - c. Recordation of a development agreement pursuant to MMC Section 8.37.050(1).
  - d. Conveyance of the Project Site from the City of Mendota to the Applicant as detailed in the purchase and sale agreement approved October 22, 2019.

6. The conditional use permit detailed within Application No. 20-23 shall expire two (2) years following the date of its approval unless, prior to expiration, a building permit for the requested site modifications is issued by the City of Mendota and construction is commenced and being diligently pursued. At the discretion of the City Manager, and upon valid request not less than thirty (30) days prior to its expiration, this conditional use permit may be extended for a period or periods not to exceed two (2) additional years in the aggregate.
7. Development shall comply with all applicable provisions of the City of Mendota General Plan and the Mendota Municipal Code (MMC), including but not limited to: potable water protection regulations (Chapter 13.30), business licensing requirements (Title 5), and Building Code Standards (Title 15); the Subdivision Ordinance (Title 16); the regulations of the applicable zone district(s) and other relevant portions of the Zoning Ordinance (Title 17); and the City of Mendota Standard Specifications and Standard Drawings, unless exceptions therefrom are approved by the City Engineer.
8. Use of the site shall conform to all applicable requirements for the M-1 Light Manufacturing Zone District as modified by the provisions of the CO Commercial Cannabis Overlay District.
9. The site plan shall be revised to reflect the comments of the City Engineer and City Planner provided October 31, 2020 and to depict locations and dimensions of existing and proposed features, utilities, and other improvements.
10. Construction drawings (building and improvement plans; site, grading, irrigation, and landscaping, as applicable) shall be submitted to the Planning and Building Department and City Engineer for review and approval. A building permit shall be acquired prior to start of any construction activities.
11. No new landscaping is required. Any existing landscaping damaged or destroyed as a result of construction shall be repaired or replaced in-kind by the applicant at the discretion of the City Planner.
12. The applicant shall provide a lighting plan for the review and approval of the City Engineer. All exterior lights shall be shielded or otherwise oriented to prevent disturbance to surrounding or neighboring properties or traffic on abutting rights-of-way.
13. The applicant shall consult with and shall comply with the requirements of the San Joaquin Valley Air Pollution Control District, including but not limited to compliance with Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions) and Rule 9510 (Indirect Source Review).
14. The applicant shall consult with and shall comply with the requirements of the Fresno County Fire Protection District/CAL FIRE, including but not limited to requirements related to sprinklers, fire hydrants, and fire access.



15. The developer shall comply with Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.98, and 21083.2 and related statutes regarding regulation of cultural and historical resources that may be discovered on the site.
16. Development and operation of the project site shall be in substantial conformance with the Site Plan dated September 29, 2020 and the operational statement dated October 13, 2020 as incorporated herein by reference. The City Planner shall determine the extent to which incremental or minor changes to the site plan, the landscape plan, and/or the operational statement meet this requirement.
17. Following any changes made to the site plan as a result of these conditions or other commentary, correspondence, or official requirement, the applicant shall submit a copy of the final site plan as revised to the Planning Department for inclusion in the project file. Changes made pursuant to these conditions shall be considered minor or incremental.
18. Prior to issuance of a certificate of occupancy, all relevant conditions of approval shall be verified as complete by the Planning Department, and any and all outstanding fees shall have been paid. Any discrepancy or difference in interpretation of the conditions between the subdivider and the Planning Department shall be subject to review and determination by the Planning Commission.
19. All above-ground features including but not limited to lighting, fire hydrants, postal boxes, electrical and related boxes, and backflow devices shall be installed outside of the public-right-of-way. All utilities shall be installed underground.
20. Hours of construction shall be limited to 6:00 AM to 7:00 PM, Monday through Saturday.
21. Construction debris shall be contained within an on-site trash bin and the project site shall be watered for dust control during construction.
22. Any non-structural fencing shall be subject to approval by the Community Development Department consistent with Standard Drawing Nos. M-3 through M-7.
23. The applicant shall comply with all relevant components of the California Building Code and associated trade codes.
24. All signage must be approved pursuant to the standards and guidelines of the Mendota Municipal Code prior to installation.
25. Development shall at all times respect existing or new easements by, for, and between all private and public entities, including but not limited to the City of Mendota.

26. It shall be the responsibility of the subdivider to grant/secure easements as necessary for the installation and maintenance of private utilities, including but not limited to electricity, gas, telephone, and cable television.
27. Connection points for water and wastewater shall be determined by the City Engineer. Connections shall be made in accordance with City of Mendota standards and shall be coordinated with the Director of Public Utilities.
28. The applicant shall comply with the City of Mendota Cross-Connection Control Regulations contained within MMC Section 13.24.
29. The applicant shall coordinate with the City Engineer and Mid Valley Disposal to establish necessary solid waste procedures and facilities.

#### Water System Improvements

30. The project is subject to the provisions of the Conditional Will-Serve Letter issued by the City of Mendota on September 8, 2020.
31. The site plan shall be revised to illustrate existing and proposed water facilities.
32. The project shall make connection(s) to the City water system as determined by the City Engineer.
33. The improvement plans shall include the location of existing water mains, valves, and valve boxes located in adjacent streets that the proposed water system is to be connected to.
34. All connections to the existing water mains shall include a temporary reduced pressure double check backflow preventer (see Standard Drawing No. W-8) and follow the connection procedures outlined in that standard, or exhibit compliance with AWWA Standard C651-05.
35. Fire hydrants shall be spaced not to exceed 300 feet on center and shall be individually valved between the hydrant and the water system.
36. Fire flow conditions are subject to review and approval by the Fresno County Fire Protection District/CAL FIRE.
37. A meter, meter box, and service shall be installed to each unit. Applicant shall obtain meter type, size and service requirements from the Public Utilities Department and/or the City Engineer. The construction of the water service with meter shall be installed per Standard Drawing No. W-1 and Standard Specifications.
38. All water meters shall be Badger Model E Series with Nicor Connector (E-Series Ultra Plus for sizes 3/4" and 5/8") with Badger Model Orion CMNA-N Cellular Endpoint with Nicor Connector fully loaded with through lid mounting kit
39. No water services are allowed within drive approaches.



40. The project shall comply with City of Mendota's Automated Water Meter Reading System

#### Sewer System Improvements

41. The site plan shall be revised to illustrate existing and proposed sewer facilities.
42. The project shall connect make connection(s) to the City wastewater system as determined by the City Engineer.
43. No sewer laterals are allowed within driveways. All laterals and cleanouts shall be installed per Standard Drawings No. S-7A and M-1.

#### Storm Drain Improvements

44. To ensure proper spacing between underground facilities and allow for unimpeded placement of brass cap monuments in the road surfaces at the intersections of the streets, the location of sewer mains shall conform to Standard Drawing No. M-1.
45. Storm drainage facilities shall be constructed per City of Mendota Standard Drawings and Specifications.
46. If applicable, valley gutter construction shall be consistent with City of Mendota Standard Drawing No. ST-14 unless an alternate design is approved by the City Engineer.

#### Streets

47. The applicant shall provide for acquisition of any and all necessary easements to accommodate access to the site from the current northerly terminus of Belmont Avenue.
48. Any work within the City of Mendota right-of-way shall require an encroachment permit.
49. Any work within Caltrans right-of-way shall require an encroachment permit.
50. All concrete work, including curbs, gutters, valley gutters, sidewalks, drive approaches, curb ramps, and other concrete features shall contain a minimum of six (6) sacks of cementous material per cubic yard unless otherwise approved by the City Engineer.
51. Any broken, damaged, or substandard sidewalk, curb, gutter, or pavement along the project frontages, or any of the above damaged during construction wherever located, shall be removed and replaced as directed by the City Engineer consistent with City Standard Drawings.
52. Drive approaches, as necessary, shall be installed consistent with Standard Drawing No. ST-15.

## Fees

53. This project is also subject to a development agreement. Fees discussed in that agreement are not included herein and are in addition to this section.
54. The applicant shall be responsible for payment of any and all outstanding planning, building, plan check, engineering, and attorney fees prior to issuance of a certificate of occupancy. This shall include all fees incurred by the City's consultants or contract staff resulting from preliminary review, correspondence, review of formal application materials, peer review of documents, processing of application materials, attendance at and/or participation in meetings and conference calls, or other services rendered in relation to the project.
55. Concurrently with submittal of improvement and/or building plans, the applicant shall deposit with the City of Mendota funds in an amount estimated by the City Engineer and/or Building Official, respectively, to be sufficient to offset costs to the City for review of such plans. In the event that such funds are not sufficient to cover costs to the City, the City Engineer and/or Building Official, as appropriate, shall contact the applicant to request additional funds, which the applicant shall then deposit with the City.
56. The applicant shall pay to the City of Mendota development impact fees consistent with the City's current Development Impact Fee Schedule (January 2007). Fees are due in full prior to issuance of a certificate of occupancy.
57. The applicant shall be responsible for payment of fees to the Mendota Unified School District and shall provide the City with evidence of payment, or evidence of the District's determination that no payment is required, prior to issuance of a certificate of occupancy.
58. The applicant shall be responsible for payment of Fresno County Regional Transportation Mitigation Fees and Fresno County Public Facilities Impact Fees and shall provide the City with evidence of payment, or evidence of the County's determination that no payment is required, prior to issuance of a certificate of occupancy.



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

Date: July 1, 2022

<b>Bill To:</b>	
Name:	Boca Del Rio Holdings LLC
Address:	1201 K Street, Suite 920 Sacramento, CA 95814
Attn:	Legal Department

Description	Amount
Boca de Rio Development Agreement Public Contribution Payment Quarter August 2nd Payment	\$ 100,000.00
<b>Total Amount Due</b>	<b>\$ 100,000.00</b>

Due August 2, 2022

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.





# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

August 12, 2022

## Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and BOCA DEL RIO AGRICULTURE LLC, a California limited liability company ("Developer"), BOCA DEL RIO HOLDINGS LLC, a California limited liability company ("BDR"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 420 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, BDR, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, BDR, and VA that Developer, BDR, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is \$100,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \$1,000.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 8-29-2022.

  
\_\_\_\_\_  
City Manager  
City of Mendota

8/12/2022  
\_\_\_\_\_  
Date



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

Date: November 2, 2022

<b>Bill To:</b>	
Name:	Boca Del Rio Holdings LLC
Address:	1201 K Street, Suite 920 Sacramento, CA 95814
Attn:	Legal Department

Description	Amount
Boca de Rio Development Agreement Public Contribution Payment Quarter November 2nd Payment	\$ 100,000.00
<b>Total Amount Due</b>	<b>\$ 100,000.00</b>

Due November 2, 2022

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.





# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

November 18, 2022

**VIA CERTIFIED MAIL AND E-MAIL:**

[dustin@bocadelriofarms.com](mailto:dustin@bocadelriofarms.com);

[kevin@bocadelriofarms.com](mailto:kevin@bocadelriofarms.com)

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

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

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

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

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

**Re: Notice of Default and Demand for Cure  
City of Mendota Development Agreement**

To Whom It May Concern:

I am writing in connection with the March 26, 2021, Development Agreement between Boca Del Rio Agriculture, LLC ("Developer"), Boca Del Rio Holdings, LLC ("BDR"), Valley Agricultural Holdings, LLC ("VA"; collectively with Developer and BDR, "Developers"), and the City of Mendota ("City").

Developers are currently in default of the Development Agreement for failing to pay the Public Benefit Fees due to City on November 2, 2022, in the amount of \$100,000. (See Development Agreement, §§ 4.2, subd. (a)(2)(iii), 4.2, subd. (a)(3), 4.2, subd. (b), 4.3, 4.5, 4.6.) Pursuant to Section 8.1, subdivisions (a) and (e), of the Development Agreement, the City demands Developers cure this default by paying the City all outstanding amounts due within thirty days of the date of this notice. Such deadline to cure Developers' default expires on December 18, 2022.

Thank you,

Cristian Gonzalez  
City Manager, City of Mendota



# CITY OF MENDOTA


*"Cantaloupe Center Of The World"*

November 21, 2022

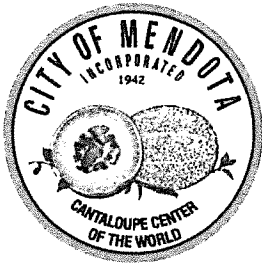
## Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and BOCA DEL RIO AGRICULTURE LLC, a California limited liability company ("Developer"), BOCA DEL RIO HOLDINGS LLC, a California limited liability company ("BDR"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 420 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, BDR, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, BDR, and VA that Developer, BDR, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is \$100,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \$1,000.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 12-6-2022.

  
\_\_\_\_\_  
City Manager  
City of Mendota

11/21/2022  
Date



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

Date: January 3, 2023

<b>Bill To:</b>	
Name:	Boca Del Rio Holdings LLC
Address:	1201 K Street, Suite 920 Sacramento, CA 95814
Attn:	Legal Department

Description	Amount
Boca de Rio Development Agreement Public Contribution Payment Quarter February 2nd Payment	\$ 100,000.00
Total Amount Due	\$ 100,000.00

Due February 2, 2023

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.





# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

February 3<sup>rd</sup>, 2023

## Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and BOCA DEL RIO AGRICULTURE LLC, a California limited liability company ("Developer"), BOCA DEL RIO HOLDINGS LLC, a California limited liability company ("BDR"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 420 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, BDR, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, BDR, and VA that Developer, BDR, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is \$100,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \$1,000.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 2/22/2023.

  
\_\_\_\_\_  
City Manager  
City of Mendota

2/3/2023  
Date



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

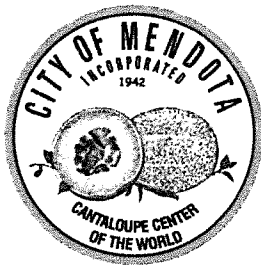
Date: April 7, 2023

<b>Bill To:</b>	
Name:	Boca Del Rio Holdings LLC
Address:	1201 K Street, Suite 920 Sacramento, CA 95814
Attn:	Legal Department

Description	Amount
Boca de Rio Development Agreement Public Contribution Payment Quarter May 2nd Payment	\$ 100,000.00
Total Amount Due	\$ 100,000.00

Due May 2, 2023

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

Date: July 21, 2023

<b>Bill To:</b>	
Name:	Boca Del Rio Holdings LLC
Address:	1201 K Street, Suite 920 Sacramento, CA 95814
Attn:	Legal Department

Description	Amount
Boca de Rio Development Agreement Public Contribution Payment Quarter August 2nd Payment	\$ 100,000.00
<b>Total Amount Due</b>	<b>\$ 100,000.00</b>

Due August 2, 2023

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** HOLDING THE DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING FOR ODYSSEY AGRICULTURAL DEVELOPMENT LLC  
**DATE:** AUGUST 8, 2023

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**ISSUE**

The City Council must hold a Development Agreement Annual Review Hearing for Odyssey Agricultural Development LLC.

**BACKGROUND**

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

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

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

On Friday, July 28, 2023, the City of Mendota provided Developer a Notice of Annual Review of Development Agreement (the “Notice”). The Notice included the Development Agreement and all supporting documentation regarding the Developer’s performance within the past year.



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

Although the Developer was delinquent on Public Benefit Fee installments due to the City under the Development Agreement in 2022 and the early part of 2023, the Developer has since paid all outstanding sums due to the City and remains current as of the date of this hearing.

**RECOMMENDATION**

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

**Attachments:**

1. Notice of Annual Review Hearing
2. Annual Review Hearing Supporting Documents



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

## NOTICE OF DEVELOPMENT AGREEMENT ANNUAL REVIEW HEARING Government Code § 65865.1

### VIA U.S. MAIL and E-MAIL:

Odyssey Agricultural Development LLC  
2222 E Olympic Boulevard  
Los Angeles, CA 90021  
Attn: Alex Freedman, President  
[alex@traditional.com](mailto:alex@traditional.com)

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

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

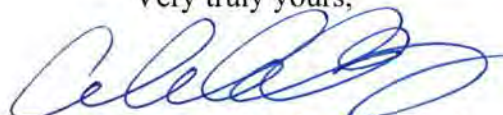
To Whom It May Concern:

On Tuesday, August 8, 2023, at 6:00 p.m., the City of Mendota shall host an annual review hearing to determine the extent of your good faith, substantial compliance with the Development Agreement dated March 26, 2021, between you and the City of Mendota (the "Hearing"). This annual review hearing is scheduled pursuant to Government Code section 65865.1 and Section 8.2 of the Development Agreement. During the Hearing, you shall be permitted an opportunity to be heard orally or in writing regarding your performance under the Development Agreement.

Pursuant to Section 8.2 of the Development Agreement, the City of Mendota has enclosed copies of documents related to your performance over the past year.

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

Very truly yours,



Celeste Cabrera-Garcia, City Clerk

Dated: July 28, 2023

49



2021-0078341

FRESNO County Recorder  
Paul Dictos, CPA

Wednesday, May 12, 2021 11:32:09 AM

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:

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

Titles: 1	Pages: 43
Fees:	\$0.00
CA SB2 Fee:	\$0.00
Taxes:	\$0.00
Total:	\$0.00
CITY OF MENDOTA	

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

### DEVELOPMENT AGREEMENT

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

### RECITALS

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

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

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

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

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

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

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

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

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



cannabis facility to be located at the Site.

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

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

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

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

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

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

P. Pursuant to Government Code section 65867.5, on January 26, 2021, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 21-XX. <sup>02</sup>

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

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

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

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

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

hereby acknowledged, the Parties do hereby agree as follows:

## AGREEMENT

### ARTICLE 1

#### GENERAL PROVISIONS

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

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

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

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

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

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

Developer to the City.

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



powers.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 2  
DEVELOPMENT OF PROPERTY**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

from time to time to the California Building Standards Codes.

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

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

### **ARTICLE 3 ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS**

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



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

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

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

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

#### **ARTICLE 4 PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT**

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

#### **Section 4.2. Public Benefit.**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

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

**ARTICLE 6**  
**INSURANCE AND INDEMNITY**

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

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

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

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

**(iii)** Contain standard separation of insured provisions.

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

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

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

**(iii)** Contain standard separation of insured provisions.

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



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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 7 MORTGAGEE PROTECTION**

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

## **ARTICLE 8 DEFAULT**

### **Section 8.1. General Provisions.**

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

proceedings for the breach of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 9 TERMINATION

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



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

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

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

## ARTICLE 10 OTHER GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**Section 10.11. Standard Terms and Conditions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

“CITY”

Date: March 30, 2021

CITY OF MENDOTA,  
a California Municipal Corporation

By: Cristian Gonzalez  
Its: City Manager

Attest:

  
Celeste Cabrenza  
City Clerk

“DEVELOPER”

Date: March 26, 2021

ODYSSEY AGRICULTURAL  
DEVELOPMENT, LLC,  
a California limited liability company

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

“OAH”

Date: March 26, 2021

ODYSSEY AGRICULTURAL HOLDINGS,  
LLC,  
a California limited liability company

By: Aaron Mamann  
Its: Managing Member

Date: <sup>April</sup> March 6, 2021

Approved to as Form:

  
John P. Kinsey  
City Attorney

“VA”

Date: March 26, 2021

VALLEY AGRICULTURAL HOLDINGS,  
LLC, a California limited liability company

By: Aaron Mamann  
Its: Authorized Signatory



## ACKNOWLEDGMENT

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

State of California  
County of Los Angeles )

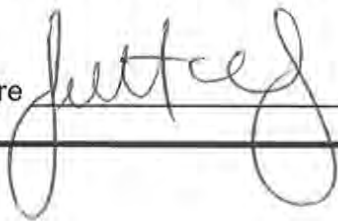
On March 26, 2021 before me, Jeanette Valdez, Notary Public  
(insert name and title of the officer)

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

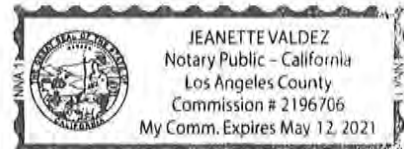
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



**California All-Purpose Acknowledgment**

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

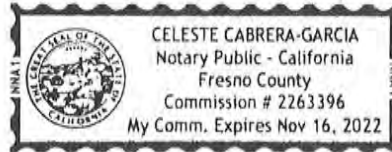
State of California )  
County of Fresno )

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

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

Witness my hand and official seal.

