



CITY OF MENDOTA

“Cantaloupe Center Of The World”

JUAN LUNA
Chairperson
ALBERT ESCOBEDO
Vice-Chairperson
JOSE GUTIERREZ
JONATHAN LEIVA
KEVIN ROMERO

CITY OF MENDOTA PLANNING COMMISSION AGENDA

City Council Chambers
Mendota, CA 93640
SPECIAL MEETING
December 29, 2020
12:00 P.M.

CRISTIAN GONZALEZ
City Manager
Public Works/Planning Director
JEFFREY O'NEAL
City Planner

The Mendota City Planning Commission welcomes you to its meetings, which are scheduled for the 3rd Tuesday every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Planning Commissioners may discuss and/or take action on any or all of the items listed on this agenda. Please turn your cell phone off. Thank you for your respect and consideration.

Any public writings distributed by the City of Mendota to at least a majority of the Planning Commission 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.

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

If you would like to participate at this meeting via Zoom, please use the following information:

Dial-in number: 1(669) 900-6833 Meeting ID: 963 3439 4752 Password: 081625

<https://zoom.us/j/96334394752?pwd=NWRGeVViSVNnVFILaUtzNytXemhodz09>

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adjustments to Agenda
2. Adoption of final Agenda

PUBLIC HEARING

1. Commission discussion and consideration of **Resolution No. PC 20-05**, making a determination pursuant to the California Environmental Quality Act; **Resolution No. PC 20-06**, making a determination pursuant to Government Code section 65402(a); **Resolution No. PC 20-07**, approving a conditional use permit; and **Resolution No. PC 20-08**, making a recommendation to the City Council regarding a general plan amendment, rezone, and development agreements in the matter of Application No. 20-23, the Valley Agricultural Holdings, LLC project.
 - a. *Receive report from City Planner O'Neal*
 - b. *Inquiries from Planning Commission to staff*
 - c. *Chairperson Luna opens the public hearing*
 - d. *Once all comment has been received, Chairperson Luna closes the public hearing*
 - e. *Commission considers Resolution Nos. PC 20-05, PC 20-06, PC 20-07, and PC 20-08 for adoption*

PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA

The public is invited to speak to the Planning Commission at this time about any item that is not on the Agenda. Please limit your comments to five (5) minutes. Please note that the Planning Commission cannot take action on any item not listed on the agenda.

PLANNING DIRECTOR UPDATE

PLANNING COMMISSIONERS' REPORTS

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 Planning Commission Special Meeting of Tuesday, December 29, 2020 was posted on the outside bulletin board of City Hall, 643 Quince Street on Monday, December 28, 2020 at 11:00 a.m.


Celeste Cabrera-Garcia, City Clerk

AGENDA ITEM – STAFF REPORT

TO: HONORABLE CHAIRPERSON AND COMMISSIONERS
FROM: JEFFREY O’NEAL, AICP, CITY PLANNER
SUBJECT: APPLICATION NO. 20-23, THE VALLEY AGRICULTURAL HOLDINGS, LLC COMMERCIAL CANNABIS PROJECT
DATE: DECEMBER 29, 2020

ISSUE

In the matter of Application No. 20-23, the Valley Agricultural Holdings LLC project, shall the Planning Commission:

1. Make a determination pursuant to the California Environmental Quality Act, make a determination of General Plan consistency for the disposal of real property, and approve a conditional use permit; and
2. Make recommendations to the City Council regarding a general plan amendment, rezone, and development agreement?

BACKGROUND

The State of California’s Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) is the primary statute that regulates personal, medicinal, and commercial cannabis activity in the state. In addition to MAUCRSA, Chapters 8.37 (Commercial Cannabis Businesses) and 17.99 (Commercial Cannabis Overly District) of the Mendota Municipal Code (MMC) provide regulations applicable to non-personal cannabis activities at the local level. Pursuant to these local regulations, an applicant wishing to undertake commercial cannabis activities must meet certain location criteria, receive approval of a conditional use permit, and enter into a development agreement with the City. Dating to early 2019, the City has been in discussions with various entities regarding development of a commercial cannabis facility on a portion of a City-owned parcel (APN 013-030-68ST) adjacent to the City’s wastewater treatment plant (WWTP). In October 2019, the City entered into a purchase and sale agreement with Valley Agricultural Holdings, LLC.

On October 13, 2020 the Planning Department received an application from Valley Agricultural Holdings, LLC requesting a variety of entitlements and actions to facilitate the construction and operation of a commercial cannabis facility as discussed. The Department accepted the application as complete on October 31, 2020 and notified the applicant accordingly.

<u>Owner:</u>	City of Mendota
<u>Applicant:</u>	Valley Agricultural Holdings, LLC
<u>Representatives:</u>	Dustin Moore, Daniel Pocius, Kevin Schmidt
<u>Location:</u>	APN 013-030-68ST (portion) See attached map and photo

Site Size: Approximately 59 acres of an existing 114-acre parcel¹
General Plan: Public/Quasi-Public Facility
Zoning: P-F/CO (Public Facilities with Commercial Cannabis Overlay District)
Existing Use: Vacant
Surrounding Uses: North – Wastewater ponds, vacant; P-F (portion with CO)
East – Vacant; AE-20 (Fresno County)
South – Inactive biomass plant; M-2/CO
West – CalRENEW-1 solar PV facility; P-F/CO

Street Access: None. Proposed access to be via easement to Belmont Avenue

The Project Site is currently vacant, although the northwestern panhandle of the parcel in question supports an approximately-15-acre pond occasionally utilized by the City for disposal (evaporation) of excess treated effluent from the WWTP. The parcel to the immediate west contains an operational solar photovoltaic (PV) electricity generation facility. All other surroundings parcels are vacant, although APN 013-030-61S to the southwest contains the remnant infrastructure of the Mendota Biomass (Covanta Energy Corporation) facility, which ceased operation in 2015. The Fresno Slough runs generally south-to-north approximately 2,000 feet to the east.

ANALYSIS

Application No. 20-23 proposes construct and operate a facility for the cultivation, processing, and distribution of commercial cannabis. It proposes approximately 39.7 acres (1.7 million square feet (SF)) of outdoor cultivation area and approximately 68,000 SF of structures housing employee workspaces, offices, and ancillary facilities along with nurseries, and processing areas. To meet Fire Department requirements, the Project will likely require installation of a pumping station and/or one or more tanks for water storage. Two basins totaling approximately 2.6 acres would provide storm drainage retention. The remainder of the Project Site consists of vehicular and pedestrian circulation areas, parking, and open area.

Access to the Project Site would be provided via a new 26-foot wide paved or all-weather access road that would extend 1,400 feet east from the northwest corner of the Project Site along and adjacent to the northern boundary of the neighboring PV facility, then south approximately 1,900 feet to the current terminus of Belmont Avenue. Alternately, access could be provided from the south via an easement through APNs 013-030-62S and 66S from Belmont Avenue to the southwestern corner of the Project Site. The proposed internal circulation, an all-weather-surface road, would follow the perimeter of the Project Site to provide access to the structures and outdoor cultivation areas and would circle the stormwater and fire pump facilities. The employee parking area would provide approximately 64 delineated parking spaces located directly north of the employee buildings. An emergency vehicle hammerhead turnaround would be constructed in the north-central region of the Project Site. The site would be enclosed by a seven (7)-foot chain-

¹ The parcel abutting to the west, APN 013-030-67ST, is not a separate legal parcel, but rather a lease parcel owned by the City and leased to CalRENEW-1, LLC for the construction and operation of the solar PV facility. Therefore, APNs 013-030-67ST & 68ST are simply two portions of an existing legal parcel containing approximately 164.80 acres. For the sake of simplicity and since one component of the proposed project consists of the conveyance of the 59-acre Project Site within 68ST to the applicant, this report and accompanying documents treat 68ST as a standalone parcel.

link fence. Each of two entrances would have a 15-foot-high double-gate entry with a manned guardhouse including cameras and security lighting.

The applicant estimates the Project will use between 100 and 150 acre-feet (AF)² of water per year, or roughly the equivalent of 180-420 residences.³ On September 8, 2020, the City issued a *Conditional Will-Serve Letter* to Valley Agricultural Holdings, LLC stating the City's willingness and capability to provide municipal water to the Project subject to certain conditions. There is no timeline under which the Project must secure an alternative source of water. The Project will connect to the City's water system via installation of a 6-inch water main extending west approximately 1,400 feet from the Project Site along the northern boundary of the PV facility, then south approximately 2,300 feet within the Belmont Avenue alignment, where it will connect to the end of an existing 10-inch water main.

The Project will connect to the City's 20-inch South Side Sewer Interceptor, which runs due south-north within the Belmont Avenue right-of-way and its prolongation, approximately 1,400 feet west of the Project Site.

The Project would employ approximately 20 persons on a year-round basis and an additional 40 persons during planting and harvesting (April through October). Employee commuting would comprise the majority of vehicles trips; distribution via van (more likely) or truck (less likely) would result in approximately six (6) daily trips.

The City intends to convey the Project Site to the applicant via recordation of a deed and accompanying legal description. That action is not subject to the approval or recommendation of the Planning Commission, but rather is entirely within the purview of the City Council. However, as described below, the conveyance is subject to a determination by the Planning Commission as to whether disposing of the property conforms to the General Plan.

GENERAL PLAN & ZONING

The site is currently designated for Public/Quasi-Public Facilities (P/QP) by the General Plan and is zoned P-F/CO (Public Facilities/Commercial Cannabis Overlay District). While, at the time the CO district was created and applied, it may have been the City's intention to allow cannabis uses on land carrying this zoning or any other zoning,⁴ a reading of General Plan Policy LU-13.1 notes that the P/QP designation is intended for land owned by public or institutional agencies (i.e., not private entities) and is to be used for educational, governmental, and public safety purposes. Because zoning is required to be consistent with the general plan (Gov. Code section 65860; also discussed in the Land Use Element of the General Plan), a zoning provision cannot supersede a general plan policy, i.e., a privately-owned commercial operation cannot be approved on land within the P/QP designation regardless of a zoning regulation that appears to allow it.

² One acre-foot contains approximately 326,000 gallons.

³ *City of Mendota Water Master Plan*. October 2019. Assumes Medium Density Residential range of 3.6-6.0 dwelling per acre as stated in the City of Mendota General Plan Update 2005-2025.

⁴ Section 17.99.030 of the MMC reads in its entirety: "*Where a conflict occurs between the Commercial Cannabis Overlay District and any other section of the zoning code, or any provision of the Mendota Municipal Code, the Commercial Cannabis Overlay District regulations shall prevail.*"

To facilitate the Project, the applicant proposes to amend the Land Use Element of the General Plan to reflect APN 013-030-68ST as Light Industrial and to concurrently amend the zoning map to reflect it as M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District). General Plan Policy LU-8.1, which describes the intent of the Light Industrial land use designation, states that “*permitted uses generally include industrial or manufacturing uses*”, and the corresponding M-1 zone expressly allows agriculture and agricultural processing. The Project straddles the various definitions, as it is an agricultural use that includes onsite processing, and thus is appropriate in an LI/M-1 area. Under Gov., Code section 65358(b), a city may not amend a single element of its general plan more than four times per calendar year. Following an approval action by the City Council, the proposed general plan amendment would constitute the first amendment to the City’s Land Use Element for Calendar Year 2021.

Senate Bill 18 (SB 18), codified at Gov. Code section 65352.3, requires that prior to approving a general plan amendment, the local agency must refer the project to Native American Tribes for consultation in order to protect or mitigate impacts to cultural places. Tribes then have 90 days to provide comments or request additional consultation. This is a distinct process from AB 52 Tribal Consultation, which is discussed under the Environmental section below. Staff contacted the Native American Heritage Commission (NAHC), which provided a list of Tribes traditionally and culturally affiliated with the project area:

Big Sandy Rancheria of Western Mono Indians
Cold Springs Rancheria
Dumna Wo-Wah Tribal Government
Dunlap Band of Mono Indians
Kings River Choinumni Tribe
North Fork Mono Tribe
Santa Rosa Rancheria Tachi Yokut Tribe
Table Mountain Rancheria
Traditional Choinumni Tribe
Wuksache Indian Tribe/Eshorn Valley Band

Staff sent letters notifying these Tribes of the project on January 17, 2020 pursuant to SB 18. The only comment received was from Dirk Charley of the Dunlap Band of Mono Indians via telephone call to the City Planner. Mr. Charley expressed goodwill towards the City and the Project but stated that the Project Site is far outside his Tribe’s area of concern or interest.

General Plan Conformity Determination

Gov. Code Section 65452(a) requires that before the City disposes of real property, the Planning Agency, in this case the Planning Commission, must make a determination as to whether the disposal conforms to the General Plan. The General Plan does not contain discussion, goals, or policies specific to disposal of real property, so staff suggests that the finding be predicated on the proposed land use changes and use of the site following its disposal. The following General Plan policies relate to the proposed disposal:

LU-2.2. The City shall monitor job opportunities in the City and surrounding areas, and promote patterns of development that allow for expanded job growth and job opportunities for Mendota's residents. Conveyance of the property will allow for operation of an industrial-ag use that will employ between 20 and 60 people depending on the time of year.

LU-8.2. The City shall facilitate economic development by designating sufficient land for potential industrial expansion. By amending the General Plan Land Use of the site to Light Industrial and conveying the land to the project applicant to facilitate the proposed Project, the City is providing additional industrial land.

LU-11.4. The City shall seek to maintain its agricultural heritage, while increasing and diversifying its residential, commercial, and industrial base. Conveyance of the property will provide the opportunity for development and operation of a specific type of industrial-agricultural use that will be the first of its kind in Mendota.

LU-11.5. The City should pursue the development of agricultural related industry (e.g., agricultural processing facilities) and where feasible and desirable, the City shall identify and develop infrastructure as needed for agricultural related industries. By conveying the property to the applicant, the City is providing the opportunity for a hybrid agricultural-industrial operation that includes both in-ground agriculture and related processing facilities on the same site.

Taking into consideration the above General Plan policies, staff's position is that the Planning Commission can find in the affirmative that disposal of the relevant portion of City-owned APN 013-030-68ST is in conformity with the General Plan.

DEVELOPMENT AGREEMENT

The Project proposes to be owned and operated by two separate entities, called "operational entities" for the purpose of this discussion. To describe the obligations and rights of the operational entities and the City, the development agreement (Agreement or Agreements) has been split into two similar versions, each of which has the following parties in common: the City of Mendota (City) and Valley Agricultural Holdings, LLC (Developer). One Agreement also includes The Axiom Group, LLC (Axiom) as a party; the other includes Industrial Integrity Solutions (IIS) as a party. There are further subcomponents of the parties, but those are not germane to the discussion.

The Agreements, the draft versions of which are attached, are largely contract documents but also contain provisions for site development and use related to project entitlements, operations, and allowable cannabis license types, along with discussion of financial considerations. Each Agreement states that, prior to close of escrow, the Developer shall submit applications to the City to subdivide the Project Site into two parcels to be owned and operated by the respective operational entities. If the process as described in the Agreements is pursued, it will require the Developer to prepare a tentative parcel map for consideration by the Planning Commission and the City Council, followed by preparation of the (final) parcel map and what can be a protracted recordation process. While not provided for in the Agreements, the City could instead convey the

Project as two parcels in the first place, thus obviating the need for additional processes. Staff recommends that the Planning Commission considers a change to the language in the Agreements to include the option to convey the Project Site as multiple parcels.

The term of the Agreements is 20 years. During that time, each operational entity will pay various public benefit fees to the City:

1. Contribution Payment. One-time, upfront payments to the City in the amounts of \$80,000 and \$120,000, respectively.
2. Public Benefit Fee. Provided that at least 800,000 square feet of each site is developed, an annual payment to the City equal to four (4) percent of the gross annual receipts, to be not less than \$400,000 and \$600,000, respectively. This is subject to adjustment per the Consumer Price Index, not to exceed two (2) percent in any year.

Each agreement also contains provisions for late payment.

CONDITIONAL USE PERMIT FINDINGS

The provisions of MMC Section 17.84.050 require that the following findings be made prior to approval, or in this case amendment, of a conditional use permit:

FINDING No. 1: 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.

Staff believes that the proposed use is compatible with the surrounding uses. Structures will not encroach into any required yard or setback. Onsite parking has been provided to adequately address the anticipated number of vehicles, as well as provide compliance with the Americans with Disabilities Act.

FINDING No. 2: THE SITE FOR THE 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.

The Project will be required to acquire easements and install and maintain appropriate surfaces for ongoing access to the site. Belmont Avenue, which connects to SR 180 (Oller Street/San Benito Avenue) is intended to support access to industrial facilities.

FINDING No. 3: THE PROPOSED USE WILL HAVE NO ADVERSE EFFECT ON ABUTTING PROPERTY OR THE PERMITTED USE THEREOF.

Uses on the surrounding properties consist of moderate to heavy industrial uses and wastewater treatment facilities. The proposed use is considered to be of less or similar intensity to other uses in the vicinity.

FINDING No. 4: THE CONDITIONS STATED IN THE PROJECT APPROVAL ARE DEEMED NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE.

The conditions of approval will serve to accommodate the proposed use while protecting the health, safety, and welfare of the public. Conditions of approval are based upon standards contained within the Mendota General Plan and the Mendota Municipal Code, and upon precedent established through review and approval of similar projects. Further, the proposed conditions will serve to implement the goals and objectives of the General Plan, which itself is intended to provide for logical and orderly development of the City in a manner beneficial to its residents.

ENVIRONMENTAL

The first step in complying with the California Environmental Quality Act (CEQA) is to determine whether the activity in question constitutes a “project” as defined by CEQA, Public Resources Code section 21000, et seq. and the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, section 15000, et seq. A “project” consists of the whole of an action (i.e., not the individual pieces or components) that may have a direct or reasonably foreseeable indirect effect on the environment. The second step is to determine whether the project is subject to or exempt from the statute. This proposal qualifies as a project under CEQA because it involves the issuance to a person of a “lease, permit, license, certificate, or other entitlement for use” as described in CEQA Guidelines section 15378 and will have a direct physical effect on the environment. Additionally, section 15378 expressly includes amendments to a general plan or a zoning ordinance within the definition of “project.”⁵ While there are exemptions from CEQA that could apply to some of the individual components of the overall project, the “piecemeal” approach to analyzing a project does not satisfy the requirements of CEQA. Accordingly, in June 2019 the City entered into a contract with Wood Environment & Infrastructure Solutions, Inc. (Wood) to prepare an initial study consistent with CEQA Guidelines Appendix G intended to examine the potential environmental effects of the Project.

Assembly Bill 52 (AB 52), codified at Public Resources Code section 21080.3.1, et seq., requires that prior to releasing a CEQA document for public review, a lead agency, in this case the City of Mendota, must notify any Native American Tribe that has presented the City with a written request for notification. The City received such a letter from the Santa Rosa Rancheria Tachi Yokut Tribe on August 8, 2016. As a result, the City is obligated to notify Santa Rosa of any project for which it intends to prepare a negative declaration, mitigated negative declaration, or environmental impact report prior to releasing the document for public review. This is a separate process from the SB 18 process described above under General Plan Amendment.

Tribes have 30 days from receipt of the notice to provide comments or request that the City initiate formal consultation. Within a further 30 days, the City must initiate that consultation, the intention of which is to identify potential impacts to tribal cultural resources and any mitigation that can reduce or eliminate those impacts. Once initiated, there is no limit to the duration of the

⁵ Recently clarified by the California Supreme Court regarding zoning in *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal. 5th 1171.

formal consultation: either mitigation is agreed upon; the parties agree that no mitigation is needed; or one party determines that a good-faith effort has been made to agree, but no agreement is forthcoming. The City mailed notice of the project to Santa Rosa on January 17, 2020 via certified mail. A return receipt indicated that the Tribe received notice on January 23, 2020. No comments were received during the 30-day period.

Based on the results of the initial study, the City Planner made a preliminary finding on November 13, 2020 that, with implementation of mitigation measures, the project would not have a significant impact on the environment, and that a mitigated negative declaration would be prepared. On Also on November 13, 2020, a notice of intent to adopt an initial study/ mitigated negative declaration (IS/MND) was published in *The Business Journal* and filed electronically with the State Clearinghouse.⁶ The notice of intent indicated that the combined initial study/ mitigated negative declaration (“IS/MND”) would be subject to a public review and comment period starting on November 13, 2020 and ending on December 14, 2020. It further stated that the Mendota Planning Commission would consider the CEQA document and other components of the project at a regular meeting on December 15, 2020 and that the Mendota City Council would consider the project at a to-be-determined date.

SCH, having assigned the unique identifier 2020110237 to the IS/MND, distributed the document to numerous State agencies. Additionally, the City provided a digital download link to the County of Fresno, the Fresno County Fire Protection District/CAL FIRE, and Mid Valley Disposal. The City received two formal comments during the review period:

1. Fresno County Fire Protection District/CAL FIRE dated November 16, 2020. The letter was a standard project review letter that did not specifically address CEQA.
2. California Department of Food & Agriculture dated December 9, 2020. CDFA has jurisdiction over the issuance of certain cannabis-related licensing and is a responsible agency under CEQA. The letter contained three comments/requests:
 - a. That the IS/MND be modified to acknowledge additional regulatory provisions over which CDFA has jurisdiction.
 - b. That the IS/MND be modified to address the potential for cumulative impacts.
 - c. That the City advise applicants for cannabis licenses to provide all technical documents to CFDA as part of their license applications.

The CDFA letter did not suggest that the requested revisions would necessitate recirculation of the IS/MND.

Additionally, staff received an email from the California Department of Fish and Wildlife (CDFW) on December 8, 2020 requesting that it be provided additional time to comment on the IS/MND. Typically, the City is not required to accept comments received after the close of the comment period. For this type of project, CDFW is both a responsible agency and a trustee agency under CEQA: it is responsible for issuance of a Lake or Streambed Alteration (LSA) Agreement or an LSA waiver, which is a mandatory element for cannabis-related projects, and it acts as a trustee agency for any project with the potential to affect flora and/or fauna. City staff

⁶ Pursuant to Governor’s Executive Order N-80-20, which incorporates by reference EO N-54-20, local filing requirements pursuant to CEQA are conditionally suspended and may be satisfied by filing with the State Clearinghouse.

met with CDFW staff via video on December 10, 2020 to discuss CDFW concerns and to attempt to establish an appropriate extension to the comment period. Specific comments included:

1. Addition of detailed site assessment, including soil types and history of use
2. Elaborate on proposed mitigation for biological resources, specifically related to:
 - a. Burrowing owl
 - b. San Joaquin kit fox
 - c. Blunt-nosed leopard lizard
 - d. Fresno kangaroo rat

CDFW did not suggest that the requested revisions would necessitate recirculation of the IS/MND.

CDFW staff suggested that a comment letter might be forthcoming by December 18, 2020; however, email correspondence between the City and CDFW indicated that the letter was under review and its exact status was unknown as of that date. The City requested additional information via email on December 23 and December 24, 2020 and received a response on December 24 that the letter was still under review and no update was available.

To this point, Wood has responded to the comments received from FCFPD/CAL FIRE and CDFA and has made revisions to the IS/MND and the Mitigation Monitoring & Reporting Program (MMRP) consistent with the formal comments from CDFA and the verbal comments from CDFW. The delay in receipt of comments from CDFW has resulted in the continuation of the Planning Commission's December 15, 2020 regular meeting and its December 22, 2020 special meeting. Staff recommends that the Planning Commission adopt the IS/MND and MMRP as they relate to the conditional use permit.

PUBLIC NOTICE

In addition to the CEQA Notice of Intent published and filed on November 13, 2020, a notice of the December 15, 2020 public hearing was published in the December 4, 2020 edition of *The Business Journal*, was individually mailed to property owners within 300 feet of the project site, and was posted at City Hall. To provide additional review time accommodate CDFW, the December 15, 2020 hearing was continued to December 22, 2020 and subsequently continued to December 29, 2020.

FISCAL IMPACT

Review and processing of the planning applications, engineering plans, and building plans are paid for by the applicant, and the project is responsible for payment of development impact fees. As discussed, the project will be responsible for payment of various public benefit fees that can amount to hundreds of thousands of dollars or more annually. Building fees will be determined when a building permit is requested.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Adopts Resolution No. PC 20-05, adopting the mitigated negative declaration and mitigation monitoring and reporting program and determining that, with mitigation incorporated, the project will not result in a significant effect on the environment.
2. Adopts Resolution No. PC 20-06, determining that disposal of City-owned real property as proposed in Application No. 20-23 conforms to the City of Mendota General Plan Update 2005-2025.
3. Adopts Resolution No. PC 20-07, approving the conditional use permit proposed by Application No. 20-23.
4. Adopts Resolution No. PC 20-08, forwarding a recommendation to the City Council to approve the General Plan amendment, rezoning, and development agreements proposed by Application No. 20-23.

Attachment(s):

1. Aerial photo and site depiction
2. General Plan Exhibit
3. Zoning Exhibit
4. Assessor's Parcel Map
5. Site Plan
6. Initial Study
7. Responses to Comments
8. Resolution No. PC 20-05
9. Resolution No. PC 20-06
10. Resolution No. PC 20-07
11. Resolution No. PC 20-08

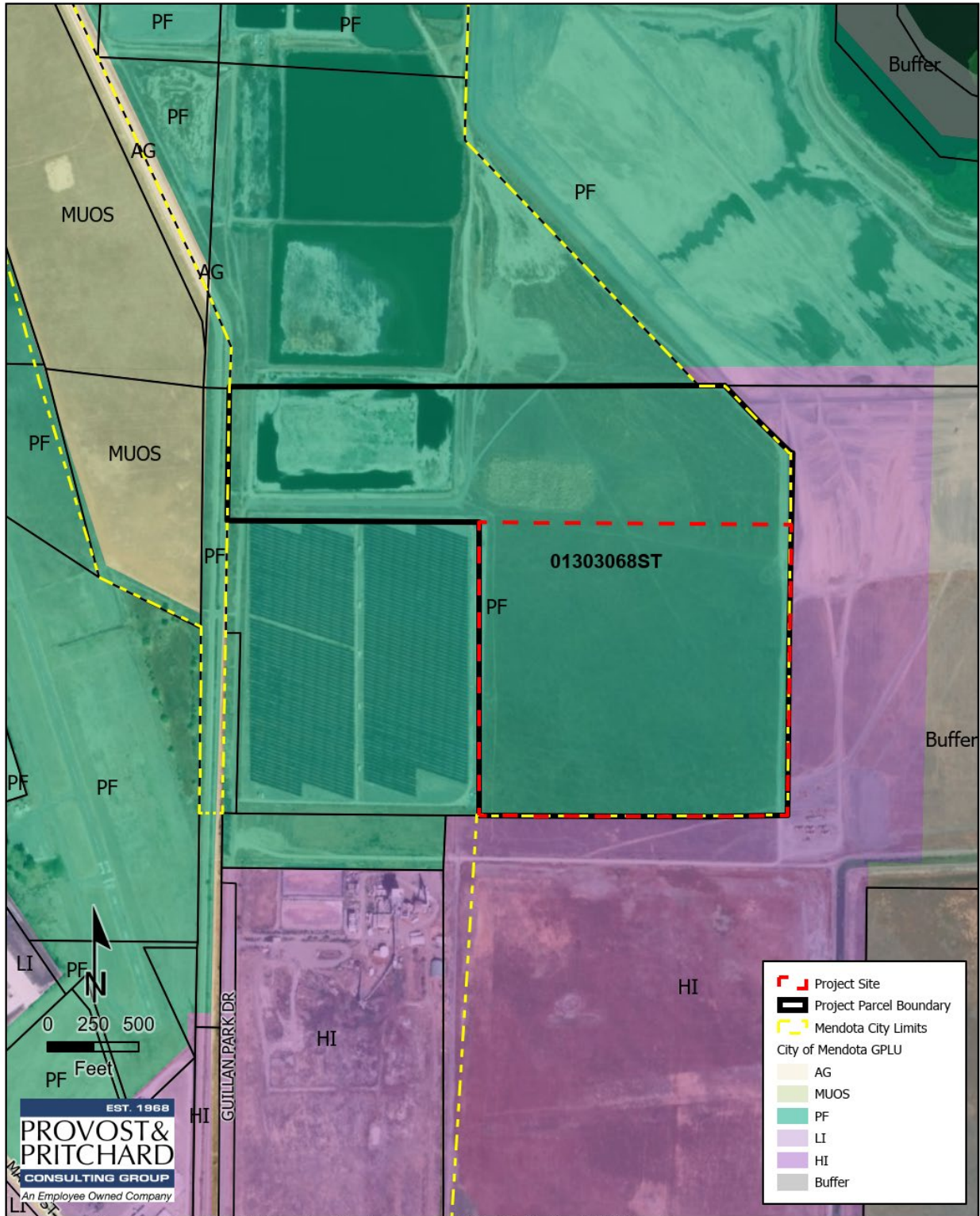
AERIAL PHOTO AND SITE DEPICTION



Site Vicinity and Offsite Improvements

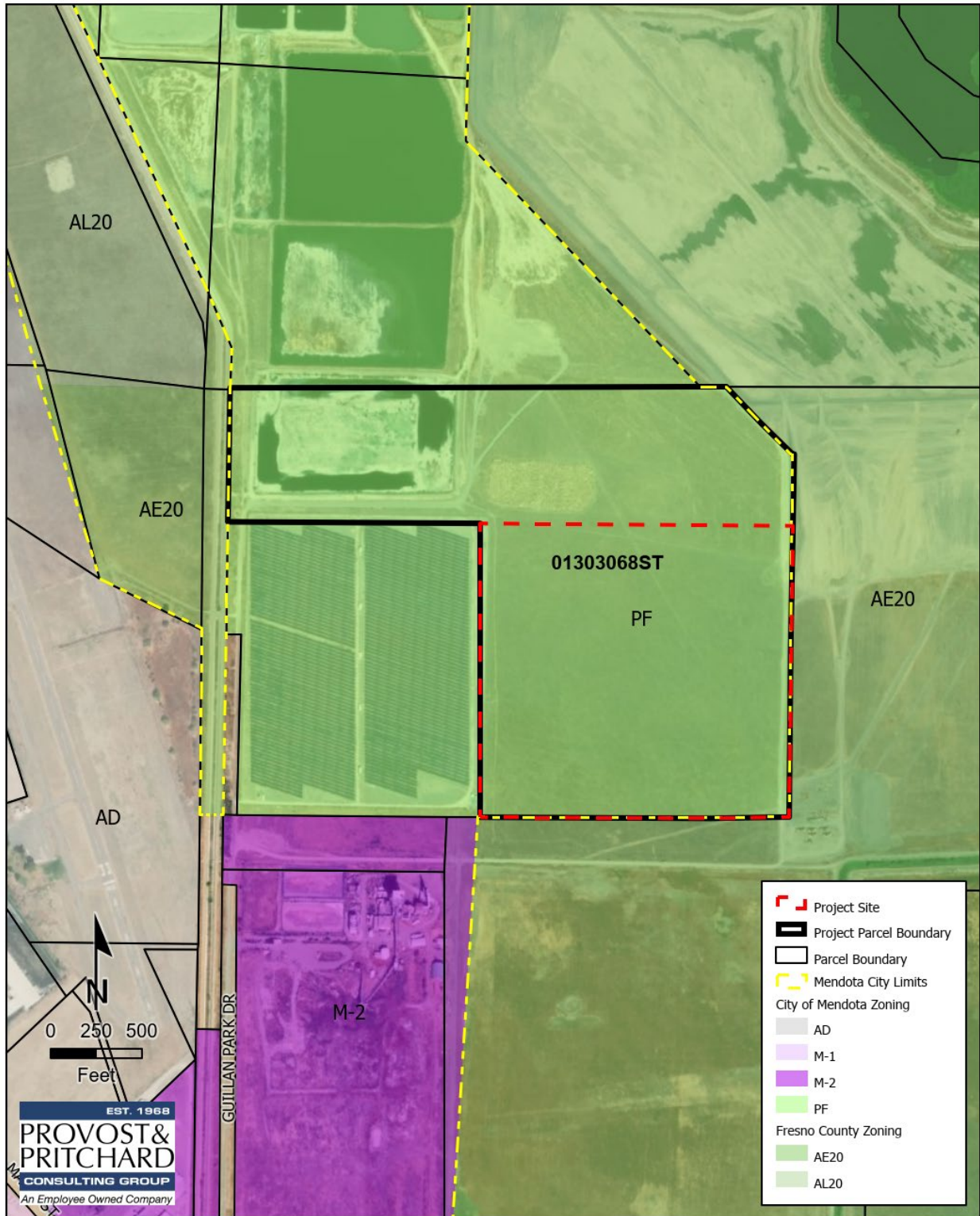


GENERAL PLAN EXHIBIT



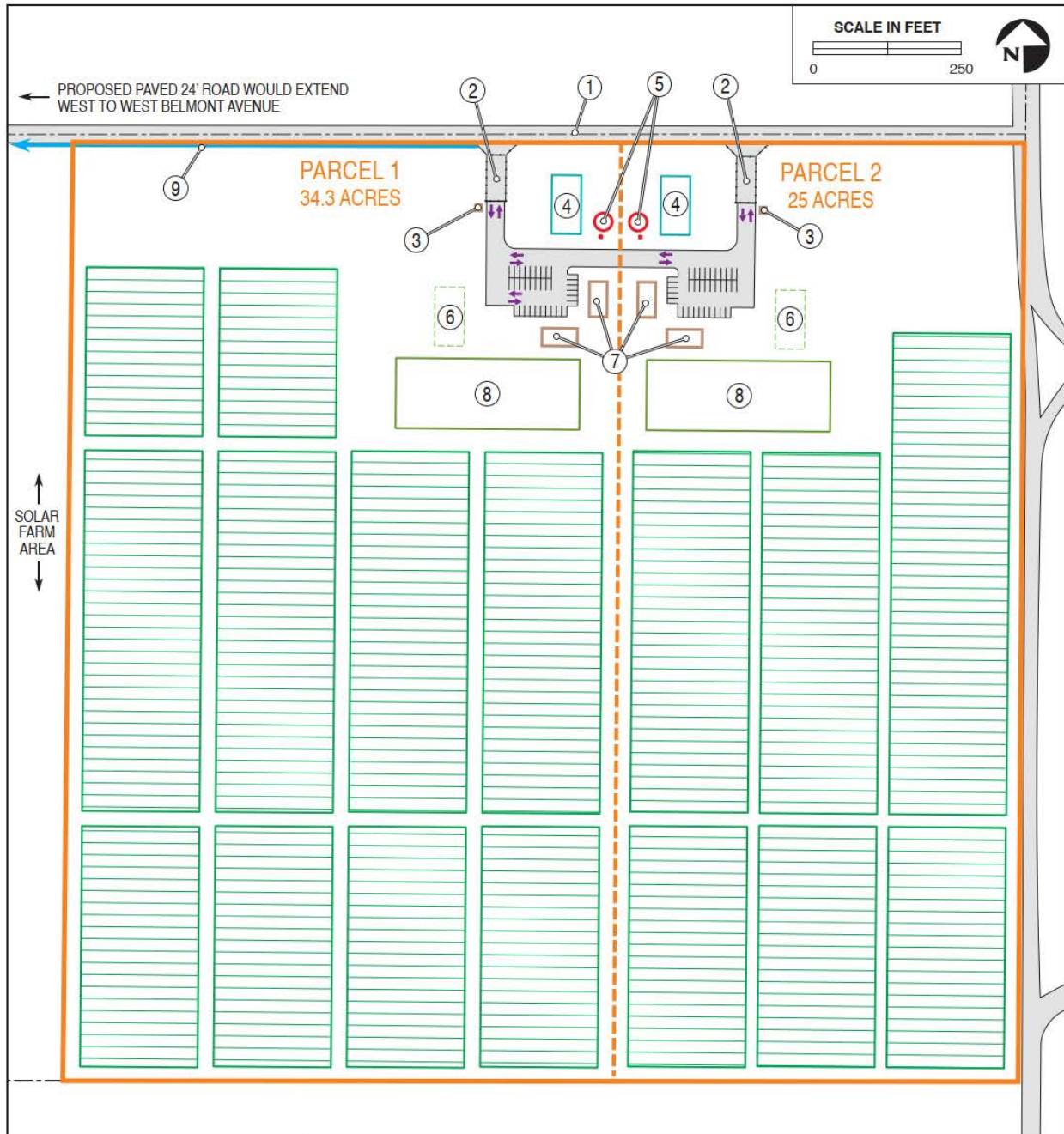
12/3/2020 : G:\Mendota_City of-3336\3336 On-Going Planning Services\GIS\Map\Application_Exhibit_Template.aprx

ZONING EXHIBIT



12/3/2020 : G:\Mendota_City of-3336\3336 On-Going Planning Services\GIS\Map\Application_Exhibit_Template.aprx

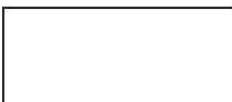
SITE PLAN



LEGEND		# Proposed Improvements Key	
Development Area Boundary with 7-Foot-High Perimeter Fence	1 New Gravel Access Road	5 Fire Tanks and Pumps	8 Processing Buildings – 30,000 Square Feet Each
Proposed Lot Split	2 Double Gated Entry	6 Compost Area	9 Water Supply and Wastewater Lines
Access Roads and Parking Stalls	3 100-Square-Foot Security Guard Building	7 Modular/Mobile Office and Employee Buildings – Restrooms and Break Rooms; 8,000 Square Feet Each	
Cultivation Fields – 1.7 Million Square Feet Total	4 Storm Water Retention Catch Basin		



Site Plan





CITY OF MENDOTA

INITIAL STUDY / DRAFT MITIGATED NEGATIVE DECLARATION

MENDOTA VALLEY AGRICULTURAL HOLDINGS PROJECT

FINAL DRAFT

December 2020

Initial Environmental Study

1. Project Title:

City of Mendota Application No. 20-23, Mendota Valley Agricultural Holdings Project

2. Lead Agency Name and Address:

City of Mendota
643 Quince Street
Mendota, CA 93640

3. Contact Person and Phone Number:

Cristian Gonzalez, City Manager
643 Quince Street
Mendota, CA 93640
(559)-655-4298

4. Project Location:

The Project is located at the end of Belmont Avenue approximately 0.5 mile north of Guillan Park Drive on a 59.0-acre portion of Assessor's Parcel No. (APN) 013-030-68ST within the city limits of the City of Mendota. See Figure 1 (Vicinity Map).

5. Project Applicant's Name and Address:

Valley Agriculture Holdings, LLC
2151 E. Convention Center Way, Ste. 222
Ontario, CA 91764

6. General Plan Designation:

Public/Quasi-Public Facility

7. Zoning:

Public Facilities with Commercial Cannabis Overlay District (P-F/CO)

8. Description of the Project:

See "Project Description" below

9. Surrounding Land Uses:

North: Vacant land and wastewater treatment plant; P-F (portion with CO)
South: Vacant land and idle biomass plant; M-2/CO, AE-20 (Fresno County)
East: Vacant land, Fresno/Kings/Mendota Slough, Agriculture; P-F, AE-20 (Fresno County)
West: Solar Photovoltaic ("PV") Facility, William Robert Johnston Municipal Airport; P-F, A-D

10. Other Public Agencies Whose Approval is Required:

The Project may require discretionary actions and approvals by regional and/or State agencies:

- Department of Food and Agriculture (CDFA):

-
- Provisional Adult-Use Cannabis Cultivation (A-License) (until annual license is acquired)
 - Type 3 Outdoor Cultivation Licenses
 - Nursery Licenses
 - Processor Licenses
 - Bureau of Cannabis Control
 - Type 11 Distribution Licenses
 - California Department of Public Health
 - Type 7 Manufacturing License
 - Fresno County Department of Environmental Health
 - On-site waste disposal
 - State Water Resources Control Board (SWRCB):
 - National Pollutant Discharge Elimination System (NPDES) Permits
 - Storm Water Pollution Prevention Plan (SWPPP)
 - Central Valley Regional Water Quality Control Board (CVRWQCB):
 - Storm Water Permits
 - Department of Fish and Wildlife
 - Lake & Streambed Alteration Agreement or waiver (FGC Section 1617)
 - San Joaquin Valley Air Pollution Control District
 - Central Valley Flood Protection Board

11. Other Project Assumptions:

The Initial Study assumes compliance with all applicable State and local codes and regulations including, but not limited to, the City's Design and Improvement Standards, the California Building Standards Code, the Health and Safety Code, and the Public Resources Code.

12. Required City Approvals:

The Project requires the following actions and/or approvals by the City:

- Adoption of the Mitigated Negative Declaration (MND)
- Approval of a General Plan Amendment (Land Use Map: Public/Quasi-Public Facilities to Light Industrial at the Project Site)
- Rezoning (P-F to M-1; CO to be maintained)
- Conditional Use Permit
- Development Agreement (Agreement number to be assigned once approved by the City Council)
- Commercial Cannabis Business Permit
- Cannabis Business License Tax Certificate

Project Description

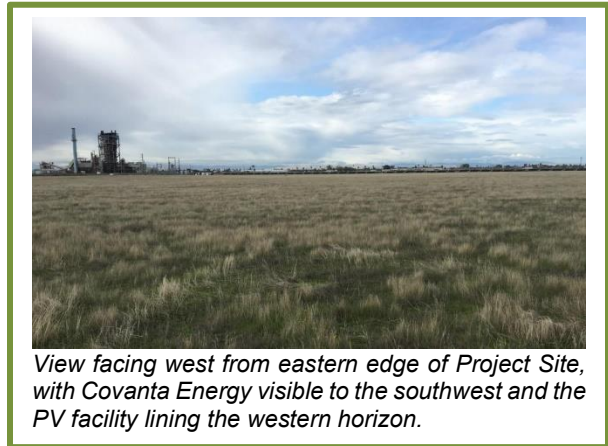
Application No. 20-23, the Mendota Valley Agricultural Holdings Project (Project), would entail purchase and development of 59 acres (Project Site) of an existing 114-acre parcel (APN 013-030-68ST) to construct and operate a commercial cannabis facility. The City of Mendota, which currently owns the 114-acre parcel, would sell the Project Site to the applicant as Parcels 1 and 2 (approximately 35 acres and 24 acres, respectively) via deed while retaining ownership of the remaining 55 acres. The proposed Project would include approximately 39.7 acres (1.7 million square feet) of open-field cannabis cultivation. Processing of harvested cannabis is currently anticipated to occur by hand within two 30,000-sf head houses onsite. The cannabis facility would include cultivation activities in compliance with current restrictions on allowable cannabis garden canopy (i.e., mature plant coverage). The Project would also include an ancillary nursery and processing of harvested cannabis. Distribution of cannabis and development of supporting onsite facilities are also proposed.

Development of the proposed Project would include offsite improvements to construct an all-weather access road through either the remaining 55-acre portion of the original 114-acre parcel to link with Belmont Avenue (which is aligned north-south in the vicinity of the Project Site) or through abutting property to the south, along with connections for utilities such as water, sewer, and electricity. Project development and operation would proceed in accordance with applicable State regulations, including the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), the Adult Use of Marijuana Act (AUMA), the CalCannabis Cultivation Licensing Program, and the City's Commercial Cannabis Business Ordinance. The Project would require City approval of a General Plan Amendment in order to change the designation of the 59-acre Project Site from Public/Quasi-Public Facilities to Light Industrial and a corresponding rezone of the site from P-F to M-1. The overall site is also within the City's Commercial Cannabis Overlay District, which would remain in effect. Associated actions requiring City consideration include conveying the 59-acre Project Site to Mendota Valley Agricultural Holdings and approval of a conditional use permit (CUP). Consistent with the City's cannabis regulations, the Project includes a request for a development agreement between the City and applicant to authorize construction and operation and to finalize financial arrangements and responsibility for improvements between the City and Project applicant.



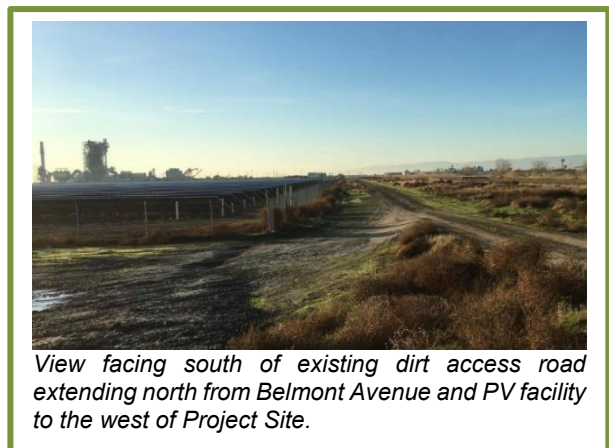
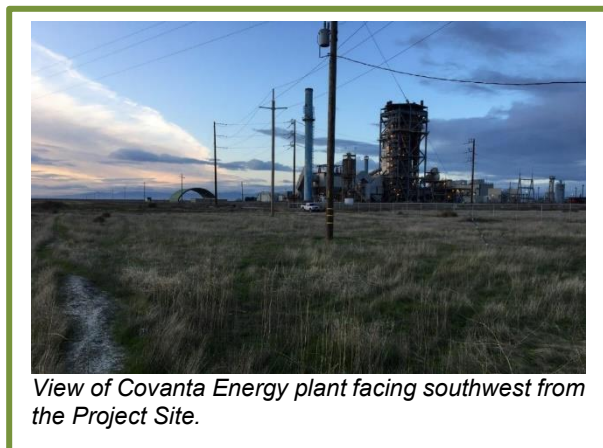
Project Site and Surrounding Land Uses

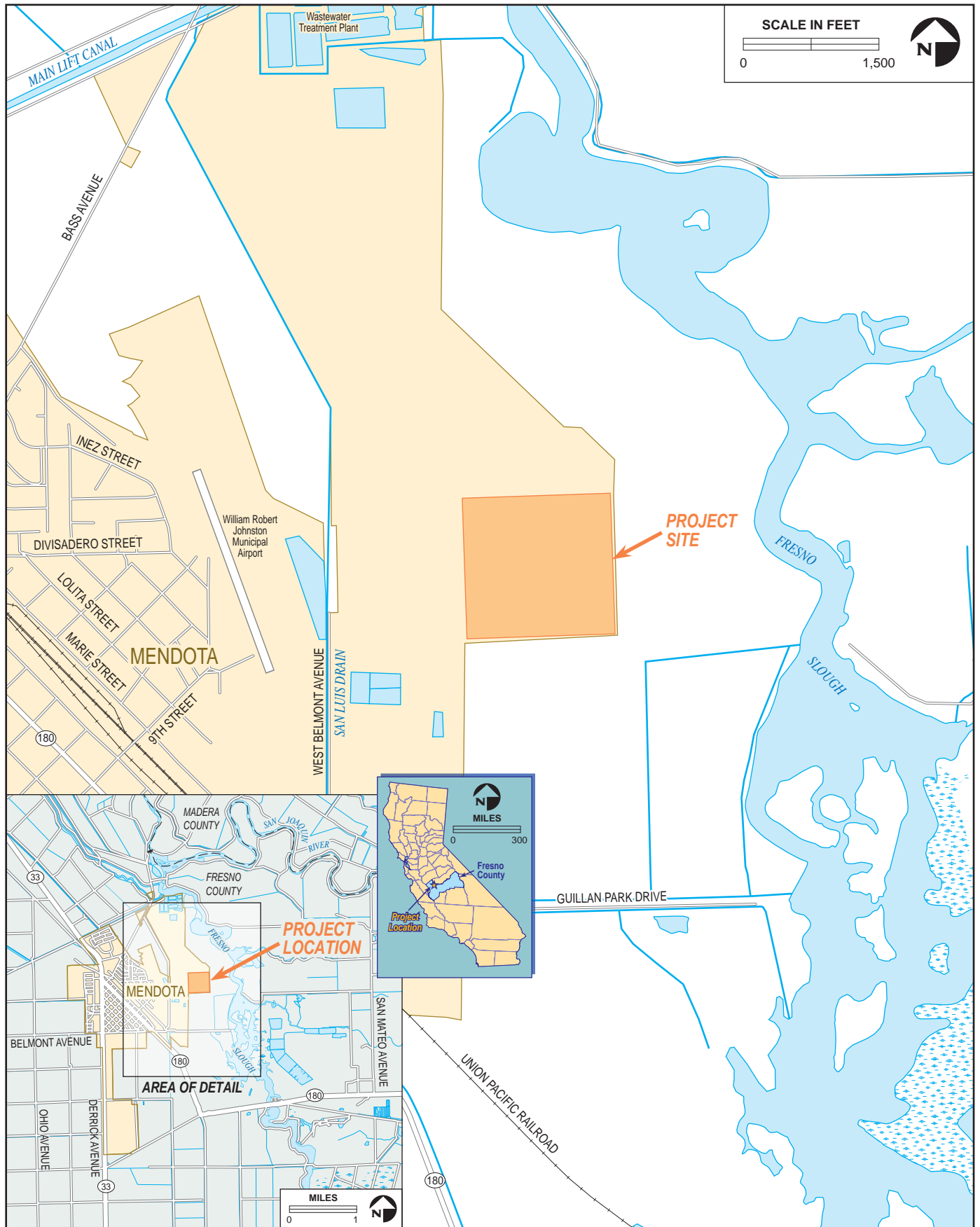
The Project Site includes 59 acres of vacant land located at the end of Belmont Avenue, approximately 0.5 mile north of Guillan Park Drive (Figure 1). The Project Site is designated for Public/Quasi-Public Facilities land uses under the City’s General Plan; adjacent properties are designated for both Multi-use/Open Space, Heavy Industrial and Public/Quasi-Public Facilities. The Project Site and adjacent lands are currently zoned Public Facilities (P-F) under the City’s Zoning Ordinance and are within the Commercial Cannabis Overlay District.



The Project Site is bordered by the City’s wastewater treatment plant to the northwest, vacant land to the north and east, fallow agricultural land to the south and the idle Covanta Energy Corporation biomass plant to the southwest, and a solar photovoltaic (PV) facility to the west. The PV facility is located on 50 acres of land leased from the City (APN 013-030-67ST). The parcels adjacent to the east and south are within unincorporated Fresno County and are owned by River Ranch LLC, a local agricultural enterprise. While zoned for agricultural use, they are currently idle. The nearest residential uses are located approximately 0.5 mile to the west of the Project Site, beyond the PV facility and the Airport (Figure 2). The nearest active agricultural site is approximately 0.5 mile to the south.

The topography of the Project Site is generally flat and slopes down gently to the northeast, with an average elevation of approximately 160 feet above sea level. Existing vehicle access to the Project Site is provided off of Belmont Avenue, with direct access provided via informal dirt roads, including a 1,300 foot long dirt road spanning east-west along the northern boundary of the Project Site (Figure 2). Belmont Avenue is a 44-foot-wide, two-lane north-south paved road within an 80-foot dedicated right-of-way which extends roughly 1,600 feet north of Guillan Park Drive and provides access to the Covanta Energy Corporation site, the PV facility, the City’s wastewater treatment plant, the Project Site, and the agricultural land to the east.





Regulatory Context

The following timeline summarizes the regulatory actions that the City Council has taken associated with cannabis since 2018:

- June 11, 2019: Adopted Ordinance No. 19-06, amending Chapter 8.37 of the Mendota Municipal Code (MMC) to eliminate the ban on cannabis dispensaries and to establish regulations for commercial cannabis businesses. The regulations include provisions for development agreements, permits, licensing, and requirements related to the location, operation, and design of businesses.
- September 10, 2019: Adopted Ordinance No. 19-09, modifying the location requirements for commercial cannabis retail businesses.
- September 24, 2019: Adopted Ordinance No. 19-08, amending the MCC to permit commercial cannabis businesses in the C-3 district subject to a conditional use permit.
- October 8, 2019: Adopted Resolution No. 19-75, establishing the application submittal period for applicants to enter into a development agreement for commercial cannabis businesses.
- September 22, 2020: Adopted Ordinance No. 20-16, amending MMC Chapter 17.99 to address certain cannabis-related performance and development standards and revise language regarding development costs for large-scale operations.

The City currently operates a licensing program under the ordinances for Commercial Cannabis Businesses, found under Title 8, Chapter 8.37 of MMC. The Project applicant is seeking to enter into a Development Agreement with the City under these provisions.

CA Department of Consumer Affairs: Responsible for licensing of transporters, distributors, dispensaries, and testing laboratories.

CA Department of Food and Agricultural (CalCannabis Division): Responsible for licensing of cultivation and implementation of the Track-and-Trace System.

CA Department of Public Health: Responsible for licensing of cannabis manufacturers.



Development Summary

The Applicant is seeking to acquire a State cannabis licenses, which include: Type 3 cultivation licenses and Type 11 distribution licenses. Commercial cannabis activities would consist of cultivation and processing by hand and would not include any manufacturing or processing machinery. Additional facilities would include restrooms, offices, roads, fire tanks and pumps, other appurtenant infrastructure. The Project would use standard agricultural operating materials (e.g., fertilizers, nutrient solutions, and small amounts of gasoline and/or diesel for machinery), and does not propose the storage of any high-intensity hazardous materials or require designation as a hazardous materials storage facility.

Of the 59 acres, the Project would include approximately 39.7 acres, or 1.7 million square feet, of outdoor cultivation 68,000 square feet of support buildings, with the remaining acreage dedicated to parking and circulation areas, utilities infrastructure, and undeveloped land. (see Figure 3).

I. Proposed Support Facilities

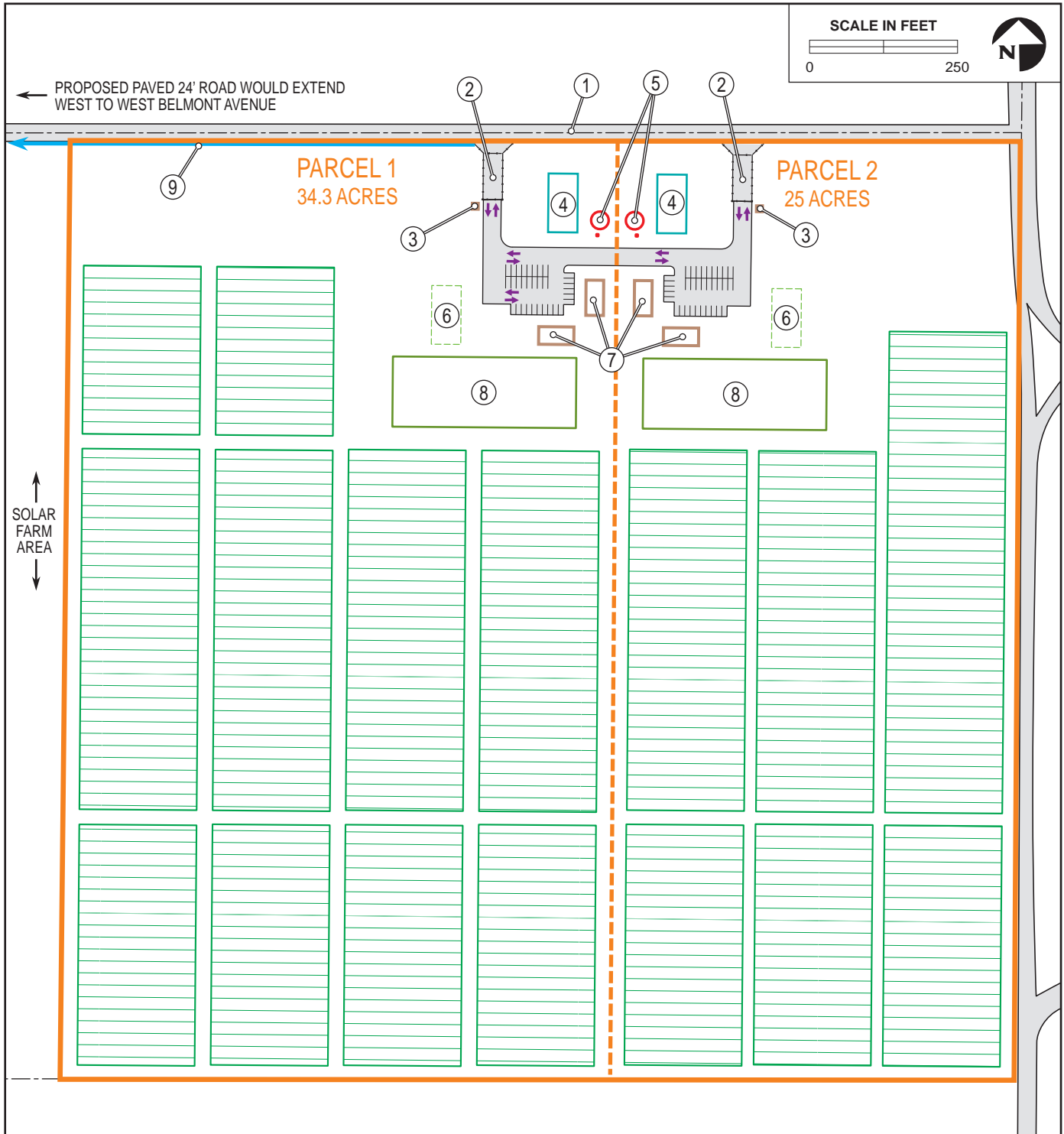
The Project Site would support a capacity for up to 1.7 million square feet of total cannabis cultivation. A detailed description of each of the proposed support facilities is provided below.

Buildings

Several structures would be constructed at the north-central area of the Project Site. Four (4) 2,000-sf worker buildings would be constructed to support employees, and would include breakrooms, restrooms, offices, and other ancillary facilities within tilt up concrete buildings assembled on concrete building footprints (Figure 3). Two (2) single-story, 30,000-sf head houses to support onsite processing would be constructed. The buildings would reach a maximum height of 25 feet and face an approximate 30-foot-wide all-weather road that would facilitate access for support equipment and personnel (see Figure 3).

II. Parking and Circulation

Access to the Project Site would be provided via a new 26-foot wide paved or all-weather access road that would extend 1,400 feet east from the northwest corner of the Project Site along and adjacent to the northern boundary of the neighboring PV facility, then south approximately 1,900 feet to the current terminus of Belmont Avenue (Figure 2). The proposed internal circulation, an all-weather-surface road, would follow the perimeter of the Project Site to provide access to the head houses, other structures, and outdoor cultivation areas and would circle the stormwater and fire pump facilities. The employee parking area would provide approximately 64 delineated parking spaces located directly north of the employee buildings. An emergency vehicle hammerhead turnaround would be constructed in the north-central region of the Project Site (Figure 3).



LEGEND		# Proposed Improvements Key	
	Development Area Boundary with 7-Foot-High Perimeter Fence	1	New Gravel Access Road
	Proposed Lot Split	2	Double Gated Entry
	Access Roads and Parking Stalls	3	100-Square-Foot Security Guard Building
	Cultivation Fields – 1.7 Million Square Feet Total	4	Storm Water Retention Catch Basin
		5	Fire Tanks and Pumps
		6	Compost Area
		7	Modular/Mobile Office and Employee Buildings – Restrooms and Break Rooms; 8,000 Square Feet Each
		8	Processing Buildings – 30,000 Square Feet Each
		9	Water Supply and Wastewater Lines

III. Security

The Project Site would be surrounded by a seven-foot-tall chain link fence. Motion-sensor security lighting would be installed at the main gates and building entrances, along with pole-mounted lights in the entry and parking/loading areas. The main gates would include two 15-foot-tall double gated entries, and would have two 100 square foot security guard buildings – one near each access point and each with security cameras and motion lighting.

IV. Utilities

Water and Wastewater

Project water demand for onsite cultivation and domestic uses such as restrooms, hand wash stations, and drinking is estimated to range between 100 and 150 acre-feet per year (AFY) and can initially be supplied by the City of Mendota in accordance with the *Conditional Will-Serve* Letter from the City of Mendota dated September 8, 2020. To supply water to the site, the Project would install a 6-inch water main from the Project Site approximately 1,400 feet west along and adjacent to the northern boundary of the PV facility, then south approximately 2,300 feet to the existing terminus of the City's 10-inch water main within Belmont Avenue (Figure 2).

Wastewater from onsite restrooms, breakrooms, and offices would be conveyed within a new 6-inch sewer line approximately 1,400 feet west along and adjacent to the northern boundary of the PV facility and alongside the proposed water main, where it would connect to the City's existing 30-inch East Side Sewer Interceptor pipe. The Interceptor conveys wastewater from the prison facility south of the City to the City's Wastewater Treatment Plant to the north of the Project Site. (Figure 2). The proposed sewer line would be installed alongside the proposed water line, in accordance with Title 22 of California Code of Regulations.

Stormwater and Drainage

Stormwater runoff from building roofs and impervious surfaces would be captured and conveyed into two stormwater retention basins to be constructed within the northern region of the site, proposed to be approximately 1.5 acres in Parcel 1, and 1.1 acres in Parcel 2. Captured stormwater may also potentially be utilized to supplement the Project's water irrigation supplies. Additional runoff from the cultivation operation and other onsite stormwater, subject to the state's Cannabis General Order, would either pond, percolate or evaporate within the Project Site. The retention basins will be sized to retain the average annual rainfall volume in accordance with the City's Hydrologic Design Criteria. Emergency overland release from the basins will be to the vacant land to the north, following existing topography.

Energy

Electricity would be provided to the Project Site via a new connection to the adjacent PG&E utility lines near the southwest corner of the site (Figure 2). Standby diesel or gasoline generators would be available for use in the case of power outages. The Project would not utilize natural gas nor include solar PV facilities.

Solid Waste

The types of potential solid waste generated from this cultivation operation would include gardening materials and wastes (e.g., used plastic seedling pots, plastic fertilizer/pesticide bags), general litter from site personnel, and unusable plant (green) wastes and spent soils. Non-usable cannabis plant material would be composted onsite, adjacent to the proposed buildings in the northern region of the site (see Figure 3). All remaining municipal waste would be placed in trash enclosures located near the proposed structures and regularly hauled to a local permitted solid waste disposal facility via Mid Valley Disposal.

V. Construction

Construction of the Project would occur over an estimated six-month period. Construction is anticipated to begin in early 2021 and be completed in 2021.

Project development would require clearing, grubbing, and grading prior to road construction and building installation, and leveling for the cultivation areas. Construction equipment, such as backhoes, haul trucks, and soil compactors, and associated material deliveries would arrive and leave the site via Belmont Avenue and the proposed access road. All construction equipment would be staged onsite. Project construction would consist of all land preparation, fencing, employee structures, onsite circulation in compliance with CAL FIRE requirements specific to compaction and all-weather access. Construction would also include the processing buildings pursuant to the California Building Code and utility improvements (e.g. water, wastewater, electricity) within and to the Project Site per City standards. Development would also include installation of security perimeter fencing, and utility poles for electric power.

VI. Operation and Maintenance

Cannabis cultivation and overall operations are proposed to occur year-round, with peak activity occurring over a seven-month period between April and October. Approximately two harvests are anticipated to occur each year, with the first crop between April and June and the second crop between July and October. The typical preparation-to-harvesting period would occur between March and October.

Staffing would consist of 20 full-time employees (year-round) to support overall business operations, with an additional 40 part-time workers during planting and harvesting, resulting in an estimate of up to 60 employees during peak times of the year (April-October). Distribution operations would involve delivery/loading of cannabis product up to six (6) times per day using vans.

VII. Appendix List

Appendix A: CalEEMod Air Quality Model
Outputs

Appendix B: Biological Study

Appendix C: Phase I Cultural Resources Report

Appendix D: Transportation Analysis Memo

Appendix E: Water Supply Feasibility Study

Appendix F: Odor Nuisance Review

Environmental Factors Potentially Affected

The environmental factors checked below could potentially be affected by this Project, involving at least one impact that is a “Potentially Significant Impact” (before any proposed mitigation measures have been adopted or before any measures have been made or agreed to by the project proponent) as indicated by the checked box.

- | | | | | | |
|-------------------------------------|------------------------------|--------------------------|------------------------------------|-------------------------------------|------------------------------------|
| <input type="checkbox"/> | Aesthetics | <input type="checkbox"/> | Agriculture and Forestry Resources | <input checked="" type="checkbox"/> | Air Quality |
| <input checked="" type="checkbox"/> | Biological Resources | <input type="checkbox"/> | Cultural Resources | <input type="checkbox"/> | Energy |
| <input type="checkbox"/> | Greenhouse Gas Emissions | <input type="checkbox"/> | Geology and Soils | <input type="checkbox"/> | Hazards and Hazardous Materials |
| <input type="checkbox"/> | Hydrology and Water Quality | <input type="checkbox"/> | Land Use and Planning | <input type="checkbox"/> | Mineral Resources |
| <input type="checkbox"/> | Noise | <input type="checkbox"/> | Population and Housing | <input type="checkbox"/> | Public Services |
| <input type="checkbox"/> | Recreation | <input type="checkbox"/> | Transportation | <input type="checkbox"/> | Tribal Cultural Resources |
| <input type="checkbox"/> | Utilities and Service System | <input type="checkbox"/> | Wildfire | <input checked="" type="checkbox"/> | Mandatory Findings of Significance |

Determination:

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature

Date

Printed Name/Position

Purpose of this Initial Study

This Initial Study has been prepared consistent with CEQA Guidelines Section 15063, to determine if the project as described herein may have a significant effect upon the environment.

Evaluation of Environmental Impacts

1. A brief explanation is required for all answers except “No Impact” answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
2. All answers must take account of the whole action involved, including offsite as well as onsite, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
4. A “Less than Significant with Mitigation Incorporated” determination applies when the incorporation of mitigation measures has reduced an effect from a “Potentially Significant Impact” to a “Less than Significant Impact”. The lead agency must describe the mitigation measures and briefly explain how they reduce the effect to a less-than-significant level.
5. A determination that a “Less than Significant Impact” would occur is appropriate when the project could create some identifiable impact, but the impact would be less than the threshold set by a performance standard or adopted policy. The initial study should describe the impact and state why it is found to be “less than significant.”
6. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration [Section 15063(c)(3)(D) of the California Government Code.
7. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, when appropriate, include a reference to the page or pages where the statement is substantiated.
8. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

Environmental Impact Analysis

I. Aesthetics

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Except as provided in Public Resources Code Section 21099, would the Project:				
a. Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The Project Site is generally level and is bordered by wastewater treatment plant ponds to the northwest, vacant agricultural land to the east, agricultural operations and Covanta Energy Corporation property to the south and southwest, and the PV facility to the west. The Site is located on the lightly developed eastern edge of the City adjacent to rural agricultural lands and limited industrial uses. Roadways in the Project vicinity carry limited traffic. The Project Site is well removed from most public roads and viewing areas, with Belmont Avenue located 1,400 feet to the west of the site and SR-180 located 0.75 mile to the southwest. Intervening uses such as the Conventa Energy Plant and adjacent PV facility partially screen the site from public roads. The closest residences are located 0.5 mile west of the Project Site beyond the Airport and PV facility. Potential views of the Project Site driving northward along SR-180 towards the City are obscured by the Covanta Energy Corporation facility to the south of the Project Site.

The Project Site and adjacent properties to the north and east consist of agricultural and vacant uses, which results in a low level of artificial light in the vicinity. However, Covanta Energy Corporation facility, the adjacent PV facility, and City wastewater treatment plant all have basic security lights that are a source of existing night lighting. Open Space and Conservation Policy OSC-8.8 in the City's General Plan requires that land uses do not produce glare, the spillage of light off-site, upward illumination, or night glow.

For purposes of CEQA, a "scenic vista" is generally defined as a viewpoint that provides expansive views of a highly valued landscape for the benefit of the general public. There are no officially designated scenic vistas near within the City, although the area offers low-lying expansive views of the undeveloped and agricultural landscape (City of Mendota 2009). Concerning regulatory compliance, the Project is subject to CDFA regulation that address potential impacts on aesthetic resources under California Code of Regulations Sections 8304(c) and 8304(g) which generally require shielded and downward facing lighting. Compliance with these regulations would help reduce potential impacts to aesthetic resources.

DISCUSSION

a) Have a substantial adverse effect on a scenic vista?

Less than Significant. The Project Site is well removed from most public roads and has only limited visibility due to level topography and intervening uses (e.g., Covanta Energy) between the site and the nearest public road, Belmont Avenue, located 1,400 feet to the west. The City currently has no designated scenic corridors or protected vistas, nor does it have any policies regulating development in scenic areas. The Project Site is located approximately 0.75 mile from the nearest public highway, SR-180. The Project area would be surrounded by a new 7-foot tall chain-link fence that would partially shield views of the proposed cannabis operations from nearby roadways and residences. Additionally, given the distance from public roads and the intervening uses (e.g., PV facility), impacts to existing views would be minimized. Further, while the Project is located in a moderately scenic rural area, proposed uses are consistent with surrounding agricultural uses, such as farms. Therefore, no scenic vistas would be obstructed by the proposed changes to the property, and impacts are considered less than significant.



b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings along a scenic highway?

No Impact. There are no officially designated scenic resources or highways on or near the Project Site. The closest officially-designated scenic highway is the eastern end of SR 180 in the Sierra Nevada Mountains, beginning approximately 50 miles east of the Project Site. There are no trees, rock outcroppings, and historic buildings on the Project Site and no impacts to scenic highways would occur.

-
- c) **In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?**

Less than Significant. The Project Site is located in a rural area on the lightly developed urban fringe of the City. The visual character of the Project Site would remain agricultural, similar to its surrounding setting that is commonly perceived by most viewers in the region. The PV facility to the east and the Covanta Energy Corporation facility to the south would diminish the Project's visibility from nearby roads such as Belmont Avenue or SR 180. While the proposed cultivation, head houses, and other structures would be intermittently visible in the distance from the south to cars traveling northwest on SR 180, views of the structures would be relatively brief and would be distant from approximately 0.75 mile away or greater, and would be partially occluded by intervening uses (e.g., Covanta Energy) limiting the visibility of any structures on the site. Given the distance of the Project Site from public view corridors towards the Project Site, aesthetic impacts are considered less than significant.

- d) **Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area?**

Less than Significant. Daytime operations would fall within traditional farming hours of 6:00_{A.M.} to 6:00_{P.M.} and would not be expected to create light or glare that would impact daytime views in the area. However, potential future sources of nighttime lighting associated with the proposed Project would include exterior building, outdoor security lighting, and headlights of employee and delivery vehicles. Consistent with Open Space and Conservation Policy OSC 8.8, the Project would be conditioned to require that any outdoor lighting includes light fixtures that are low-intensity, shielded, and/or directed away from adjacent properties to minimize glare and overspill on adjacent parcels, the night sky, and the public right-of-way. Additionally, the nearby airport, intervening PV facility and Covanta Energy Corporation facilities also include some exterior security lighting and would also provide a buffer between new light generated from Project activities, further decreasing the potential of future night lighting to reach viewers from the public roadways and residences within the City. Therefore, the impact of new sources of lighting on daytime or nighttime views in the area would be considered less than significant.

II. Agricultural and Forestry Resources

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

EXISTING SETTING

The Project Site is located in a semi-rural agricultural region of the City which is zoned P-F but surrounded by agricultural, public facilities and industrial properties zoned AG and P-F. The P-F zone is designated for public and quasi-public facilities and would allow additional uses (e.g., parks, ponding basins, water pumping stations, etc.) under a conditional use permit.

The City does not have any Williamson Act contracted land within its boundary, and the Project Site is not currently enrolled in a Williamson Act land use contract.

Soils within the Project Site are identified primarily as Tachi clay (hnc2) (USDA Natural Resources Conservation Service [NRCS] 2020). The Tachi clay soil is identified as a very poorly drained soil and is listed as a "Farmland of Statewide Importance" soil by the U.S. Department of Agriculture (USDA) (NRCS

2020). Farmland of Statewide Importance is a designation assigned to land that has the best combination of physical and chemical features for maintaining long-term sustainable crop production.

DISCUSSION

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

Less than Significant. As discussed above, the Project Site is currently listed as “Farmland of Statewide Importance” by the USDA pursuant to the California Resources Agency Farmland Mapping and Monitoring Program (FMMP). The Project would develop facilities to cultivate and process an agricultural commodity as defined under California Code of Regulations Section 6000. Construction of these facilities would result in the development of approximately 68,000 sf (1.6 acres) of farmland of statewide importance with concrete floors and an additional approximate 774,924 square feet (17.8 acres) with ancillary or supporting uses and open area (e.g., access roads, rain water ponds, storage, unimproved area, etc.). Any soils of statewide importance that are converted during development of the Project would remain onsite for subsequent reuse as needed or managed in other appropriate ways as identified by the City pursuant to the requirements of the City’s permit process. However, because these accessory uses would cover less than five percent of the Project Site, and would be constructed in support of agricultural expansion, the Project is not considered to result in significant impacts associated with conversion or loss of valuable agricultural resources. The Project Site would remain in agricultural production of cannabis for the duration of Project activities. For these reasons, the proposed development would result in less than significant impacts to Prime Farmland, Unique Farmland, or Farmland of Statewide Importance caused by the conversion of such resources to a non-agricultural use.

b) Conflict with existing zoning for agricultural use or conflict with a Williamson Act contract?

No Impact. The Project would not conflict with existing zoning or Williamson Act contracts for established agricultural land. While the site is not expressly within an “agricultural” zone, the proposed M-1 zoning does allow agriculture as a permitted use and the Project would expand and intensify agricultural production on the site. The Project Site is not subject to a Williamson Act contract. Therefore, no impact to Williamson Act or agricultural use would occur.

c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)) or timberland (as defined in Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?

d) Result in the loss of forest land or conversion of forest land to non-forest use?

No Impact. The Project would not conflict with existing zoning for, or cause rezoning of, or result in the loss or conversion of forest or timberland. There are no trees or forestry resources on the Project Site, nor is the site zoned for forestry uses. Therefore, no impact to forest land would occur.

-
- e) **Involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to non-agricultural use or conversion of forest land to non-forest use?**

No Impact. As discussed in a) and b), the Project would expand and intensify agricultural production on the Project Site, would bring currently nonproductive land into production, and would not convert any farmland to non-agricultural use. Therefore, no impact to the conversion of farmland to non-agricultural use would occur.