  
(Signature)



(Seal)

**EXHIBIT "A"**

**Legal Description**

**Entire Site:**

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

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

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

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

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

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

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

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

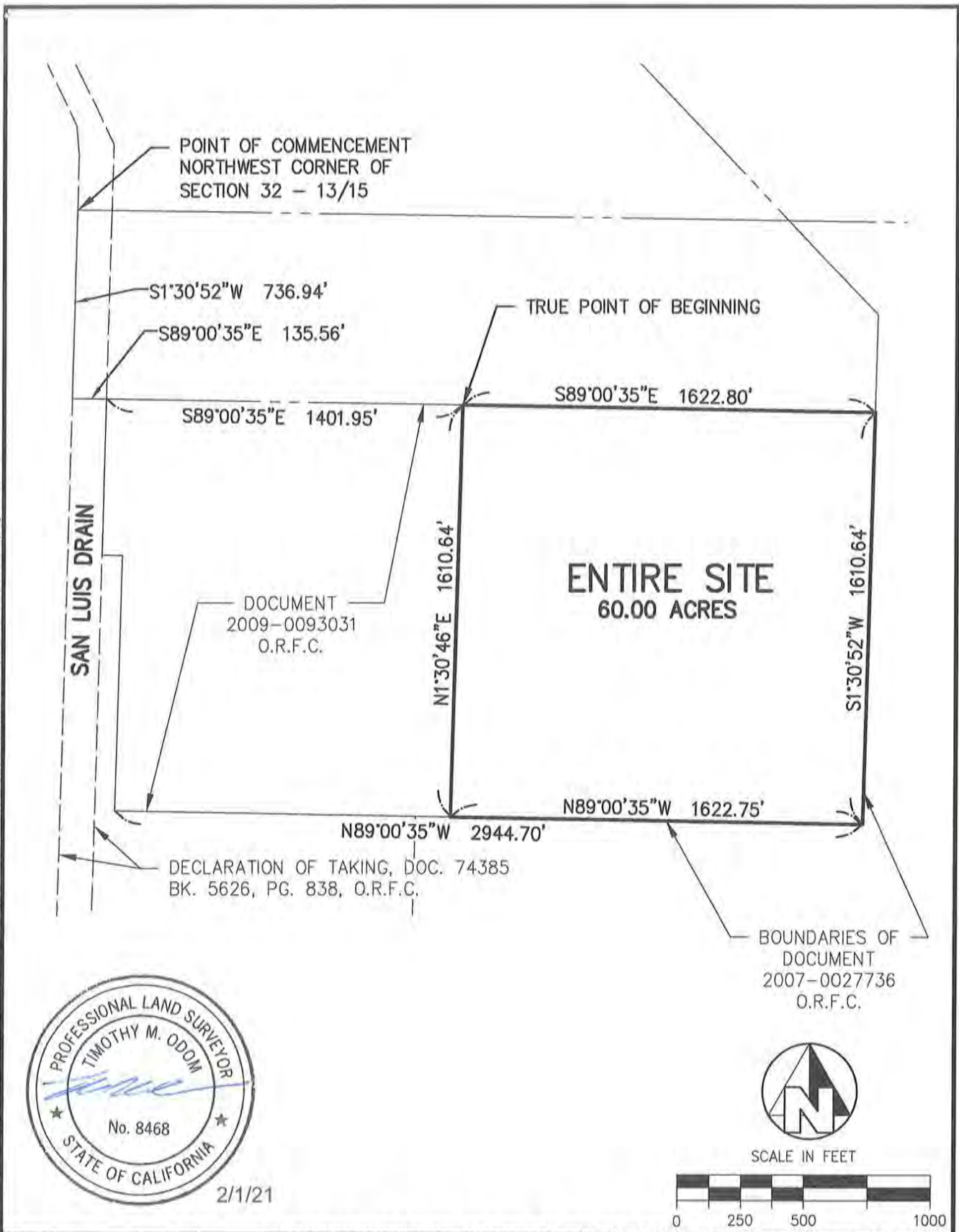
North 1°30'46" East, along the East line of said parcel described in Document 2009-0093031, a distance of 1610.64 feet to the TRUE POINT OF BEGINNING.

Containing an area of 60.00 acres, more or less.

END OF DESCRIPTION



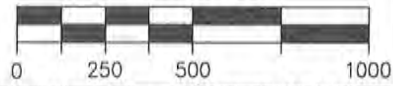
2/1/2021 10:56 AM c:\mendota\_city\_of\_mendota\city\_of\_mendota\planning\_services\city\_project\_files\333620013-2021-20-23 - Valley Ag Holdings (AZOM)\Survey\Background & Working Docs\Exhibit B - Entire Site map.dwg - Tim Odom



2/1/21



SCALE IN FEET



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

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

CITY OF MENDOTA  
**EXHIBIT B**

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



**EXHIBIT "C"**

**Legal Description**

**OAH Parcel:**

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

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

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

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

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

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

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

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

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

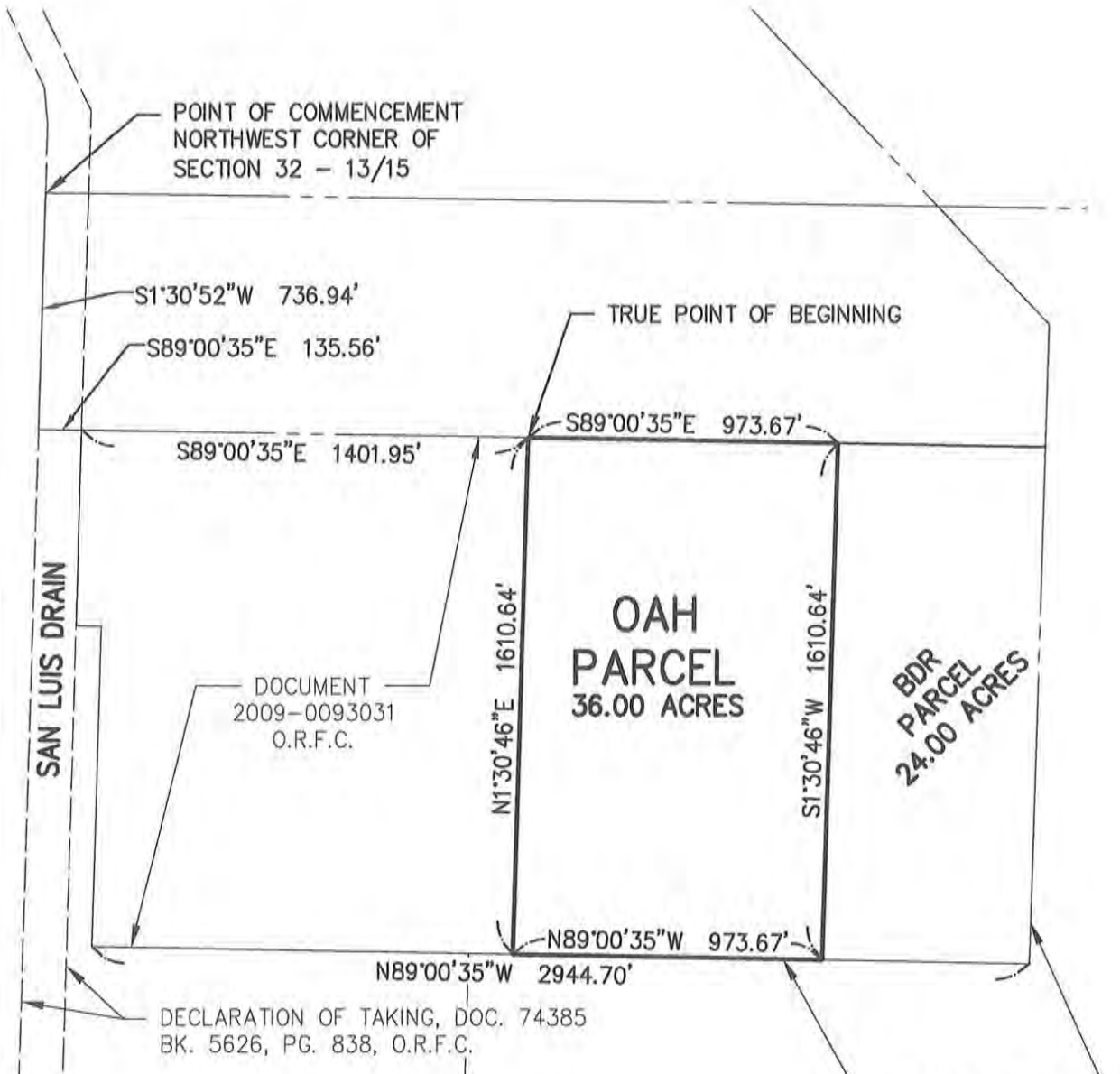
Containing an area of 36.00 acres, more or less.