III. Air Quality

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The Project Site is within the western portion of the San Joaquin Valley Air Basin (Air Basin) and the jurisdiction of the San Joaquin Valley Air Pollution Control District (SJVAPCD; District), which regulates air quality conditions within the region and City. The SJVAPCD also establishes air quality emissions thresholds and implements air quality management strategies to attain and maintain Central Valley air quality standards. Air quality is affected by stationary sources (e.g., land use and development) and mobile sources (e.g., motor vehicles). Air quality at a given location is a function of several factors, including the quantity and type of pollutants emitted locally and regionally, and the dispersion rates of pollutants in the region. Primary factors affecting pollutant dispersion are wind speed and direction, atmospheric stability, temperature, the presence or absence of inversions, and topography. The Air Basin often experiences high levels of air pollution that are exacerbated by regional climate and topography. The mountain ranges on three sides of the Air Basin trap air within the San Joaquin Valley, creating a zone of high air pollution potential. Within the Air Basin, temperature inversions, long hot summers, and stagnant foggy winters are conducive to the formation and retention of air pollutants. Fugitive dust (and other particulate matter) and ground-level ozone are of particular concern in the area as well. The air quality within the Air Basin is influenced by a wide range of emission sources, such as intermittent dense population centers, heavy vehicular traffic, industry, and agricultural activities.

To protect the public health and welfare, the federal and State governments under direction of the U.S. Environmental Protection Agency (U.S. EPA) have identified six criteria air pollutants and a host of air

toxics, and ambient air quality standards. These are established through the federal Clean Air Act and the California Clean Air Act. Federal and State criteria air pollutants include carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter less than 10 microns in diameter (PM₁₀), fine particulate matter less than 2.5 microns in diameter (PM_{2.5}), and sulfur dioxide (SO₂). Air quality impacts are assessed by comparing impacts to baseline air quality levels and applicable ambient air quality standards. Standards are levels of air quality considered safe from a regulatory perspective, including an adequate margin of safety, to protect public health and welfare. The Air Basin is classified as a non-attainment area for several air pollutants, including O₃ and PM_{2.5} for both federal and State standards, and PM₁₀ for State standards. The Air Basin is classified as an attainment area or is unclassified for all other criteria pollutants (SJVAPCD 2020c).

The SJVAPCD is responsible for preparing attainment plans for each nonattainment criteria pollutant for which the SJVAPCD does not meet the federal or state standard, which currently include ozone, PM₁₀ (State standard only), and PM_{2.5}. The SJVAPCD has developed plans and established strategies to attain State and federal ozone and PM standards. To meet federal and State Clean Air Act requirements, the SJVAPCD adopted the following plans: 2018 PM_{2.5} Plan, 2016 Ozone Plan, 2014 8-hour Ozone Implementation Plan; 2013 Revoked 1-hour Ozone Plan; 2007 Ozone Plan, and the 2007 PM₁₀ Maintenance Plan. The SJVAPCD continues to coordinate emission reduction strategies to address multiple standards, to maximize efficiency for staff and stakeholders, and to maximize health benefits. Building on previous plans, the 2016 Ozone Plan addresses overlapping standards and streamlines the SJVAPCD's approach to reduce ozone precursors while meeting state and federal requirements. In a similar manner, the 2018 PM_{2.5} Plan addresses federal PM_{2.5} standards for the years 1997, 2006, and 2012. Preparing a single plan instead of three separate plans allows for the development of a more robust and health-protective plan that incorporates stronger control measures in a short timeframe than may otherwise be required.

To identify ambient concentrations of the criteria pollutants, the SJVAPCD operates air quality monitoring stations throughout the Air Basin. These stations are primarily located in central Fresno County. The monitoring station located closest to the Project Site is located in Tranquility approximately 10 miles southeast. The station monitors O₃ and PM_{2.5} (SJVAPCD 2020a). Traffic-congested roadways and intersections have the potential for the generation of localized CO levels (i.e., CO hotspots). As further discussed within Section XVII, *Transportation*, adjacent and nearby intersections to the Project Site consist of relatively low-volume agricultural roadways and are not considered substantial enough to generate a CO hotspot by local Air District standards. Therefore, no CO hotspots are anticipated to occur on adjacent roadways or intersections.

Surrounding land uses include commercial agriculture (e.g., row crops, orchards), PV facility, the currently inoperative Covanta Energy facility, the City's municipal wastewater treatment plant, the William Robert Johnston Municipal Airport, vacant land, and an established rural vehicular network. These uses generate particulate emissions during cultivation or plowing of agricultural fields, emissions from aircraft and related airport operations, potential emissions from the Covanta Energy facility (when in operation), emissions from the City's adjacent wastewater treatment plant, those from operation of diesel or gasoline powered farm equipment and operation of typical residential vehicles and yard maintenance equipment. The nearest sensitive receptors to air quality conditions within the Project vicinity include single-family residences within neighborhoods situated approximately 0.5 mile to the west of the Project Site.

Cannabis cultivation is often accompanied by strong odors. Odors can vary by variety, ranging from pepper, balsamic vinegar, pine, citrus, and skunk scents. Most of the pungent aromas of cannabis come from a class of chemicals called terpenes. Terpenes are among the most common compounds produced by flowering plants; they vary widely between plants and are responsible for the fragrance of nearly all flowers. Cannabis contains over 140 different terpenes. These terpenes are found in varying concentrations in different cannabis varieties. Tetrahydrocannabinol (THC), the cannabinoid primarily responsible for cannabis' psychoactive effects, has no odor whatsoever. As type and potency of cannabis odors range widely across varieties, so do resident receptors' opinions regarding whether the odor is pleasant or objectionable.

Cannabis odors can spread through the air and potentially be sensed by surrounding sensitive receptors such as residential neighborhoods. The predictability and degree to which cannabis odors can travel are highly variable depending on climatic and topographic conditions near a cannabis site. Field research by Wood on major cannabis operations in Santa Barbara and Santa Cruz counties has indicated that odors are typically lower during cooler temperatures, especially during cooler overcast days. As temperatures increase, increased odors may occur throughout the Mendota area, particularly due to its flat topography. Stagnant air during nighttime hours also has the potential to intensify the concentration of cannabis odors. Wind patterns decrease the intensity of cannabis odors due to air diffusion; however, constant breezes in a certain direction may result in a somewhat constant, lower-intensity odor in the associated direction if there is no suppression. Outdoor cultivation has the greatest potential to expose receptors to odors; although, greenhouse and indoor cultivation may occasionally contribute odors to surrounding areas if ventilation systems are ineffective, or if indoor spaces are periodically aired out.

In the City's specific region of the Central Valley, the prevalent wind direction from March through November is northwest, indicating that wind conditions from early spring to late fall generally flow from the northwest to the southeast. From December through February, the prevalent wind direction ranges from east to southeast, indicating wind in the middle of winter typically flows from the east or southeast to the west or northwest (Western Regional Climate Center 2020).

The City of Mendota is surrounded by active agricultural crop lands that produce a range of products. All of the City lies within 1.8 miles of the Project Site. Sensitive receptors to air emissions and odors may include residential uses, churches, schools, parks, and hospitals. Residential neighborhoods such as those along I Street, J Street, L Street, Inez Avenue, and Airport Boulevard west of the City's airport are all located roughly 0.5 to 0.75 mile west of the Project Site. Additional potential sensitive receptors in this area include churches such as the Little Zion Missionary Baptists Church and the Apostolic Assembly of Faith, and the City's Veterans Park. Mendota Elementary School and the United Health Center lie approximately 1.1 miles northwest of the Project Site, while Mendota High School lies 1.2 miles to the southwest.

The SJVAPCD maintains rules and regulations with which typical development projects are required to comply (SJVAPCD 2020d). The current rules and regulations are published on the SJVAPCD's website and include regulations regarding generation of dust during construction activities and permitting requirements for new and modified stationary sources of air emissions. Listed below are descriptions of those rules that would be applicable to a typical development project and which may apply to the Project to reduce construction and operational emissions:

-
- Rule 1080 Stack Monitoring: This rule grants the Air Pollution Control Officer (APCO) the authority to request the installation, use maintenance, and inspection of continuous monitoring equipment. This rule also specifies the performance standards for the equipment and administrative recordkeeping, reporting, and violation and equipment breakdown notification requirements.
 - Rule 1100 Equipment Breakdown: This rule defines a breakdown condition and the procedures to follow if one occurs. The corrective action, the issuance of an emergency variance, and the reporting requirements are also specified.
 - Rule 1160 Emission Statements: The owner or operator of any stationary source operation that emits or may emit nitrogen oxides or reactive organic gases (ROG) shall provide the APCO with a written statement in such form that the APCO prescribes, showing actual emissions of nitrogen oxides and ROG from that source. At a minimum the Emission Statement shall contain all of the information contained in the Air Resources Board's Emission Inventory Turn Around Document as described in "Instructions for the Emission Data System Review and Update Report."
 - Rule 2092 Standards for Permits to Operate: The owner or operator of the source has obtained an Authority to Construct granted pursuant to Rule 2201 (New and Modified Stationary Source Review Rule); and the APCO has determined that the source and any sources which provide offsets have been constructed and/or modified to operate, and emit quantities of air contaminants, consistent with the conditions imposed on their respective Authorities to Construct under the applicable sections of Rule 2201 (New and Modified Stationary Source Review Rule); and the APCO has determined that any offsets required as a condition of an Authority to Construct or a Permit to Operate shall commence not later than the date of initial operation of the new or modified source, except that where a new or modified stationary source is, in whole or in part, a replacement for an existing stationary source on the same or contiguous property, the APCO may allow a maximum of 90 calendar days as a start-up period for simultaneous operation of the existing stationary source and the new or replacement source; and the APCO has determined that all conditions specified in the Authority to Construct have been or will be complied with by any dates specified.
 - Rule 2201: The purpose of this rule is to provide for the following: The review of new and modified Stationary Sources of air pollution and to provide mechanisms including emission trade-offs by which Authorities to Construct such sources may be granted, without interfering with the attainment or maintenance of Ambient Air Quality Standards; and no net increase in emissions above specified thresholds from new and modified Stationary Sources of all nonattainment pollutants and their precursors.
 - Rule 4001 New Source Performance Standards: This rule incorporates the New Source Performance Standards from Part 60, Chapter 1, Title 40, Code of Federal Regulations (CFR).
 - Rule 4002 National Emission Standards for Hazardous Air Pollutants: This rule incorporates the National Emission Standards for Hazardous Air Pollutants from Part 61, Chapter I, Subchapter C, Title 40, Code of Federal Regulations (CFR) and the National Emission Standards for Hazardous Air Pollutants for Source Categories from Part 63, Chapter I, Subchapter C, Title 40, Code of Federal Regulations (CFR).
 - Rule 4101 Visible Emissions: The purpose of this rule is to prohibit the emissions of visible air contaminants to the atmosphere.

- Rule 4102 Nuisance: A person shall not discharge from any source whatsoever such quantities of air contaminants or other materials which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such person or the public or which cause or have a natural tendency to cause injury or damage to business or property.
- Rule 4550 Conservation Management Practices (CMP): The purpose of this rule is to limit fugitive dust emissions from agricultural operation sites by requiring agricultural operation sites to submit a CMP Plan.
- Rule 4601 Architectural Coatings: this rule limits volatile organic compound (VOC) emissions for architectural coatings to 50 grams per liter (g/l) for flat coatings on residential and non-residential interiors and exteriors.
- Rule 8021 Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities: Limits fugitive dust emissions from construction, demolition, excavation, extraction, and other earthmoving activities by requiring measures to reduce visible dust emissions by 20% opacity. Required measures include application of water or chemical/organic stabilizers/suppressants on unpaved surfaces, limiting the speed of vehicles traveling on uncontrolled unpaved access/haul roads within construction sites to a maximum of 15 miles per hour (mph), and implementation of an Air Pollution Control Officer (APCO)-approved Dust Control Plan developed by the applicant/owner.
- 8071 Unpaved Vehicle/Equipment Traffic Areas: limits fugitive dust emissions particularly from unpaved vehicle and equipment traffic areas by stabilizing unpaved roads to reduce visible dust emissions by 20% opacity. Stabilization measures include watering, using chemical/organic dust stabilizers, vegetation, and/or implementation of a APCO-approved Dust Control Plan developed by the applicant/owner.

For the evaluation of Project-related criteria pollutant air quality impacts, the SJVAPCD recommends the use of the following thresholds of significance in tons per year (tons/yr) for permitted equipment and activities (Table 1). The City’s General Plan also adopts the SJVAPCD thresholds by reference. There are no specific thresholds for odors.

Table 1. Air Quality Thresholds of Significance – Criteria Pollutants

Pollutant	Construction Emissions (tons/yr)	Operational Emissions (tons/yr)
CO	100	100
NO_x	10	10
ROG	10	10
SO_x	27	27
PM₁₀	15	15
PM_{2.5}	15	15

Source: SJVAPCD 2015

In addition, the SJAPCD holds thresholds for toxic air contaminants from the operations of both permitted and non-permitted sources (Table 2).

Table 2. Air Quality Thresholds of Significance – Toxic Air Contaminants

Toxic Air Contaminant	Threshold of Significance
Carcinogens	Maximally Exposed Individual risk equals or exceeds 20 in one million
Non-Carcinogens	Acute: Hazard Index equals or exceeds 1 for the Maximally Exposed Individual
	Chronic: Hazard Index equals or exceeds 1 for the Maximally Exposed Individual

Source: SJVAPCD 2020b

After California voters passed Proposition 64 in 2016, the District published an Advisory on Cannabis Operations (SJVAPCD 2020e). This Advisory provides local agencies and potential cannabis business operators located in the San Joaquin Valley with guidance regarding the air quality related requirements associated with this activity. The Advisory describes the permit requirements for the following:

- Commercial cannabis growing and harvesting operations: permits required for most diesel generators, and for other equipment if cumulative emissions exceed one-half major source thresholds
- Commercial cannabis processing operations: permits required
- Odor controls associated with commercial cannabis operations (growing, harvesting, storing, processing, dispensary): permits required
- Open burning of cannabis residues: prohibited

Concerning regulatory compliance, the Project is subject to CDFA regulation that address potential impacts from air quality and greenhouse gas emissions under California Code of Regulations Sections 8102(s), 8304(e), 8305, and 8306, which generally require heating and cooling power identification, requirements for generators, adherence to renewable energy requirements, and generator requirements. Compliance with these regulations would help reduce potential project impacts to air quality.

DISCUSSION

a) Conflict with or obstruct implementation of the applicable air quality plan?

Less than Significant. The Project would generate short-term construction and long-term operational emissions. Short-term emissions would result from construction of approximately 68,000 square feet of new buildings, including minor earth moving activities, installation of concrete pads, and construction worker vehicle trips and materials delivery trips during an estimated six-month construction period. Operational mobile source emissions would be generated from maximum estimated potential to of 140 average daily vehicle trips to and from the site (60 maximum employees and up to 10 distribution vehicle trips each day during harvest) associated with the Project. Increased stationary source emission would result from infrequent use of generators, operation of water pumps and electrical equipment, and application of fertilizers and pesticides.

The use of heavy-duty construction equipment and vehicle trips would generate emissions, such as NO_x and PM₁₀. Use of certain paints for architectural coatings would similarly increase the amount of associated ROG and anthropogenic volatile organic compounds (VOC) emissions. The amount of criteria pollutant emissions generated from construction would vary substantially from day to day, depending on the

construction activity. The Project would be required to comply with State and local regulations pertaining to air quality, which would substantially limit the generation of construction emissions related to the proposed Project. Unmitigated construction emissions estimated for the Project would not exceed annual construction emissions thresholds for both NO_x and ROG (see Table 3).

To calculate potential Project construction and operational emissions, the California Emissions Estimator Model (CalEEMod) Version 2016.3.2 was used to calculate emissions based on assumptions regarding Project construction and operation, as informed by the *Project Description* section of this Initial Study. Results of the CalEEMod for this Project are provided as Appendix A. As demonstrated therein and summarized in Table 3 and Table 4 below, unmitigated construction and operation emissions estimated for the Project would not exceed daily or annual emission thresholds established by SJVAPCD. Unmitigated construction and operation emissions assume that the SJVACPD required rules and regulations will be implemented under the Project.

Table 3. Estimated Unmitigated Construction Emissions from the Proposed Project

Air Pollutant	SJVAPCD Thresholds (tons/yr)	Estimated Construction Emissions without Mitigation (2021) (tons/yr) ¹	Exceeds Threshold?
CO	100	0.84	No
NO _x	10	0.69	No
ROG	10	0.27	No
SO _x	27	0.002	No
PM ₁₀	15	0.11	No
PM _{2.5}	15	0.06	No

¹ Refer to Appendix A for CalEEMod output sheets; overall emissions based on rounded totals and an approximate 6-month construction period.

Table 4. Estimated Unmitigated Operational Emissions for the Proposed Project

Air Pollutant	SJVAPCD Thresholds (tons/yr)	Estimated Operational Emissions without Mitigation (tons/yr) ¹	Exceeds Threshold?
CO	100	0.65	No
NO _x	10	0.76	No
ROG	10	0.35	No
SO _x	27	0.003	No
PM ₁₀	15	0.19	No
PM _{2.5}	15	0.06	No

¹ Refer to Appendix A for CalEEMod output sheets; overall emissions based on rounded totals.

As demonstrated through development of a CalEEMod model run, the proposed Project would not substantially conflict with or obstruct implementation of the SJVAPCD air quality plans, including the 2018

PM_{2.5} Plan, 2016 Ozone Plan, 2014 8-hour Ozone Implementation Plan; 2013 Revoked 1-hour Ozone Plan; 2007 Ozone Plan, and the 2007 PM₁₀ Maintenance Plan, or the goals and objectives of the General Plan. Implementation of the Project would result in use of the site and construction of agricultural production and support facilities compatible with the Project's proposed General Plan land zoning, in addition to the City's Commercial Cannabis Overlay District. Implementation of the Project would not result in exceedance of thresholds adopted for the purpose of ensuring consistency with federal and State ambient air quality standards, and impacts would be considered less than significant.

b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

Less than Significant. The SJVAPCD does not have specific guidance to determining cumulative impacts of criteria pollutants other than greenhouse gases (GHG). As discussed under Air Quality Impact Discussion (a) above, the Project would not result in significant construction or operational emissions, and Project construction and operation would not result in exceedance of SJVAPCD adopted thresholds of significance for land use development projects. Although the proposed Project would result in short-term construction emissions and an increase in daily trips to the Project Site, it would not create a cumulatively considerable net increase of any criteria pollutants. Therefore, impacts are less than significant.

However, in addition to the operational emissions generated by typical equipment and vehicle use and impacts of criteria pollutant emissions, cannabis cultivation, as with most typical vegetation growth, can result in the generation and release of biogenic VOCs (BVOCs). Similar to anthropogenic VOCs, BVOC emissions play a role in atmospheric chemistry, including ozone and photochemical smog formation in the stratosphere and troposphere, and they extend the atmospheric lifetime of the key greenhouse gas, methane. In general, flowers and fruits release the widest variety of BVOCs, with emission rates peaking on maturation, but leaves have the greatest mass emission rates. An emerging research topic involves the BVOCs emitted by commercial cannabis operations. Cannabis VOCs are terpenes, which are the source of cannabis' strong and variable odors. Terpenes are a large and diverse class of molecules produced by a variety of plants (e.g., rosemary, thyme) that range in volatility and perceptible odor.

A key factor in BVOC contributions to tropospheric ozone is the concentration of BVOCs and NO_x, plus sunlight, to result in the photochemical reaction need to create ozone. A recent study in the highly-urbanized Denver, Colorado area identified linkages between concentrations of cannabis BVOCs and hourly ozone concentrations (Denver Environmental Health 2016). It is understood that BVOCs are ozone precursors, just like anthropogenic VOCs. Given the right concentrations of BVOCs and NO_x with sunlight, ozone can be created. In the absence of urban air pollution (e.g., large concentrations of NO_x), BVOCs and natural sources of NO_x maintain a level of oxidation capacity that effectively removes reactive toxic gas species and greenhouse gases (e.g., methane) in the atmosphere. Excess NO_x emissions from human activities can upset the natural balance and cause secondary photochemical pollution. Therefore, BVOC emission from cannabis cultivation under the Project is not considered substantial, given that the Project is located in a relatively rural area where large concentrations of NO_x do not exist. Impacts of the Project associated with release of criteria air pollutants are therefore considered less than significant.

c) Expose sensitive receptors to substantial pollutant concentrations?

Less than Significant. The potential for Toxic Air Contaminants (TACs) to have an effect on sensitive receptors would occur if the Project is located near an existing significant source of TACs or if it would generate TACs in quantities that may have an adverse effect on sensitive receptors. CARB identifies high-volume freeways and roads as potential sources of TACs. The proposed Project activities are not considered uses that would generate substantial amounts of TACs and would not pose a risk to sensitive receptors in the Project vicinity. Consistent with the SWRCB Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Policy), the Project would be prohibited from use of restricted pesticides and shall integrate pest management strategies where feasible to limit the need and use of pesticides. Project construction would not generate substantial increases in emissions proximate to sensitive receptors. The nearest sensitive receptors to the Project consist of residences located approximately 0.5 miles to the west, and two churches located 0.6 miles west. Further, construction activities would be confined primarily to the undeveloped land, would last up to 6 months, and would include limited construction traffic passing along roadways in proximity to residentially developed neighborhoods. Therefore, impacts from exposure of sensitive receptors to substantial pollutant concentrations or TACs are considered less than significant.

d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Less than Significant with Mitigation. Implementation of the Project would result in the handling, cultivation, hand processing of cannabis (e.g. using scissors to trim), of cannabis at the Project Site, and its distribution from the site. Individuals perceive cannabis odor differently. Cannabis users and some other members of the public perceive cannabis odor as pleasant; however, others perceive it as unpleasant, and some residents proximate to cannabis cultivation facilities have stated that they have adverse physical reactions to the odor. Although the scent of cannabis plants is not widely considered to be harmful to human health, in some instances, exposure to cannabis odors has been reported to result in headaches, eye and throat irritation, nausea, discomfort, and mental stress (Denver Environmental Health 2016). Similar symptoms are also experienced by individuals with specific allergies such as pollen. Primarily, the plants can produce a variety of odors, especially during the flowering phase, which are often considered and perceived by some individuals as objectionable or offensive. For others, the smell of cannabis may often be described as fragrant, aromatic, or pleasant. In effect, perception of odors from cannabis is considered to be highly variable between individuals.

Odors would primarily occur during physical disturbance of the plant at maturation, such as during harvest, or during particularly heavy winds that would cause the plants leaves to brush against each other and expel additional terpenes that could be carried by the wind. With consideration for the Project's proposed cultivation periods that would occur during the summer and early fall months, the months with the highest likelihood for experiencing odor from the Project's operation would be during the times of year in which the prevailing winds in the region stem from the northwest (between March and November). As prevailing wind direction in the City stems from the northwest during the periods in which more odorous activity may occur, it is anticipated that the majority of potential odors from the Project Site would be carried towards the southeast into rural agricultural areas that do not support dense sensitive receptors. Therefore, because the Project Site is located on the eastern edge of the City and removed from potential sensitive receptors

outside the City farther to the southeast, frequent odorous plumes are not anticipated to approach the City towards existing sensitive receptors which generally lie 0.5 mile or more to the west of the Project Site. Sensitive receptors such as individual rural residential structures separated between agricultural areas may experience odor from the Project Site to the southeast, and a change in wind direction may result in some exposure to sensitive receptors within the City from odorous activity by the Project. For instance, small-scale downdrafts during low-wind periods that create mild winds blowing to the northwest, while not expected to be the primary wind flow, may cause odors from the Project to be periodically blown towards the residences.

Ultimately, as summarized by the Odor Nuisance Review (Appendix F), wind flow is expected to transport odor compounds away from the closest residences and sensitive receptors. While grow periods are expected to occur in warmer months, which have the potential to increase the dispersion of odor, dispersion benefits from seasonal temperatures are not solely expected to reduce odor impacts to below potential nuisance levels to those that consider the odor objectionable. The public traveling on Belmont Avenue or SR 180 to the southeast could expect to experience cannabis odors due to the proximity of the grow site, however it is uncertain if the odorous plumes will remain strong to the southwest for a considerable distance. Select property owners to the southeast may experience substantial odor, specifically during the flowering periods, and workers at the facilities located at the idle Covanta Energy Corporation biomass plant or solar PV facility could experience noticeable odors. Processing activities are not expected to result in as strong of an odor plume as the flowering and harvesting of the cannabis plants, and would be minimized due to taking place indoors. Due to the potential for nuisance-level offsite odor impacts from implementation of the Project, impacts would be potentially significant. However, with the implementation of **MM AQ-1**, which requires the establishment of an Odor Monitoring Plan, and the variability of cannabis odor considered a nuisance, impacts would be reduced to a less than significant level.

REQUIRED MITIGATION MEASURE

MM AQ-1. Odor Monitoring Plan (OMP). *To reduce potential effects of nuisance odors to the extent feasible, the permit issued for the Project shall have an OMP, subject to approved by the City. The requirements of this mitigation are designed to be flexible, to balance the protection of sensitive resources with active monitoring. The approved OMP shall include, but not be limited to, the following elements to address issues from nuisance odors:*

- *The name and telephone number of a designated individual who is responsible for logging in and responding to odor complaints, 24 hours a day, 7 days a week;*
- *Include an enforceable process to require operational changes to mitigate odors in the case that the site generates recurring odor emissions that have been documented to be persistent, intrusive, or pervasive by nearby sensitive receptors, such as the installation of odor control mechanisms on head houses (e.g., filtration systems, HVAC, etc);*
- *Providing property owners and residents of property within a 0.25-mile radius of the cannabis facility with the contact information of the individual responsible for responding to odor complaints;*
- *Policies and procedures describing the actions to be taken when an odor complaint is received, including the training provided to the staff on how to respond;*

-
- *Description of potential methods for reducing odors;*
 - *Require the designated individual to report all odor complaints to the appropriate City department within a reasonable time frame and to record and report the steps they took to resolve the issue, including a record-keeping system to track these actions;*
 - *Contingency measures to curtail odor emissions in the event of a potential continuous public nuisance; and*
 - *Description of agricultural practices that can be shown to be effective in controlling odors (e.g., changes in cultivation practices).*

Requirements and Timing. *The applicant shall prepare and submit an OMP to the City. The City shall review and approve the OMP prior to permit issuance.*

Monitoring. *The City shall determine that the site adheres to **MM AQ-1** before issuance of the building permit, and ensure compliance with the OMP.*

IV. Biological Resources

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.), through direct removal, filling, hydrological interruption or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ENVIRONMENTAL SETTING

The potential for the Project Site to support sensitive biological resources was investigated through a literature review, a review of aerial photographs, U.S. Geological Survey (USGS) topographic maps, U.S. Department of Agriculture (USDA) soil survey maps, and the National Wetlands Inventory, and a site reconnaissance survey. Database sources such as the California Natural Diversity Database (CNDDDB), U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC), Calflora, Consortium of California Herbaria database, and the California Native Plant Society Rare Plant Inventory among others were utilized to identify recorded occurrences of sensitive natural communities, plant species, and wildlife species within the region (Appendix B).

The survey was conducted by qualified biologists from Wood in December 2019. The survey area includes the proposed Project Site, a 500-foot burrowing owl (*Athene cunicularia*) survey buffer, and proposed access routes on the west and north side of the adjacent PV facility. Linear transects were walked at a maximum width of 30 feet for the entire survey area, with closer inspection of potential nest trees and shrubs, and scans of the surrounding habitat with binoculars. Potential nesting trees for Swainson’s hawk (*Buteo swainsoni*) were investigated out to 0.5 miles from the Site.



Looking northeast at Project Site from near southwest corner.

A review of database records suggests a total of 11 sensitive plant species occur within the region around the Project Site (Table 5). Each species has specific habitat or substrate requirements, none of which are expected on the Project Site (i.e., at least seasonally wet or flooded conditions, and/or saline or alkali soils). Only four (4) of these are known to occur within five (5) miles of the Project Site (Lost Hills crownscale [*Atriplex coronata* var. *vallicola*], heartscale [*A. cordulata* var. *cordulata*], Sanford’s arrowhead [*Sagittaria sanfordii*], and recurved larkspur [*Delphinium recurvatum*]). The shallow freshwater habitat that Sanford’s arrowhead inhabits are not present onsite, though these may be present in treatment ponds and canals adjacent to the site. Larkspur, crownscale, and heartscale all

require alkali soils which are not present onsite, though alkali seasonal wetlands preferred by the larkspur may be present in the unincorporated area south of the Project. These are only known in the immediate area from CNDDDB historical records (> 20 years, with no recent observations or collections).

Table 5. Potential Sensitive Plant Taxa

Species Name	Common Name	Federal Status	State Status	CRPR	Potential to Occur
<i>Cordylanthus palmatus</i>	Palmate-bracted bird's-beak	E	E	1B.1	Not Expected
<i>Sagittaria sanfordii</i>	Sanford's arrowhead	-	-	1B.2	Not Expected
<i>Layia munzii</i>	Munz's tidy-tips	-	-	1B.2	Not Expected
<i>Atriplex cordulata</i> var. <i>cordulata</i>	Heartscale	-	-	1B.2	Not Expected
<i>Atriplex coronata</i> var. <i>vallicola</i>	Lost Hills crownscale	-	-	1B.2	Not Expected
<i>Atriplex depressa</i>	Brittlescale	-	-	1B.2	Not Expected
<i>Atriplex subtilis</i>	Subtle orache	-	-	1B.2	Not Expected
<i>Atriplex minuscula</i>	Lesser saltscale	-	-	1B.1	Not Expected
<i>Eriastrum hooveri</i>	Hoover's eriastrum	-	-	4.2	Not Expected
<i>Delphinium recurvatum</i>	Recurved larkspur	-	-	1B.2	Not Expected
<i>Monolopia congdonii</i>	San Joaquin woollythread	E	-	1B.2	Not Expected

CALIFORNIA RARE PLANT RANK

1B = Plants rare, threatened, or endangered in California and elsewhere

4 = Plants of limited distribution

0.1 = Seriously Threatened in California = Over 80% of occurrences threatened/high degree and immediacy of threat

0.2 = Fairly Threatened in California = 20%- 80% occurrences threatened/high degree and immediacy of threat

Wildlife species that may occur in the region around the site area listed in Table 6 and discussed in further detail below.

Table 6. Potential Sensitive Wildlife

Species Name	Common Name	Federal Status	State Status	Potential to Occur
Birds				
<i>Riparia riparia</i>	Bank swallow	-	T	Low (Foraging)
<i>Athene cunicularia</i>	Burrowing owl	-	SSC	High
<i>Lanius ludovicianus</i>	Loggerhead shrike	-	SSC	Moderate (Forage)
<i>Falco columbarius</i>	Merlin	-	WL	Low
<i>Charadrius montanus</i>	Mountain plover	PT	SSC	Low
<i>Circus hudsonius</i>	Northern harrier	-	SSC	Moderate (Foraging)

<i>Buteo swainsoni</i>	Swainson's hawk	-	T	Moderate
<i>Agelaius tricolor</i>	Tricolored blackbird	-	SSC	Low
<i>Coccyzus americanus occidentalis</i>	Western yellow-billed cuckoo	C	E	Not Present
<i>Plegadis chihi</i>	White-faced ibis	-	WL	Not Present
Herpetofauna				
<i>Gambelia sila</i>	Blunt-nosed leopard lizard	E	E	Not Expected
<i>Phrynosoma blainvillii</i>	Coast horned lizard	-	SSC	Not Expected
<i>Thamnophis gigas</i>	Giant garter snake	T	T	Not Expected on site; Moderate in buffer zone
<i>Masticophis flagellum ruddocki</i>	San Joaquin whipsnake	-	SSC	Low
<i>Anniella pulchra pulchra</i>	Silvery legless lizard	-	SSC	Not Expected
<i>Thamnophis hammondi</i>	Two-striped garter snake	-	SSC	Low
<i>Emys marmorata</i>	Western pond turtle	-	SSC	Low
<i>Spea hammondi</i>	Western spadefoot	-	SSC	Not Expected
Mammals				
<i>Taxidea taxus</i>	American badger	-	SSC	Moderate
<i>Dipodomys nitratooides exilis</i>	Fresno kangaroo rat	E	E	Low
<i>Ammospermophilus nelsoni</i>	Nelson's antelope squirrel	-	T	Not Expected
<i>Vulpes macrotis mutica</i>	San Joaquin kit fox	E	T	Not Expected
<i>Perognathus inornatus inornatus</i>	San Joaquin pocket mouse	-	SA	Not Expected
<i>Eumops perotis californicus</i>	Western mastiff bat	-	SSC	Moderate (Foraging)
<i>Lasiurus blossevillii</i>	Western red bat	-	SSC	Moderate (Foraging)
<i>Myotis yumanensis</i>	Yuma myotis	-	SA	Moderate (Foraging)

FEDERAL STATUS

E = Endangered = Danger of extinction throughout range

T = Threatened = Likely to become endangered in foreseeable future throughout range

C = Candidate = In process for listing or recommended for listing but currently precluded

PT = Potentially Threatened = A species or subspecies whose survival may potentially be subject to a threat

STATE STATUS

E = Endangered = Applies to a species whose survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors

T = Threatened = Applies to a species that is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens

SSC = CDFW Species of Special Concern = Species with declining population levels, limited ranges, and/or continuing threats which have made them vulnerable to extinction

WL = Watch List = Species that 1) are not on the current Special Concern list but were on previous lists and they have not been state listed under CESA; 2) were previously state or federally listed and now are on neither list; or 3) are on the list of "Fully Protected" species

SA = California Special Animal = Species that are uncommon and tracked by the CDFW in the California Natural Diversity Database

While the timing of the survey was not appropriate to determine all potential sensitive plant species, based upon known habitat conditions, it is unlikely that any may occur. The Site was observed to provide forage space for CDFW Species of Special Concern such as burrowing owls, loggerhead shrikes, and northern harriers, and may similarly provide forage space for other raptors and bird species as well as bats. No burrowing owls were observed on the Site. Within the survey buffer of the Project Site, a single burrowing owl was observed at a burrow in the south buffer area, and a large California ground squirrel population exists to the north of the site in a rubble field and to the east along the proposed access route, especially on the embankment of the wastewater treatment pond.

Swainson's hawk (*Buteo swainsoni*) is a State-listed Threatened species, which migrates from South or Central America, arriving in late February to March and departs for winter range in September. In the Central Valley, it nests in trees adjacent to large open forage habitats such as agricultural fields and native grasslands. The Swainson's hawk is known as a regular visitor and nesting species in the area; while the Project Site offers no potential nesting habitat, the Project Site is identified as a place that could be utilized for foraging habitat. The closest CNDDDB record is approximately 0.7 miles southwest of the site along North San Benito Avenue, and dates from 2017. The species has a moderate chance of occurrence as a foraging species, however trees capable of providing nesting are lacking within the site within 500 feet of the site, and therefore the species is not expected on site nor anticipated to use the site for frequent foraging. Considering the site is surrounded by comparable fallowed agricultural land, the species will likely continue to forage in nearby areas.

Vegetation on the Project Site is a non-native annual grassland, which is remnant from fallow agricultural operations and appears to be mowed or grazed to maintain a short grass aspect of about a foot or less. Surrounding unimproved areas to the north and east have dense populations of ruderal herb species such as mustard or ox-tongue. The PV facility to the west of the site and the inoperative power plant to the southwest represent developed lands, while properties to the east can be classified as disturbed/ruderal due to construction disturbance and dense ruderal vegetation (mustard). County lands south of the Project appear to be seasonally flooded and hosts a variety of common wetland species such as alkali sacaton, California kochia, purselane, and cattail.

The Project is not located near any riparian habitat. The City General Plan states that there is no Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) within the City or within a 5-mile buffer (City of Mendota 2009). The City General Plan's record of occurrences of special status species indicates that blunt-nosed leopard lizard, giant garter snake, and San Joaquin pocket mouse have occurred along the southern edge of the Project Site. The biology report (Appendix B) found that those three species were unlikely to occur at the Project Site due to the lack of suitable habitat, although the potential for giant garter snakes is moderate in the buffer zones.

According to the City's General Plan, the San Joaquin Valley serves as a major migration corridor and wintering ground for millions of migratory birds in the Pacific Flyway, a major north-south route of travel for migratory birds in the Americas, extending from Alaska to Patagonia (City of Mendota 2009). Every year, migratory birds travel some or all of this distance both in spring and in fall, following food sources, heading to breeding grounds, or traveling to over-wintering sites. The City is adjacent to an extensive network of waterways and wetlands including the San Joaquin River, Fresno Slough, and several man-made canals, a system that provides refuges, or rest stops, for the many species birds on their way to and from breeding and wintering grounds along the Flyway. Though this wetland and waterway complex also serves as a migratory corridor for numerous resident terrestrial and avian species, there are no trees or associated sensitive habitat identified on the Project Site (Appendix B). Finally, the Project is also subject to CDFA regulations that address potential impacts on biological resources under California Code of Regulations Sections 8102(w), 8102(dd), 8216, 8304(a-c), and 8304(g), which generally include compliance with CDFW Lake and Streambed Alteration Agreement conditions, consideration for watersheds that could be adversely impacted by cannabis, avoiding impacted watersheds, compliance with section 13149 of the Water Code, compliance with conditions of CDFW and SWRCB, outdoor lighting limits, and shielded lighting. Compliance with these regulations would help reduce potential project impacts to biological resources to less than significant.

As discussed in Section II, *Agricultural and Forestry Resources*, soils within the Project Site are identified as the Tachi clay series (hnz2) (NRCS 2019). Soils within this association are considered very poorly drained (NRCS 2019).

DISCUSSION

- a) **Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?**

Less than Significant with Mitigation. The existing 59-acre site has no tree cover and is largely vegetated with nonnative grasslands, and thus does not support high-quality nesting bird habitat. However, the grasslands on the Project Site provide ideal habitat for burrowing owls, which are a CDFW Species of Special Concern (SSC). Burrowing owls are known in the immediate region, and have a high potential to occur; one specimen was observed outside of and adjacent to the Project Site. Mountain plover and northern harrier are also CDFW SSCs, known in the area, and tend to forage in grassland habitat. Swainson's hawk is a State-listed Threatened species that nests in trees adjacent to large open forage habitats such as agricultural fields and native grasslands. Nest trees are lacking both onsite and in the nearby vicinity, though has a moderate potential for occurrence as a foraging species at the Project Site, along with other hawks, bats, and badger. Similar habitat surrounds the site to the north, east, and southeast, while developed area and unsuitable habitat, resides to the west and southwest. The lack of habitat or witnessed species (aside from burrowing owl on adjacent site) at the Site reduces the likelihood of Project impacts, though the loss of potential foraging habitat would result in some potential impact. While the converted area is not suitable nesting habitat for Swainson's hawks and other birds, the fallowed land may provide foraging habitat for these species, or potentially rodent dens suitable for use by burrowing owls; however, ongoing regular mowing or discing as well as disturbance by cultivation activities greatly

reduce potential for use of allowed land by burrowing owls. Proposed offsite improvements to connect to the Project Site, such as trenching for underground utility lines, pole installation for above ground power lines, and road pavement improvements, would be conducted within City right of way and subject to the City's associated requirements, all of which would occur within previously-disturbed areas adjacent to and extending from Belmont Avenue, and would not result in any additional biological impact.

Due to the moderate potential for some species to occur onsite, there is the potential to impact sensitive species, which would be reduced via the implementation of **MM BIO-1**, which requires pre-construction surveys prior to Project construction. Compliance with this requirement and regulations would ensure impacts to special status species and habitat are less than significant with mitigation.

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Less than Significant. As the Project is not located near any riparian habitat, is not located within any HCP/NCCP, and potential special status species identified by the City's General Plan are unlikely to occur at the Project Site due to the lack of suitable habitat (although the potential for giant garter snakes is moderate in the buffer zones), little to no impact is anticipated on sensitive natural communities. There are no existing trees located in the Project boundary, and construction and operation activities are not anticipated to impact nearby trees. Because there are no riparian habitats or known sensitive natural communities on the Project Site, impacts to the natural communities would be less than significant.

c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marshes, vernal pools, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

Less than Significant. The Project Site is not located within proximity to any wetlands, nor would the Project impact any wetlands in the region. While the Fresno Slough is located approximately 0.5 mile east of the Project Site, stormwater capture onsite would prevent substantial agricultural runoff from traveling to the Slough ecosystem. Potential water quality related impacts are further discussed in Section X, *Hydrology and Water Quality*. Therefore, impacts to wetlands would be less than significant.

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Less than Significant. Though the Project Site has been identified with areas suitable for foraging for several species, including mountain plover, northern harrier, and Swainson's hawk, there is no identified suitable habitat on the Project Site for these species or migratory birds. Therefore, the Project is not expected to interfere with the movement of any wildlife species nor impede a wildlife nursery site and impacts to migratory species would be less than significant.

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Less than Significant. The proposed Project does not conflict with any local policies or ordinances protecting biological resources. Impacts to biological resources would be considered less than significant.

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

No Impact. As there are no HCP/NCCP which cover the Project Site, the proposed Project would not conflict with any local policies or ordinances protecting biological resources in the City General Plan, and no impact is anticipated with Project implementation on any adopted conservation plan.

REQUIRED MITIGATION MEASURE

BIO-1. Pre-construction Survey, Worker Awareness Training, and Avoidance Measures. *The Project Site contains habitat that can be used by CDFW Species of Special Concern. Surveys prior to initiation of construction-related activities shall be undertaken on the Project Site to determine the presence/ absence of the following species according to accepted agency protocols and the types of actions undertaken to avoid impacts to CDFW Species of Special Concern consistent with CDFW requirements:*

- *Burrowing owl*
 - *Adhere to Burrowing Owl Survey Protocol and Mitigation Guidelines; if onsite, exclusion measures, one-way trap use if relocating outside of nesting season*
- *Swainson's hawk*
 - *Adhere to Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures; determine presence onsite, protect foraging habitat, provide habitat management land as necessary*
- *Giant garter snake*
 - *Adhere to Standard Avoidance and Minimization Measures During Construction Activities for the Giant Garter Snake; determine presence, use silt fencing, protective mats, prevent runoff, avoid and/or minimize construction within 200 feet of banks of associated aquatic habitat*
- *Western pond turtle*
 - *Determine presence within 100 feet of suitable aquatic habitat; if species is present, contact CDFW and cease work within 100 feet of suitable aquatic habitat, determine action within 14 days, which may include relocation by a qualified biological monitor*
- *American badger*
 - *Identify any badger holes or trails, determine setback from location and determine action for avoidance, which may include relocation by a qualified biological monitor and/or refining the project schedule*
- *San Joaquin kit fox*
 - *Adhere to Standard Kit Fox CEQA Mitigation Measures; determination of presence or evidence of species onsite, include maximum 25 mph speed limit during construction, remove food-related trash from project site, cease construction if species discovered onsite and contact CDFW, determine action within 14 days, which may include obtaining appropriate federal and state permits*

-
- Blunt-nosed leopard lizard
 - Determine evidence onsite, limit construction activities near sensitive habitat for the blunt-nosed leopard lizard between early November through March; if construction scheduled for this time, include additional survey within 7 days of construction to determine presence and a qualified biological monitor shall thoroughly search for and capture all individuals found in or immediately adjacent to potentially disturbed areas for relocation
 - Fresno kangaroo rat
 - Adhere to CDFW Approved Survey Methodologies for Sensitive Species: Fresno Kangaroo Rat; determine evidence onsite, include additional surveys as applicable during active period (April through June), establish protection measures, which may include habitat management, setbacks, or trapping and relocation as determined by a qualified biological monitor
 - Nesting birds

Surveys shall cover areas of suitable habitat as defined in the Biological Resources Technical Report (Appendix H). In the event that special-status species are identified within the proposed basin site, the following would occur: 1) the appropriate agencies shall be notified; 2) the construction site shall be monitored by a qualified biologist who oversees all construction activities affecting sensitive habitat; 3) the site shall be relocated, if necessary; and/or 4) non-disturbance buffers shall be implemented. Pre-construction surveys shall conform to the appropriate CDFW and/or USFWS-approved survey and monitoring protocols and guidelines for protection of threatened and endangered species. Contractor education regarding sensitive species that have the potential to occur on and adjacent to the site shall also be conducted. Results of these surveys, avoidance measures, and worker awareness training shall be reported to the City. As indicated above, coordination with CDFW regarding species-specific mitigation to ensure accordance with accepted agency protocols shall continue throughout the Project approval and construction process.

Requirements and Timing: Pre-construction surveys and worker awareness shall be conducted prior to the start of Project Site soil disturbance. Avoidance measures determined during the pre-construction surveys shall be adhered to during Project implementation.

Monitoring: The City shall monitor the results of the pre-construction surveys, review the required avoidance measures, and obtain evidence of the worker awareness training.

V. Cultural Resources

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Cause a substantial adverse change in the significance of a historical resource pursuant to in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

Cultural resources in Fresno County reflect the area's history of settlement by Native Americans, Europeans, Mexicans and others, as well as periods of economic and social change such as those associated with the Gold Rush and development of agriculture and rail transportation (County of Fresno 2000a). This region of the San Joaquin Valley, which extends from the forested Sierra Nevada to the Coastal Range, has supported an abundance of wildlife, riparian habitats, and marshes. Records indicate that at least five Native American tribes resided in the area. The presence of archaeological and historic resources would generally be most likely along rivers and streams and in other areas with ground cover or other features which could have invited and sustained habitation. Fresno County's rich history has produced a large stock of historically significant homes, public buildings, and landmarks including important ethnic historical sites. The physical environment of Fresno County has been greatly altered by human modification over the past 150 years, including archaeological resources that may have been buried or displaced (County of Fresno 2000a).

Under CEQA, a historical resource consists of any "object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California" (Guidelines Section 15064.5(a)(3)). The City General Plan states that there are only two known cultural resource sites within the City which are recorded historic sites: the Cervantes Property (P-10-005364) and the Marchini Property (P-10-005365) (City of Mendota 2009). There are no prehistoric or historic sites within the City listed as State Historic Landmarks (California State Parks 2020a), California Points of Historical Interest or the California Register of Historical Resources (CRHR) (California State Parks 2020b), or on the National Register of Historic Places (NRHP) (National Park Service 2020).

A Phase I Environmental Site Assessment (ESA) was completed by GeoTek, Inc. on November 25, 2019. Aerial imagery analyzed for the ESA showed that the Project Site appears to have been vacant from at least 1937 to 1946. It was utilized for agricultural cultivation purposes from 1938 to 2006, and then vacant again from 2006 to 2012. In 2012, temporary stockpile uses appeared on the northwest portion of the site, however the site has otherwise changed little since. No building permits have ever been issued for the property.

Under CEQA, a unique archaeological resource is defined as an artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets one or more of the following criteria:

- contains information needed to answer important scientific research questions, and there is a demonstrable public interest in that information;
- has a special and particular quality, such as being the oldest of its type or the best available example of its type; or
- is directly associated with a scientifically recognized important prehistoric or historic event or person (Public Resources Code 21083.2(g)).

A Phase I Archaeological Survey (Appendix C) was prepared by cultural resource specialists from Wood Environment & Infrastructure Solutions, Inc. in January 2020 for the Project Site. An archaeological literature and records search was conducted at the California Historical Resources Information System (CHRIS) Southern San Joaquin Valley Information Center (SSJVIC) for the Project Site in December 2019. Data from the SSJVIC indicates that there are no recorded resources within the 0.5-mile search radius and none within the Project Site. A recent archaeological investigation consisting of an intensive ground surface survey and systematic, subsurface backhoe trench excavation was completed in 2018 for the Mendota Pool Group 20-Year Exchange Program directly north of the Project Site. No archaeological resources were discovered during the intensive ground surface survey or subsurface backhoe trench excavation.

The entire 59-acre Project Site, including all proposed improvement areas, was surveyed using 10- to 15-meter (33- to 49-foot) parallel transects in December 2019. This intensive Phase 1 ground surface survey provided a reliable opportunity to evaluate the presence of cultural resources on the ground surface as well as within the topsoil where cultural resources would be expected. Ground surface visibility was poor to excellent (10 to 90 percent). In areas of poor visibility, surface shovel scrapes, the inspection of subsurface soil exposures including scattered rodent burrow tailings, and the excavation of shovel probes were completed. No cultural resources were identified throughout all proposed improvement areas.

Finally, the Project is also subject to CDFA regulation that address potential impacts on cultural resources under California Code of Regulations Section 8304(d) which generally includes halting cultivation activities and implementing section 7050.5 of the Health and Safety Code if human remains are discovered. Compliance with these regulations would help reduce potential project impacts to cultural resources to less than significant.

DISCUSSION

a) Cause a substantial adverse change in the significance of a historical resource pursuant to in Section 15064.5?

No Impact. As discussed above, there are no potential or designated historic structures identified at the Project Site or immediate vicinity to which the Project, either through construction or operation, would adversely affect the significance of the resource. Therefore, the Project's is not considered to have any impact on an historic structure.

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

Less than Significant. The proposed Project would not have significant impacts on cultural resources and no further archaeological measures including construction monitoring are necessary. Nonetheless, it is possible that the Project Site contains unrecorded archaeological materials. Per Section 7050.5 of the California Health and Safety Code, if human bone is discovered during construction, work is required to immediately cease and the procedures described in the section would be required. Section 7050.5 requires notification of the coroner, and if the coroner determines that the remains are those of a Native American, the Applicant is required to notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code are required, which continues the process to prevent impacts to these culturally sensitive resources. As also required by State law, if prehistoric cultural resources are identified during construction, construction is required to cease, and the appropriate local tribal representative would be notified. In this case, a mitigation data collection program would be undertaken by a qualified archaeologist in consultation with a tribal representative to adequately characterize the nature and research value of the resource. This would include a limited excavation, analysis, reporting, and curation of artifacts, as well as monitoring construction. With consideration for the low potential for onsite resources, adherence to these regulations would be sufficient to protect resources that could be discovered during Project development. Therefore, impacts to archaeological resources would be avoided and residual impacts are considered less than significant.

c) Disturb any human remains, including those interred outside of formal cemeteries?

Less than Significant. No human remains are known or predicted to exist in the Project area and potential for disturbance of such resources is considered highly unlikely. Given the potential for extensive grading to occur onsite, the potential to disturb undiscovered human remains exists. However, these impacts would be avoided by adherence to the above-described California Health and Safety Code Section 7050.5 and California Public Resources Code Sections 5097.94 and 5079.98, which would address impacts associated with inadvertent discoveries of human remains. Therefore, impacts to undiscovered human remains are considered less than significant.

VI. Energy

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The Project Site is located on vacant land with no development or energy demands. The City of Mendota is supplied power by Pacific Gas & Electric (PG&E). Surface PG&E utility access is located approximately 1,400 ft to the west of the Project Site along Belmont Avenue. PG&E generates electricity at hydroelectric (13 percent), nuclear (34 percent), renewable solar, geothermal and biomass (39 percent), and natural gas (15 percent) facilities (PG&E 2019).

The City's General Plan – Open Space and Conservation Element (2009) provides local policymakers with strategies and action items for reducing GHG emissions associated with energy. Supporting measures within the General Plan include facilitation of an effective Green Building Program, encouraging building owners to maximize energy efficiency, and incentivizing onsite renewable energy generation at residential and commercial properties.

Section 8313 of the CalCannabis Licensing Program prohibits the use of gas- or diesel-powered generators except as a backup energy source in the event of a power outage or emergency. Additionally, wattage of lights used for cannabis production is limited by the existing City Municipal Code §8.36.050 regarding cannabis cultivation. Finally, the Project is also subject to CDFA regulation that address potential impacts on energy under California Code of Regulations Sections 8102(s), 8305, and 8306 which generally include heating and cooling power considerations, adhering to renewable energy requirements, and compliance with generator requirements. Compliance with these regulations would help reduce potential project impacts to biological resources to less than significant.

- a) **Result in potentially significant environmental impact due to wasteful, inefficient or unnecessary consumption of energy resources, during project construction or operation?**

Less than Significant. The Project does not propose to utilize significant natural gas supplies for operation of the Project. Outdoor cultivation operations do not require intensive artificial lighting or utilize climate control or air circulation systems. Under the Project, outdoor cultivation is proposed, so the Project would only require lighting in worker buildings and ancillary facilities.

While the proposed Project would potentially result in incremental new electricity demands, the Project Applicant would be subject to proposed State regulations for such operations, which include requirements for the provision of electricity from a combination of the following sources: 1) on-grid power with a mix of at least 42 percent provided by renewable sources; 2) onsite renewable energy sources which generate and provide at least 42 percent of the Site's energy demands; and/or 3) the purchase of carbon offsets for any portion of power above 58 percent that is not provided by renewable sources (Section 8315 of the CDFA's Proposed Medical Cannabis Regulation and Safety Act [MCRSA] Regulations). These State requirements would ensure that electrical demands from the proposed Project would not result in the wasteful, inefficient, or unnecessary consumption of electricity supplies.

Included under the Project's anticipated approvals is receipt of a PG&E Will Serve Letter. Given regional electricity demand, and the lack of lighting required by the Project, increases in demand under the Project are considered to be negligible and construction of additional regional electrical generation and/or transmission facilities beyond the Project's proposed tie-in to Belmont Ave would not be required.

The Project would not constrain local or regional energy supplies, would not require the expansion or construction of new regional electrical generation and/or transmission facilities, and would not use large amounts of fuel or energy in a wasteful, inefficient, or unnecessary manner. The Project would be required to comply with all existing energy standards and impacts would be less than significant.

b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

Less than Significant. The Project would not conflict with the goals and measures of the City's General Plan – Open Space and Conservation Element or applicable State plans for renewable energy or energy efficiency. As discussed above, the Project would be required to comply with all standard local and regional regulatory requirements. The Project would also comply with any applicable local or State plans for renewable energy or energy efficiency, and impacts would be considered less than significant.

VII. Geology and Soils

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury or death, involving:				
i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii. Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv. Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or offsite landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

EXISTING SETTING

Earthquakes within the Project vicinity could cause structural damage to buildings, exposing people to falling objects and possible building collapse. According to the General Plan, the only fault near the City that has been identified by the California Division of Mines and Geology to be subject to surface rupture (within an Alquist-Priolo Earthquake Fault Zone) is the Ortigalita Fault. The Ortigalita Fault is located in a sparsely inhabited area of the extreme western corner of Fresno County, approximately 30 miles from the Project Site near the community of Panoche (City of Mendota 2009). Most of this fault extends through Merced County. Other potentially active faults in Fresno County are the San Joaquin Fault and the O'Neill Fault System, which both run parallel to the Ortigalita Fault (California Department of Conservation 2020). However, none of these faults are in the vicinity of the Project Site.

Ground shaking occurs as a result of energy released during faulting, which could potentially result in the damage or collapse of buildings and other structures. Although no region in California is immune from potential earthquake damage, the Project Site is located in an area which is likely to experience low to moderate potential for groundshaking hazards (Branum, Chen, and Wills 2016). Based on historical activity and the County's seismic setting, groundshaking is the primary seismic hazard in Fresno County. Most of the already urbanized locations in the East and West Valleys and Sierra Nevada Foothills areas are subject to less intense seismic effects than locations in the Coast Range Foothills and Sierra Nevada Mountain areas (County of Fresno 2000b).

Soil liquefaction occurs when ground shaking from an earthquake causes a sediment layer to become saturated with groundwater, causing it to lose strength and take on the characteristics of a fluid. In addition to structural damage resulting from the rapid loss of bearing capacity of underlying soils, liquefaction increases the hazard of fires because of explosions induced when underground gas lines break, and because the breakage of water mains substantially reduces fire suppression capability. Since saturated soils are a necessary condition for liquefaction, soil layers in areas where the groundwater table is near the surface have higher liquefaction potential than those in which the water table is located at greater depths. As indicated by the Sustainable Groundwater Management Act Data Viewer, groundwater levels at the Project Site are encountered between 40 and 60 feet below ground surface (bgs). Although the California Geologic Survey is currently mapping seismic hazard zones for susceptible portions of California pursuant to the Seismic Hazard Mapping Act, no map of liquefaction hazard has been prepared for Fresno County (County of Fresno 2000b).

Expansion and contraction of soil volume can occur when expansive soils undergo alternating cycles of wetting (swelling) and drying (shrinking). As a consequence of these volume changes, structural damage to buildings and infrastructure may occur if the potentially expansive soils were not considered during building design and construction. Soils exhibiting a high to moderately high shrink-swell potential generally occur in a northwest-trending belt approximately parallel to the Friant-Kern Canal, foothills in Kings Canyon National Park in the Sierra Nevada, and along Fresno Slough from Madera County to Kings County. The County has also identified areas of expansive soils that roughly parallel the San Luis Drain west of the community of Tranquillity and the City of San Joaquin (County of Fresno 2000b). Due to the proximity of Mendota to San Joaquin and Madera County, there are likely expansive soils in Mendota.

Landslides involve the downslope transport of soil, rock, and vegetative material, primarily under the influence of gravity. Lateral sliding refers to landslides that form on gentle slopes and that involve a fluid-like flow movement of materials. These events occur when shear stress (i.e. weight of material) exceeds the shear strength of the soil/rock and can be induced by ground shaking from earthquakes or during high rainfall periods as materials become saturated. The Project Site has low landslide susceptibility due to its relatively flat topography and soil stability characteristics.

As discussed in Section II, *Agricultural and Forestry Resources*, soils within the Project Site are identified as the Tachi clay series (hnz2) (NRCS 2019). Soils within this association are considered very poorly drained with moderate to severe soil limitations for septic tank filter fields (NRCS 2019).

DISCUSSION

- a) **Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:**
- i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?

No Impact. The Project Site is not located within an Alquist-Priolo Earthquake Fault Zone. No landforms are known to be on the Project Site that would indicate the presence of active faults. As discussed above, earthquake fault zones are present in the vicinity of the City (City of Mendota 2009). However, surface ground rupture along faults is generally limited to a linear zone a few yards wide. Because the Project Site is not located within an Alquist-Priolo Earthquake Fault Zone, the likelihood of ground rupture that would cause substantial adverse effects to people or structures at the Project Site is considered low, and the Project would require compliance with the California Building Code, the Project would have no impact on exacerbating the potential for earthquakes.

- ii) Strong seismic ground shaking?

Less than Significant. The Project is located nearly 30 miles from the nearest active fault and in an area with a low to moderate potential to experience groundshaking hazards (Branum, Chen, and Wills 2016; City of Mendota 2009). Any proposed construction would be required to be built in accordance with California Building Code requirements that minimize structural damage from groundshaking. Given generally low levels of risk for groundshaking, and development in accordance with mandatory regulations, the Project

would not directly or indirectly cause people and structures to be exposed to potentially substantial adverse effects involving strong seismic ground shaking, nor exacerbate the potential for such activity. Impacts are considered less than significant.

iii) Seismic-related ground failure, including liquefaction?

Less than Significant. Factors determining the liquefaction potential include the level and duration of seismic ground motions, the type and consistency of soils, and the depth to groundwater. At the Project Site, groundwater levels occur between 40 to 60 feet bgs, and poorly-draining soils present at the Project Site can be expected to retain high levels of water. However, threats from seismic-related ground failure such as liquefaction are not expected to occur (City of Mendota 2009). Given low levels of risk from seismic-related ground failure and the lack of potential to exacerbate such issues, and that the Project would require compliance with the California Building Code, impacts from seismic-related ground failure are considered less than significant.

iv) Landslides?

No Impact. Given the soil characteristics and relatively flat slope of the Project Site and surrounding areas, the Project would not cause people or structures on the Project Site to be exposed to potentially adverse effects of landslides.

b) Result in substantial soil erosion or the loss of topsoil?

Less than Significant. Development of the Project is expected to result in a moderate amount of grading associated with construction of the worker buildings, head houses, and site improvements (e.g., building construction, site drainage). In addition, secondary development improvements for the Project (e.g., development of roads, excavation of topsoil to minimize ground failure hazards) may inadvertently result in significant additional grading and subsequent loss of topsoil. Project construction would cause a slight increase in runoff by of approximately 1.6 acres of impermeable surfaces, which would increase site runoff by 1.6 cubic feet per second (720 gallons per minute) during a 25-year storm event, which may cause additional on- and offsite erosion; however, the proposed catch basins would mitigate the potential for substantial offsite impacts. Proposed offsite improvements to connect to the Project Site, such as trenching for underground utility lines, pole installation for above ground power lines, and road pavement improvements, would be conducted within City right-of-way and subject to the City's associated requirements, all of which would occur within previously-disturbed dirt areas adjacent to and extending from Belmont Avenue, and would not result in any additional geologic impact. Construction of the Project and implementation of identified necessary improvements would be subject to a grading plan, as well as a storm water permit from the Central Valley Regional Water Quality Control Board (CVRWQCB) as required for disturbance of one acre or more. These plans would include requirements for erosion control, stability of building sites, building code compliance, and implementation of necessary best management practices (BMPs) that would remain in effect for all phases of Project implementation. Implementation of these standard development/permit requirements would ensure that the Project would not result in substantial adverse impacts caused from soil erosion or loss of topsoil. Impacts are therefore considered less than significant.

-
- c) **Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?**

Less than Significant. The Project is not expected to substantially affect the stability of the underlying materials such to result in an increase in the potential for on- or offsite landslide, lateral spreading, subsidence, liquefaction, or collapse. The Project Site and surrounding area is generally flat, and soil stability onsite does not indicate enhanced susceptibility to landslides or lateral spreading. The nearest active fault is nearly 30 miles away, and the Project Site is exposed to low to moderate potential for groundshaking activities (Branum, Chen, and Wills 2016; City of Mendota 2009). In addition to the low likelihood of groundshaking activities, a deep groundwater level and poorly-draining soils onsite suggest low to moderate possibility of liquefaction occurring onsite (NRCS 2019). Groundwater resources are not expected to be reduced such to increase the potential for subsidence. Given these conditions, Project impacts are considered less than significant.

- d) **Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?**

Less than Significant. As identified in the County General Plan, the Project Site may be located on soils that have high to very high potential to be expansive. However, all development and construction proposals would be reviewed by the City to ensure conformance to applicable building standards. Following adoption and implementation of all applicable measures and standards, substantial risks to life or property would be minimized and impacts would be considered less than significant.

- e) **Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?**

No Impact. The proposed Project would be connected to the City's existing wastewater sewer system via a connection at Belmont Avenue, and would avoid soils onsite that have moderate to severe soil limitations for septic systems. Therefore, no impact would occur.

- f) **Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?**

No Impact. Project construction and implementation are not expected to affect any paleontological resources known or suspected to occur on the Project Site. No paleontological or geologic resources are known to exist on the site or surrounding area, and the excavation or site grading that would under the Project is not expected to occur within areas or at depths where paleontological resources may occur.

VIII. Greenhouse Gas Emissions

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

Climate change can be measured by changes in wind patterns, storms, precipitation, and temperature. California is already experiencing impacts related to climate change, including a seven-inch rise in the sea level along the California coast over the last century; a decrease in the average snowpack in the Sierra Nevada region; an increase in the frequency, length, and severity of wildfires; and a shift in precipitation rates, with increased precipitation in the north and decreased precipitation in the south. The potential impacts of climate change include severe weather patterns, flooding, reduced quality and availability of water, sea level rise, and beach erosion. Primary activities associated with GHG emissions include transportation, operation of utilities (e.g., power generation and transport), industrial activities, manufacturing, agriculture, and residential uses. End-use sector sources of GHG emissions in California are as follows: transportation (41 percent), industry (24 percent), electricity generation (15 percent), agriculture and forestry (8 percent), residential (7 percent) and commercial (5 percent) (California Air Resources Board (CARB) 2020)

Scientific consensus has identified human-related emissions of greenhouse gases (GHGs) above natural levels as a significant contributor to global climate change. GHGs are emissions that trap heat in the atmosphere and regulate the Earth's temperature, and include water vapor, CO₂, methane (CH₄), nitrous oxide (N₂O), ground level ozone, and fluorinated gases, such as chlorofluorocarbons (CFCs), hydro chlorofluorocarbons (HCFCs), and halons.

Primary anthropologic activities associated with GHG emissions include transportation, operation of utilities (e.g., power generation and transport), industrial activities, manufacturing, agriculture, and residential uses. End-use sector sources of GHG emissions in California are as follows: transportation (41 percent), industry (24 percent), electricity generation (12 percent), agriculture and forestry (8 percent), residential (7 percent) and commercial (5 percent) (CARB 2019). Assembly Bill (AB) 32 is a California State Law that establishes a comprehensive program to reduce GHG emissions from all sources throughout the state. AB 32 requires

the CARB to develop regulations and market mechanisms to reduce California's GHG emissions to 1990 levels by 2020, representing a 25 percent reduction statewide, with mandatory caps beginning in 2012 for significant emissions sources (CARB 2014).

The SJVAPCD, the agency principally responsible for comprehensive air pollution control in the San Joaquin Valley Air Basin, adopted the Climate Change Action Plan (CCAP) in 2008, which provides guidance to assist SJVAPCD staff, valley businesses, land use agencies, and other permitting agencies in addressing GHG emissions as part of the CEQA process. In response, the SJVAPCD adopted a policy and guidance in December 2009 to provide direction assessing and reducing the impacts of project specific GHG emissions on global climate change from stationary sources. The policy is detailed in SJVAPCD Policy – Addressing GHG Emission Impacts for Stationary Source Projects Under CEQA When Serving as the Lead Agency (SJVAPCD Policy) and guidance regarding this policy is provided in Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA.

The SJVAPCD Policy establishes the process to evaluate the significance of action-specific GHG emission impacts on global climate change and to establish Best Performance Standards (BPSs) to reduce action-specific GHG emissions. Use of BPSs is a method of streamlining the CEQA process of determining significance and is not a required emission reduction measure. Actions implementing BPSs are determined to have a less than cumulatively significant impact. Otherwise, demonstration of a 29-percent reduction in GHG emissions, from business-as-usual, is required to determine that an action would have a less than cumulatively significant impact. The SJVAPCD has not officially adopted a significance threshold for generation of GHGs from water exchanges to assess the level at which an action's incremental contribution is considered cumulatively considerable.

The SJVAPCD Policy applies to projects for which the SJVAPCD has discretionary approval authority over the Project and serves as the lead agency for CEQA purposes. However, land use agencies can refer to it as guidance for projects that include stationary sources of emissions. The guidance does not limit a lead agency's authority in establishing its own process and guidance for determining significance of action-related impacts on global climate change. Concerning regulatory compliance, the Project is also subject to CDFR regulation that address potential impacts from greenhouse gas emissions under California Code of Regulations Sections 8102(s), 8304(e), 8305, and 8306 which generally include heating and cooling power identification, requirements for generators, adherence to renewable energy requirements, and generator requirements. Compliance with these regulations would help reduce potential project impacts of GHG emissions.

DISCUSSION

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Less than Significant. The proposed Project would generate increased GHG emissions over the short-term related to operation of construction equipment. The total emissions from Project construction were modeled using CalEEMod (Appendix A). As presented in Table 7, the total estimated maximum annual unmitigated GHG emissions from construction activities would be 140.86 metric tons (MT) of carbon dioxide equivalent per year (CO₂e/yr), which would not increase local emissions above the SJVAPCD significance

threshold of 230 MT CO₂e/yr. Therefore, impacts related to generation of greenhouse gas emissions would be less than significant.

Table 7. Estimated Unmitigated GHG Emissions from Construction of the Proposed Project

Construction Year	GHG Emissions (MT CO ₂ e)
2021	140.86
Amortized Over 30 Years	4.69

¹ Construction GHG emissions for 2020 summed for Phases 1 and 2.

Source: Appendix A.

Project operational activities would emit minimal GHGs from cultivation equipment (e.g., irrigation pumps), processing and distribution operations (e.g., building lighting, refrigeration, air conditioning and heating), and vehicular traffic. The total emissions from Project operations were modeled using CalEEMod (Appendix A). As presented in Table 8, emissions from operation of the Project would consist largely of electrical energy use and mobile source employee and material delivery vehicles. The total estimated annual unmitigated emissions from Project operation are estimated to be 705.97 MT CO₂e/yr. However, it is important to note that estimated Project operational emissions are a worst case as they are gross emissions for total operations and do not reflect the Project’s anticipated net increase in annual emissions above existing annual GHG emissions generated by existing onsite cannabis cultivation activities.

Table 8. Estimated Unmitigated GHG Emissions from Operation of the Proposed Project

Annual Emissions by Category	GHG Emissions (MT CO ₂ e)
Area	0.002
Energy	249.69
Mobile	287.60
Waste	32.11
Water	0.06
Total	569.46
Total + Amortized Construction Emissions	574.15

Source: Appendix A.

The total Project emissions including amortized construction GHG emissions and operation GHG emissions are estimated to be 574.15 MT CO₂e/yr, which do not exceed the BAAQMD threshold¹ of 1,100 MT CO₂e/yr for commercial land use development projects. Therefore, the Project would not require additional mitigation nor result in a significant impact from GHG emissions.

b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Less than Significant. The Project would be consistent with BPSs required by the SJVACPD Policy. Fresno County does not have specific regulations regarding reducing GHG emissions and the proposed

¹ BAAQMD threshold used in this scenario as SJVAPCD has not established a threshold for this metric.

Project would not conflict with the CCAP adopted by the SJVAPCD. Therefore, impacts related to GHG emissions would be less than significant.

IX. Hazards and Hazardous Materials

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a) Create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan area or, where such a plan has not been adopted, within two miles of a public airport or a public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ENVIRONMENTAL SETTING

The nearest schools are located in the City approximately 1 mile away from the Project Site. As determined through a search of the SWRCB online Geotracker records and the Department of Toxic Substances Control's (DTSC) data management system (EnviroStor), no current hazardous sites exist within a half-mile radius of the Project Site.

The Project is located within an airport land use plan for the William Robert Johnston Municipal Airport, and therefore experiences an exceedance of relevant noise level thresholds as a result of aircraft operations (Fresno Council of Governments 2018). The Project Site is within a 2-mile radius of a public airport, located approximately 0.5 miles to the east of the Airport. While there are several agricultural and private airplane landing strips throughout the County, the Project Site is not located within a 2-mile radius of a private airstrip. The nearest private air strip is the El Peco Ranch Airport, located approximately 14 miles to the northeast of the Project Site, outside of proximity to aircraft operations.

As discussed in Section XVII, *Transportation*, SR 33 and SR 180 are designated as the primary routes for emergency evacuation in the City's Circulation Element. The nearest segment of SR 180 is located almost one mile away by car. Both routes are designated as arterials in the General Plan, which means they accommodate a relatively high volume of traffic. The intersection at Belmont Avenue and Oller Street (SR 180), located 0.8 miles southwest of the Project Site, operates at Level of Service (LOS) B, which means it has very light congestion (City of Mendota 2009).

The Project Site is not located in a designated Fire Hazard Severity Zone (FHSZ). The closest FHSZ is 16.5 miles southwest of the Project Site at Interstate 5 (CalFire 2020). The site is 3.8 miles north of the nearest Federal Responsibility Area (CalFire 2020). Additionally, the Project is located in a predominantly agricultural area surrounded by irrigated farmland.

The City of Mendota Sub-Committee on Public Safety is the emergency management agency responsible for the planning, preparing, and coordinating of large-scale emergencies throughout the City. For emergency planning purposes, the City follows the evacuation plans of the Fresno County Office of Emergency Services (OES) and the Fresno County Fire Protection District/CAL FIRE.

Finally, the Project is also subject to CDFA regulation addressing potential impacts from hazards and hazardous materials under California Code of Regulations Sections 8102(q), 8102(aa), 8216, 8304(a)(3), 8304(f), and 8307 which generally include establishing a responsible party for the project, including the local fire department in review of the project, adhering to conditions requested by CDFW or SWRCB, compliance with pesticide laws, regulations, and use requirements. Compliance with these regulations would help reduce potential project impacts of hazards and hazardous materials to less than significant.

DISCUSSION

- a) **Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? and**

-
- b) **Create a significant hazard to the public or the environment through reasonably foreseeable upset and/or accident conditions involving the release of hazardous materials into the environment?**

Less than Significant. Project construction would require the transport, storage, use, handling, and disposal of different types of hazardous substances including diesel fuel, oil, lubricants, and solvents. The transport, use, and disposal of any construction-related hazardous materials such as tractors and fuel would be handled in accordance with all applicable federal, State, and local requirements, including the City of Mendota Municipal Code Title 8 – Health and Safety regulations. As discussed in Section III, *Air Quality*, emissions from diesel vehicles and other construction equipment would not be generated at levels that are considered hazardous.

Project operations would require the use of standard agricultural operating materials that are considered hazardous, including fertilizers, pesticides, nutrient solutions, and small amounts of gasoline for machinery. Per State requirements, the Project would utilize a Nitrogen Management Plan (NMP) to minimize risks associated with the utilization and transportation of agricultural additives. The NMP is reviewed and updated annually as needed and provides detailed instructions for proper storage of hazardous materials in onsite designated Hazardous Materials Storage Facilities, as well as product preparation and crop application. The Project would also implement a Safety Plan, which outlines proper procedures and protocols for equipment operation, hazard reporting, and other requirements to ensure onsite safety. Both the NMP and Safety Plan include required employee training for equipment and product handling to minimize the potential for reasonably foreseeable upset and/or accident conditions

The hazardous materials and management standards proposed by the Project are typical within the agricultural industry, and potential impacts to the public or environment would be considered less than significant.

- c) **Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?**

No Impact. The Project Site is not located within one-quarter mile of an existing or proposed school and as such, no impacts to schools are anticipated.

- d) **Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?**

No Impact. Review of records from the SWRCB and the DTSC identified no current hazardous sites existing within a half-mile radius of the Project Site. The Project Site location would not create a significant hazard to the public or the environment, and impacts would be considered less than significant.

- e) **For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?**

Less than Significant. The Project is located within an airport land use plan and is approximately 0.5 miles from the nearest public airport and approximately 14 miles from the nearest private air strip (Fresno Council of Governments 2018). However, the Project is not located within noise level contours of any airport land use plan, would not place uses in proximity to typical aircraft operations, nor would the Project include any uses that would affect air traffic patterns. Therefore, there would be no significant impact to employees, residents, or visitors from aircraft activities.

f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

Less than Significant. Project construction and operation employees may utilize SR 180 or SR 33 to access the Project Site. SR 180 in this area of the City operates at LOS B throughout the day and night, which means traffic conditions in this area are generally quiet (see Section XVII, *Transportation*). Given this relatively minor increase in traffic along SR 180 due to employees entering and existing the Site, the Project would not interfere with emergency response, and impacts to emergency evacuation routes would be considered less than significant.

g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?