END OF DESCRIPTION



35

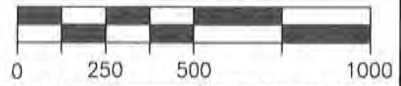
2/4/2021 3:37 PM C:\Mendota\_City\4-3336\3336 On-Going Planning Services\Civil Project Files\333620013-2021 - 20-23 - Valley Ag Holdings (AOTOM)\Survey\Background & Working Docs\Exhibit D - Parcel 1 map.dwg - Tim Odom



2/4/21



SCALE IN FEET



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

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

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

**Exhibit E**

**Notice of Non-Performance Late Fee**

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at \_\_\_\_\_, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is \_\_\_\_\_. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \_\_\_\_\_ ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by \_\_\_\_\_.

\_\_\_\_\_  
City Manager  
City of Mendota

\_\_\_\_\_  
Date

**Exhibit F**

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

City of Mendota  
643 Quince St, Mendota, CA 93640  
Attention: City Manager

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §6103

**Notice of Termination**

Pursuant to Article 9, Section 9.1 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at \_\_\_\_\_, Mendota, California 93640 ("Agreement"), \_\_\_\_\_ informs \_\_\_\_\_ that the Agreement is hereby terminated, in accordance with the terms and conditions as stated therein, pursuant to Article \_\_\_\_, Section \_\_\_\_.

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

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

\_\_\_\_\_  
Date



## Exhibit G

### Assignment and Assumption Agreement

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

### RECITALS

A. City and Assignors entered into a development agreement, dated \_\_\_\_\_, for the development of property located at \_\_\_\_\_, in the City of Mendota, County of Fresno, State of California, Assessor’s Parcel Number 013-030-68ST (“Development Agreement”), attached hereto as Exhibit “1” and incorporated herein by this reference;

B. Pursuant to Article 10, Section 10.1 of the Development Agreement, Assignors may transfer all or part of its rights, title, and/or interests in all or a portion of Site, or Project, as those terms are defined in the Development Agreement, to any person, firm, corporation, or entity during the Term of the Development Agreement only with the advance written consent of the City Manager, who shall not unreasonably withhold or condition such consent;

C. Assignors desire to transfer to Assignee some or all of Assignors’ rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

D. Assignee desires to assume some or all of Assignors’ rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

E. The City Manager has agreed to permit Assignors’ transfer of some or all of Assignor’s rights and obligations under the Development Agreement to Assignee, and to Assignee’s assumption of same, subject to the terms and conditions specified in this Agreement;

F. The Parties intend through this Agreement to allow Assignors to transfer, and Assignee to assume, some or all of Assignors’ rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement.

G. The City Council has conducted all necessary proceedings in accordance with City’s Municipal Code for the approval of this Agreement.

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

which are hereby acknowledged, the Parties do hereby agree as follows:

## AGREEMENT

**Section 1. Assignment.** Assignors hereby assign to Assignee (all/some) of Assignors' rights and obligations under the Development Agreement. If Assignor is transferring only some of Assignor's rights and obligations under the Development Agreement, then the specific rights and obligations subject to transfer shall be specified in Exhibit "1," attached hereto and incorporated herein by this reference.

**Section 2. Assumption.** Assignee hereby accepts and assumes the foregoing transfer or assignment of (all/some) of Assignors' rights and obligations under the Development Agreement.

**Section 3. Consent.** In accordance with Article 10, Section 10.1 of the Development Agreement, the City Manager hereby consents to Assignors' transfer of, and Assignee's assumption of, Assignor's rights and obligations under the Development Agreement, as specified herein, subject to any reasonable terms and conditions the City Manager may require, as set forth in Exhibit "2," attached hereto and incorporated herein.

**Section 4. Conditions of Assignment.** The Parties hereby agree to abide by the terms or conditions of assignment, if any, set forth in Exhibit 2, and acknowledge that City's consent would not have been provided but for the Parties' agreement to abide by the terms or conditions of assignment.

**Section 4. Effective Date.** The assignment and assumption of rights and obligations as specified herein shall be effective on \_\_\_\_\_.

**Section 5. Terms of the Development Agreement.** The terms of the Development Agreement are incorporated herein by this reference. Assignors acknowledge and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Development Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.

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

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

**“CITY”**

Date: January \_\_\_\_\_, 2021

CITY OF MENDOTA,  
a California Municipal Corporation

\_\_\_\_\_  
By: Cristian Gonzalez  
Its: City Manager

Attest:

\_\_\_\_\_  
\_\_\_\_\_  
City Clerk

Date: January \_\_\_\_\_, 2021

Approved to as Form:

\_\_\_\_\_  
John P. Kinsey  
City Attorney

**“DEVELOPER”**

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

ODYSSEY AGRICULTURAL  
DEVELOPMENT, LLC,  
a California limited liability company

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

**“OAH”**

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

ODYSSEY AGRICULTURAL HOLDINGS,  
LLC, a California limited liability company

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

**“VA”**

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

VALLEY AGRICULTURAL HOLDINGS,  
LLC, a California limited liability company

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

**“ASSIGNEE”**

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

Name:  
Corporate Status:

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

**Exhibit 1**  
**(Interest Subject to Transfer)**



**Exhibit 2**  
**(Conditions of Consent)**

**BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENDOTA APPROVING A CONDITIONAL USE PERMIT FOR APPLICATION NO. 20-23, THE VALLET AGRICULTURAL HOLDINGS, LLC PROJECT (PORTION OF APN 013-030-68ST) RESOLUTION NO. PC 20-07**

**WHEREAS**, on October 13, 2020 the City of Mendota received Application No. 20-23, submitted Valley Agricultural Holdings, LLC and proposing the construction and operation of commercial cannabis facilities on approximately 59 acres of Fresno Co. APN 013-030-68ST, said APN currently owned in fee by the City of Mendota; and

**WHEREAS**, the project site is designated Public/Quasi-Public Facilities by the City of Mendota 2005-2025 General Plan and is zoned P-F/CO (Public Facilities/Commercial Cannabis Overlay District); and

**WHEREAS**, Application No. 20-23 proposes to amend the General Plan Land Use designation of the project site to Light Industrial and amend the zoning to M-1/CO (Light Manufacturing/ Commercial Cannabis Overlay District); and

**WHEREAS**, the proposed use is permitted in the M-1/CO zone subject to approval of a conditional use permit and entrance into a development agreement as described in Mendota Municipal Code Chapters 8.37 and 17.99; and

**WHEREAS**, on December 4, 2020 a notice of public hearing was published in *The Business Journal*, similar notices were individually mailed to property owners within 300 feet of the project site, and a copy of the notice was posted in the Mendota City Hall bulletin window; and

**WHEREAS**, on December 29, 2020 the Mendota Planning Commission conducted a public hearing at a special meeting to consider Application No. 20-23; and

**WHEREAS**, approval of the project consists of a "lease, permit, license, certificate, or other entitlement for use", and is therefore a "project" pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* ("CEQA") and the CEQA Guidelines, California Code of Regulations Title 14, Chapter 3, Section 15000, *et seq.*; and

**WHEREAS**, as the agency primarily responsible for carrying out or approving said project, the City of Mendota assumes the role of lead agency pursuant to CEQA; and

**WHEREAS**, the Planning Commission, via adoption of Resolution No. PC 20-05, has determined that, with mitigation incorporated, the Project will not have a significant

effect on the environment and that the provisions of the California Environmental Quality Act have been met; and

**WHEREAS**, the Planning Commission has made the following findings pursuant to Mendota Municipal Code Section 17.84.050, said findings substantiated in the record:

- a. The site for the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping and other features to adjust such use with the land and uses in the neighborhood;
- b. That the site for proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
- c. That the proposed use will have no adverse effect on abutting property or the permitted use thereof;
- d. That the conditions stated in the project approval are deemed necessary to protect the public health, safety and general welfare.

**NOW, THEREFORE, BE IT RESOLVED** that the Mendota Planning Commission hereby approves the conditional use permit proposed within Application No. 20-23 substantively as illustrated in Exhibit "A" hereto subject to the Conditions of Approval contained in Exhibit "B" hereto

  
\_\_\_\_\_  
Juan Luna, Chairperson

ATTEST:

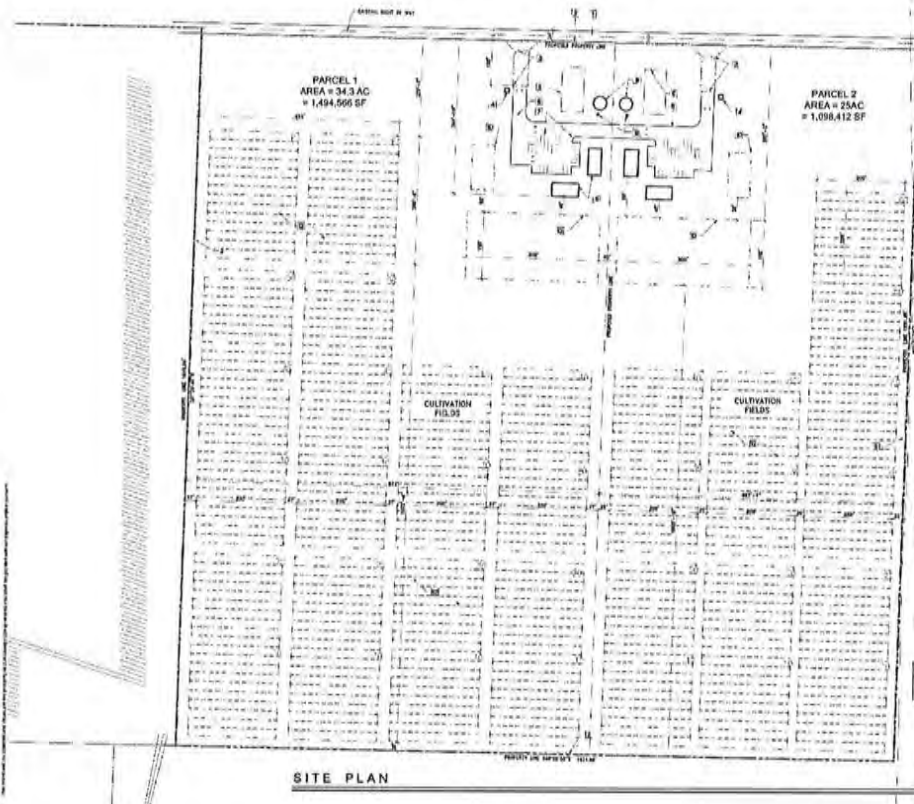
I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the Planning Commission at a special meeting of said Commission, held at Mendota City Hall on the 29<sup>th</sup> day of December 2020, by the following vote:

**AYES: 5 – Chairperson Luna, Vice-Chairperson Escobedo, Commissioners Gutierrez, Leiva, and Romero**  
**NOES: 0**  
**ABSENT: 0**  
**ABSTAIN: 0**

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



EXHIBIT "A" TO RESOLUTION NO. PC 20-07  
 SITE PLAN FOR APPLICATION NO. 20-23



**PROJECT DATA**

OWNER: THE AGRICULTURAL HOLDINGS, LLC  
 1113 GARDEN ROAD  
 DUNES, CA 93931

DESIGNER: SIA Design Group  
 1113 GARDEN ROAD  
 DUNES, CA 93931  
 PH: 562 855-0603

**Code Analysis**

**PARCEL 1 - 1.494565 AC**  
 ZONING: R-1  
 MAXIMUM BUILDING AREA: 1,494,565 SF  
 MAXIMUM FLOOR AREA: 1,494,565 SF  
 MAXIMUM HEIGHT: 35 FT

**PARCEL 2 - 1.098412 AC**  
 ZONING: R-1  
 MAXIMUM BUILDING AREA: 1,098,412 SF  
 MAXIMUM FLOOR AREA: 1,098,412 SF  
 MAXIMUM HEIGHT: 35 FT

**Site Keynotes**

No.	Description
1	EXISTING BUILDING
2	NEW BUILDING
3	EXISTING DRIVE
4	NEW DRIVE
5	EXISTING PARKING
6	NEW PARKING
7	EXISTING FENCE
8	NEW FENCE
9	EXISTING UTILITY
10	NEW UTILITY
11	EXISTING ROAD
12	NEW ROAD
13	EXISTING FIELD
14	NEW FIELD
15	EXISTING WOOD
16	NEW WOOD
17	EXISTING WATER
18	NEW WATER
19	EXISTING SEWER
20	NEW SEWER
21	EXISTING ELEC
22	NEW ELEC
23	EXISTING GAS
24	NEW GAS
25	EXISTING TEL
26	NEW TEL
27	EXISTING CABLE
28	NEW CABLE
29	EXISTING OTHER
30	NEW OTHER

**Proposed Site Plan**

Revision 4  
 8/8

DIRECTOR  
 A1

**SIA Design Group**

1113 GARDEN ROAD  
 DUNES, CA 93931  
 PH: 562 855-0603

**Valley Agricultural Holdings, LLC**  
 W. Belmont Ave.  
 Mendota, CA, 93640

Date: 09.23.2020  
 Drawn By: SIA Design Group  
 Project #: 20-23

**Proposed Site Plan**

Revision 4  
 8/8

DIRECTOR  
 A1



EXHIBIT "B" TO RESOLUTION NO. PC 20-07  
CONDITIONS OF APPROVAL  
APPLICATION NO. 20-23; PORTION OF APN 013-030-68ST  
VALLEY AGRICULTURAL HOLDINGS, LLC

As may be used herein, the words "applicant", "owner," "operator", and "developer" shall be interchangeable, excepting when the word is indicated in ***bold italics***. In that event, the condition of approval is specific to the entity named.

Operations

1. The operator shall acquire and maintain any licenses, approvals, waivers, or similar that may be issued by the State of California requisite to cannabis operations and shall comply with all provisions of any State regulatory agency that may have oversight over said operations.
2. The operator shall acquire and maintain all City of Mendota licenses pursuant to Mendota Municipal Code Chapter 8.37, including payment of applicable fees.
3. The contractor and any subcontractor(s) shall acquire a City of Mendota business license, including payment of any applicable business license fees, prior to commencing construction.
4. The City will monitor the operation for violations of conditions of approval. Penalty for violation may include but is not limited to warnings, fines, and/or permit revocation.

General & Site

5. Approval of this conditional use permit is contingent upon of additional processes contained within Application No. 20-23, to wit:
  - a. City Council approval of a proposed amendment to the General Plan Land Use designation of the site from Public/Quasi-Public Facilities to Light Industrial.
  - b. City Council approval of a proposed amendment to the zoning of the site from P-F/CO (Public Facilities with the Commercial Cannabis Overlay District) to M-1/CO (Light Manufacturing with the Commercial Cannabis Overlay District).
  - c. Recordation of a development agreement pursuant to MMC Section 8.37.050(1).
  - d. Conveyance of the Project Site from the City of Mendota to the Applicant as detailed in the purchase and sale agreement approved October 22, 2019.

6. The conditional use permit detailed within Application No. 20-23 shall expire two (2) years following the date of its approval unless, prior to expiration, a building permit for the requested site modifications is issued by the City of Mendota and construction is commenced and being diligently pursued. At the discretion of the City Manager, and upon valid request not less than thirty (30) days prior to its expiration, this conditional use permit may be extended for a period or periods not to exceed two (2) additional years in the aggregate.
7. Development shall comply with all applicable provisions of the City of Mendota General Plan and the Mendota Municipal Code (MMC), including but not limited to: potable water protection regulations (Chapter 13.30), business licensing requirements (Title 5), and Building Code Standards (Title 15); the Subdivision Ordinance (Title 16); the regulations of the applicable zone district(s) and other relevant portions of the Zoning Ordinance (Title 17); and the City of Mendota Standard Specifications and Standard Drawings, unless exceptions therefrom are approved by the City Engineer.
8. Use of the site shall conform to all applicable requirements for the M-1 Light Manufacturing Zone District as modified by the provisions of the CO Commercial Cannabis Overlay District.
9. The site plan shall be revised to reflect the comments of the City Engineer and City Planner provided October 31, 2020 and to depict locations and dimensions of existing and proposed features, utilities, and other improvements.
10. Construction drawings (building and improvement plans; site, grading, irrigation, and landscaping, as applicable) shall be submitted to the Planning and Building Department and City Engineer for review and approval. A building permit shall be acquired prior to start of any construction activities.
11. No new landscaping is required. Any existing landscaping damaged or destroyed as a result of construction shall be repaired or replaced in-kind by the applicant at the discretion of the City Planner.
12. The applicant shall provide a lighting plan for the review and approval of the City Engineer. All exterior lights shall be shielded or otherwise oriented to prevent disturbance to surrounding or neighboring properties or traffic on abutting rights-of-way.
13. The applicant shall consult with and shall comply with the requirements of the San Joaquin Valley Air Pollution Control District, including but not limited to compliance with Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions) and Rule 9510 (Indirect Source Review).
14. The applicant shall consult with and shall comply with the requirements of the Fresno County Fire Protection District/CAL FIRE, including but not limited to requirements related to sprinklers, fire hydrants, and fire access.

15. The developer shall comply with Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.98, and 21083.2 and related statutes regarding regulation of cultural and historical resources that may be discovered on the site.
16. Development and operation of the project site shall be in substantial conformance with the Site Plan dated September 29, 2020 and the operational statement dated October 13, 2020 as incorporated herein by reference. The City Planner shall determine the extent to which incremental or minor changes to the site plan, the landscape plan, and/or the operational statement meet this requirement.
17. Following any changes made to the site plan as a result of these conditions or other commentary, correspondence, or official requirement, the applicant shall submit a copy of the final site plan as revised to the Planning Department for inclusion in the project file. Changes made pursuant to these conditions shall be considered minor or incremental.
18. Prior to issuance of a certificate of occupancy, all relevant conditions of approval shall be verified as complete by the Planning Department, and any and all outstanding fees shall have been paid. Any discrepancy or difference in interpretation of the conditions between the subdivider and the Planning Department shall be subject to review and determination by the Planning Commission.
19. All above-ground features including but not limited to lighting, fire hydrants, postal boxes, electrical and related boxes, and backflow devices shall be installed outside of the public-right-of-way. All utilities shall be installed underground.
20. Hours of construction shall be limited to 6:00 AM to 7:00 PM, Monday through Saturday.
21. Construction debris shall be contained within an on-site trash bin and the project site shall be watered for dust control during construction.
22. Any non-structural fencing shall be subject to approval by the Community Development Department consistent with Standard Drawing Nos. M-3 through M-7.
23. The applicant shall comply with all relevant components of the California Building Code and associated trade codes.
24. All signage must be approved pursuant to the standards and guidelines of the Mendota Municipal Code prior to installation.
25. Development shall at all times respect existing or new easements by, for, and between all private and public entities, including but not limited to the City of Mendota.



26. It shall be the responsibility of the subdivider to grant/secure easements as necessary for the installation and maintenance of private utilities, including but not limited to electricity, gas, telephone, and cable television.
27. Connection points for water and wastewater shall be determined by the City Engineer. Connections shall be made in accordance with City of Mendota standards and shall be coordinated with the Director of Public Utilities.
28. The applicant shall comply with the City of Mendota Cross-Connection Control Regulations contained within MMC Section 13.24.
29. The applicant shall coordinate with the City Engineer and Mid Valley Disposal to establish necessary solid waste procedures and facilities.