No Impact. The Project would not expose people or structures to threats of wildland fires, as the it is not located in an area designated by CAL FIRE to be at risk for fires, nor near forested areas that may contain the hazard (CAL FIRE 2020).The Project would not lead to offsite effects related to wildland fire hazards; therefore, no wildfire impacts are anticipated.

X. Hydrology and Water Quality

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				
i. Result in substantial erosion or siltation on- or off-site;	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii. Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv. Impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

EXISTING SETTING

The Project Site is located within a 100-year and 500-year flood plain associated with flooding from the San Joaquin river and Fresno Slough and is designated as Flood Zone A (Special Flood Hazard Area) by the FEMA Flood Insurance Rate Maps (FIRM), Panel 06019C1463H. Flood Zone A (Special Flood Hazard Area) is a designation given to areas identified as being subject inundation by the 1-percent-annual-chance flood event generally determined using approximate technologies (FEMA 2020). The San Joaquin River and Fresno Slough are located approximately 0.5 mile east of the Project Site. The Site is generally level with overall drainage conveyed to the east. Belmont Avenue and SR-180 lack curbs or gutters and no developed storm drains or other public drainage infrastructure exists on or adjacent to the Project Site. Drainage from the site is absorbed into the soil and/or conveyed overland by sheet flow across neighboring properties, eventually reaching the Fresno Slough.

Flooding is a key concern for City residents, particularly in the northwest portion of the City at the intersection of SR 33 (Derrick Avenue) and Bass Avenue, approximately 1.35 miles northwest of the Project Site. One of the City's two designated stormwater retention basins is located northeast of this intersection, in the Hacienda Gardens development area (approximately 1.2 miles northwest of the Project Site). According to the General Plan, this basin which has a maximum storage capacity of 20 acre feet periodically fails (City of Mendota 2009).

The City also experiences flooding due to runoff from Panoche Creek, which lacks an established drainage course to the Fresno Slough as it approaches the City from the west. Panoche Creek terminates at Belmont Avenue approximately seven miles west of the existing City limits. Flooding along Belmont Avenue within the City has been partially alleviated by a storm drain project that involved the construction of a flood wall along the northern right-of-way of Belmont Avenue and by raising the elevation of each cross-street intersection. The project was designed to channel floodwater from the west along Belmont Avenue and prevent flooding in the rest of the City to the north. Stormwater on Belmont Avenue continues eastward to the Caltrans right-of-way at SR 180 and then proceeds south towards the Fresno Slough (City of Mendota 2009).

The Project Site is not located within an area known to be at risk from flooding as a result of seiche or tsunami hazards and is not located near any physical or geologic features that would produce a mudflow hazard (City of Mendota 2009).

The Project Site overlies the Delta-Mendota Subbasin of the San Joaquin Valley Groundwater Basin. The Delta-Mendota Subbasin was designated a high priority basin under the California Statewide Groundwater Elevation Monitoring (CASGEM) and Sustainable Groundwater Management Act (SGMA) programs (County of Fresno 2020). Groundwater in the Delta Mendota Subbasin is characterized by the presence of mixed sulfate to bicarbonate types in the northern and central portion with areas of sodium chloride and sodium sulfate waters in the central and southern portions, but is generally good for agricultural and municipal uses. Shallow, saline groundwater occurs within about 10 feet of the ground surface over a large portion of the Subbasin, with localized areas of elevated concentrations of pollutants such as iron, fluoride, nitrate, and boron (County of Fresno 2020).

The SWRCB has adopted the comprehensive Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Policy) and General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order), which include principles and guidelines for cannabis cultivation within the state (SWRCB 2019). The general requirements and prohibitions included in the Cannabis Policy address a wide range of issues related to water and water quality, including riparian setbacks and compliance with state and local permits. The Cannabis General Order also includes regulations on the use of pesticides, rodenticides, herbicides, insecticides, fungicides, disinfectants, and fertilizers. The law requires that cannabis cultivators provide evidence of compliance with the Water Boards' Requirements (or certification by the appropriate Water Board that a permit is not necessary) as part of their application for a CDFG cannabis cultivation license. CDFG regulation that governs the Project and addresses potential impacts on hydrology and water quality is also included under California Code of Regulations Sections 8102(p), 8102(v), 8102(w), 8102(dd), 8107(b), 8216, 8304(a and b), and 8307 which generally include evidence of enrollment in an order of waste discharge requirements, identification of the water source, adherence to lake or streambed alteration requirements, avoidance of impacted watersheds, compliance with section 13149 of the Water Code, compliance with conditions requested by CDFG or SWRCB, and compliance with pesticide use requirements. Compliance with these regulations would help reduce potential project impacts to hydrology and water quality to less than significant.

DISCUSSION

a) **Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?**

Less than Significant. Project construction and operational activities required to support cannabis cultivation would have potential for ground disturbance, runoff, and contamination generated from machinery and sediments. The introduction of sediment or pollutants to surface and groundwater sources during construction could occur through site grading; spoil sites; and leaks of petroleum products or other chemicals associated with cannabis activities (e.g., tractors, excavators). During Project operation, the introduction of sediment or pollutants could occur from the following sources: soils, fertilizers, pesticides, herbicides, and rodenticides; trash associated with cannabis cultivation or associated manufacturing; human waste; and spills or leaks of petroleum products or other chemicals associated with pumps and cultivation equipment.

The Applicant would therefore be required to comply with Waste Discharge Requirements (WDRs) of the CVRWQCB as a standard Condition of Approval, as well as a Storm Water Permit. Additionally, the Project would be required to meet Fresno County Environmental Health Division requirements and standards for water and wastewater systems, including the review and approval of a water supply source plan as well as a sewage disposal site plan/evaluation report. Test results that show that the water supply for domestic uses meets water quality and quantity standards shall be submitted to Environmental Health Division. Consistent with the requirements of the Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) Program General Construction Permit Program, a Stormwater Pollution Prevention Plan for the Project would also be submitted to City Engineering staff, and includes consideration for cumulative projects in the vicinity that are subject to the same requirements.

The Project is not expected to directly result in runoff that would potentially impact water quality standards. The Project would utilize BMPs and other required measures for proper onsite water system management and sewage disposal to prevent possible storm water pollution. Given implementation of these measures, Project operations would not be expected to result in any form of runoff where pollutants could be mobilized into nearby surface and ground water sources and exceed water quality standards. The Project would not be expected to substantially degrade surface and/or groundwater, and impacts would be considered less than significant.

b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

Less than Significant. The Project's projected water demand is estimated to be 100 to 150 AFY. An additional 1-2 AFY of potable water is anticipated for municipal uses onsite associated with typical business operations (restrooms, bathrooms, sinks, etc.). New infrastructure would be constructed to support municipal uses such as restrooms, hand wash stations, and drinking water. A new pipeline is proposed extending along Belmont Avenue. The Project would utilize the City municipal water supply via a connection to the transmission main network. The City sources high-quality, potable water from three primary production groundwater wells located on a private well field approximately 3.5 miles northeast of the City, near the San Joaquin River, and has two emergency backup wells off Bass Avenue (City of Mendota 2009).

Under a lease agreement with the well field property owners, the City obtains higher-quality groundwater for domestic consumption in exchange for lower-quality water suitable for crop irrigation that is pumped from City-operated groundwater wells located west of the Fresno Slough. Per the existing lease agreement, the City pays a flat annual rate to pump up to 2,000 AFY before additional rent must be paid to the property owner. Pumping over 2,000 AFY requires additional annual rent in increments of 100 AFY. As of the 2017-18 fiscal year, the City pumped approximately 1,800 AFY to meet its water demand of 1,485 AFY. With consideration for cumulative projects, City water demand is projected to increase with anticipated future development to an estimated 2,200 AFY by 2025.

The City provided a Will Serve letter to the Applicant on August 18, 2020. The letter states that the Project will utilize water supplies delivered by the City in accordance with the City's Lease Agreement with the outside water provider, which is subject to regulatory actions beyond the City's control such as required measures under the Sustainable Groundwater Management Act. These measures may include reductions in water supply during periods such as a drought that would be proportionate to those required of other City rate payers; and disproportionate reductions in water supply would not be imposed on the Project. Finally, due to the relatively small area that would be improved with impervious surfaces, in addition to the proposed onsite catch basins, the Project is not anticipated to reduce overall groundwater recharge capabilities. With these measures in place and complying with the requirements of the Will Serve letter and groundwater agreement, the Project would have less than significant impacts on groundwater supplies.

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

- i) Result in substantial erosion or siltation on- or off-site;

-
- ii) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;
 - iii) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff;
 - iv) Impede or redirect flood flows?

Less than Significant. Development of the Project would create approximately 68,000 sf (1.6 acres) of new impermeable surfaces. Runoff generated from new impervious surfaces would generally flow to the northeast in overland sheet flow similar to existing conditions, into proposed stormwater retention basins to be constructed in the northern part of the Project Site. Using the Rational Method Equation for calculating runoff, development of the Project would potentially capture up to 21.9 AFY of stormwater rainfall throughout the year, dependent on intensity of rain and capacity of the basins. The proposed stormwater retention basins would be covered to prevent water evaporation, through the use of a physical covering or shade balls. Additional runoff from the cultivation operation and other onsite stormwater would largely percolate within the Project Site or otherwise be directed towards the onsite stormwater basins and subject to the required implementation of BMPs discussed below.

Construction of the Project would be required to comply with City Engineering Standards, and CVRWQCB Storm Water Permit program that would require BMPs to address storm water quality, erosion, and sediment control on- and offsite. Given the Project would disturb more than one acre, the Applicant would also be required to obtain a General Construction Activity Storm Water Permit from the CVRWQCB for stormwater discharges. Consistent with the requirements of the Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) Program General Construction Permit Program, a SWPPP for the Project would also be submitted to City Engineering staff to eliminate or substantially reduce potential for generation of polluted runoff and associated degradation of downstream water quality.

Compliance with applicable permits and new infrastructure onsite would minimize flooding and erosion. Based on the anticipated slight increase in runoff and proposed drainage infrastructure on the Project Site, the increase in stormwater runoff generated by new impervious surfaces under the Project would be minimal. Finally, the Project proposes minimal impervious surfaces and structures that would impede flood flows or increase runoff. Therefore, impacts to flood flows and runoff would be minimal and impacts would be less than significant.

d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?

Less than Significant. The Project Site is not in an area subject to seiche or tsunami hazards. However, it is located inside a 500-year flood plain as indicated by FEMA. In the unlikely event of a 100- or 500-yr storm event, the inundation zones indicate areas that could potentially be flooded, with greater threat to developed areas located within proximity to the Fresno Slough and San Joaquin River and less threat to City's developed and surrounding agricultural areas in the flat expanses of the Central Valley. The SWRCB has adopted the comprehensive Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Policy) and General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities (Cannabis General Order), which include principles and guidelines for cannabis cultivation within the state. The general

requirements and prohibitions included in the Cannabis Policy address a wide range of issues, from compliance with State and local permits to riparian setbacks. The Cannabis General Order also includes regulations on the use of pesticides, rodenticides, herbicides, insecticides, fungicides, disinfectants, and fertilizers. The law requires that cannabis cultivators provide evidence of compliance with the Water Boards' Requirements (or certification by the appropriate Water Board stating a permit is not necessary) as part of their application for a CDFA cannabis cultivation license. These regulations would mitigate the release of pollutants in the case of flood inundation. Development of the Project would also not result in increased exposure of adjacent nearby development and populations to significant loss, injury, or death from flooding in the event of extreme flooding. Therefore, impacts are considered less than significant.

e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

Less than Significant. As discussed above, the Project Site lies within the Delta-Mendota Subbasin of the San Joaquin Valley Basin. Though the City of Mendota is its own Groundwater Sustainability Agency (GSA), it is subject to the Delta-Mendota Subbasin Groundwater Sustainability Plan (GSP). The Delta-Mendota Subbasin is designated a high-priority basin under the CASGEM and SGMA programs, with the County of Fresno serving as the GSA. Project water demands on the City's municipal sources would generally be consistent with the forecast for the Delta Mendota Subbasin GSP and the City would be responsible for participating in actions to improve basin sustainability such as groundwater recharge.

The cannabis waste discharge requirements described above include measures that would protect water quality. The Project relies on municipal water supplies provided by the City, and the City provided a Will Serve letter, described above. The Project would not install a well onsite that would tie directly to the underlying groundwater basin. Therefore, the Project would not have direct impacts on the GSP and would be subject to the requirements of the City's Lease Agreement regarding water supply, resulting in less than significant impacts.

XI. Land Use and Planning

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Cause a significant environmental impact due to a conflict with any land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The Project is located within the City of Mendota, near the eastern edge of the City boundary approximately one mile east of the downtown area and one mile north of SR-180. The property is surrounded by other agricultural and industrial uses. Land use in the City is governed by the Mendota General Plan – particularly the Land Use Element. Land Use maps and policies define boundary lines and characterize the intensity of development in the City. The City’s General Plan also guides the physical development of the City, establishes a pattern of land utilization, and also sets out standards for both the density of population and the intensity of development for each of the defined land use classifications. The Project is located on land designated under the Public/Quasi-Public Facilities land use in the General Plan and zoned P-F with the Commercial Cannabis Overlay District.

DISCUSSION

a) Physically divide an established community?

No Impact. The Project Site is located on vacant land abutting the City’s WWTP, an operative PV facility, and an inoperative biomass power plant and is proximal to ongoing agricultural activities. The facilities and uses proposed would be similar in nature and intensity to nearby uses and would not present a barrier to access, visibility, or operations, or function of existing or future facilities. Therefore, the Project would not physically divide an established community.

b) Cause a significant environmental impact due to a conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

Less than Significant. The Project proposes an amendment to the existing General Plan Land Use and the existing zoning of the site to allow for its lawful operation. Therefore, with the Project’s proposed General

Plan Amendment and implementation, the Project would be compliant with the General Plan and zoning and impacts would be less than significant.

XII. Mineral Resources

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ENVIRONMENTAL SETTING

The Project Site is not located within any identified area of significant aggregate deposits, as classified by the California Department of Conservation. Most aggregate resources near the City are located in the Fresno Production-Consumption Region, the boundary of which is approximately 5 miles west of the Project Site (CDC 2020).

DISCUSSION

- a) **Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?; and**
- b) **Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?**

No Impact. Implementation of the Project would result in development of land that is currently vacant for cannabis cultivation and fallow area and would not result in the loss of any known mineral resources. The Project would not result in any impacts to known mineral resources.

XIII.Noise

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project result in:				
a. Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or of applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Generation of excessive ground borne vibration or ground borne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. For a project located within the vicinity of a private airstrip or an airport land use plan area or, where such a plan has not been adopted, within two miles of a public airport or a public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

Noise levels can be presented in several ways. The standard unit of measurement of the loudness of sound is the decibel (dB). Since the human ear is not equally sensitive to sound at all frequencies, the A-weighted decibel scale (dBA) compensates for the difference in humans' ability to hear perceive various soundwave frequencies by discriminating against frequencies in a manner approximating the human ear. Averaged noise levels over a 24-hour or annual period can be depicted using Community Noise Equivalent Level (CNEL) measurements. CNEL measurements incorporate a penalty for noises occurring during the late night and early morning (7:00PM to 7:00 AM). Studies have indicated that a noise level increase of 3 dBA is barely perceptible to most people, a 5 dBA increase is readily noticeable, and a difference of 10 dBA would be perceived as a doubling of loudness (California Department of Transportation 1998).

The City of Mendota Code of Ordinances, Chapter 9.05 – Noise Control, states that no person or property owner can produce noise in excess of the adopted sound limits (Table 9).

Table 9. Mendota Noise Regulations

Sound Level Limits		
Daytime	7:00am – 7:00pm	55 dBA
Evening	7:00pm – 10:00pm	50 dBA
Nighttime	10:00pm – 7:00am	45 dBA

Source: City Code of Ordinances, Chapter 9.05, Section 9.05.040

The proposed Project is located approximately 0.5 miles west of a residential neighborhood. Vehicle trips along roadways are the primary sources of continuous noise generation in the Project vicinity, and farming activities such as operation of heavy equipment or trucks can also generate periodic high noise levels. The General Plan shows noise levels ranging at approximately 60-65 CNEL throughout the City at major street intersections (City of Mendota 2009).

The Project is separated from sensitive receptors such as residential area and churches approximately 0.6 mile away by intervening features such as the PV facility, Belmont Avenue, and William Robert Johnson Municipal Airport. The entire Project Site and vicinity is zoned for Public Facilities, and Industrial to the south.

The City's Noise Control Ordinance (Mendota Code of Ordinances Chapter 9.05) specifies standards for sources of excessive noise affecting sensitive receptors such as residences, schools, hospitals, churches, and libraries. Sources causing exterior noise levels in sensitive areas to exceed 55 dBA daytime (7am-7pm), 50 dBA evening (7pm-10pm), or 45 dBA nighttime (10pm-7am) are prohibited by the ordinance, with specific exceptions for construction activities in line with the Municipal Code. Finally, the Project is also subject to CDFA regulation that address potential impacts from noise under California Code of Regulations Sections 8304(e) and 8306 which generally include requirements for generators and generator use. Compliance with these regulations would help reduce potential project noise impacts to less than significant.

DISCUSSION

- a) **Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?**

Less than Significant. Project development could generate both short-term construction and incremental long-term operational noise increases in the Project vicinity. Major Project construction activities would be audible at nearby uses, including the municipal airport, agricultural operations, Covanta Energy, and the adjacent PV facility, although the later two uses are generally unoccupied. More distant residential uses, which generally lie more than 0.5 mile to the west, may experience incremental distant increases in noise, but noise attenuation of this large distance would assure that noise standards would not be exceeded. Increased vehicular trips from construction crew commuting and the transport of construction equipment and materials to the Project Site would incrementally increase noise levels on Belmont Avenue and SR-180. While heavy trucks passing residences could create peak noise events of 86 decibels at 50 feet (Caltrans 2013a), such effects would be brief, similar to the operation of typical farm equipment used in the region, and would not affect day time or evening ambient noise levels. Second, noise would be generated

from removal of existing site debris, grading of level pads, and construction of commercial buildings. The Zoning Ordinance exempts construction from basic noise regulation on the times and days when construction activities are allowed. While occasional intermittent noise impacts from construction equipment would exceed maximum allowed ambient noise levels at the border of the adjacent agriculture site, they would be similar to noise associated with ongoing agricultural activities at and near the Project Site and would not substantially increase average operational noise.

Long-term noise sources from Project operation would include those from onsite agricultural activities (e.g., tractor operation) and from mobile sources such as transport vehicles (e.g., Sprinter vans) for deliveries to and from the site up to five times a day during an 8-hour operational period, as well as site access for employees and delivery vehicles during typical farming hours of operation from an estimated 6:00_{A.M.} to 6:00_{P.M.} Monday through Friday. Noise levels from this Project generated traffic would not exceed 40 dBA at 50 feet (Caltrans 2013a). Mobile noise from standard farm machinery such as pickup trucks would also be generated. Stationary noise sources would come from fertigation systems, air compressors, agricultural well pumps, chippers, and other machinery commonly used in farming activities. Cannabis processing operations would be located within enclosed structures and would not generate substantial increases in noise levels for adjacent land uses. Therefore, noise impacts from operations would be considered less than significant.

b) Generation of excessive groundborne vibration or groundborne noise levels?

No Impact. Groundborne vibration levels may be measured similar to noise in vibration decibels (VdB). Typical construction vibration levels range from 58 VdB at 25 feet for a small bulldozer and up to 112 VdB for a pile driver (Caltrans 2013b). However there would be no pile driver used for the construction of this Project and any vibration caused at or near the site would not impact the nearest sensitive receptors and residential areas over 0.5 miles from the Project Site opposite the existing airport. Therefore, vibrations that could occur on the Project Site as a result of Project construction or operation would have no significant impact on adjacent communities.

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

Less than Significant. The Project is located within 0.5 miles of the Airport to the west of the Project Site. However, as the runway runs from north to south parallel to the Project Site, most noise impacts would be experienced by users directly north and south of the Airport, as shown in the Fresno County Airport Land Use Compatibility Plan (Fresno Council of Governments 2018). The Site is outside the 60, 65, 70, and 75 CNEL future noise contours. In addition, parcels to the north, south, and east of the Project Site are used for agriculture. Therefore, the Project expose minimal people within the Project Site to excessive noise levels, would not contribute significant ambient noise to the area, and impacts would be less than significant.

XIV. Population and Housing

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The Project Site is located within the City and is largely surrounded by rural agricultural areas on P-F zoned land currently undeveloped. The nearest residential community to the Project Site in the City is located approximately 0.5-mile west and the nearest community outside the City is the City of Firebaugh approximately 8.5 miles northwest. A report generated by the Fresno County Council of Governments in 2017 predicted that the population of Mendota in 2020 would be 11,920 people, and that there would be 2,670 total households. The report projected 900 total jobs in the City, with 160 in agriculture (Fresno Council of Governments 2017). Over the past three years, the unemployment rate for the City's population has exceeded 9 percent and as high as 18 percent, which is above the state average of approximately 4 percent (U.S. Census Bureau 2020).

DISCUSSION

- a) **Induce substantial unplanned population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through extension of roads or other infrastructure)?**

Less than Significant. The proposed Project is estimated to result in the employment of 20 full-time employees and up to 40 additional employees during cultivation periods (i.e. planting, harvesting), for a total of 60 employees during peak periods. With consideration for the City's employment rate, full-time employment positions offered by the Project are expected to be filled by existing residents of the City or surrounding communities as part of the area's agricultural economy. While the Project would extend a paved road east onto the Project Site, and introduce limited water supply infrastructure, these facilities

would not extend beyond the City limits, with bordering uses outside the City all designated for agricultural use and not planned for residential uses. Further, the Project Site is well separated from much in the City, and the City's Sphere of Influence does not extend beyond the City limits in this area. Therefore, the Project would not result in substantial direct or indirect growth inducement, and impacts would be less than significant.

b) Displace a substantial number of existing people or housing units, necessitating the construction of replacement housing elsewhere?

Less than Significant. There are no existing onsite residences located within the Project Site. The Project would not displace any existing housing units or existing residents and is not expected to substantially increase the population or require construction of new or replacement housing. All new employees for the Project are anticipated to reside within the City or nearby unincorporated communities within Fresno County. Therefore, the Project would not contribute substantially towards the local population growth or demand for housing and impacts would be less than significant.

XV. Public Services

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service rations, response times or other performance objectives for any of the following public services:</p>				
a. Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The Fresno County Fire Protection District (FCFPD), the governing body responsible for administration of fire protection services at the Project Site, is staffed 24 hours a day, 365 days a year. The closest office to the Project Site is located at 101 McCabe Avenue, approximately 1.3 miles from the Project Site, or a 2-mile, 5-minute drive. The daily emergency response staffing for the entire fire district is 48 personnel. This staffing includes seven Battalion Chiefs, thirteen 2 – 3 Person Engine Companies, one 3-Person Truck Company, one Medium Rescue Unit, Water Tenders and Patrols housed in 13 full time fire stations (FCFPD 2020).

Law enforcement within the City is provided by the Mendota Police Department (MPD), with the City’s police station located approximately 0.5 mile to the west of the Project Site. By car the route is approximately 1.3 miles, or 4 minutes away. The MPD employs a total of 19 personnel, including 12 sworn Police Officers and six volunteer Reserve Police Officers. The City’s police station is staffed 24 hours a day, 365 days a year. Dispatch is located 8 miles north of the City in the City of Firebaugh. Mendota and Firebaugh Police Officers operate jointly on one dispatch ratio channel (City of Mendota 2020). Additional dispatch from the County Sheriff’s department may be involved in emergency response throughout the City (Sergeant Jorge Urbieto 2020).

There are no schools, parks, or libraries located within proximity of the Project Site. The nearest such facilities are located between approximately 1.0 and 1.5 miles to the west of the Project Site. Facilities closest to the Project include Mendota High School (1.0 mile), Mendota Elementary School (1.0 mile), and

the Mendota Branch Library (1.4 miles). Other nearby public facilities of regional importance include the William Robert Johnston Municipal Airport (0.5 mile) and Mendota City Hall (1.1 miles). The closest park is Veteran's Park, located 0.8 miles west of the Project Site.

DISCUSSION

a) Fire protection?

Less than Significant. Construction and operation of the Project would incrementally increase the demand for emergency response service, including for fire protection and emergency medical services. According to Fire District staff, FCFPD has enough staff to service the site (Eric Watkins 2020). Backup fire protection and emergency medical response services are available from the Tranquillity fire station south of the City of Mendota, and from the City of Firebaugh. The Project must have a system in place to allow FCFPD access through the entrance gate in case of emergency. Pending review from the District, the Project would be compatible with all fire regulations (Eric Watkins 2020).

The Project would comply with all applicable fire codes, including provision of fire suppression equipment and onsite water supply, as required by the FCFPD. Additional improvements required by FCFPD would be accommodated within the site as needed within currently undeveloped areas (e.g., compaction, all-weather access, hammerhead turnaround, etc.; see Figure 3). Project construction would be conditioned to ensure an adequate onsite water supply is secured for fire-fighting purposes, as approved by the FCFPD. The Project would include a fire tank and pump located on the northern portion of the Site near the Storm Water Retention Catch Basin. This water would be available for both irrigation and emergency purposes. Mandatory employee training would include fire prevention and extinguishment. Prior to issuance of required building permits, the City would require the Applicant to remit any applicable impact fees. The FCFPD would also review the site plans (e.g. primary/secondary access, turning radii for fire equipment) to ensure access for fire trucks is provided throughout the Project Site. Implementation of City and FCFPD conditions and standard development requirements relating to fire protection measures (e.g., payment of development impact fees), as well as implementation of construction standards that meet current building and fire codes, would minimize impacts to fire protection services. Therefore, the change in demand for fire services would not require the provision of new or physically altered fire facilities and impacts would be less than significant.

b) Police protection?

Less than Significant. The Project Site would continue to be served by the Mendota Police Department. Currently, MPD's employees and facilities are considered sufficient to meet current and expected demand for law enforcement (Sergeant Jorge Urbieta 2020).

Added employment at the site and the potential for theft and intrusion at the Project Site would potentially increase the need for local law enforcement services. The Applicant includes a Site Security Plan in compliance with state cannabis regulation that identifies policies, protocols, and other mechanisms to address the potential for criminal activity. The Security Plan includes utilization of a security fence, motion sensors, and surveillance. These security measures are considered to reduce potential for theft, vandalism, or intrusion and would serve to reduce demand for local law enforcement services. While MPD resources

are currently adequate to address City law enforcement needs, onsite security measures would reduce further potential for vandalism and would not substantially increase the need for additional police protection services or facilities, therefore resulting in less than significant impacts to police protection services.

- c) **Schools?**
- d) **Parks?**
- e) **Other public facilities?**

Less than Significant. The employment of 20 full-time employees and up to 40 seasonal employees is anticipated to be fulfilled from the City and surrounding communities (see Section XIV, *Population and Housing*), and so is not anticipated to generate an increase of new residents to the area. Therefore, the Project would not introduce an influx of employees and residents that would require additional schools, parks, or other public facilities such as libraries, hospitals, or satellite City offices that may result in additional environmental impacts. Prior to receiving any required building or operation permits, the Applicant would remit any applicable impact fees to address increased demand for these resources (e.g., parks, schools). Impacts would be considered less than significant.

XVI. Recreation

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The Project Site is located in a rural agricultural area and would involve the construction of agricultural, processing, and distribution support facilities on a parcel currently designated and zoned for public facilities. There are no recreational facilities on or within the vicinity of the Project Site. The nearest parks and recreational facilities consist of the three City owned facilities including Veteran’s Park, Jess Gill Park, and Rojas Pierce Park, located between approximately 1.0 and 1.5 miles to the west. In addition to resources provided by the City, the Mendota State Wildlife Area is located approximately three miles to the south of the City, offering miles of recreation facilities and nearly 12,000 acres of wildlife habitat (City of Mendota 2009).

DISCUSSION

- a) **Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?; and**
- b) **Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?**

Less than Significant. The Project would not require the construction of additional recreational facilities nor substantially increase the use of existing recreational facilities. As discussed in Section XIV, *Population and Housing*, the majority of future employees are anticipated to currently live within the City or in nearby surrounding communities within Fresno County, which are linked to the City by SR 33

and SR 180. Therefore, demand for or use of recreational facilities is not expected to increase, nor require the construction or expansion of recreational facilities that may detrimentally impact the environment, and associated impacts would be considered less than significant.

XVII. Transportation

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
--	--------------------------------	--	------------------------------	-----------

Would the Project:

- | | | | | |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|
| a. Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b. Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c. Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d. Result in inadequate emergency access? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

ENVIRONMENTAL SETTING

A Traffic Memo (Appendix D) was prepared for this Project by KD Anderson & Associates, Inc., and was used to inform the environmental document analysis.

Existing Roadway Network

The Project Site is located east of State Route 180 beyond the Union Pacific Railroad (UPRR) and Mendota airfield. Entrance to the Project Site would be provided by a paved road from the end of Belmont Avenue, and compacted earth roads would be present for circulation within the Site. The following streets and intersections serve the area of the Project.

State Route 180 (Oller Street) is the primary arterial through the City of Mendota. SR 180 provides access to the City of Fresno to the east and terminates at the intersection with SR 33 in the northwest corner of Mendota. The highway has two lanes in each direction within Mendota, from Belmont Avenue (W) north to

SR 33. The roadway narrows to a two-lane facility south of Belmont Avenue (W). Caltrans' Transportation Concept Report (TCR) for the highway indicates that the ultimate plan for both segments is a four-lane expressway. A Route Adoption Study was completed in March 2013 that analyzed a plan line to connect SR 180 to I-5. In 2002, the policy board of the Council of Fresno County Governments (COFCG) supported the Caltrans District 6 proposal to add SR 180-West between Route 99 and I-5, to the National Highway System (NHS) routes.



The most recent traffic volume data reported by the California Department of Transportation (Caltrans) indicates that in 2018 SR 180 carried an Average Annual Daily Traffic (AADT) volume of 10,600 vehicles per day south of the SR 33 junction, 6,700 north of the Belmont Avenue (W) intersection and 7,300 AADT south of Belmont Avenue (W). Caltrans data indicates that trucks comprise 9% of the daily traffic on SR 180.

Belmont Avenue is an east-west Arterial street that runs along the south side of Mendota. Today the western segment of Belmont Avenue extends west from a “tee” intersection on SR 180 across SR 33 and into Rural Fresno County. The portion of Belmont Avenue west of SR 180 is a two-lane roadway with continuous Two-Way Left-Turn lane and Class 2 Bike lanes. The Mendota General Plan indicate that this roadway carried peak hour volumes that were equivalent to roughly 3,000 vehicles per day (vpd) when that document was prepared.

Belmont Avenue (E) also extends easterly beyond SR 180 and would provide access to the Project Site. This segment is designated a two-lane Industrial Collector street in the circulation element and originates at a “tee” intersection with SR 180 roughly 800 feet to the south of the Belmont Avenue (W) intersection. From that point the road crosses the UPRR and turns northerly along the east side of the airport. The portion of Belmont Avenue from SR 180 to the UPRR is a four-lane facility but narrows to a two-lane roadway through the Marie Street intersection about 100 feet east of the railroad. The paved two-lane section continues for about 0.5 mile and ends roughly 320 feet south of the existing PV facility. Based on interpolation of the weekday peak hour traffic volume counts collected for this study, the daily traffic volume on Belmont Avenue east of SR 180 is estimated to be roughly 500 vpd.

Marie Street and Guillan Park Drive are local streets that intersect Belmont Avenue in the area east of the UPRR. Marie Street extends north along the west side of the railroad to an intersection on 9th Street near its UPRR crossing and continues its northern terminus at 2nd Street. Guillan Park Drive intersects Belmont Avenue (E) about 375 feet north of Marie Street and extends easterly.

The SR 180 / Belmont Avenue (E) intersection is a “tee” controlled by a stop sign on the westbound Belmont Avenue approach. The SR 180 approaches have single lanes, and no left turn lane is available on the state highway. The Belmont Avenue approach has separate left turn and right turn lanes, and the intersection is wide enough to accommodate truck turns. Streetlights exist on the northeast and southwest corners. No crosswalks are striped at this intersection.

The SR 180 / Belmont Avenue (E) intersection provides the only access to the Project Site. New weekday a.m. and p.m. peak hour traffic counts were conducted in January 2020 at this location to establish the current Level of Service. Based on the methods contained in the 2010 Highway Capacity Manual (HCM) the westbound approach at this location operates LOS B. Based on methods contained in the Manual of Uniform Traffic Control Devices (MUTCD) current peak hour traffic volumes fall far below the level that would justify an all-way stop or traffic signal.

The UPRR Crossing on Belmont Avenue (E) is equipped with cantilevered flashing-light signals combined with automatics gates. Warning signs and crossing pavement markings exist on both approaches.

Other Transportation Options

Fresno County Rural Transit Agency (FCRTA) services are currently available to the elderly (60 yrs+), disabled, low-income, and general public patrons within 13 incorporated cities of Fresno County. Limited service is available to neighboring counties, and there are no transit stops within 0.5 mile of the Project Site. Currently, the FCRTA has 18 transit subsystems that are offered on a demand responsive and/or scheduled, fixed route basis. Scheduled, multiple roundtrips, intercity service is provided to Mendota through Kerman to the Fresno-Clovis Metropolitan Area and to Firebaugh, Monday through Friday, by the Westside Transit system. Demand responsive services are also available Monday through Friday.

The Fresno County Regional Active Transportation Plan (ATP) describes facilities in Mendota. Pedestrian circulation is currently provided by the 45.4 miles sidewalk system in residential and commercial neighborhoods throughout the City. There are no Class I bike paths in Mendota, but 1.2 miles of Class II bike lanes exist. The closest bike lanes are on Belmont Avenue west of SR 180.

The City of Mendota is bisected by a branchline of the UPRR that is operated by the San Joaquin Valley Railroad Company. Movement between the western and eastern portions of the City is severely restricted by the railroad line. The only crossing within the central portion of the City is via 9th Street. One additional crossing occurs in the northwest where SR 33 crosses the tracks and provides access via the intersection with Bass Avenue.

DISCUSSION

- a) **Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?**

Less than Significant. The proposed Project would generate both short-term construction increases in traffic and long-term operational increases. The City of Mendota General Plan describes the traffic operating

conditions on City streets and at intersections in terms of Level of Service, and policy C 1.2 describes City goals for the operation of its streets.

POLICY C-1.2 Seek to maintain operations on all roadways and intersections at Level of Service C or better at all times, including peak travel times, unless maintaining this Level of Service would, in the City's judgment, be infeasible and/or conflict with the achievement of other goals. Congestion in excess of Level of Service C may be accepted in these cases, provided that provisions are made to improve traffic flow and/or promote non-vehicular transportation as part of a development project or a City-initiated project.

The Caltrans SR 180 Transportation Concept Report, 2014 (SR 180 TCR) indicates that SR 180 north of Belmont Avenue (W) operates at LOS C and is expected to continue to operate at LOS C into the foreseeable future. The two-lane segment south from Belmont Avenue to Panoche Road is reported to operate at LOS D and was projected to operate at LOS E in the Year 2035.

The Mendota General Plan EIR described current traffic operations at major intersections and roadway segments during peak hours. The Level of Service at SR 180 / Belmont Avenue (W) intersection was LOS B. The Level of Service on Belmont Avenue west of SR 180 was LOS B in the a.m. peak hour and LOS C in the p.m. peak hour. East of SR 180, the roadway provides LOS C in the a.m. peak hour and LOS B in the p.m. peak hour.

Project construction would require construction employee vehicle trips as well as haul, material delivery and concrete truck trips associated with site preparation, grading, and building construction. Construction would be completed over a 6-month period. Construction would involve the use of several large flatbed trucks to deliver heavy equipment and building materials, haul trucks to remove debris or deliver gravel, and concrete trucks to pour foundations. Construction traffic would intermittently peak during periods of material delivery and debris removal with periods of lower levels of traffic trips for general construction of the onsite structures and associated facilities. The construction vehicle trips would occur on roadways with efficient level of service, would be short term associated with the smaller building sizes, and would not obstruct existing adopted programs addressing circulation.

The Project would generate automobile and truck traffic as a result of employee commute activities as well as from deliveries to and from the site by truck and van. The Project is expected to employ 60 persons during harvest, while the number employed at the site on a regular basis outside of harvest would be less. Truck activities would occur at various times. Delivery schedules for nutrients and general supplies to the site could occur once every week or two. Nutrients are typically shipped via a single-unit truck. State mandated cannabis waste pick-up typically occurs every two months, and single unit trucks would also be used for this purpose. It is anticipated there could be up to three (3) deliveries on a weekday should all schedules coincide, not including general mail delivery from the U.S. Postal Service. It is anticipated there would be days with no deliveries. Outdoor cultivation of cannabis is proposed to occur year-round, with one or two harvests anticipated to occur each year. Distribution operations would involve delivery/loading of cannabis product up to 5 times using single unit trucks or vans during an 8-hour operational period each day.

The amount of vehicle traffic associated with the Project is described in terms of vehicle “trips”. Each roundtrip consists of one vehicle trip in and one vehicle trip out or two trips total. For this Project, the number of trips would vary from day to day based on the level of delivery and shipment activity that occurs on a particular day.

To provide a “worst case” assessment of daily traffic, the following assumptions have been made:

- All 60 peak-season employees would generate trips that are “new” to the site
- All weekly deliveries to the site occur on the same day
- All five shipments from the site occur on the “worst case” day

As noted in Table 10, on a “worst case” basis the Project could generate 140 daily vehicle trips in the peak season, of which 16 would be trucks or vans and 124 would be automobiles.

Table 10. Trip Generation Estimate

Activity	Quantity	Schedule	Trip Rate per Day	Daily Trips			PM Peak Hour Trips	
				Total	Trucks and Vans	Cars	In	Out
Employee Commute	60	Daily	2 per employee	120	0	120	0	30
Miscellaneous Deliveries	2	Daily	2 per delivery	4	0	4	1	1
Deliveries to the Site	3	Weekly	2 per delivery	6	6	0	1	1
Shipments from the Site	5	Daily during harvest	2 per shipment	10	10	0	1	1
Total				140	16	124	3	33

A portion of the Project’s daily traffic may fall within typical peak commute hours that are the subject of traffic analysis under Fresno County traffic study guidelines (i.e., 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m.). Typically, employee commute activity constitutes the majority of peak hour trips. For this analysis it was assumed that the share of the daily traffic accompanying cannabis facilities falling in peak hours would be similar to the share identified for other employment related businesses (see Appendix D for full analysis).

The Mendota General Plan EIR described current traffic operations at major intersections and roadway segments during peak hours. The Level of Service at SR 180 / Belmont Avenue (W) intersection was LOS B. The Level of Service on Belmont Avenue west of SR 180 was LOS B in the a.m. peak hour and LOS C in the p.m. peak hour. East of SR 180, the roadway provides LOS C in the a.m. peak hour and LOS B in the p.m. peak hour.

The SR 180 / Belmont Avenue (E) intersection provides the only access to the Project Site. New weekday a.m. and p.m. peak hour traffic counts were conducted in January 2020 (Appendix D) at this location to establish the current Level of Service. Based on the methods contained in the 2010 Highway Capacity Manual (HCM), the westbound approach at this location operates LOS B. Based on methods contained in the Manual of Uniform Traffic Control Devices (MUTCD) current peak hour traffic volumes fall far below the level that would justify an all-way stop or traffic signal.

As previously discussed, Project generated short-term construction and long-term operational trips would access the site primarily from via SR 180. Construction traffic would be intermittent and short-term and is not anticipated to impact the LOS or long-term operational characteristics or levels of congestion on area roads, or to create long-term impacts to the operation of any intersections, streets, highways or freeways (see safety discussion below). As there are no pedestrian and bicycle paths or mass transit facilities in the Project vicinity, no impacts to such facilities from the Project would occur. Project traffic would not conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system.

Ultimately, the proposed Project would not conflict with an applicable program, plan, ordinance or policy addressing the circulation system. This takes into account mass transit as well as bicycle and pedestrian modes of transportation. It also includes but is not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit. Impacts of the Project would be less than significant.

b) Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?

Less than Significant. SB 743 requires lead agencies to move from a Level of Service based analysis under CEQA to an approach that is based on regional Vehicle Miles Traveled (VMT). The CEQA Guidelines and the California Governor's Office of Planning and Research (OPR) document Technical Advisory on Evaluating Transportation Impacts in CEQA encourage all public agencies to develop and publish thresholds of significance to assist with determining when a project would have significant transportation impacts based on the new metric of VMT, rather than operating Level of Service (LOS). The CEQA Guidelines generally state that projects that decrease VMT can be assumed to have a less than significant transportation impact. The CEQA Guidelines do not provide any specific criteria on how to determine what level of project VMT would be considered a significant impact.

Fresno County and the City of Mendota have not yet adopted methods for estimating regional VMT or significance criteria for evaluating impacts based on VMT. However, the Fresno Council of Governments (FCOG) has published draft guidelines that make use of the Fresno County regional travel demand forecasting model and expand upon OPR guidance. Those guidelines recommend that a project first be subject to a screening analysis to determine the extent of VMT analysis that is necessary. That screening identifies projects that can be reasonably assumed to have less than significant VMT impacts based on criteria such as:

- Projects in low-VMT generating areas
- Project along high quality transit corridors

-
- Locally serving retail projects
 - Project with low trip generation
 - Affordable housing projects

Of the screening criteria, the low trip generation measure is applicable to this Project. FCOG guidelines suggest that projects generating 500 or fewer daily trips be considered less than significant. The Project's seasonal daily trip generation estimate of 140 daily trips falls below that level, and as a result, the Project's impact to regional VMT is not significant.

c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

Less than Significant. Roads providing access to the Project Site are flat, straight roads with no line-of-sight issues or large amounts of traffic. Sight distance along local roads exceeds 1,000 feet. There are no safety or design hazards associated with SR 180 or Belmont Ave that would be exasperated as a result of implementation of the Project. Though uses in the vicinity of the Project include commercial agricultural operations and larger, slower-moving farm equipment is likely to be encountered along Belmont Avenue and Guillan Park Drive, the frequency of vehicles interacting with larger equipment is considered low given the existing and proposed volume of traffic along this roadways. As the Project would involve development and operation of a compatible use with surrounding commercial agricultural uses, roadway safety impacts associated with incompatible uses would be less than significant.

d) Result in inadequate emergency access?

Less than Significant. The Project would not result in inadequate emergency access to and from the area. As discussed above, the Project Site would be accessed from the point where the pavement currently ends at Belmont Avenue. From that point an approximately 24-foot-wide paved road would run northerly, then easterly and adjacent to the north side of the PV facility and along the north Project boundary to the Site, and would be constructed in compliance with fire access requirements. The internal roadway and parking areas would be provided adjacent to the constructed buildings. Impacts to emergency access would be less than significant.

XVIII. Tribal Cultural Resources

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>Would the Project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:</p> <p>a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or</p> <p>b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

The main Native American tribe present in the San Joaquin Valley were the Northern Valley Yokuts. The tribe was severely impacted by Spanish settlement in the early 1800's, when disease and later the influx of people during the American conquest of California drove the Northern Valley Yokuts from their lands (Appendix C).

AB 52, which went into effect on July 1, 2015, established a consultation process with all California Native American Tribes on the Native American Heritage Commission (NAHC) List and required consideration of Tribal Cultural Values in the determination of project impacts and mitigation. AB 52 established a new class of resources, tribal cultural resources, defined as a site feature, place, cultural landscape, sacred place or object, which is of cultural value to a Tribe. Tribal cultural resources are either: (1) on or eligible for the California Historic Register or a local historic register; or (2) treated by the lead agency, at its discretion, as

a traditional cultural resource per Public Resources Code (PRC) 21074 (a)(1)(A)-(B). SB 18, which requires consultation for a General Plan Amendment, was also conducted in compliance with PRC 65352.3, which gives the local respondents 90 days in which to request a consultation.

A search of the Native American Heritage Commission's (NAHC's) Sacred Lands File was requested on December 4, 2019, and conducted on December 10, 2019 to determine the presence of any Native American cultural resources within the proposed Project Site and general vicinity. The NAHC indicated that no known Native American cultural sites are present within the proposed Project Site. The NAHC identified 13 Native American contacts, both tribes and individuals, who would potentially have specific knowledge as to whether cultural resources are identified in the proposed Project Site (Appendix C).

Consistent with AB 52 and SB 18, on between January 17 and January 23, 2020, the City contacted representatives with traditional territory in the region to request consultation regarding tribal cultural resources in the Project Site. Of the 13 identified Native American contacts, the only response received within the 30-day comment period for AB 52 or the 90-day comment period for SB 18 was from Dirk Charley of the Dunlap Band of Mono Indians, expressing goodwill towards the City and the Project, but noting that the Project Site is far outside his Tribe's area of concern or interest.

A Phase 1 archaeological survey (i.e., an intensive, pedestrian ground surface survey) of the proposed Project Site to assess the presence/absence of cultural resources was conducted on December 18 and 19, 2019 (Appendix C). The archaeological survey was conducted using 10- to 15-meter (33- to 49-foot) parallel transects. As discussed further in Section V, Cultural Resources, no previously unrecorded resources were identified during the survey. The survey of the entire Project Site provided an opportunity to evaluate the absence of cultural resources on the ground surface as well as throughout topsoils where archaeological materials would be expected. Based on the negative records search results and the absence of tribal resources noted during the Phase 1 archaeological survey, the potential for unknown, intact cultural resources within the proposed Project Site is considered remote.

DISCUSSION

- a) **Listed or eligible for listing in the California Register or Historical Resources, or in a local register of historical resources as defined in the Public Resources Code section 5020.1(k).**

No Impact. As discussed in Section V, *Cultural Resources*, the Project Site is currently utilized for agricultural cultivation and is not recognized as an historical resource. There are no recognized historical resources near the Project Site, and no previously unrecorded historic resources were identified during the intensive Phase 1 archeological survey. Therefore, the Project is not expected to result in impacts to historic resources with cultural value to a California Native American tribe.

- b) **A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.**

Less than Significant. As discussed above, there are no known cultural resources near the Project Site, and a cultural monitor would not be needed. While no known archaeological, cultural, or tribal resources are anticipated to exist within the Project Site, there remains the possibility for undiscovered resources to be unearthed during construction. Adherence to California Health and Safety Code Section 7050.5 and California Public Resources Code Sections 5097.94 and 5079.98, which would address impacts associated with inadvertent discoveries and requiring the implementation of appropriate protocols in the event that unanticipated resources are discovered, would address potential impacts. Therefore, impacts of the Project on unanticipated tribal resources are considered less than significant.

XIX. Utilities and Service Systems

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the Project:				
a. Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Comply with federal, state and local management and reduction statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ENVIRONMENTAL SETTING

Electrical and Natural Gas

PG&E provides the City's existing residential and commercial facilities with natural gas and electrical services. Subterranean PG&E utility access is located along Belmont Avenue to the southwest of the Project Site. The Project Site would be serviced by above-ground utility poles from PG&E power. Diesel or gasoline generators would be available for use in case of power outages.

Water and Wastewater

The Project Site is located on undeveloped land and is not served by public water or wastewater services. Under a lease agreement with the well field property owners, the City obtains higher-quality groundwater for domestic consumption in exchange for lower-quality water suitable for crop irrigation that is pumped from City-operated groundwater wells located west of the Fresno Slough. Per the existing lease agreement, the City pays a flat annual rate to pump up to 2,000 AFY before additional rent must be paid to the property owner. Pumping over 2,000 AFY requires additional annual rent in increments of 100 AFY. As of the 2017-18 fiscal year, the City currently pumps approximately 1,800 AFY to meet its water demand of 1,485 AFY. City water demand is projected to increase with anticipated future development to an estimated 2,200 AFY by 2025 (Appendix E).

Wastewater for the City is handled by the City's wastewater treatment plant.² The 120-acre plant is located directly northwest of the Project site and consists of aerated and facultative lagoons, percolation ponds, and 57 acres of shallow basins for wastewater treatment and disposal. Permitted treatment capacity of the plant is 2.0 million gallons per day (MGD) with a disposal capacity of 1.12 MGD. Annual total treatment at the plant in 2019 totaled 380.38 million gallons, averaging to 1.04 MGD. Dry weather flows from July through September average approximately 1.017 MGD, reflecting the slightly lower amount of wastewater that requires treatment during that period of the year, and indicating there is remaining capacity at the plant.

Solid Waste

Consistent with CalCannabis Licensing Program requirements, existing cannabis operations shall utilize a designated composting area for non-usable cannabis plant material. This compost is then reintroduced as an organic soil amendment to be applied at the cannabis cultivation area. The organic soil mixture used for cannabis cultivation is also amended for re-use. All remaining municipal waste would be placed in trash enclosures located near the proposed structures and regularly hauled to Mid Valley Disposal Inc., a locally permitted solid waste disposal facility. The Mid Valley Disposal facility is permitted to collect 1,500 tons per day with a maximum capacity of 49,000 cubic yards of municipal waste (Mid Valley Disposal 2020). In compliance with California's Integrated Waste Management Act (AB 939), the City enacted the Construction and Demolition (C&D) Ordinance in 2007 (Mendota Municipal Code Chapter 8.16.040) requiring the construction, demolition, and renovation projects to dispose of job site waste in an environmentally responsible manner. The C&D Ordinance requires debris associated with construction, demolition, and/or renovation or green houses to be routed to the County Integrated Waste Management Division's waste disposal facilities (e.g., Mid Valley Disposal).

Finally, the Project is also subject to CDFA regulation that address potential impacts on utilities and service systems under California Code of Regulations Sections 8102(s), 8305, and 8306 which generally include heating and cooling power source identification and consideration, adhering to renewable energy

² Information on the City's wastewater treatment plant verified by Provost & Pritchard Senior Civil Engineer via phone call October 30, 2020.

requirements, and compliance with generator requirements. Compliance with these regulations would help reduce potential project impacts to utilities and service systems to less than significant.

DISCUSSION

- a) **Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?**

Less than Significant. The Project would require new infrastructure to supply water to the site. Irrigation water to be used for agricultural purposes would be supplied by the City, as well as municipal uses such as restrooms, hand wash stations, and drinking. The Project would include the trenching of new pipeline infrastructure extending along Belmont Avenue within previously disturbed areas to a connection point in the north-central region of the Project Site. The Project also proposes to construct a stormwater retention basin or basins to capture stormwater conveyed from buildings and impervious surfaces onsite, which could potentially supplement the Project's water supplies.

Wastewater for the property would be conveyed via a new sewer connection to the City's existing wastewater sewer infrastructure and wastewater treatment plant. The Project is conservatively estimated to generate no more than 893 to 1,785 gallons per day of wastewater from municipal uses onsite associated with typical business operations (restrooms, bathrooms, sinks, etc.) (Appendix E). Considering the wastewater treatment plant's permitted capacity of 2.0 MGD, disposal capacity of 1.12 MGD, and average throughput of approximately 1.04 MGD, the plant has capacity to accommodate the Project's potential generated wastewater. Therefore, integration of this system would not result in the required expansion of City sewer treatment infrastructure, and result in less than significant impacts.

Development of the Project may result in minimal changes in on- and offsite drainage patterns. As discussed in Section IX, *Hydrology and Water Quality*, the increase in impervious surfaces is anticipated to be approximately 68,000 sf (1.6 acres), which would only slightly increase runoff and would be mitigated by the proposed onsite basins. These improvements would be subject to standard development/permitting requirements (e.g., storm water permit) by the County and CVRWQCB to reduce on and offsite impacts.

The Project is expected to increase onsite electricity demand. Project construction will include a new connection to the site, and would require a Will Serve Letter from PG&E. Given sufficient regional electricity production, this increase in demand is not anticipated to require the construction or expansion of regional electrical generation and/or transmission facilities. The implementation of power lines to the connection point along Belmont Avenue would occur within previously disturbed areas and would not result in additional environmental impacts. While the Project would not utilize natural gas supplies for operation of the Project, the Project would use small-scale propane such as for the purposes of heating sink water for employee breakrooms.

Environmental effects associated with onsite construction/expansion of the water and sewer systems would be located within the footprint of development under the proposed Project, consisting of trenching and minor grading. Offsite activities associated with the expansion of these facilities would similarly require

trenching, though would occur within previously disturbed areas and within City right of way. The Project would also result in minimal increases in demand of electricity, gas, or telecommunications services. Therefore, impacts would be less than significant.

b) Have sufficient water supplies available to serve the Project and reasonably foreseeable future development during normal, dry and multiple dry years?

Less than Significant. The Applicant estimates Project water demand to be 100-150 AFY, supported by the City's Will Serve Letter administered in 2020. The letter states that the Project will utilize water supplies delivered by the City in accordance with the City's Lease Agreement with the outside water provider, which is subject to regulatory actions beyond the City's control such as required measures under the Sustainable Groundwater Management Act. These measures may include reductions in water supply during periods such as a drought that would be proportionate to those required of other City rate payers; and disproportionate reductions in water supply would not be imposed on the Project. The Delta-Mendota Subbasin that would supply the site is designated a high priority basin under the CASGEM and SGMA programs. Project water demands on the City's municipal sources, with consideration for the Project Site's current public facility designation, proposed update to light manufacturing use, and regional agricultural use, would generally be consistent with the forecast for the Delta Mendota Subbasin GSP and the City would be responsible for participating in actions to improve basin sustainability such as water conservation and groundwater recharge initiatives. Finally, due to the relatively small area that would be improved with impervious surfaces, in addition to the proposed onsite catch basins, the Project is not anticipated to reduce overall groundwater recharge capabilities. With these measures in place and complying with the requirements of the Will Serve letter and applicable groundwater agreement, the Project would have less than significant impacts on water supplies available for the foreseeable future. The Applicant has sufficient entitlement of water to serve the Project, and the Project would not require new or expanded water entitlements to serve the Project beyond those required by the City's Lease Agreement. Impacts would be less than significant.

c) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

Less than Significant. The Project Site would be served by the City's wastewater treatment facility for domestic wastewater discharge. In compliance with Zoning Code 13.08.030, the Applicant would obtain a permit to connect to the municipal sewer system. By participating in the permitting process, the sewer demand of the Project would be evaluated by the City prior to permit issuance. As discussed above, the City's wastewater treatment facility has capacity to accommodate the Project's generated wastewater. Assuming permit issuance, impacts to the sewer system would be less than significant.

d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?

Less than Significant. Solid waste generated from agricultural operations would include waste from gardening materials (e.g., used plastic seedling pots, plastic fertilizer/pesticide bags), general trash generated by site personnel, and unusable plant (green) wastes and soils. Onsite solid waste generation by the Project is estimated to be less than 350 pounds per day (CalRecycle 2020),³ and existing facilities in Fresno County can adequately accommodate this quantity (Mid Valley Disposal 2020). In compliance with the City's C&D Ordinance, debris generated from Project construction would be routed to the County Integrated Waste Management Division's waste disposal facilities. During operation, the Project would chip and compost organic waste generated from cannabis cultivation and processing onsite as necessary. This compost would be reintroduced as organic soil amendment for the cannabis cultivation area. Other waste generated from the Project such as gardening materials and general trash would be regularly collected and hauled to a local permitted solid waste disposal facility such as the Mid Valley Disposal facility. The Project would comply with federal, State, and local waste management and reduction statutes, and impacts to local and regional solid waste disposal facilities would be less than significant.

³ Assumes similar agricultural/commercial/industrial uses of ~5 lbs/1000sf/day, extrapolated to the project's development area, for ~340 lbs per day, and that plant material would be largely composted or otherwise processed for delivery onsite.

XX. Wildfire

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:				
a. Substantially impair an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ENVIRONMENTAL SETTING

As discussed in Section IX, *Hazards and Hazardous Materials*, the Project Site is not located in a designated Fire Hazard Severity Zone (CAL FIRE 2020). Additionally, the Project is located approximately 17 miles away from the nearest state responsibility area boundary. The Project is located in a predominantly agricultural area with substantial areas of irrigated farmland, further reducing risk of fires.

a) Substantially impair an adopted emergency response plan or emergency evacuation plan?

No Impact. As discussed in Section IX, *Hazards and Hazardous Materials*, the Project would have a minimal impact on emergency response and evacuation routing. Project construction and operation would contribute nominally to existing traffic along SR 33 and SR 180, and would not interfere with emergency response and evacuation along this roadway (see Section XVII, *Transportation*). Therefore, impacts to emergency response and evacuation in the result of a wildfire would be less than significant.

-
- b) **Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?**

No Impact. The Project Site is located over 17 miles away from the nearest state responsibility area boundary and is not located in a designated Fire Hazard Severity Zone. Therefore, wildfire risks are considered negligible, and no impact would occur.

- c) **Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?**

No Impact. As discussed in Section XIX, *Utilities and Service Systems*, the only utility infrastructure to be expanded as a result of the Project are those for extension of new water and wastewater sewer lines to the Project Site, with minor additional improvements (e.g., extension and connection) of electrical and telecommunication lines to exclusively serve proposed development. These would be subject to standard development/permitting requirements, would not require the regional increase of associated facilities, and would not be expected to exacerbate fire risks or result in temporary or ongoing impacts to the environment. Therefore, there would be no impact.

- d) **Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?**

No Impact. The Project Site is not located within a state responsibility area boundary and is not located in a designated Fire Hazard Severity Zone. Therefore, there is very low probability of exposure to significant risk as a result of runoff, post-fire instability, or drainage changes resulting from fires, and there would be no impacts to people or structures.

XXI. Mandatory Findings of Significance

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of rare or endangered plants or animals, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DISCUSSION

- a) **Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of rare or endangered plants or animals, or eliminate important examples of the major periods of California history or prehistory?**

Less than Significant with Mitigation. As described in Section IV, *Biological Resources*, the Project Site is located within an area with moderate potential to contain sensitive wildlife species. Impacts to the environment have been determined to be less than significant with implementation of **MM BIO-1**. Sections V, *Cultural Resources* and XVIII, *Tribal Cultural Resources*, describe the potential for cultural or significant paleontological resources to be encountered due to the proposed Project; however, due to the low potential for unanticipated onsite resources, adherence to California Health and Safety Code Section 7050.5 and

California Public Resources Code Sections 5097.94 and 5079.98 would address impacts associated with cultural resources and ensure impacts to California history or prehistory would be less than significant.

- b) **Does the project have impacts that are individually limited, but cumulatively considerable? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects; and**
- c) **Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?**

Less than Significant. Based on the analysis provided in this IS/MND and cumulative projects anticipated by the City, the proposed Project would not result in any significant impacts on an individual or cumulative level and would not result in any significant adverse effects on human beings. The Project would provide a beneficial impact for employment within the City. The Project would not impact the visual aesthetics of any nearby projects and would be consistent in nature and use with the surrounding agricultural environment.

Cumulative construction impacts related to the proposed Project and other development projects has the potential to result in cumulative air quality, GHG, noise, and temporary traffic safety and circulation impacts. There is the potential for future projects (existing or not yet existing) in the vicinity of the proposed site to undergo construction simultaneously with the Project, resulting in temporarily adverse impacts; however, such impacts would be short-term due to the temporary nature of construction. Cumulative construction impacts therefore would be temporarily adverse but less than significant.

Operation of the Project in combination with cumulative projects would incrementally increase demand on City public services and utilities, as well as surface and groundwater supplies; however, as described in Sections XV, *Public Services* and Section XIX, *Utilities and Service Systems*, the Project would result in manageable increases in demand for regional services or utility supplies due to provision of services onsite or due to the negligible increase in need for additional City infrastructure beyond what is proposed under the Project. Regarding potential cumulative impacts of other pending or approved projects, the City supports a variety of commercial and industrial land uses where changes to or expansion of existing uses or potential new future proposed uses may affect long-term utility and service system demand over time. However, adopted City policy for and required review of additional pending development projects, including cannabis projects decrease the potential for cumulative impacts. In addition, the potential for additional cannabis projects in the vicinity is limited by both state and City regulations. As discussed in Section XI, *Land Use and Planning*, and addressed via the General Plan, the City includes a Commercial Cannabis Overlay District that encourages additional cannabis businesses within the City limits that will increase the potential for cannabis-related projects and potential cumulative associated impacts. For instance, as of December 15, 2020, the Mendota Planning Commission adopted Resolution No. PC 18-01, which authorized the renovation of an existing cold storage packing facility into an industrial center for cannabis cultivation and processing on a parcel located approximately 0.75 miles to the southwest of the Project Site. Cumulatively, while additional cannabis cultivation projects or other agriculturally related projects would contribute to the potential for increased services and utilities, construction and operation of the Project would not be considered cumulatively considerable due to adherence to the local GSP, capacity of the existing utilities to accommodate the project, and application of mitigation measures.

Operation of the Project would not individually, nor in combination with cumulative projects, result in significant impacts to operations and safety along SR 180 or other local City or County roads (see Section XVII, *Transportation*). Therefore, cumulative impacts and impacts to human beings from the proposed Project are considered less than significant.

REQUIRED MITIGATION MEASURES

MM BIO-1 would apply.

References

- Branum, D., R. Chen, and C. Wills. 2016. "Earthquake Shaking Potential for California."
- CalFire. 2020. "FHSZ Viewer." 2020. <https://egis.fire.ca.gov/FHSZ/>.
- California Air Resources Board (CARB). 2020. "GHG Current California Emission Inventory Data." 2020. <http://www.arb.ca.gov/ghg-inventory-data>.
- California Department of Conservation. 2020. "Fault Activity Map of California." 2020. <https://maps.conservation.ca.gov/cgs/fam/>.
- California Department of Transportation (Caltrans). 1998. "Technical Noise Supplement." <http://www.dot.ca.gov/hq/env/noise/pub/Technical%20Noise%20Supplement.pdf>.
- California State Parks. 2020a. "California Historic Landmarks by County - Fresno." 2020. https://ohp.parks.ca.gov/?page_id=21418.
- . 2020b. "California Historical Resources." 2020. <https://ohp.parks.ca.gov/ListedResources/?view=county&criteria=10>.
- CalRecycle. 2020. "Estimated Solid Waste Generation Rates." 2020. <https://www2.calrecycle.ca.gov/WasteCharacterization/General/Rates#:~:text=Solid%20waste%20generation%20rates%20estimate,or%20disposed%20in%20a%20landfill>.
- Caltrans. 2013a. "Technical Noise Supplement to the Traffic Noise Analysis Protocol." California Department of Transportation. 2013. http://www.dot.ca.gov/hq/env/noise/pub/TeNS_Sept_2013B.pdf.
- . 2013b. "Transportation and Construction Vibration Guidance Manual." September 2013. <https://www.placer.ca.gov/DocumentCenter/View/8273/Caltrans-2013-Transportation-and-Construction-Vibration-Guidance-Manual-PDF>.
- CARB. 2014. "Assembly Bill 32 - California Global Warming Solutions Act." 2014. <http://www.arb.ca.gov/cc/ab32/ab32.htm>.
- . 2016. "California's Greenhouse Gas Emission Inventory." 2016. <http://www.arb.ca.gov/cc/inventory/data/data.htm>.
- CDC. 2020. "Mineral Land Classification." 2020. <https://maps.conservation.ca.gov/cgs/informationwarehouse/mlc/>.
- City of Mendota. 2009. "City of Mendota General Plan Update 2005-2025." <http://ci.mendota.ca.us/wp-content/uploads/2014/06/City-of-Mendota-General-Plan-Update.pdf>.
- . 2020. "Police Department." 2020. <http://ci.mendota.ca.us/police-department/#1521561856286-03c2ff1c-2aac>.
- County of Fresno. 2000a. "County of Fresno General Plan Update 2000." <https://www.co.fresno.ca.us/home/showdocument?id=13736>.
- . 2000b. "County of Fresno General Plan EIR - Seismic and Geologic Hazards." http://www2.co.fresno.ca.us/4510/4360/General_Plan/GP_Final_EIR/EIR/seisgeo413.pdf.
- . 2020. "Groundwater Sustainability Plan County of Fresno GSA." file:///C:/Users/GINA~1.SAW/AppData/Local/Temp/Fresno%20County%20Management%20Area%20A&B%20GSP_FINAL_withAppendices.pdf.
- County of Yolo. 2009a. "2030 Countywide General Plan EIR." <https://www.yolocounty.org/general-government/general-government-departments/county-administrator/general-plan/final-environmental-impact-report-eir>.
- . 2009b. "2030 Countywide General Plan."
- Denver Environmental Health. 2016. "Frequently Asked Questions - Nuisance Odor Provisions Update."
- Eric Watkins. 2020. Phone Call with Fire District.
- FCFPD. 2020. "District Operations." 2020. <https://www.fresnocountyfire.org/stations-and-functions/#district-operations>.
- FEMA. 2020. "Flood Zones." 2020. <https://floodpartners.com/flood-zones/>.

-
- Fresno Council of Governments. 2017. "Fresno County 2050 Growth Projections." https://www.fresnocog.org/wp-content/uploads/publications/RTP/2018_RTP/Fresno_COG_2050_Projections_Final_Report_050417.pdf.
- . 2018. "Fresno County Airport Land Use Compatibility Plan." <https://www.fresnocog.org/project/airport-land-use-commission-fresno-county/>.
- Mid Valley Disposal. 2020. "Mid Valley Disposal." 2020. <http://www.midvalleydisposal.com/index.php>.
- National Park Service. 2020. "National Register Database and Research." 2020. <https://www.nps.gov/subjects/nationalregister/database-research.htm>.
- NRCS. 2018. "Web Soil Survey - Yolo County." 2018. <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>.
- . 2020. "Soil Data Access (SDA) Prime and Other Important Farmlands." 2020. https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcseprd1338623.html.
- PG&E. 2019. "Where Your Electricity Comes From." https://www.pge.com/pge_global/common/pdfs/your-account/your-bill/understand-your-bill/bill-inserts/2019/1019-Power-Content-Label.pdf.
- Sergeant Jorge Urbietta. 2020. Phone Call with Police Department.
- SJVAPCD. 2015. "Air Quality Thresholds of Significance - Criteria Pollutants." <http://www.valleyair.org/transportation/0714-GAMAQI-Criteria-Pollutant-Thresholds-of-Significance.pdf>.
- . 2020a. "Air Monitoring." 2020. <http://valleyair.org/aqinfo/air-monitoring.htm>.
- . 2020b. "Air Quality Thresholds of Significance – Toxic Air Contaminants." <http://www.valleyair.org/transportation/0714-GAMAQI-TACs-Thresholds-of-Significance.pdf>.
- . 2020c. "Ambient Air Quality Standards & Valley Attainment Status." 2020. <http://www.valleyair.org/aqinfo/attainment.htm>.
- . 2020d. "Current District Rules and Regulations." 2020. <http://www.valleyair.org/rules/1ruleslist.htm>.
- . 2020e. "District Advisory: Cannabis Operations." 2020. <http://www.valleyair.org/busind/pto/cannabis-operations.htm>.
- SWRCB. 2019. "Cannabis Cultivation Policy." https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/final_cannabis_policy_with_attach_a.pdf.
- U.S. Census Bureau. 2020. "U.S. Census Bureau Quickfacts - Fresno County - Mendota - Employment." 2020. <https://data.census.gov/cedsci/all?q=Mendota%20city,%20California%20Employment&g=0500000US06019>.
- USDA Natural Resources Conservation Service [NRCS]. 2020. "Web Soil Survey." 2020. <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>.
- Western Regional Climate Center. 2020. "Western Regional Climate Center - Prevailing Wind Direction - California - Station - Fresno Air Terminal, CA." 2020. https://wrcc.dri.edu/Climate/comp_table_show.php?stype=wind_dir_avg.

Responses to Comments on the Draft Initial Study Mitigated Negative Declaration

This section includes comments received during the circulation of the Draft Initial Study Mitigated Negative Declaration (IS/MND) prepared for the Mendota Valley Agricultural Holdings Project (Project).

The Draft IS/MND was circulated for a 30-day public review period that began on November 13, 2020 and ended on December 14, 2020. The City of Mendota received two comment letters on the Draft IS/MND during this period. The commenters and the page number on which each commenter's letter appear are listed below.

Letter No. and Commenter

Comment Set/ Number of Comments		Name of Commenter	Date Received
1	1.1 – 1.2	Fresno County Fire Protection District	November 16, 2020
2	2.1 – 2.3	California Department of Food & Agriculture (CDFA)	December 8, 2020

The comment letters and responses follow. The comment letters have been numbered sequentially and each separate issue raised by the commenter, if more than one, has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (Response 1.1, for example, indicates that the response is for the first issue raised in comment Letter 1). Edits made to the IS/MND between the Draft and Final Draft manifest in a ~~strikeout~~ and underline format to identify removed and added text, respectively.



FRESNO COUNTY FIRE

PROTECTION DISTRICT

210 South Academy Avenue
Sanger, California 93657
Telephone: (559) 493-4300
Fax: (559) 875-7451
www.fresnocountyfire.org

November 16, 2020

Jeffrey O’Neal, AICP – City Planner
City of Mendota
c/o Provost & Pritchard Consulting Group
286 W. Cromwell Ave
Fresno, CA 93711-6162

Transmitted by Email to: joneal@ppeng.com

RE: **Application Reference #: AP#20-23**
Name of Applicant: VALLEY AG HOLDINGS
Address of Project: W. BELMONT AVE
City, State & Zip of Project: MENDOTA, CA

Fresno County Fire Protection District (FCFPD) has received notice of the project and will continue to review the project for its potential impacts on the FCFPD.

Application Types

- | | |
|---|--|
| Site Plan Review (SPR) | Initial Study Application (ISA) |
| Director Review Application (DRA) | Variance Application (VA) |
| Conditional Use Permit (CUP) | General Plan Application (GPA) |
| Tentative Parcel Map (TPM, TPMW) | Tentative Tract Map (TTM) |
| Pre-Application for Certificate of Compliance (PCOC) | |

1.1 All application types stated above **SHALL** comply with California Code of Regulations Title 24 – Fire Code. Prior to receiving your FCFPD conditions of approval for your project, you must submit construction plans to the County of Fresno Public Works and Planning and FCFPD for review. It is the **Applicants Responsibility** to deliver a minimum of **two (2)** sets of plans to the FCFPD.

Your Project/Development may be required to annex into the into Community Facilities District No. 2010-01 of the Fresno County Fire Protection District. Project/Developments included: Single Family Residential (SFR), SFR Properties subdivided into three (3) or more housing units, Multi-Family Residential (MFR) Property, Commercial Property, Industrial Property, and/or Office Property.

Project/Developments will be subject to the requirements of the current Fire Code and Building Code when a building permit or certificate of occupancy is sought.

1.1 Before plans are submitted to the Fresno County Fire Protection District, please visit our website at www.fresnocountyfire.org and complete the Fire Permit Application to submit with your plans.

Please Note – requirements for your project may include but are not limited to:

Water Flow Requirements
Water Storage Requirements
Fire Pumps
Road Access

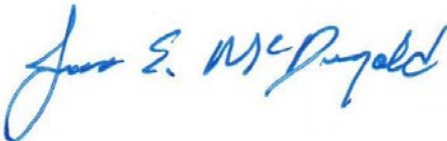
Fire Hydrants
Fire Sprinklers Systems
Fire Alarm Systems
Premises Identification

Please contact the FCFPD at **(559) 493-4359** to schedule an over the counter meeting to receive specific requirements for your project. Failure to schedule an appointment with the FCFPD will affect your ability to obtain final approval for your project.

Sincerely,

MARK A. JOHNSON
District Fire Chief

By



JIM McDOUGALD, DIVISION CHIEF
Fire Prevention

Letter 1

Commenter: Mark A. Johnson, District Fire Chief, Fresno County Fire Protection District (FCFPD)

Date: November 16, 2020

Response 1.1

The commenter states that the Project is required to submit site plans for FCFPD review. The commenter states the Project will be subject to the requirements of the current Fire Code and Building Code when a building permit is sought.

The text on pages 61 and 62 identifies improvement requirements of FCFPD and required adherence to fire codes. The IS/MND notes that FCFPD would review the site plans (e.g. primary/secondary access, turning radii for fire equipment, ensuring access for fire trucks), and that the Project is subject to development requirements relating to fire protection measures. The commenter's input regarding FCFPD review is noted and will be included in decision-maker consideration.



December 08, 2020

Jeffrey O'Neal, City Planner
City of Mendota
643 Quince Street
Mendota, CA 93640
joneal@ppeng.com

Subject: Initial Study/Mitigated Negative Declaration (SCH No. 2020110237) –
Valley Agricultural Holdings Project

Dear Mr. O'Neal:

Thank you for providing the California Department of Food and Agriculture (CDFA) CalCannabis Cultivation Licensing Division (CalCannabis) the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) (SCH No. 20200110237) prepared by the City of Mendota for the proposed Valley Agricultural Holdings Project (Proposed Project).

CDFA has jurisdiction over the issuance of licenses to cultivate, propagate and process commercial cannabis in California. CDFA issues licenses to outdoor, indoor, and mixed-light cannabis cultivators, cannabis nurseries and cannabis processor facilities, where the local jurisdiction authorizes these activities. (Bus. & Prof. Code, § 26012(a)(2).) All commercial cannabis cultivation within California requires a cultivation license from CDFA. For a complete list of all license requirements, including CalCannabis Licensing Program regulations, please visit: https://static.cdfa.ca.gov/MCCP/document/CDFA%20Final%20Regulation%20Text_01162019_Clean.pdf.

CDFA expects to be a Responsible Agency for this project because the project will need to obtain an annual cultivation license from CDFA. In order to ensure that the IS/MND is sufficient for CDFA's needs at that time, CDFA requests that a copy of the IS/MND, revised to respond to the comments provided in this letter, and a signed Notice of Determination be provided to the applicant, so the applicant can include them with the application package it submits to CDFA. This should apply not only to this Proposed Project, but to all future CEQA documents related to cannabis cultivation applications in the City of Mendota.