#### Water System Improvements

30. The project is subject to the provisions of the Conditional Will-Serve Letter issued by the City of Mendota on September 8, 2020.
31. The site plan shall be revised to illustrate existing and proposed water facilities.
32. The project shall make connection(s) to the City water system as determined by the City Engineer.
33. The improvement plans shall include the location of existing water mains, valves, and valve boxes located in adjacent streets that the proposed water system is to be connected to.
34. All connections to the existing water mains shall include a temporary reduced pressure double check backflow preventer (see Standard Drawing No. W-8) and follow the connection procedures outlined in that standard, or exhibit compliance with AWWA Standard C651-05.
35. Fire hydrants shall be spaced not to exceed 300 feet on center and shall be individually valved between the hydrant and the water system.
36. Fire flow conditions are subject to review and approval by the Fresno County Fire Protection District/CAL FIRE.
37. A meter, meter box, and service shall be installed to each unit. Applicant shall obtain meter type, size and service requirements from the Public Utilities Department and/or the City Engineer. The construction of the water service with meter shall be installed per Standard Drawing No. W-1 and Standard Specifications.
38. All water meters shall be Badger Model E Series with Nicor Connector (E-Series Ultra Plus for sizes 3/4" and 5/8") with Badger Model Orion CMNA-N Cellular Endpoint with Nicor Connector fully loaded with through lid mounting kit
39. No water services are allowed within drive approaches.



40. The project shall comply with City of Mendota's Automated Water Meter Reading System

#### Sewer System Improvements

41. The site plan shall be revised to illustrate existing and proposed sewer facilities.
42. The project shall connect make connection(s) to the City wastewater system as determined by the City Engineer.
43. No sewer laterals are allowed within driveways. All laterals and cleanouts shall be installed per Standard Drawings No. S-7A and M-1.

#### Storm Drain Improvements

44. To ensure proper spacing between underground facilities and allow for unimpeded placement of brass cap monuments in the road surfaces at the intersections of the streets, the location of sewer mains shall conform to Standard Drawing No. M-1.
45. Storm drainage facilities shall be constructed per City of Mendota Standard Drawings and Specifications.
46. If applicable, valley gutter construction shall be consistent with City of Mendota Standard Drawing No. ST-14 unless an alternate design is approved by the City Engineer.

#### Streets

47. The applicant shall provide for acquisition of any and all necessary easements to accommodate access to the site from the current northerly terminus of Belmont Avenue.
48. Any work within the City of Mendota right-of-way shall require an encroachment permit.
49. Any work within Caltrans right-of-way shall require an encroachment permit.
50. All concrete work, including curbs, gutters, valley gutters, sidewalks, drive approaches, curb ramps, and other concrete features shall contain a minimum of six (6) sacks of cementous material per cubic yard unless otherwise approved by the City Engineer.
51. Any broken, damaged, or substandard sidewalk, curb, gutter, or pavement along the project frontages, or any of the above damaged during construction wherever located, shall be removed and replaced as directed by the City Engineer consistent with City Standard Drawings.
52. Drive approaches, as necessary, shall be installed consistent with Standard Drawing No. ST-15.

## Fees

53. This project is also subject to a development agreement. Fees discussed in that agreement are not included herein and are in addition to this section.
54. The applicant shall be responsible for payment of any and all outstanding planning, building, plan check, engineering, and attorney fees prior to issuance of a certificate of occupancy. This shall include all fees incurred by the City's consultants or contract staff resulting from preliminary review, correspondence, review of formal application materials, peer review of documents, processing of application materials, attendance at and/or participation in meetings and conference calls, or other services rendered in relation to the project.
55. Concurrently with submittal of improvement and/or building plans, the applicant shall deposit with the City of Mendota funds in an amount estimated by the City Engineer and/or Building Official, respectively, to be sufficient to offset costs to the City for review of such plans. In the event that such funds are not sufficient to cover costs to the City, the City Engineer and/or Building Official, as appropriate, shall contact the applicant to request additional funds, which the applicant shall then deposit with the City.
56. The applicant shall pay to the City of Mendota development impact fees consistent with the City's current Development Impact Fee Schedule (January 2007). Fees are due in full prior to issuance of a certificate of occupancy.
57. The applicant shall be responsible for payment of fees to the Mendota Unified School District and shall provide the City with evidence of payment, or evidence of the District's determination that no payment is required, prior to issuance of a certificate of occupancy.
58. The applicant shall be responsible for payment of Fresno County Regional Transportation Mitigation Fees and Fresno County Public Facilities Impact Fees and shall provide the City with evidence of payment, or evidence of the County's determination that no payment is required, prior to issuance of a certificate of occupancy.





# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

Date: July 1, 2022

<b>Bill To:</b>	
Name:	Odyssey
Address:	2222 E. Olympic Blvd Los Angeles, CA 90021
Attn:	Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter August 2nd Payment	\$ 150,000.00
<b>Total Amount Due</b>	<b>\$ 150,000.00</b>

Due August 2, 2022

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.



# CITY OF MENDOTA


*"Cantaloupe Center Of The World"*

August 12, 2022

## Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 418 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is \$150,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \$1,500.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 8-29-2022.

  
\_\_\_\_\_  
City Manager  
City of Mendota

8/12/2022  
Date





# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

Date: November 2, 2022

<b>Bill To:</b>	
Name:	Odyssey
Address:	2222 E. Olympic Blvd Los Angeles, CA 90021
Attn:	Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter November 2nd Payment	\$ 150,000.00
<b>Total Amount Due</b>	<b>\$ 150,000.00</b>

Due November 2, 2022

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

November 18, 2022

**VIA CERTIFIED MAIL AND E-MAIL:**

[alex@traditional.com](mailto:alex@traditional.com)

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

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

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

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

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

**Re: Notice of Default and Demand for Cure  
City of Mendota Development Agreement**

To Whom It May Concern:

I am writing in connection with the March 26, 2021, Development Agreement between Odyssey Agricultural Development, LLC ("Developer"), Odyssey Agricultural Holdings, LLC ("OAH"), Valley Agricultural Holdings, LLC ("VA"; collectively with Developer and OAH, "Developers"), and the City of Mendota ("City").

Developers are currently in default of the Development Agreement for failing to pay the Public Benefit Fees due to City on: May 2, 2022, in the amount of \$150,000; August 2, 2022, in the amount of \$150,000; and November 2, 2022, in the amount of \$150,000, for a total sum of \$450,000 currently past due to the City. (See Development Agreement, §§ 4.2, subd. (a)(2)(iii), 4.2, subd. (a)(3), 4.2, subd. (b), 4.3, 4.5, 4.6.) Pursuant to Section 8.1, subdivisions (a) and (e), of the Development Agreement, the City demands Developers cure this default by paying the City all outstanding amounts due within thirty days of the date of this notice. Such deadline to cure Developers' default expires on December 18, 2022.

Thank you,

Cristian Gonzalez  
City Manager, City of Mendota





# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

November 21, 2022

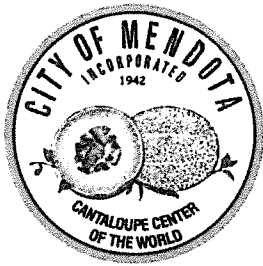
## Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 418 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is \$150,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \$1,500.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 12-6-2022.

\_\_\_\_\_  
City Manager  
City of Mendota

\_\_\_\_\_  
Date



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

Date: January 3, 2023

<b>Bill To:</b>
Name: Odyssey
Address: 2222 E. Olympic Blvd Los Angeles, CA 90021
Attn: Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter February 2nd Payment	\$ 150,000.00
Total Amount Due	\$ 150,000.00

Due February 2, 2023

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.





# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

February <sup>10</sup> 9, 2023 *ms*

## Notice of Non-Performance Late Fee

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and ODYSSEY AGRICULTURAL DEVELOPMENT LLC, a California limited liability company ("Developer"), ODYSSEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("OAH"), and VALLEY AGRICULTURAL HOLDINGS LLC, a California limited liability company ("VA"), for the development of property located at 418 W. Belmont Avenue, Mendota, California 93640 ("Agreement"), if Developer, OAH, and/or VA fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer, OAH, and VA that Developer, OAH, and/or VA has failed to make payment(s) required by the Agreement. The past due amount is \$150,000.00. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \$1,500.00 ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by 2/24/2023.  
*25 ms*

  
\_\_\_\_\_  
City Manager  
City of Mendota

2/9/2023  
Date



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

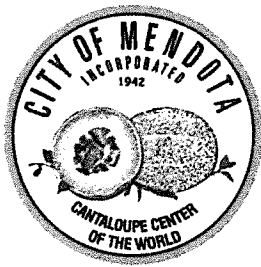
Date: April 7, 2023

<b>Bill To:</b>	
Name:	Odyssey
Address:	2222 E. Olympic Blvd Los Angeles, CA 90021
Attn:	Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter May 2nd Payment	\$ 150,000.00
Total Amount Due	\$ 150,000.00

Due May 2, 2023

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

Date: July 21, 2023

<b>Bill To:</b>	
Name:	Odyssey
Address:	2222 E. Olympic Blvd Los Angeles, CA 90021
Attn:	Legal Department

Description	Amount
Odyssey Development Agreement Public Contribution Payment Quarter August 2nd Payment	\$ 150,000.00
<b>Total Amount Due</b>	<b>\$ 150,000.00</b>

Due August 2, 2023

Please make payable to City of Mendota. If you have any questions, please contact City Hall at (559) 655-3291. Thank you.