Comments and Recommendations

CDFA offers the following comments concerning the IS/MND.

Comment 1: Acknowledgement of CDFA Regulations

CDFA appreciates that the IS/MND acknowledges CDFA's role as the state agency for cannabis cultivation licensing and regulation, as defined in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and CDFA regulations related to cannabis cultivation (Bus. & Prof. Code, § 26103(a)). Although the document cites CDFA regulations on certain topics (e.g. energy, waste), the IS/MND's analysis would also benefit from discussion of the additional protections for environmental resources provided by CDFA's regulations. In particular, the impact analysis would be further supported by an explicit identification of the state regulations that reduce the severity of impacts on the following resource topics:

- 2.1
- Aesthetics (See 3 California Code of Regulations § 8304(c); § 8304(g).)
 - Air Quality and Greenhouse Gas Emissions (See § 8102(s); § 8304(e); § 8305; § 8306.)
 - Biological Resources (See § 8102(w); § 8102(dd); § 8216; § 8304(a-c); § 8304(g).)
 - Cultural Resources (See § 8304(d).)
 - Hazards and Hazardous Materials (See § 8102(q); § 8102(aa); § 8106(a)(3); § 8304(f); § 8307.)
 - Hydrology and Water Quality (See § 8102(p); § 8102(v); § 8102(w); § 8102(dd); § 8107(b); § 8216; § 8304(a and b); § 8307.)
 - Noise (See § 8304(e); § 8306.)
 - Utilities and Service Systems (See § 8102(s); § 8108; § 8308.)
 - Energy (See §8102(s); § 8305; § 8306.)
 - Cumulative Impacts (related to the above topics).

Comment 2: Evaluation of Cumulative Impacts

- 2.2
- It is important for CEQA analysis to consider the cumulative impacts of cannabis cultivation in the City of Mendota. Of particular importance are topics for which the impacts of individual projects may be less than significant, but where individual projects may make a considerable contribution to a significant cumulative impact. These topics include, but are not limited to:

- cumulative impacts from groundwater diversions on the health of the underlying aquifer, including impacts on other users and impacts on stream-related resources connected to the aquifer;
- cumulative impacts related to transportation; and
- cumulative impacts related to air quality and objectionable odors.

2.2

The IS/MND would be improved by acknowledging and analyzing the potential for cumulative impacts resulting from the Proposed Project coupled with other cannabis cultivation projects being processed by the City, and any other reasonably foreseeable projects in Mendota that could contribute to cumulative impacts similar to those of the Proposed Project.

Comment 3: Project-specific Plans and Supporting Documentation

The IS/MND references several project-specific plans and studies, including a Biological Study, Phase I Archaeological Survey; Phase I Environmental Site Assessment; Transportation Analysis Memo, Water Supply Feasibility Study, Odor Nuisance Review; Odor Monitoring Plan, Nitrogen Management Plan, Safety Plan, Water Supply Source Plan, Sewage Disposal Site Plan, and Site Security Plan. To ensure that CDFA has supporting documentation for the IS/MND, CDFA requests that the City advise applicants to provide copies of all project-specific plans and supporting documentation with their state application package for an annual cultivation license to CDFA.

2.3

Conclusion

CDFA appreciates the opportunity to provide comments on the IS/MND for the Proposed Project. If you have any questions about our comments or wish to discuss them, please contact Kevin Ponce, Senior Environmental Scientist Supervisor, at (916) 576-4161 or via e-mail at kevin.ponce@cdfa.ca.gov.

Sincerely,

Lindsay Rains

Digitally signed by Lindsay
Rains
Date: 2020.12.09 07:44:36
-08'00'

Lindsay Rains
Licensing Program Manager

Letter 2

Commenter: Lindsay Rains, Licensing Program Manager, California Department of Food & Agriculture (CDFA)

Date: December 8, 2020

Response 2.1

The commenter states that though the IS/MND acknowledges CDFA's role as the state agency for cannabis cultivation licensing and regulation, the IS/MND analysis would also benefit from discussion of the additional protections for environmental resources provided by CDFA's regulations. Specifically, the commenter states that the impact analysis would be further strengthened with the explicit identification of state regulations that reduce the severity of impacts on the document's resource areas.

As noted by the commenter, the IS/MND accurately reflects CDFA's role in the cannabis licensing and regulatory process. The IS/MND identifies specific CDFA regulations, reference to CDFA compliance, or required project approval through CDFA on pages 1, 35, 50, and 52. With input from the commenter, the IS/MND has been updated to include specific reference to those regulations suggested by the commenter on pages 6, 16, 27, 32, 34, 42, 45, 50, 58, and 78.

Response 2.2

The commenter states that the IS/MND would be improved with additional discussion related to potential cumulative impacts. Specifically, the commenter requests additional analysis related to, but not limited to: cumulative acts from groundwater diversions on the health of the underlying aquifer, including impacts on other users and impacts on stream-related resources connected to the aquifer; cumulative impacts related to transportation; and cumulative impacts related to air quality and objectionable odors. The commenter requests additional discussion that considers other cannabis projects or other foreseeable projects in the City.

The IS/MND identifies and discusses potential impacts to groundwater, surface water and air quality, as well as potential cumulative impacts. The text on page 84 of the IS/MND is primarily focused on discussion of cumulative impacts, and includes consideration for air quality, GHG, noise, safety, and circulation, including the potential for future, currently unknown, projects. The IS/MND text on page 50 additionally includes consideration for regional services and utility supplies, and the utilities and hydrology analysis include consideration for cumulative impacts to surface waters in the Fresno Slough from neighboring properties (page 49) and developed areas within proximity to the Slough (page 52). Additionally, the IS/MND considers impacts on City water supply from three production groundwater wells and two emergency backup wells north of the City. The project, in accordance with the City's Lease Agreement with B&B Ranch for provision of groundwater to the City, is subject to the adopted Groundwater Sustainability Plan which addresses drought and/or water supply conditions. However, to more fully address the commenter's concerns, additional analysis has been included on page 84 of the IS/MND to expand on the potential impacts that can occur to groundwater supplies and the underlying aquifer if additional cumulative projects occur in the vicinity. For instance, since the Public Draft IS/MND was made available during public review, a resolution (Resolution No. PC 18-01) was adopted by the City Planning Commission on December 15, 2020, to authorize the renovation of an existing cold storage packing facility located approximately 0.75 miles to the southwest of the Project Site into an industrial center for cannabis cultivation and processing. This additional approved project would incrementally increase the potential for cumulative impacts (e.g. odor, water, electricity

Mendota Valley Agricultural Holdings Project

Responses to Comments on the Draft Initial Study Mitigated Negative Declaration

demand). However, this additional cumulative project would be located in an existing cold storage packing facility with a long history of operation and associated impacts due to electric and water demand, odor and noise generation, etc. Such potential increases in cumulative impacts would therefore be largely consistent with the historic environmental baseline in the City and would be further limited due to City and utility service operator regulatory requirements. These would include state regulations such as those of CDFA, the Bureau of Cannabis Control, State Water Resources Control Board, and the California Department of Fish and Wildlife, among others as stated on pages 1 and 2 of the IS/MND, in addition to conditions imposed by the City of Mendota. Ultimately, the scale of the Project and required regulatory requirements for Project approval limit the potential for cumulative impacts and would continue to be less than significant. However, additional discussion has been added to pages 51, 52, and 86 of the IS/MND to address such potential concerns.

Response 2.3

The commenter states that the City should advise the applicant to provide copies of all project-specific plans and studies (appendices to the IS/MND) and include this supporting documentation with state application packages for an annual cultivation license to CDFA.

The commenter’s input regarding supporting documentation for CDFA annual cultivation licenses from the applicant is noted and will be included in decision-maker consideration.

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

**A RESOLUTION OF THE PLANNING COMMISSION RESOLUTION NO. PC 20-05
OF THE CITY OF MENDOTA ADOPTING A MITIGA-
TED NEGATIVE DECLARATION REGARDING
APPLICATION NO. 20-23, THE VALLEY AGRICUL-
TURAL HOLDINGS, LLC COMMERCIAL CANNABIS
PROJECT (PORTION OF APN 013-030-68ST)**

WHEREAS, at a special meeting on December 29, 2020 the Mendota Planning Commission considered Application No. 20-23, submitted by Valley Agricultural Holdings, LLC, said application proposing to develop approximately 59 acres of Assessor's Parcel No. 013-030-68ST with a commercial cannabis facility; and

WHEREAS, to facilitate said development, the applicant has requested that the City undertake various processes, said processes to include:

1. An amendment to the General Plan Land Use Designation of the Project Site from Public/Quasi-Public Facilities.
2. An 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).
3. A conditional use permit.
4. A development agreement; and

WHEREAS, the requested processes and the resulting physical development of the Project Site, individually and collectively, constitute 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, division 6, section 15000, *et seq.*; and

WHEREAS, pursuant to Public Resources Code section 21080.3.1, on January 23, 2020 the City provided notice of the Project to the Santa Rosa Rancheria Tachi Yokut Tribe, and received no response therefrom; and

WHEREAS, the City has prepared an initial study pursuant to the provisions of the CEQA and made a preliminary determination that approval of the Project, with mitigation incorporated, would not result in any significant impacts to the environment, and accordingly adoption of a mitigated negative declaration would be appropriate; and

WHEREAS, on November 13, 2020 the City published a notice of intent to adopt a mitigated negative declaration in *The Business Journal*, said notice indicating that the initial study and proposed mitigated negative declaration (IS/MND) would be available for public review starting on November 13, 2020 and ending on December 14, 2020; and

WHEREAS, on November 13, 2020 the City filed the IS/MND and accompanying support documents with the State Clearinghouse pursuant to Governor's Executive

Orders N-80-20 and N-54-20, which in pertinent part conditionally suspend CEQA's local filing requirements; and

WHEREAS, the IS/MND was assigned the State Clearinghouse Number 2020110237; and

WHEREAS, on November 13, 2020 the City also provided copies of said IS/MND to various local entities for review; and

WHEREAS, comments were received from the Fresno County Fire Department/CAL FIRE, the California Department of Food & Agriculture, and the California Department of Fish and Wildlife; and

WHEREAS, comments received from the commenting agencies have been incorporated into the IS/MND and Mitigation Monitoring & Reporting Program; and

WHEREAS, incorporation of said comments served only to clarify statements and information already contained within the IS/MND and does not constitute new information, new mitigation, new potentially significant effects, or other change in circumstances of the Project that would necessitate recirculation of the IS/MND pursuant to CEQA Guidelines section 15073.5; and

WHEREAS, the Planning Commission finds that it cannot be fairly argued, nor is there any substantial evidence in the record, that the project could have a significant effect on the environment, either directly or indirectly; and

WHEREAS, based upon the initial study and mitigated negative declaration and the record, the project will not individually or cumulatively have an adverse impact on environmental resources; and

WHEREAS, the City of Mendota is the custodian of the documents and other materials that constitute the record of the proceedings upon which the Planning Commission's recommendation is based, and Mendota City Hall, 643 Quince Street, Mendota, CA is the location of this record; and

NOW, THEREFORE BE IT RESOLVED that the Mendota Planning Commission takes the following actions:

1. Finds that the initial study and mitigated negative declaration prepared for the project comply with provisions of the California Environmental Quality Act and the CEQA Guidelines, and affirm that, with incorporation of mitigation, the project will not have a significant effect on the environment; and
2. Adopts the mitigated negative declaration and mitigation monitoring & reporting program as contained in Exhibit "A" Exhibit "B" hereto, respectively; and
3. Directs the City Manager or his designee to file a notice of determination with the Fresno County Clerk within five (5) business days following approval of the Project.

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 29th day of December 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit "A"
Resolution No. PC 20-05
MITIGATED NEGATIVE DECLARATION

LEAD AGENCY: City of Mendota
643 Quince Street
Mendota, CA 93640

PROJECT TITLE: Application No. 20-23 – Valley Agricultural Holdings, LLC Commercial Cannabis Project

STATE CLEARINGHOUSE: 2020110237

ADDRESS/LOCATION: No address; Project Site is a 59-acre portion of Fresno County APN 013-030-68ST, located approximately 0.25-mile east of Belmont Avenue and 0.5-mile north of Guillan Park Drive.

PROJECT APPLICANT: Valley Agricultural Holdings, LLC

PROJECT DESCRIPTION: The Project proposes to develop a 59-acre commercial cannabis facility including cultivation, processing, and distribution. The Project includes a general plan amendment, rezoning, conditional use permit, and a development agreement along with various State approvals for cannabis licensing.

CONTACT PERSON: Cristian Gonzalez, City Manager; 559.655.3291

The City Council of the City of Mendota has reviewed the proposed Project described herein along with the initial study prepared pursuant to the California Environmental Quality Act (CEQA), and has found that this Project will have no significant impact on the environment for the following reasons:

1. The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.
2. The project does not have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
3. The project does not have possible environmental effects which are individually limited but cumulatively considerable; "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.
4. The environmental effects of a project will not cause substantial adverse effects on human beings, either directly or indirectly.
5. Mitigation measures were, were not made a condition of the approval of the project.

On December 29, 2020, based upon a recommendation from staff, the Mendota Planning Commission adopted Resolution No. PC 20-05, determining that with mitigation the above Project would have no significant effect on the environment. Copies of the documents relating to the Project, including the initial study, may be examined by interested parties at Mendota City Hall, 643 Quince Street, Mendota, CA 93640.

Dated: December 29, 2020

Attest: _____
Hon. Juan Luna, Chair

**MENDOTA VALLEY AGRICULTURAL
HOLDINGS PROJECT**

**MITIGATION MONITORING
AND REPORTING PROGRAM**

PURPOSE

This section of the Final Initial Study/Mitigated Negative Declaration (IS/MND) provides the Mitigation Monitoring and Reporting Program (MMRP) that would be used to monitor the implementation of the mitigation measures adopted for the Mendota Valley Agricultural Holdings Project (Project).

INTRODUCTION

The California Environmental Quality Act (CEQA) requires the adoption of feasible mitigation measures to reduce the severity and magnitude of potentially significant environmental impacts associated with development projects. However, simply adopting these measures is not adequate under state law. Lead agencies are also required to adopt a program that will be used to ensure that the mitigation measures are, in fact, implemented. The requirements for mitigation monitoring or reporting are codified in Section 15097 of the State CEQA Guidelines.

The Final IS/MND for the Project identifies project-specific mitigation measures to reduce the potentially significant impacts of the project as proposed. Following adoption of the Final IS/MND and approval of this MMRP by the City of Mendota, the project-specific mitigation measures identified in the Final IS/MND would be implemented and monitored as described in this MMRP.

LIST OF MITIGATION MEASURES

The mitigation measures adopted for the Project are listed in the following table along with the action required, the timing for implementation of each measure, the parties responsible for monitoring the mitigation measure and the parties responsible for implementing the mitigation measure.

MONITORING TABLE

For each mitigation measure, Table 1 identifies 1) the full text of the mitigation measure; 2) the action(s) required by the mitigation measure; 3) applicable timing; and 4) the entity responsible for monitoring the action and verifying compliance.

Exhibit “B”
Resolution No. PC 20-05

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Action Required	Timing	Monitoring Responsibility
Air Quality			
<p>AQ-1: Odor Monitoring Plan (OMP). To reduce potential effects of nuisance odors to the extent feasible, the permit issued for the Project shall have an OMP, subject to approved by the City. The requirements of this mitigation are designed to be flexible, to balance the protection of sensitive resources with active monitoring. The approved OMP shall include, but not be limited to, the following elements to address issues from nuisance odors:</p> <ul style="list-style-type: none"> • The name and telephone number of a designated individual who is responsible for logging in and responding to odor complaints, 24 hours a day, 7 days a week; • Include an enforceable process to require operational changes to mitigate odors in the case that the site generates recurring odor emissions that have been documented to be persistent, intrusive, or pervasive by nearby sensitive receptors, such as the installation of odor control mechanisms on head houses (e.g., filtration systems, HVAC, etc); • Providing property owners and residents of property within a 0.25-mile radius of the cannabis facility with the contact information of the individual responsible for responding to odor complaints; • Policies and procedures describing the actions to be taken when an odor complaint is received, including the training provided to the staff on how to respond; • Description of potential methods for reducing odors; • Require the designated individual to report all odor complaints to the appropriate City department within a reasonable time frame and to record and report the steps they took to resolve the issue, including a record-keeping system to track these actions; • Contingency measures to curtail odor emissions in the event of a potential continuous public nuisance; and • Description of agricultural practices that can be shown to be effective in controlling odors (e.g., changes in cultivation practices). 	<ul style="list-style-type: none"> • The applicant shall prepare and submit an Odor Monitoring Plan (OMP) to the City, adhering to the mitigation’s requirements. 	<p>Prior to issuance of the building permit.</p> <p>During project operation.</p>	<p>City shall determine the site adheres to the mitigation measure and ensures continued compliance.</p>
Biological Resources			

Exhibit “B”
Resolution No. PC 20-05

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Action Required	Timing	Monitoring Responsibility
<p>BIO-1: Pre-construction Survey, Worker Awareness Training, and Avoidance Measures. The Project Site contains habitat that can be used by CDFW Species of Special Concern. Surveys prior to initiation of construction-related activities shall be undertaken on the Project Site to determine the presence/ absence of the following species according to accepted agency protocols and the types of actions undertaken to avoid impacts to CDFW Species of Special Concern consistent with CDFW requirements:</p> <ul style="list-style-type: none"> • Burrowing owl <ul style="list-style-type: none"> ○ Adhere to Burrowing Owl Survey Protocol and Mitigation Guidelines; if onsite, exclusion measures, one-way trap use if relocating outside of nesting season • Swainson’s hawk <ul style="list-style-type: none"> ○ Adhere to Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures; determine presence onsite, protect foraging habitat, provide habitat management land as necessary • Giant garter snake <ul style="list-style-type: none"> ○ Adhere to Standard Avoidance and Minimization Measures During Construction Activities for the Giant Garter Snake; determine presence, use silt fencing, protective mats, prevent runoff, avoid and/or minimize construction within 200 feet of banks of associated aquatic habitat • Western pond turtle <ul style="list-style-type: none"> ○ Determine presence within 100 feet of suitable aquatic habitat; if species is present, contact CDFW and cease work within 100 feet of suitable aquatic habitat, determine action within 14 days, which may include relocation by a qualified biological monitor • American badger <ul style="list-style-type: none"> ○ Identify any badger holes or trails, determine setback from location and determine action for avoidance, which may include relocation by a qualified biological monitor and/or refining the project schedule • San Joaquin kit fox <ul style="list-style-type: none"> ○ Adhere to Standard Kit Fox CEQA Mitigation Measures; determination of presence or evidence of species onsite, include maximum 25 mph speed limit during construction, remove food-related 	<ul style="list-style-type: none"> • Pre-construction surveys and worker awareness training shall be conducted prior to the start of Project Site soil disturbance. • Avoidance measures determined during the pre-construction surveys shall be adhered to during Project implementation, in accordance with accepted CDFW and associated agency protocols. 	<p>Prior to start of Project Site soil disturbance.</p>	<p>The City shall monitor results of the pre-construction surveys, review the required avoidance measures, coordinate with CDFW and the applicant, and obtain evidence of the worker awareness training.</p>

Exhibit "B"
Resolution No. PC 20-05

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Action Required	Timing	Monitoring Responsibility
<p>trash from project site, cease construction if species discovered onsite and contact CDFW, determine action within 14 days, which may include obtaining appropriate federal and state permits</p> <ul style="list-style-type: none"> • Blunt-nosed leopard lizard <ul style="list-style-type: none"> ○ Determine evidence onsite, limit construction activities near sensitive habitat for the blunt-nosed leopard lizard between early November through March; if construction scheduled for this time, include additional survey within 7 days of construction to determine presence and a qualified biological monitor shall thoroughly search for and capture all individuals found in or immediately adjacent to potentially disturbed areas for relocation • Fresno kangaroo rat <ul style="list-style-type: none"> ○ Adhere to CDFW Approved Survey Methodologies for Sensitive Species: Fresno Kangaroo Rat; determine evidence onsite, include additional surveys as applicable during active period (April through June), establish protection measures, which may include habitat management, setbacks, or trapping and relocation as determined by a qualified biological monitor • Nesting birds <p>Surveys shall cover areas of suitable habitat as defined in the Biological Resources Technical Report (Appendix H). In the event that special-status species are identified within the proposed basin site, the following would occur: 1) the appropriate agencies shall be notified; 2) the construction site shall be monitored by a qualified biologist who oversees all construction activities affecting sensitive habitat; 3) the site shall be relocated, if necessary; and/or 4) non-disturbance buffers shall be implemented. Pre-construction surveys shall conform to the appropriate CDFW and/or USFWS-approved survey and monitoring protocols and guidelines for protection of threatened and endangered species. Contractor education regarding sensitive species that have the potential to occur on and adjacent to the site shall also be conducted. Results of these surveys, avoidance measures, and worker awareness training shall be reported to the City. As indicated above, coordination with CDFW regarding species-specific mitigation to ensure</p>			

Exhibit "B"
Resolution No. PC 20-05

Table 1. Mitigation Monitoring and Reporting Program

Mitigation Measure	Action Required	Timing	Monitoring Responsibility
accordance with accepted agency protocols shall continue throughout the Project approval and construction process.			

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

**A RESOLUTION OF THE PLANNING COMMISSION RESOLUTION NO. PC 20-06
OF THE CITY OF MENDOTA MAKING A DETERMIN-
ATION PURSUANT TO GOVERNMENT CODE SEC-
TION 65402(a) REGARDING DISPOSAL OF REAL
PROPERTY IN THE MATTER OF APPLICATION NO.
20-23, THE VALLEY AGRICULTURAL HOLDINGS, LLC
COMMERCIAL CANNABIS PROJECT (PORTION OF
APN 013-030-68ST)**

WHEREAS, on or around October 22, 2019, the City of Mendota (City) entered into a purchase and sale agreement with Valley Agricultural Holdings, LLC and The Xiom Group regarding the conveyance of a 59-acre portion of Assessor's Parcel No. 013-030-68ST, owned in fee by the City, to Valley Agricultural Holdings, LLC; and

WHEREAS, Government Code (GC) section 65402(a) states in pertinent part: *"If a general plan...has been adopted, no real property shall be disposed of...if the general plan applies thereto, until the location, purpose, and extent or such...disposition...[has] been submitted to and reported upon by the planning agency as to conformity with said adopted general plan."*

WHEREAS, the City of Mendota General Plan Update 2005-2025 (General Plan) does not contain discussion, goals, or policies related to disposal of real property; and

WHEREAS, staff has proposed, and the Planning Commission has concurred, that in this instance a determination regarding conformity may therefore be predicated upon the proposed use of the site following its conveyance; and

WHEREAS, the Planning Commission has examined applicable General Plan polices and finds that the disposal of property as proposed will further the following policies, the evidence therefor contained within the record:

LU-2.2. The City shall monitor job opportunities in the City and surrounding areas, and promote patterns of development that allow for expanded job growth and job opportunities for Mendota's residents.

LU-8.2. The City shall facilitate economic development by designating sufficient land for potential industrial expansion.

LU-11.4. The City shall seek to maintain its agricultural heritage, while increasing and diversifying its residential, commercial, and industrial base.

LU-11.5. The City should pursue the development of agricultural related industry (e.g., agricultural processing facilities) and where feasible and desirable, the City

shall identify and develop infrastructure as needed for agricultural related industries.

NOW, THEREFORE, BE IT RESOLVED that the Mendota Planning Commission determines that, pursuant to Government Code section 65402(a), the disposal of real property as described in the purchase and sale agreement approved October 22, 2019 and incorporated herein as Exhibit "A" conforms to the City of Mendota General Plan Update 2005-2025.

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 29th day of December 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

EXHIBIT "A"
RESOLUTION NO. PC 20-06

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Joint Escrow Instructions (this "*Agreement*"), dated as of October 22, 2019 (the "*Effective Date*"), is by and between Valley Agricultural Holdings, LLC, a California limited liability company (the "*Buyer*"), and The City of Mendota, a Municipal Corporation (the "*Seller*"), and constitutes an agreement for the purchase and sale of real property and joint escrow instructions directed to Orange Coast Title Company (as "*Escrow Holder*") to establish an escrow (the "*Escrow*") to accommodate the transaction contemplated hereby. The Buyer and Seller shall collectively be referred to as the "*Parties*" and individually as the "*Party*".

RECITALS:

A. Seller is the fee owner of approximately 59 acres of certain unimproved real property located in the City of Mendota ("*City*"), Fresno County (the "*County*"), California, and as depicted on Exhibit "A" attached hereto and incorporated herein by this reference (the "*Land*"). Prior to the Close of Escrow, as defined in Section 4.b below, a legal description of the Land will be attached as Exhibit "C" to this Agreement and initialed by the Parties constituting their approval and acceptance of same. The Land shall be subdivided into two parcels, one consisting of 35 acres and one of 24 acres, and the legal description for the two parcels will be attached as Exhibit "B" to this Agreement.

B. For purposes of this Agreement, the term "*Property*" shall consist of a fee interest in the Land depicted on Exhibit "A" and described on Exhibit "C" attached hereto, and all of Seller's right, title and interest, if any, in and to (i) any rights and appurtenances pertaining to the and including all privileges, easements, rights of way, and any mineral and water rights pertaining to the Land, (ii) all improvements thereon, (iii) any and all warranties and guaranties of contractors relating to work performed on the Land, (iv) any and all licenses, permits and approvals issued by governmental authorities relating to the use, maintenance, occupancy or operation of the Land, and (v) all development rights and entitlements applicable to the Land, including all rights to reimbursements or credits from any governmental or quasi-governmental agency related to the ownership and development of the Land.

C. As a condition to the sale of the Property and the Close of Escrow, as defined in Section 4.b below, Seller requires that Buyer develop plans and specifications for the Property's development that are satisfactory to Seller and that Buyer and Seller enter into an agreement for such development, as more particularly described in Section 4.f of this Agreement.

D. Buyer wishes to purchase the Property from Seller, and Seller wishes to sell the Property to Buyer, under the terms and conditions provided for herein.

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

EXHIBIT "A"
RESOLUTION NO. PC 20-06

1. **Purchase and Sale.** Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and conditions hereinafter set forth.

2. **Purchase Price.** The "**Purchase Price**" for the Property shall be One Million (\$1,00,000.00 USD), payable all in cash at the Close of Escrow as described in Section 4.b below.

3. **Payment of Purchase Price.**

a. Not later than 5:00 PM (Pacific Time) on the date which is three (3) business days after the Effective Date, Buyer shall deposit into the Escrow: (A) the amount of One Hundred Thousand Dollars (\$100,000.00 USD) by confirmed wire transfer of immediately available federal funds (the "**Deposit**"). Upon the expiration of the Contingency Period the Deposit shall be fully credited to the Purchase Price, except upon a termination of this Agreement following a default by Seller or the failure of Seller to deliver insurable title in accordance with the terms of this Agreement.

b. Contemporaneously with the execution and delivery of this Agreement to Escrow Holder, Buyer has paid to Seller as further consideration for this Agreement, in cash, the sum of One Hundred Dollars (\$100.00 USD) (the "**Independent Consideration**"), in addition to the Deposit and the Purchase Price and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Seller and is non-refundable under any circumstances.

c. In the event of a termination of this Agreement by Seller due to a default by Buyer with respect to Buyer's obligations under this Agreement, the Deposit shall constitute the liquidated damages of Seller pursuant to Section 16.b below.

d. The balance of the Purchase Price, together with Buyer's share of costs to be paid and pro-rations to be made pursuant to Section 13 and Section 14 of this Agreement, shall be deposited by Buyer into the Escrow by confirmed wire transfer of immediately available federal funds, no later than 5:00 P.M. on the last business day before the Close of Escrow and, once the Grant Deed has been recorded and Seller's costs and pro-rations hereunder have been deducted, the remainder shall be delivered to Seller by Escrow Holder at the Close of Escrow.

3.1. **Access Rights.** By entering into this Agreement Seller acknowledges and agrees that it will be necessary for it to provide to Buyer, through land dedications and/or access easements, certain City-controlled properties adjacent to the Property for Buyer's use for vehicular and pedestrian access and utility services to and from the Property (the "**Access Rights**"). Accordingly, Seller shall cooperate and coordinate with Buyer in good faith to facilitate such land dedications and grants of easement, to be determined at Seller's sole and absolute discretion, prior to the Close of Escrow, as necessary and required, to ensure Buyer is granted reasonable Access Rights to the Property. Buyer and Seller further agree that the Purchase Price, as defined in Section 2, will not increase as a result of any City land dedication(s) or grants of easement providing Buyer said access rights.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

3.2. Water Availability. By entering into this Agreement Seller acknowledges and agrees that Buyer's access to a continuous water source is instrumental in the development of the proposed project, with said project to be more fully described in the Development Agreement discussed in Section 4.f below, and, as such, sufficient water availability is a material term in Buyer's purchasing the Property and closing the Escrow. To the extent not prohibited by law or contract, Seller agrees to fully cooperate with Buyer to assist in Buyer's securing any and all necessary water rights, including, but not limited to (i) subsurface water rights existing below the Property, and (2) if required, assisting Buyer in obtaining access to a continuous off-Property water source within Seller's jurisdiction and control.

4. Opening and Close of Escrow.

a. For the purposes of this Agreement, the "*Opening of Escrow*" shall mean that date which is one (1) business day after Escrow Holder has received fully executed counterparts of this Agreement from both Buyer and Seller. Immediately upon the Opening of Escrow, Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable and customary supplemental instructions that may reasonably be requested by Escrow Holder or that may be necessary or convenient to consummate the transaction contemplated hereby; provided, however, that such supplemental instructions shall be consistent with and shall not supersede this Agreement and in all cases this Agreement shall control.

b. For purposes of this Agreement, the "*Close of Escrow*" shall mean the date on which two (2) grant deeds conveying the title to the Property to Buyer, substantially in the form attached hereto as Exhibit "B" (the "*Grant Deed(s)*"), are concurrently recorded in the Official Records of the County. For clarity, one Grant Deed shall reflect Seller's conveyance of approximately 35 acres of the Property to Seller, and one Grant Deed shall reflect Seller's conveyance of approximately 24 acres of the Property to Buyer. The Grant Deeds shall also provide that the transfer tax shall not be of record. As discussed in Section 4.c below, in no event shall Close of Escrow occur prior to the Development Entitlements becoming Effective (the "*Entitlement Date*"). For purposes of this Agreement, Development Entitlements shall be deemed to have become "*Effective*" thirty (30) calendar days after the date that a Notice of Determination ("*NOD*") has been filed and posted by the City following a certification from the City's Planning Commission and/or the City Council that the California Environmental Quality Act ("*CEQA*"), and any and all related City discretionary approvals, have been obtained from the City in connection with the City's consideration of Buyer's application(s) for the Development Entitlements; provided, however, if there is an appeal or legal challenge to the City's approval of the Development Entitlements prior to the expiration of said thirty (30) day appeal period, the Development Entitlements shall become Effective on the date that such appeal or legal challenge is favorably concluded without material adverse impact on the Development Entitlements. Buyer shall provide to Seller any

EXHIBIT "A"
RESOLUTION NO. PC 20-06

notice of legal challenge or appeal of the Development Entitlements or CEQA document certification, promptly following Buyer's receipt thereof.

c. By entering into this Agreement, Seller understands and acknowledges that Buyer intends to diligently seek from the City any and all approvals and development entitlements the City requires for the purpose of constructing and operating a facility for cannabis cultivation and related uses, including the issuance of a Conditional Use Permit (the "*Development Entitlements*"). Development 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. Accordingly, the Close of Escrow shall occur no more than three (3) business days after the Entitlement Date, except with the mutual written agreement of the Parties (the "*Closing Date*").

d. By entering into this agreement, Buyer acknowledges and agrees that Seller will exercise its independent judgment to determine whether granting the Development Entitlements is in the best interests of the City of Mendota and that Seller shall be under no obligation whatsoever to grant the Development Entitlements to Buyer. Seller 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. Consequently, Buyer acknowledges and agrees that, in accordance with Seller's obligations under CEQA and its duty to the citizens of the City of Mendota, Seller may decide not to approve some or all of the 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 Seller to grant the Development Entitlements to Buyer prior to Seller'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.

e. Seller Cooperation. By entering into this agreement Seller acknowledges that Close of Escrow shall only occur after the Development Entitlements are Effective, as discussed on Section 4.c above. To facilitate the Close of Escrow in an expeditious and timely manner, Seller agrees, in its capacity as a public municipality and subject to all applicable laws and the time-frames generally established in the Seller's land use entitlement processes and procedures, to fully and diligently cooperate with Buyer in the efficient processing of development applications and final approval(s) of all Development Entitlements reasonably sought by Buyer. However, nothing herein shall be construed as a warranty by Seller that the Development Entitlements will be issued to Buyer.

f. Development Agreement. By entering into this Agreement, and as a condition to the Close of Escrow, Buyer and Seller shall negotiate and execute a mutually acceptable development agreement (the "*Development Agreement*") that shall provide, among other things: (a) a description of the proposed project to be developed upon the

EXHIBIT "A"
RESOLUTION NO. PC 20-06

Property, (b) specific requirements for the development of the proposed project and its intended use, and (c) certain revenue and fee provisions potentially requested by the City, as applicable and as negotiated by Buyer and Seller (the "*Fees*"), with a portion of the Fees being paid by Buyer to Seller within thirty (30) business days after Close of Escrow. The Parties will, commencing upon the Effective Date of this Agreement, attempt in good faith to negotiate a mutually agreeable form of the Development Agreement, with the intention that the same will be formally approved by the Seller's City Council on or before December 20, 2019.

5. **Buyer's Contingencies.** For the benefit of Buyer, Buyer's obligation to consummate the transaction contemplated in this Agreement shall be expressly subject to and contingent upon Buyer's written approval or written waiver of each of the following contingencies ("*Contingencies*") on or before the dates set forth below, **time being of the essence:**

a. **Title Matters.**

i. Within five (5) business days of the Effective Date, the Escrow Holder shall deliver to the Buyer an updated preliminary title report for the Property, together with copies of all written instruments creating the exceptions specified therein, and plat maps plotting all easements specified therein (collectively, the "*Title Report*"). Within twenty (20) business days of Buyer's receipt of the Title Report, Buyer shall notify Seller in writing ("*Buyer's Objection Notice*") of any objections Buyer may have to the title exceptions contained in the Title Report. Buyer's failure to provide Seller with a Buyer's Objection Notice within said period shall constitute Buyer's approval of all exceptions to title shown on the Title Report. Seller shall have a period of ten (10) business days after receipt of Buyer's Objection Notice in which to deliver written notice to Buyer ("*Seller's Notice*") of Seller's election to either (i) agree to remove or cure the objected to items prior to the Close of Escrow, or (ii) decline to remove or cure any such title exceptions. Seller's failure to deliver Seller's Notice within such period shall constitute Seller's election to decline to remove or cure any such title exceptions. If Seller notifies Buyer of its election not to remove and cure the objected to items or is deemed to so elect, Buyer shall have the right, by written notice delivered to Seller after Buyer's receipt of Seller's Notice or deemed election, to either (a) terminate this Agreement, or (b) agree to accept the Property subject to the objected to items, in which event Buyer shall take title at the Close of Escrow subject to such objected to items without any adjustment to or credit against the Purchase Price; with said election to occur within twenty (20) days of the Buyer's receipt of Seller's written notice of its election not to remove and cure the objected items. Notwithstanding the foregoing, in no instance shall any deeds of trust, mortgages, or monetary encumbrances against the Property constitute an approved title exception, and the Buyer shall have been deemed to have disapproved any such encumbrance, with such encumbrances to be paid off and removed from any policy of title insurance at the Close of Escrow.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

Upon the issuance of any amendment or supplement to the Title Report which adds additional exceptions, or adds any new requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) business days following Buyer's receipt of the instrument(s) creating such additional exceptions, and further provided that the Buyer may only disapprove of, and may only elect to terminate this Agreement based on, any new exception that would reasonably be expected to add a material cost to or have a material adverse effect on Buyer's development or use of the Property.

ii. In the event Buyer requests any endorsements to the Title Policy (as hereinafter defined in Section 9) in its Buyer's Title Notice or a Buyer's Title Notice Supplement ("*Buyer Requested Title Endorsements*"), Buyer shall be solely responsible for ordering the same directly from the Title Company and shall be responsible for all action and additional premiums and costs which may be required as a condition to the issuance of such endorsements (except for a mechanics lien endorsement which shall be paid for by Seller). Buyer Requested Title Endorsements shall not be or be deemed to be a condition to closing the transactions contemplated hereunder. Seller shall execute an affidavit and/or certified resolutions on the Title Company's standard form so that the Title Company can delete or modify the standard printed exceptions as to the Seller's constituent documents, parties in possession, unrecorded liens and similar matters.

b. Due Diligence Review. Buyer shall have sixty (60) days from the Effective Date of this Agreement (the "*Contingency Period*") to examine, inspect and investigate the Property and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer. In the event, prior to the end of the Contingency Period, Buyer provides Seller written notice disapproving the condition of the Property (in Buyer's sole discretion and without any restrictions thereon), Buyer shall be deemed to have disapproved the Property, in which event the Deposit will be immediately returned to Buyer and the termination provisions of Section 12 below shall apply. Prior to the expiration of the Contingency Period, Buyer and Seller agree that Buyer's access requirements, as discussed in Section 3.1 above and related to the Access Rights, shall have been determined by Seller and accepted in writing by Buyer.

c. Post Contingency Period Property Disapproval. Buyer shall retain the right, by providing written notice to Seller, to disapprove the Property and have the Deposit immediately returned to Buyer if, after expiration of the Contingency Period but prior to the Close of Escrow, one or more of the following circumstances occur: (1) Buyer determines there is insufficient water available to service the project for its intended use, as discussed in Section 3.2 above, with said project to be more fully described in the Development Agreement, as discussed in Section 4.f above, (2) all Development Entitlements, as more fully described in Section 4.c above, have not been obtained by Buyer on or before the Closing Date, and (3) Seller is unable or unwilling to

EXHIBIT "A"
RESOLUTION NO. PC 20-06

grant the Access Rights, as necessary and required for use of the Property, as more fully discussed in Section 3.1 above.

d. Within five (5) days of the Opening of Escrow, Seller shall provide to Buyer the documents, instruments and agreements, in Seller's possession or control material, if any, relating to the condition, use or development of the Property (the "***Property Information Materials***"), including, but not limited to, any geo-technical reports, engineering reports, surveys, phase I environmental site assessments, phase II environmental investigations, traffic studies, drainage studies, and copies of permits and authorizations (and mitigation measures and conditions thereto) obtained by Seller from local, state and federal agencies having jurisdiction over the Property. Seller shall be solely responsible for the costs of preparing copies of such documents, studies, reports and schedules. Buyer shall be solely responsible for any costs incurred in connection with its review and/or investigation of the Property and the Property Information Materials. Notwithstanding the foregoing, Seller has made, and during the term of this Agreement, will continue to make, available to Buyer for inspection and copying (at Buyer's cost), any and all known information in Seller's possession or reasonably available to Seller regarding a change in the physical condition of the Property.

e. Buyer's comprehensive due diligence investigation of the Property may include, but shall not be limited to, the following matters respecting the Property:

i. The availability and adequacy of all utilities to the Property, including, but not limited to, power, water, gas, telephone, cable and sewer.

ii. The condition of the soils and the geologic, environmental and engineering conditions of the Property, based on any and all soils, engineering, environmental or geologic tests, reports and studies which Buyer desires to perform, which reports, tests and studies shall be performed at Buyer's sole cost and expense in compliance with the provisions of Section 18 below.

iii. The existence of mineral rights connected to the property and, if existing, the transferability of the same to Buyer.

iv. The existence of, and if existing the extent of, subsurface water located beneath the Property and the feasibility of Buyer's future use of subsurface water in connection with Buyer's intended use of the Property; or in the event subsurface water is not available, Buyer's ability to obtain water from City-controlled properties or facilities.

v. The contents of a California Natural Hazards Disclosure Statement. Seller hereby authorizes Escrow Holder, at Seller's cost, promptly following the Opening of Escrow, to procure and deliver to Buyer and Seller, for the benefit of Buyer and Seller, a Natural Hazards Disclosure Statement covering the Property. Seller shall have no responsibility for the completeness or accuracy of the Natural Hazards Disclosure Statement.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

f. The deadlines specified in this Section 5, subdivisions (a), (b), (c), and (d) may be modified pursuant to the written agreement of the Parties.