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** WAIVING THE SECOND READING AND ADOPTION OF ORDINANCE NO. 23-02, AMENDING TITLE 15 OF THE MENDOTA MUNICIPAL CODE RELATED TO ADOPTION BY REFERENCE OF THE 2022 CALIFORNIA BUILDING CODE AND ASSOCIATED TRADE CODES  
**DATE:** AUGUST 8, 2023

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**ISSUE**

Should the City Council waive the second reading of and adopt Ordinance No. 23-02, amending Title 15 of the Mendota Municipal Code related to adoption by reference of the 2022 California Building Code and Associated Trade Codes?

**BACKGROUND**

Title 15 of the Mendota Municipal Code (“MMC”), Buildings and Construction, incorporates by reference the California Building Standards Code, including the California Building Code and associated trade codes (collectively “Standard Codes”), in order to address compliance with industry-standard health and safety practices related to construction. The various Standard Codes are generally updated by the California Building Standards Commission (“CBSC”) on a triennial basis. In 2020 the City of Mendota (“City”) incorporated by reference the then-current 2019 set of California Standard Codes and now the newly adopted 2022 set of California Standard Codes must be enforced by the building department beginning this year.

At its regular meeting on July 25, 2023, the City Council waived the first reading of the ordinance and scheduled the public hearing for the August 8, 2023 regular City Council meeting. A public notice noticing the hearing was posted at Mendota City Hall and in the August 2<sup>nd</sup> edition of the Firebaugh-Mendota Journal.

**ANALYSIS**

As the Standard Codes adopted by the CBSC take effect, typically on January 1<sup>st</sup> of the calendar year following their adoption, all agencies are required to implement the provisions of those codes, unless local circumstances dictate that amendments are appropriate. As such, the City must amend Title 15 of the MMC to reflect the most current Standard Codes.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Staff recommends that the City Council waive the second reading of and adopt Ordinance No. 23-02, amending Title 15 of the Mendota Municipal Code related to adoption by reference of the 2022 California Building Code and Associated Trade Codes.



**Attachment:**

1. Ordinance No. 23-02

**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AMENDING  
TITLE 15 OF THE MENDOTA MUNICIPAL  
CODE RELATED TO ADOPTION BY  
REFERENCE OF THE 2022 CALIFORNIA  
BUILDING CODE AND ASSOCIATED  
TRADE CODES**

**ORDINANCE NO. 23-02**

**WHEREAS**, the City of Mendota (“City”) is empowered to protect the health and safety of its citizens; and

**WHEREAS**, Title 15 of the Mendota Municipal Code (“MMC”), Buildings and Construction, incorporates by reference the California Building Standards Code, including the California Building Code and associated trade codes in order to address compliance with industry-standard health and safety practices related to construction; and

**WHEREAS**, the California State Building and related Trade Codes are updated by the California Building Standards Commission (“CBSC”) on a triennial basis; and

**WHEREAS**, in 2020, the City incorporated by reference the then-current 2019 set of California State Building and related Trade Codes; and

**WHEREAS**, the CBSC recently adopted its 2022 standards which must be enforced by the City’s building department starting in 2023.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Mendota hereby amends the Mendota Municipal Code as follows:

**Section 1.** Section 15.08.010 of Chapter 15.08 of Title 15 of the Mendota Municipal Code is hereby amended to read as follows:

15.08.010 California Building Code adopted by reference.

The California Building Code, including the Appendices as referenced in the ~~2019~~ **2022** California Building Code Standards and the International Building Code Standards is adopted by reference.

**Section 2.** Section 15.12.010 of Chapter 15.12 of Title 15 of the Mendota Municipal Code is hereby amended to read as follows:

15.12.010 California Mechanical Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Mechanical Code, including Appendices A, B, C, and D **through H**, is adopted by reference in its entirety.

**Section 3.** Section 15.16.010 of Chapter 15.16 of Title 15 of the Mendota Municipal Code is hereby amended to read as follows:

15.16.010 California Electrical Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Electrical Code, including Annex A through Annex H **J**, is adopted by reference.

**Section 4.** Section 15.20.010 of Chapter 15.20 of Title 15 of the Mendota Municipal Code is hereby amended to read as follows:

15.20.010 California Plumbing Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Plumbing Code and Appendices and the International Association of Plumbing and Mechanical Officials (IAPMO) Installation Standards are adopted by reference.

**Section 5.** Section 15.24.010 of Chapter 15.24 of Title 15 of the Mendota Municipal Code is hereby amended to read as follows:

15.24.010 California Fire Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Fire Code is adopted by reference in its entirety.

**Section 6.** Section 15.32.010 of Chapter 15.32 of Title 15 of the Mendota Municipal Code is hereby amended to read as follows:

15.32.010 California Administrative Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Building Standards Administrative Code is adopted by reference in its entirety.

**Section 7.** Section 15.40.010 of Chapter 15.40 of Title 15 of the Mendota Municipal Code is hereby amended to read as follows:

15.40.010 California Referenced Standards Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Referenced Standards Code, with appendices, is adopted by reference in its entirety.

**Section 8.** Section 15.44.010 of Chapter 15.44 of Title 15 of the Mendota Municipal Code are hereby amended to read as follows:

15.44.010 California Energy Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Energy Code is adopted by reference in its entirety.

**Section 9.** Section 15.48.010 of Chapter 15.48 of Title 15 of the Mendota Municipal Code is hereby added to read as follows:

15.48.010 California Residential Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Residential Code, including Appendices A through ~~R~~ **Z**, is adopted by reference in its entirety.

**Section 10.** Section 15.52.010 of Chapter 15.52 of Title 15 of the Mendota Municipal Code is hereby added to read as follows:

15.52.010 California Green Building Standards Code adopted by reference.

The ~~2019~~ **2022** Edition of the California Green Building Standards Code, including Appendices A4 and A5 **A5, and A6.1**, is adopted by reference in its entirety.

**Section 11.** This ordinance shall become effective and in full force at 12:00 midnight on the 31<sup>st</sup> day following its adoption.

**Section 12.** Severability. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of any remaining portions of this Ordinance, and the City Council of the City of Mendota declares it would have passed the remainder of this Ordinance as if such invalid portion thereof had been deleted.



**Section 13.** CEQA. The adoption of this Ordinance is not subject to environmental review under the under Public Resources Code, § 21000 et seq., the California Environmental Quality Act (“CEQA”), because the amendments do not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and therefore are not considered a “project” under CEQA. (Pub. Res. Code, § 21065; 14 Cal. Code Regs., § 15378, subd. (a).)

\* \* \* \* \*

The foregoing ordinance was introduced the 25<sup>th</sup> day of July, 2023 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 8<sup>th</sup> day of August, 2023 by the following vote:

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

\_\_\_\_\_  
Victor Martinez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CELESTE CABRERA-GARCIA, CITY CLERK  
**VIA:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** AUTHORIZING THE FORMATION OF A CITY COUNCIL AD HOC SUBCOMMITTEE TO EVALUATE THE PROPOSALS RECEIVED IN RESPONSE TO THE REQUEST FOR PROPOSALS FOR THE PURCHASE AND POTENTIAL DEVELOPMENT OF CITY-OWNED REAL PROPERTY  
**DATE:** AUGUST 8, 2023

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**ISSUE**

Shall the City Council adopt Resolution No. 23-64, authorizing the formation of a City Council Ad Hoc Subcommittee to evaluate the proposals received in response to the Request for Proposals for the Purchase and Potential Development of City-Owned Real Property?

**BACKGROUND**

On July 26, 2023 the City of Mendota (“City”) issued a Request for Proposals (“RFP”) for the Purchase and Potential Development of City-Owned Real Property on July 26, 2023.

**ANALYSIS**

Proposals in response to the RFP will be accepted until the deadline of August 25, 2023. In accordance with the provisions contained in the RFP, an evaluation subcommittee (consisting of two (2) Council Members and staff) will be tasked with reviewing and considering all proposals received during the submission window. The evaluation committee will provide a recommendation to the City Council on which proposal to approve following their review of all responsive submissions.

**FISCAL IMPACT**

There is no fiscal impact caused to the City by this item.

**RECOMMENDATION**

Staff recommends that the City Council select two (2) Council Members to serve as regular members on the subcommittee and one alternate Council Member (who may participate in the discussions in the absence of a regular member) and adopt Resolution No. 23-64, authorizing the formation of a City Council Ad Hoc Subcommittee to evaluate the proposals received in response to the Request for Proposals for the Purchase and Potential Development of City-Owned Real Property.

**Attachment:**

1. Resolution No. 23-64

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AUTHORIZING  
THE FORMATION OF A CITY COUNCIL  
AD HOC SUBCOMMITTEE TO EVALUATE  
THE PROPOSALS RECEIVED IN RESPONSE  
TO THE REQUEST FOR PROPOSALS FOR  
THE PURCHASE AND POTENTIAL DEVELOPMENT  
OF CITY-OWNED REAL PROPERTY**

**RESOLUTION NO. 23-64**

**WHEREAS**, as approved during the July 25, 2023, regular City Council meeting, the City Council of the City of Mendota (“City”) will issue a Request for Proposals (“RFP”) for the Purchase and Potential Development of City-Owned Real Property on July 26, 2023; and

**WHEREAS**, proposals will be accepted until the deadline of August 25, 2023; and

**WHEREAS**, in accordance with the provisions contained in the RFP, an evaluation subcommittee will be tasked with reviewing and considering all proposals received during the submission window; and

**WHEREAS**, the evaluation committee will provide a recommendation to the City Council on which proposal to approve following their review of all responsive submissions.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Mendota hereby authorizes the formation of a City Council ad hoc subcommittee to review and consider the proposals received in response to the RFP identified above, and to provide a recommendation to the City Council during open session at a subsequent regular meeting.

**BE IT FURTHER RESOLVED**, that the City Council hereby appoints \_\_\_\_\_ and \_\_\_\_\_ to serve as regular members and \_\_\_\_\_ to serve as the alternate member on this ad hoc subcommittee.

\_\_\_\_\_  
Victor Martinez, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 25<sup>th</sup> day of July, 2023, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Celeste Cabrera-Garcia, City Clerk



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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CELESTE CABRERA-GARCIA, CITY CLERK  
**VIA:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** AUTHORIZING THE FORMATION OF A CITY COUNCIL AD HOC SUBCOMMITTEE TO DISCUSS AND CONSIDER THE DESIGN AND SCOPE OF THE PROPOSED MENDOTA COMMUNITY CENTER PROJECT  
**DATE:** AUGUST 8, 2023

---

**ISSUE**

Shall the City Council adopt Resolution No. 23-65, authorizing the formation of a City Council Ad Hoc Subcommittee to discuss and consider the design and scope of the proposed Mendota Community Center project?

**BACKGROUND**

The City of Mendota (“City”) is anticipating receiving funding for the construction of the Mendota Community Center.

**ANALYSIS**

To initiate and plan the potential Mendota Community Center Project (the “Project”), it is necessary to create an Ad Hoc Subcommittee (the “Subcommittee”) consisting of two (2) Council Members and staff. The Subcommittee will be tasked with meeting with staff and consultants to discuss the design and scope of the Project. The Subcommittee will provide a recommendation to the City Council on the details of the Project.

**FISCAL IMPACT**

There is no fiscal impact caused to the City by this item.

**RECOMMENDATION**

Staff recommends that the City Council select two (2) Council Members to serve as regular members on the Subcommittee and one alternate Council Member (who may participate in the discussions in the absence of a regular member) and adopt Resolution No. 23-65, authorizing the formation of a City Council Ad Hoc Subcommittee to discuss and consider the design and scope of the proposed Mendota Community Center project.

**Attachment:**

1. Resolution No. 23-65

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

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AUTHORIZING  
THE FORMATION OF A CITY COUNCIL  
AD HOC SUBCOMMITTEE TO DISCUSS  
AND CONSIDER THE DESIGN AND SCOPE  
OF THE PROPOSED MENDOTA COMMUNITY  
CENTER PROJECT**

**RESOLUTION NO. 23-65**

**WHEREAS**, it is anticipated that the City of Mendota (“City”) will receive funding for the construction of the Mendota Community Center; and

**WHEREAS**, to initiate and plan the potential Mendota Community Center project (“Project”), it is necessary to create an Ad Hoc Subcommittee (“Subcommittee”) to help facilitate the discussion regarding the major scope, design, and cost impacts of the potential Project; and

**WHEREAS**, the Subcommittee will provide a recommendation to the City Council during open session regarding the Project.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Mendota hereby authorizes the formation of a City Council ad hoc subcommittee to discuss and consider the design and scope of the Project, and to provide a recommendation to the City Council during open session at a subsequent regular meeting.

**BE IT FURTHER RESOLVED**, that the City Council hereby appoints \_\_\_\_\_ and \_\_\_\_\_ to serve as regular members and \_\_\_\_\_ to serve as the alternate member on this ad hoc subcommittee.

\_\_\_\_\_  
Victor Martinez, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 8<sup>th</sup> day of August, 2023, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Celeste Cabrera-Garcia, City Clerk

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** NANCY BANDA, FINANCE DIRECTOR  
**VIA:** CRISTIAN GONZALEZ, CITY MANAGER  
**SUBJECT:** GRANTS UPDATE  
**DATE:** AUGUST 8, 2023

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**GRANTS UPDATE**

- **Land and Water Conservation Fund (LWCF)** – The Department of Parks and Recreation has requested a Site Visit for July 18, 2023, from 8 am to 9:30 am. A site visit does not guarantee approval of grant funding. There is an extensive multi-level review of all statewide applications. This grant was submitted for a total project cost of \$1,658,030.00, with a match of \$829,015.00 for the Mendota Triangle Park Project.
- **SB 1383** – Staff has ordered wagons and laptops. We will work with our interns from Fresno EOC to conduct site visits on the educational campaigns.
- **Proposition 64** – Staff has planned out activities for the month of July. Movies in the Park will begin on Thursday, July 6<sup>th</sup> with the showing of “*Super Mario Bros,*” on Thursday, July 13<sup>th</sup> with the showing of “*Puss in Boots,*” on Thursday, July 20<sup>th</sup>, with the showing of “*Spiderman.*” We will have an educational discussion on Monday, July 17<sup>th</sup>. At this meeting, we will talk with the youth about the harmful effects of cannabis and also discuss what activities or discussions they would like to engage in this academic/fiscal year. Staff submitted an application to the Mendota Unified School District (MUSD) to use the McCabe Elementary Swimming Pool on Thursday, July 27<sup>th</sup> from 2– 4 pm. MUSD approved this event. The community was pleased with the event and inquired about future events.
- **Automatic Meter Read** – Staff submitted the final reimbursement to the State Water Board on June 28, 2023.
- **Encampment Funding** – City Staff and Townsend Public Affairs, Inc., met with the County of Fresno regarding this grant opportunity and succession planning. The County of Fresno would be willing to offer a letter of support for grant opportunities.
- **California State Budget** – Community Center \$8,000,000.00.
- **2024 STEP Grant** – The Office of Traffic Safety approved the grant submitted for DUI Saturations and other Traffic Enforcement Activities. The awarded amount is \$35,000.00.
- **Water and Sewer Infrastructure Project** – City Staff and Townsend Public Affairs had a conference call to discuss three projects the City will pursue. These projects include The Backwash Project, A 1-Million Gallon Water Storage Project, and the Wastewater Treatment Plant Expansion.
- **CDBG Program** – The City received funding from reimbursement request #4 for \$311,585.25. Staff will be submitting a final reimbursement request for the lighting portion of the Rojas-Pierce Park Expansion Project.



**In – Progress Grants:**

- **Rojas-Pierce Park Expansion Project** – County of Fresno, Urban Community Development Block Grant (CDBG) Program
- **Rojas-Pierce Park Expansion Project** – Per Capita Program
- **Rojas-Pierce Park Expansion Project** – CDBG-CV
- **COPS Hiring Program** – Department of Justice
- **Proposition 64** – Board of State and Community Corrections
- **Urban Flood Protection Grant** – California Natural Resources Agency
- **Automatic Meter Read Project** – State Water Board
- **Tire-Derived Product** – Cal Recycle
- **SB 1383** – Cal Recycle
- **Office of Traffic Safety** – STEP Program for October 2022 thru September 2023
- **Water Storage and Booster Pump** – County of Fresno
- **Floodplain Maps** – U.S. Army Corps of Engineers

# Memorandum

To: City Council via Cristian Gonzalez, City Manager

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

Subject: City Engineer's Report to City Council

Date: August 3, 2023

## Engineering Projects:

1. Rojas Pierce Park:
  - Working with County for CDBG funding for Phase 3: Restroom & Concession Building
2. Well 10 and Water Main Relocation
  - Design in progress; coordination with USBR and BB Limited
3. Citywide RRXG Improvements:
  - Coordinating crossing improvements with Railroad, Caltrans & CPUC
  - Construction anticipated in Winter 2023
4. 2022 Local Street Reconstruction Project
  - Construction with SB1 funding is completed
5. Backwash Reclaim Project
  - Design is underway; looking for funding opportunities for construction
6. Mendota Stormwater Improvement Project
  - Prop 68 UFGP funded: Construction beginning this month
  - Construction to continue into Winter 2023/24
7. Derrick & Oller Roundabout
  - CEQA & NEPA completed
  - 100% Construction Documents to be completed this month
  - Construction anticipated in Spring 2024
8. Westside Water Tank & Booster Pump
  - ARPA funded design in progress
  - Construction anticipated in late Winter/early Spring
9. 5<sup>th</sup> & Quince Street Reconstruction:
  - Design in progress
  - Construction funded with STBG funds in FFY 23/24
10. Fleming & McCabe Street Reconstruction:
  - Design in progress
  - Construction funded with SB1 funds, targeting late Fall 2023
11. 2024 Local Street Reconstruction:
  - Includes segments of Tule Street, Quince Street & Jennings Street
  - Design to start in October 2023
  - Construction funded with SB1 funds in summer 2024

## Planning/Development Projects

1. Rojas Pierce Park Annexation
  - Continuing discussions with USBR about whether and how the WWD land retirement program affects the project.
2. Regional Housing Needs Allocation
  - Participating in Fresno COG meetings for 6<sup>th</sup> Cycle multijurisdictional Housing Element
3. Safe Routes to School Master Plan
  - Plan accepted on June 27, 2023, prepared with ATP funds
4. Airport Reuse
  - Request of closure sent to Caltrans and FAA
  - Phase 1 of Land Use planning commencing this month

## Grant Applications:

1. Amador & Smoot Extension:
  - \$874,000 in STBG & CMAQ TPP funds; Construction authorization in FFY 23/24
  - Design to start in September 2023
2. Triangle Park & Pool Park:
  - Assisted in various Grant applications for both parks
3. Marie Street Reconstruction:
  - Design to start in August 2023 to apply for CMAQ funding in September 2023
4. Divisadero Street Reconstruction:
  - Design to start in August 2023 to apply for STBG funding in October 2023

## On-going (this month):

1. Representation of the City at FCOG TTC
2. Coordination of road projects with Caltrans
3. Assistance to Finance Director for grant opportunities
4. Coordination with USACOE for Panoche Creek flood study

## Overall P&P Staff engaged (month of July):

- Engineers: 7
- Planners: 1
- Surveyors: 2
- Environmental Specialist: 0
- GIS/CAD Specialists: 2
- Construction Manager: 2
- Project Administrator: 2

## Abbreviations:

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

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