6. "AS-IS" SALE.

a. Buyer, having had the opportunity to undertake full testing or review of the Property during the Contingency Period, expressly assumes the risk that the Property may contain or have defects or conditions that might prevent the intended use of the Property or cause unexpected expense in connection with preparing the Property for the intended use. This Agreement contains all of the terms and conditions agreed upon, it being understood that there are no outside representations or oral agreements. Buyer acknowledges that, except as expressly contained in this Agreement, (a) neither Seller nor anyone acting for or on behalf of Seller has made any representation, statement, warranty, or promise to Buyer concerning the physical aspects and condition of the Property, any dimensions or specifications of any of the Property, the feasibility, desirability, or convertibility of the Property into any particular use, or the projected income or expenses for the Property; (b) in entering into this Agreement, Buyer has not relied on any representation, statement, or warranty of Seller (except those expressly contained herein) or on the documentation provided by Seller to Buyer under this Agreement, or anyone acting for or on behalf of Seller, all of which are to be independently verified by Buyer; (c) Buyer is purchasing the Property based solely upon Buyer's own inspection and examination thereof; (d) that Buyer is purchasing the Property in its then "AS IS" physical condition and its then "AS IS" state without any representation, statement, or warranty of Seller (except those expressly contained herein); and (e) Buyer does hereby waive, and Seller does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Property, including, by way of description, but not limitation, those of fitness for a particular purpose, merchantability, tenantability, habitability, and use, except for the representations and warranties of Seller set forth herein.

b. Buyer acknowledges that certain of the Property Information Materials may have been prepared by parties other than Seller. Buyer accepts the fact that Seller is making no representation or warranty whatsoever, express or implied, as to the completeness, content or accuracy of the Property Information Materials, except as may otherwise be provided in Section 7 below of this Agreement. Except as may otherwise be provided in Section 7, Buyer specifically releases Seller from all claims, whether known or unknown, which are or may be asserted against or incurred by Buyer by reason of the information contained in, or that should have been contained in, the Property Information Materials or in the Recitals to this Agreement.

7. Seller's Representations, Warranties and Covenants.

Seller hereby represents and warrants to Buyer, which representations and warranties shall be true and correct as of the Effective Date and as of the date of the Close of Escrow, and, subject to Section 34 hereof, shall survive the Close of Escrow.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

For purposes of this Section 7, "Seller's knowledge" shall refer to the actual, personal knowledge of Cristian Gonzalez, without any duty of inquiry or investigation. Seller represents and warrants that Cristian Gonzalez is the person affiliated with Seller most knowledgeable about the Property. In the event a representation or warranty of Seller as stated above is true as of the Effective Date, but due to the occurrence of a change in circumstances (which change does not arise due to Seller's breach hereunder) of which Seller actually becomes aware between the Effective Date and the Close of Escrow, cannot be stated truthfully by Seller in all material respects upon the Close of Escrow, Seller shall not be in breach of this Agreement by reason thereof, provided Seller promptly after learning of the same and prior to the Close of Escrow, notifies Buyer in writing of such change in circumstances; in such event, Buyer shall have the right by written notice to Seller and Escrow Holder within five (5) business days of learning of such changed circumstance, either (a) to waive such changed circumstances and proceed to the Close of Escrow with Seller's relevant representation or warranty deemed qualified to exclude the changed circumstances, or (b) to deem such change in circumstances a failure of a condition precedent to Buyer's obligation to purchase the Property and terminate this Agreement, in which event the Deposit shall be immediately returned to Buyer and the termination provisions of Section 12 below shall apply.

a. To Seller's knowledge, Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby.

b. To Seller's knowledge, and except for this Agreement, Seller is not a Party to any currently enforceable agreement or option for the transfer, sale or purchase of all or any portion of the Property and has not granted any other party any right or option to use, occupy or lease all or any portion of the Property.

c. To Seller's knowledge, Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations thereunder (collectively, the "*Code*").

d. To Seller's knowledge, there are no legal, administrative, regulatory or other actions, suits or similar proceedings pending and served, or threatened in writing against Seller or the Property which, if adversely determined, would materially and adversely affect the value of the Property or adversely affect Seller's ability to consummate the transactions contemplated hereby.

e. To Seller's knowledge, Seller has not (1) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (2) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (3) made an assignment for the benefit of creditors.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

f. To Seller's knowledge, Seller has not received any written notice from any applicable governmental authority respecting any violation of any applicable governmental law, ordinance, rule or regulation applicable to Seller, the Property, or any part thereof, by reason of a violation of any applicable federal, state, county or municipal law, code, rule, or regulation, that (1) has not been either cured or removed (or shall be cured or removed prior to the Closing) or otherwise disclosed to Buyer, and (2) materially and adversely affects the value of the Property.

g. To Seller's knowledge, Seller has never used, generated, processed, stored, disposed of, released or discharged any Hazardous Substances on, under or about the Property, that would be a material impediment to the development of the Property.

h. To Seller's knowledge, the Property Information Materials are true and correct in all material respects as of the date of such document; provided, however, that Seller makes no representation or warranty and shall have no liability or responsibility for any analysis or conclusion set forth in any third party reports which are included in the Property Information Materials. To Seller's knowledge, and without limiting the foregoing, all copies of Property Information Materials provided to Buyer are accurate and complete copies.

Seller hereby covenants with Buyer, which covenants subject to Section 34 hereof, shall survive the Close of Escrow, as follows:

a. During the period between the Opening of Escrow and the Close of Escrow or termination of this Agreement, Seller shall not, without the prior written consent of Buyer, enter into any contract with respect to the Property that will impede or otherwise interfere with Seller's sale of the Property to Buyer which will survive the Close of Escrow.

b. On or before the Close of Escrow, Seller shall terminate, at its sole cost, any contracts to which it is a party that may interfere with Buyer's intended use of the Property, as that use shall be described in the Development Agreement discussed in Section 4.f above, unless Buyer has expressly agreed to assume such contracts in its sole discretion.

c. At all times prior to the Close of Escrow, Seller shall maintain the Property substantially in its current condition.

d. Any backup offers for purchase of the Property obtained by and that are acceptable to Seller shall be expressly subordinate to Buyer's rights under this Agreement.

e. Prior to the Close of Escrow, Seller shall obtain all such written consents and approvals as may be necessary or required, if any, to permit Seller to perform its obligations under this Agreement.

f. Seller shall notify Buyer promptly upon receipt by Seller prior to Closing of written notice of the institution or pendency of any action, suit, or proceeding against or affecting the Property, or relating to or arising out of the ownership of such Property.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

8. Buyer's Representations, Warranties and Covenants.

a. Buyer hereby represents and warrants to Seller, which representations and warranties shall be true and correct as of the Effective Date of this Agreement and as of the date of the Close of Escrow, and, subject to Section 34 hereof, shall survive the Close of Escrow, as follows:

i. Buyer has the legal power, right and authority to enter into this Agreement and the instruments to be executed by Buyer pursuant to this Agreement and to consummate the transactions contemplated hereby. No consent of any third party is required in order for Buyer to perform its obligations hereunder.

ii. Buyer has obtained all government approvals, permits, licenses, and entitlements required by any law or regulation for Buyer's operation of a commercial cannabis business.

iii. All requisite action has been taken by Buyer in connection with Buyer's execution of this Agreement and the instruments to be executed by Buyer pursuant to this Agreement and the consummation of the transactions contemplated hereby.

iv. The individuals executing this Agreement and the instruments to be executed by Buyer pursuant to this Agreement on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions of this Agreement and such instruments.

v. Neither the execution and delivery of this Agreement and the documents referenced herein, nor the undertaking of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party.

vi. Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due or (vi) made an offer of settlement, extension or composition to its creditors generally.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

9. **Title Insurance.** It shall be a condition to the Close of Escrow for Buyer's benefit that the Title Company shall have unconditionally committed to issue to Buyer an CLTA standard coverage owner's policy of title insurance (the "*Title Policy*") in the amount of the Purchase Price, showing fee simple title to the Property to be vested in Buyer free and clear of all liens and encumbrances other than the approved exceptions and containing the Requesting Endorsements. Seller shall pay the premium for the issuance of the standard Title Policy. Buyer, at Buyer's sole option and cost, so long as the Close of Escrow is not thereby delayed, may elect to obtain an ALTA standard or extended coverage title policy (the "*ALTA Policy*"). Seller shall pay for the cost of the Title Policy and the cost of any curative endorsements Seller has agreed in writing to provide and the costs of a mechanics' lien endorsement, and Buyer shall pay any additional cost for the ALTA Policy, and the cost of any Buyer Requested Title Endorsements not covered by Seller.

10. **Conditions to Close of Escrow.**

a. Buyer's obligation to purchase the Property and close the Escrow is subject to and conditioned upon the satisfaction of the following conditions, on or before the Close of Escrow, as indicated below:

i. Seller shall have timely delivered to Escrow Holder the items described in Section 11.a below, together with any and all written third party consents thereto, where indicated, in the Exhibits attached hereto.

ii. The representations and warranties of Seller shall be true and correct on the Closing Date, and Seller shall not be (or deemed to be) in material breach of any representation or warranty given by Seller under Section 7 above.

iii. Seller shall not otherwise be in material default in the performance of any of its obligations under this Agreement.

iv. Unless waived by Buyer pursuant to the express provisions of this Agreement, the Development Entitlements shall have become Effective.

v. The Title Company has irrevocably committed to issue the Title Policy.

b. Seller's obligation to sell the Property and close the Escrow is subject to and conditioned upon the satisfaction of the following conditions on or before the Close of Escrow:

i. The representations and warranties of Buyer shall be true and correct on the Closing Date, and Buyer shall not be in material breach of any representation or warranty given by Buyer under Section 8.a above.

ii. Buyer shall have timely executed and delivered to Escrow Holder the items described in Section 11.b below.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

iii. Buyer shall have deposited into the Escrow all funds required to pay the Purchase Price and Buyer's share of pro-rations and closing costs.

iv. Buyer and Seller shall have executed a mutually acceptable Development Agreement, as discussed in Section 4.f above.

v. Buyer shall not otherwise be in material default in the performance of any of its obligations under this Agreement.

11. Deliveries to Escrow Holder.

a. Seller shall deliver or cause to be delivered to Escrow Holder by 5:00 P.M. on the last business day before the date of the Close of Escrow the following instruments and documents:

i. The Grant Deeds, in recordable form, duly executed and acknowledged by Seller.

ii. Counterpart originals of the Development Agreement as required by Section 4.f

iii. All original (or copies thereof in the event Seller does not possess originals) licenses and permits with respect to the Property and in the possession or control of the Seller or any of its representatives.

iv. Any other instruments and documents which Seller is obligated to execute and deliver into the Escrow under this Agreement.

b. Buyer shall deliver or cause to be delivered to Escrow Holder by 5:00 P.M. on the last business day before the Close of Escrow the following:

i. All sums that Buyer is required to deliver to Escrow Holder pursuant to Section 3.d to close the Escrow.

ii. Counterpart originals of the Development Agreement as required by Section 4.f.

iii. Evidence reasonably satisfactory to Seller that the person executing any documents at the Closing on behalf of Buyer has full right, power, and authority to do so.

iv. Any other instruments and documents which Buyer is obligated to execute and deliver into the Escrow under this Agreement.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

12. **Termination.** Whenever (i) a party has the right to terminate this Agreement pursuant to an express provision of this Agreement, and notifies the other party of its election to terminate the Agreement, or (ii) this Agreement automatically terminates pursuant to an express provision of this Agreement, then:

a. This Agreement, the Escrow, and the rights and obligations of Buyer and Seller under this Agreement shall terminate except as otherwise expressly provided in this Agreement.

b. If neither Buyer nor Seller is in breach of this Agreement, each party shall be responsible to pay one-half of any cancellation charges payable to Escrow Holder and the Title Company.

c. Escrow Holder shall promptly return to Seller and Buyer all documents deposited by them into the Escrow, respectively.

d. Buyer and/or Buyer's Representatives (as such term is defined in Section 18 below) shall upon demand deliver to Seller all originals and copies of the Property Information Materials and all third party reports and studies obtained by Buyer and/or Buyer's Representatives (without warranty as to accuracy or completeness and subject to the rights of third party consultants preparing such reports).

e. If the Agreement is terminated for any reason other than a default by Buyer described in Section 16.b below, and Buyer is entitled to a return of its deposit under this Agreement, Escrow Holder shall immediately release the Deposit to Buyer (less one-half of any escrow cancellation charges, if applicable), and Seller shall immediately return to Buyer, any portion of the Deposit received by Seller. If Buyer is not entitled to the return of the Deposit, then Escrow Holder shall release the Deposit (or portion thereof then held by Escrow Holder) to Seller.

13. **Costs and Expenses.** The premium for the Title Policy shall be paid in accordance with the provisions of Section 9 above. The escrow fees of Escrow Holder shall be shared equally by Seller and Buyer. Seller shall pay all documentary transfer taxes payable with the recordation of the Grant Deed. Buyer and Seller shall each pay their own legal and professional fees and fees of other consultants incurred in connection with this transaction. All other costs and expenses shall be allocated between Buyer and Seller in the manner customary in the County, except the costs of performing the obligations of each party to this Agreement, which costs shall be borne solely by the party incurring such costs. The provisions of this Section 13 shall survive the Close of Escrow or a termination of this Agreement.

14. **Pro-rations and Credits.** The following items shall be prorated between Buyer and Seller as of the Close of Escrow based on the actual number of days in the calendar month in which the Close of Escrow occurs: General and special real property taxes and assessments with respect to the Property based upon the latest available tax information such that Seller shall be responsible for all such taxes and assessments levied against the Property to and including the

EXHIBIT "A"
RESOLUTION NO. PC 20-06

day prior to the Close of Escrow and Buyer shall be responsible for all such taxes and assessments levied against the Property from and after the date of the Close of Escrow.

15. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

- a. Escrow Holder shall cause the Grant Deeds to be recorded in the Official Records of the County, together with any other documents that the parties hereto may mutually direct.
- b. Escrow Holder shall hold and/or disburse all funds deposited with Escrow Holder by Buyer as follows:
 - i. Deduct all items chargeable to the account of Seller pursuant hereto;
 - ii. Subject to Section 15.c below, disburse to Seller the Purchase Price, less items deducted pursuant to Section 5.b.i above and less the Deposit released to Seller; and
 - iii. Deduct (and disburse) all items chargeable to the account of Buyer pursuant hereto and refund to Buyer any excess funds deposited by Buyer.
- c. Escrow Holder shall direct the Title Company to issue the Title Policy (or, if applicable, the ALTA Policy) to Buyer.
- d. Escrow Holder shall deliver to Buyer and Seller, originals of the executed counterparts of the documents and instruments deposited by the parties pursuant to Section 11 above, and copies of all recorded documents.
- e. Escrow Holder shall deliver to Seller duplicate originals or copies (as the case may be) of all documents delivered to Buyer.
- f. Escrow Holder shall provide Buyer and Seller with a closing statement.

16. Default.

a. SELLER'S DEFAULT. IF THE TRANSACTION CONTEMPLATED HEREUNDER SHALL FAIL TO CLOSE SOLELY BY REASON OF SELLER'S DEFAULT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT (AS DISTINGUISHED FROM THE FAILURE OF A CONDITION TO CLOSING), AND SUCH DEFAULT IS NOT CURED WITHIN TEN (10) DAYS AFTER RECEIPT BY SELLER OF WRITTEN NOTICE THEREOF FROM BUYER, THEN BUYER SHALL HAVE AS ITS EXCLUSIVE REMEDIES THE RIGHT TO EITHER (i) TERMINATE THIS AGREEMENT (IN WHICH EVENT THE DEPOSIT SHALL IMMEDIATELY BE RETURNED TO BUYER), THE TERMINATION

EXHIBIT "A"
RESOLUTION NO. PC 20-06

PROVISIONS OF SECTION 12 SHALL APPLY, AND BUYER SHALL BE DEEMED TO HAVE WAIVED ANY RIGHT OR CLAIM TO DAMAGES FOR SELLER'S BREACH, OR (ii) SPECIFICALLY ENFORCE THIS AGREEMENT (BUT NO OTHER ACTION, FOR DAMAGES OR OTHERWISE, SHALL BE PERMITTED); PROVIDED THAT ANY ACTION BY BUYER FOR SPECIFIC PERFORMANCE MUST BE COMMENCED, IF AT ALL, WITHIN NINETY (90) DAYS OF SELLER'S DEFAULT, THE FAILURE OF WHICH SHALL CONSTITUTE A WAIVER BY BUYER OF SUCH RIGHT AND REMEDY. IF BUYER SHALL NOT HAVE COMMENCED AN ACTION FOR SPECIFIC PERFORMANCE WITHIN THE AFOREMENTIONED TIME PERIOD OR SO NOTIFIED SELLER OF ITS ELECTION TO TERMINATE THIS AGREEMENT, BUYER'S SOLE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT IN ACCORDANCE WITH CLAUSE (i) ABOVE.

b. BUYER'S DEFAULT. IN THE EVENT THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT DOES NOT CLOSE DUE TO THE DEFAULT OF BUYER THAT IS NOT CURED WITHIN TEN (10) DAYS AFTER RECEIPT OF WRITTEN NOTICE FROM SELLER SPECIFYING SUCH DEFAULT, THEN SELLER'S RETENTION OF THE DEPOSIT SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, FOR SUCH DEFAULT, SUBJECT TO THE PROVISIONS OF THIS AGREEMENT THAT EXPRESSLY SURVIVE A TERMINATION OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO LIMIT SELLER'S RIGHTS OR DAMAGES UNDER ANY INDEMNITIES GIVEN BY BUYER TO SELLER UNDER THIS AGREEMENT. SELLER AND BUYER HAVE DISCUSSED THE POSSIBLE CONSEQUENCES TO SELLER IN THE EVENT THAT THE ESCROW FAILS TO CLOSE AS A RESULT OF BUYER'S DEFAULT. SELLER AND BUYER HAVE DETERMINED AND HEREBY AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES TO SELLER OCCURRING IN THE EVENT OF SUCH A BUYER DEFAULT UNDER THIS AGREEMENT. THE PARTIES, HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL COMPENSATORY DAMAGES SELLER WOULD SUFFER IN THE EVENT OF BUYER'S DEFAULT IN ITS OBLIGATION TO ACQUIRE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, HEREBY AGREE THAT A REASONABLE ESTIMATE OF SUCH DAMAGES IS AN AMOUNT EQUAL TO THE DEPOSIT, AND IN THE EVENT THIS TRANSACTION FAILS TO CLOSE DUE TO BUYER'S DEFAULT UNDER THIS AGREEMENT, SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE DEPOSIT AS FULLY AGREED LIQUIDATED DAMAGES. SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO

EXHIBIT "A"
RESOLUTION NO. PC 20-06

CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON ANY SUCH BREACH OR DEFAULT BY BUYER HEREUNDER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT AS EXPRESSLY PROVIDED ABOVE. THE PARTIES AGREE THAT, UNDER THE CIRCUMSTANCES OF THIS TRANSACTION AND THE MARKETPLACE AT THE TIME HEREOF, THIS LIQUIDATED DAMAGES PROVISION IS REASONABLE AND IN ACCORDANCE WITH CALIFORNIA CIVIL CODE SECTION 1671.

CF
SELLER'S INITIALS

g
BUYER'S INITIALS

17. **Entry Insurance Requirements.** The following shall constitute the "***Required Insurance Coverage***" of a party under the stated circumstance:

a. Prior to the entry on the Property during the term of this Agreement by Buyer or any of Buyer's Representatives' employees, contractors or agents, Buyer shall have obtained and make available at Seller's request certificate or certificates showing that (i) Buyer has in force a policy of comprehensive public liability insurance with liability coverage of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage, automobile liability coverage including owned and hired vehicles with a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage, and an excess umbrella liability policy of bodily injury and property damage in the amount of Five Million and No/100 Dollars (\$5,000,000.00), insuring Seller as an additional insured.

b. The foregoing insurance coverage shall be on an "occurrence form" and otherwise in such forms and with an insurance company reasonably acceptable to Seller, and each insurance policy may be cancelled only after at least thirty (30) days' prior written notice has been given by the insurer to each additional insured thereunder.

18. **Right of Entry.**

a. Buyer and Buyer's agents, representatives, consultants, contractors, subcontractors, lenders and investors (collectively, "***Buyer's Representatives***") shall have the right to enter upon the Property at all reasonable times during the term of this Agreement, in order to conduct such investigations, tests and studies as Buyer shall reasonably deem necessary (the "***Investigations***"), so long as such activities do not unreasonably damage the Property. Prior to Buyer's first entry onto the Property, Buyer shall deliver to Seller a certificate or certificates evidencing that the Required Insurance Coverage specified in Section 17 above has been obtained and is in effect. Buyer shall keep the Property free and clear of any mechanic's liens or materialmen's liens arising out of any such activities (and at Buyer's sole expense, Buyer shall immediately

EXHIBIT "A"
RESOLUTION NO. PC 20-06

discharge of record or bond around any such liens or encumbrances that are so filed or recorded, including, without limitation, liens for services, labor or materials furnished in connection with the activities of Buyer or Buyer's Representatives on the Property). Further, Buyer shall indemnify and hold Seller and Seller's Related Parties harmless from and against any and all claims, demands, causes of action, losses, damages, costs, liabilities and/or expenses (including, without limitation, attorneys' fees and disbursements) caused by Buyer or Buyer's Representatives in connection with any Investigations or other activities of Buyer or Buyer's Representatives taken with respect to the Property and/or any liens or encumbrances filed or recorded against the Property as a result thereof; provided, however, that notwithstanding the foregoing, in no event shall Buyer be responsible for any environmental conditions or latent defects existing on the Property and discovered by (but not caused or exacerbated by an act or knowing omission of) Buyer during the course of Buyer's investigation of the Property, or any acts or omissions of Seller or Seller's Related Parties. The foregoing obligation shall survive the Close of Escrow or termination of this Agreement.

- b. During the term of this Agreement, Buyer shall:
 - i. Conduct any further Investigations of the Property deemed desirable by Buyer, however, such further Investigations shall not provide Buyer the right to terminate this Agreement unless a discovery made during such further Investigations constitutes a failure of a condition precedent to Close of Escrow as specified in Section 10.a of this Agreement.
 - ii. Fully comply with all laws applicable to the Investigations and all other activities undertaken in connection therewith.
 - iii. Notify and permit Seller to have a representative present during all Investigations undertaken hereunder.
 - iv. Take all actions and implement all protections reasonably necessary to ensure that the Investigations and the equipment, materials, and substances generated, used or brought onto the Property in connection with the Investigations pose no threat to the safety or health of persons or the environment and cause no damage to the Property or other property of Seller or other persons.

The foregoing obligations shall survive the Close of Escrow or a termination of this Agreement.

- c. Without limiting the foregoing, in no event shall Buyer, without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed, make any intrusive physical testing (environmental, geo-technical or otherwise) at the Property. Seller hereby consents to Buyer performing a Phase I Environmental Site Assessment, a Phase II Environmental Site Assessment if necessary and required, geotechnical borings, and soils sampling at the Property.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

19. **Condemnation or Casualty Prior to Closing.** Seller shall promptly notify Buyer of any pending or threatened condemnation affecting the Property commenced prior to the Close of Escrow or any casualty affecting the Property prior to the Close of Escrow. If any such condemnation or casualty relates to or may result in the loss of any portion of the Property or access to the Property or would otherwise impact the Development Entitlements or if any casualty would increase the costs of the Buyer's development of the Property, at Buyer's election, either (i) this Agreement shall continue in effect, without delay or abatement of the Purchase Price, and, in the event Buyer purchases the Property under the terms of this Agreement, Buyer shall be entitled to any compensation, awards or other payments or relief resulting from such condemnation proceeding or insurance proceeds ("***Casualty Payments***") to the extent applicable to the Property; provided, however, that in the event such Casualty Payments are paid prior to the Close of Escrow, the Casualty Payments shall be payable to Seller with a credit towards the purchase price in the amount of the Casualty Payment provided to Buyer at the Close of Escrow, or (ii) Buyer may terminate this Agreement within ten (10) days after Buyer's receipt of notice of such condemnation or casualty, in which event the Deposit shall be immediately returned to Buyer and the termination provisions of Section 12 above shall apply. Buyer's failure to provide such notification shall be deemed Buyer's election to terminate pursuant to clause (ii) above. In the event of a condemnation or casualty prior to the Close of Escrow potentially resulting in the loss of any portion of the Property or damage thereto, if Buyer elects to continue with the purchase of the Property as described in clause (i) above Buyer shall be deemed to have made an acceptance and/or assumption of any and all obligations arising from that condemnation or casualty. The provisions of this Section shall survive the Close of Escrow.

20. **Brokers.** Both Parties represent that no broker is involved in this Agreement. In the event of any other claim for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement or the purchase and sale of the Property, then Buyer shall indemnify, save harmless and defend Seller from and against any such claim based upon the alleged statement, representation or agreement by Buyer, and Seller shall indemnify, save harmless and defend Buyer from and against any such claim based upon any alleged statement, representation or agreement by Seller. The provisions of this Section shall survive the Close of Escrow and any termination of this Agreement.

21. **Assignment.** Buyer may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Seller, which consent, except as provided below, may be withheld by Seller in its sole and absolute discretion, and which may be conditioned upon such terms and conditions as Seller may require, in its sole and absolute discretion. Notwithstanding and without limiting the foregoing, no consent given by Seller to any transfer or assignment of Buyer's rights or obligations hereunder shall be deemed to constitute a consent to any other transfer or assignment of Buyer's rights or obligations hereunder and no transfer or assignment in violation of the provisions hereof shall be valid or enforceable. Subject to the foregoing, this Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

22. **Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by electronic mail, registered or

EXHIBIT "A"
RESOLUTION NO. PC 20-06

24. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25. **Waivers.** No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified in this Agreement for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

26. **Professional Fees.** In the event of the bringing of any action or suit by either party against the other by reason of any breach of any of the covenants, representations or warranties of the other party under this Agreement, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including, without limitation, actual attorneys' fees, accounting and engineering fees, and other professional fees resulting therefrom.

27. **Entire Agreement; Amendment.** This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, or supplemented, nor may any obligation hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

28. **Time Frames.** Unless otherwise indicated with respect to a requirement, all time frames for performance of an act required or permitted by this Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of three hundred sixty-five (365) days, unless otherwise specified.

29. **Time of the Essence.** Time is of the essence with respect to each and every provision of this Agreement. Whenever any action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the next succeeding business day. As used herein, the term "business day" shall mean any day, other than a Saturday or Sunday, on which commercial banks in the State of California are not required or authorized to be closed for business.

EXHIBIT "A"
RESOLUTION NO. PC 20-06

30. **Construction of Agreement.** Headings at the beginning of each section and subsection of this Agreement are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to sections and subsections are to sections and subsections in this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

31. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any other person other than the parties hereto and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third parties any right of subrogation or action over or against any party to this Agreement. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

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

33. **Effectiveness.** In no event shall any draft of this Agreement create any obligation or liability, it being understood that this Agreement shall be effective and binding only when a counterpart hereof has been executed and delivered by each party hereto. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby. The preparation and/or circulation of a draft of this Agreement is not intended by either of the parties to constitute a binding agreement between them for the purchase or sale of the Property. The final form of this Agreement may or may not contain terms stated in any drafts of this Agreement, and/or may contain different terms and conditions not yet identified or discussed. Neither party may rely on any drafts of this Agreement as binding on either party in any way. The parties expressly agree that neither party is bound to engage in negotiations, or, once engaged, to continue such negotiations, each party reserving the right to terminate negotiations at any time and for any reason. Efforts by either party to perform due diligence, arrange or obtain financing, or carry out other acts in contemplation of the possible purchase and sale of the Property shall not be deemed evidence of any intent by either party to be bound by any letter of interest or similar document, or unexecuted and undelivered drafts of this Agreement. The performance by either party before the mutual execution and delivery of the final, mutually agreed upon form of this Agreement of any of the rights or obligations that may be included in drafts of this Agreement shall not be considered evidence of subsequent intent by either party to be bound by any letter of interest or drafts of this Agreement. In the event Buyer or Seller alleges that any unexecuted draft of this Agreement constitutes a binding agreement for the purchase or sale of the Property, or grants an interest in or claim to the

EXHIBIT "A"
RESOLUTION NO. PC 20-06

Property, the alleging party shall be liable for the legal fees, costs and damages incurred as a result thereof.

34. Survival of Obligations. All of Buyer's and Seller's covenants, representations and warranties in Sections 7, 8, 13, 14, 19 and 20 of this Agreement shall survive the Close of Escrow for a period of one (1) year. Sections 22, 24, 34, 35, 36, 37, 38, and 39 shall survive this Agreement's termination for any reason. All other obligations of Seller or Buyer not expressly stated to survive the Close of Escrow or not stated in the exhibit documents to be delivered upon the Close of Escrow shall be deemed discharged upon the Close of Escrow and the recordation of the Grant Deed.

35. Limitation of Liability. Except to the extent of distributions of the Deposit or the Purchase Price to such persons, no, officer, employee or agent of Seller or any Seller Related Parties shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Buyer and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Seller's interest in the Property, for the payment of any claim or for any performance, and Buyer, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability. No shareholder, officer, employee or agent of Buyer shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. This Section 34 shall survive the Close of Escrow or a termination of this Agreement.

36. Waiver of Trial By Jury. TO THE EXTENT PERMITTED BY LAW SELLER AND BUYER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR FOR THE ENFORCEMENT OF ANY REMEDY IN CONNECTION HERewith.

37. Choice of Venue. EACH PARTY HERETO HEREBY AGREES THAT ALL ACTIONS TO ENFORCE THE TERMS AND PROVISIONS OF THIS AGREEMENT SHALL BE BROUGHT AND MAINTAINED ONLY IN A STATE OR FEDERAL COURT LOCATED IN FRESNO COUNTY, CALIFORNIA, AND EACH PARTY HERETO HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT AND HEREBY AGREES THAT SERVICE OF PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO THE OTHER PARTY AT THE ADDRESSES SET FORTH IN SECTION 22 ABOVE. EACH PARTY HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO MAKE ANY OBJECTIONS BASED ON JURISDICTION OR VENUE TO ANY ACTION

EXHIBIT "A"
RESOLUTION NO. PC 20-06

BROUGHT TO ENFORCE THIS AGREEMENT IN ANY SUCH COURT IN ACCORDANCE WITH THE ABOVE PROVISIONS.

38. Governing Law. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

39. Indemnification.

a. To the fullest extent permitted by applicable law, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature ("Losses") that may be asserted by any person or entity, to the extent arising out of that Party's performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Agreement, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination or expiration of this Agreement.

b. Each indemnification under this Agreement and/or under any agreement or document executed and delivered pursuant to this Agreement shall survive the Close of Escrow and shall be subject to the following provisions: (a) the indemnitee shall notify the indemnitor of any such claim against the indemnitee within twenty (20) days after it has notice of such claim, but failure to notify the indemnitor shall in no case prejudice the rights of the indemnitee under this Agreement unless the indemnitor shall be prejudiced by such failure and then only to the extent of such prejudice; (b) without the prior written consent of the indemnitee, the indemnitor shall not enter into any settlement which (i) requires an admission of guilt, the payment of any funds or the performance of any obligation by the indemnitee, and (ii) does not include a full release of indemnitee; and (c) should the indemnitor fail to discharge or undertake to defend the indemnitee against such liability within twenty (20) days after the indemnitee gives the indemnitor written notice of the same, then the indemnitee may, upon fifteen (15) days' notice to the indemnitor, in good faith settle such liability, and the indemnitor's liability to the indemnitee shall be conclusively established by such settlement, the amount of such liability to include both the settlement consideration and the reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by the indemnitee in effecting such settlement. The indemnification obligations under this Agreement shall survive the Close of Escrow or a termination of this Agreement.

40. Amendments. The City Manager of Seller is authorized to sign on his or her own authority amendments to this Agreement which are of routine or technical nature, including extensions of time deadlines either requested by Buyer or occasioned by changes in City employees determined by the City Manager to be critical to the processing of the development contemplated by the Parties, except that the cumulative total of time extensions granted by the

EXHIBIT "A"
RESOLUTION NO. PC 20-06

City Manager may not exceed one (1) year ("*Minor Amendments*"). Amendments not constituting Minor Amendments shall require approval of the City Council. The City Manager shall, after consultation with the City Attorney, have sole discretion to determine whether or not an amendment to this Agreement constitutes a Minor Amendment.

41. **Independent Legal Advice.** Each Party represents and warrants the following: that it has carefully read this Agreement, and in signing this Agreement and agreeing to be bound by the same, it has received independent legal advice from legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and it has freely signed this Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its officers, agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. This Agreement shall be interpreted as though prepared jointly and severally by both of the Parties.

42. **No Recordation.** This Agreement shall not be recorded with the County of Fresno.

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the date first above written.

SELLER:

By: _____


BUYER:

By: _____

Richard M. ...

CONSENT OF ESCROW HOLDER

ESCROW HOLDER APPROVES THE ESCROW PROVISIONS AND SPECIFIC INSTRUCTIONS TO ESCROW HOLDER SET FORTH IN THE FOREGOING AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ORANGE COAST TITLE COMPANY

By: _____

Date: _____, 2019

_____, Escrow Officer

EXHIBIT "A"
RESOLUTION NO. PC 20-06

EXHIBIT "A"
LEGAL DEPICTION

EXHIBIT "A"
RESOLUTION NO. PC 20-06



EXHIBIT "A"
RESOLUTION NO. PC 20-06

EXHIBIT "B"

GRANT DEEDS

[To be provided and initialed by the parties prior to the close of escrow]

EXHIBIT "A"
RESOLUTION NO. PC 20-06

EXHIBIT "C"

LEGAL DESCRIPTION

[To be provided and initialed by the parties prior to the close of escrow]

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

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

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 29th day of December 2020, by the following vote:

AYES:

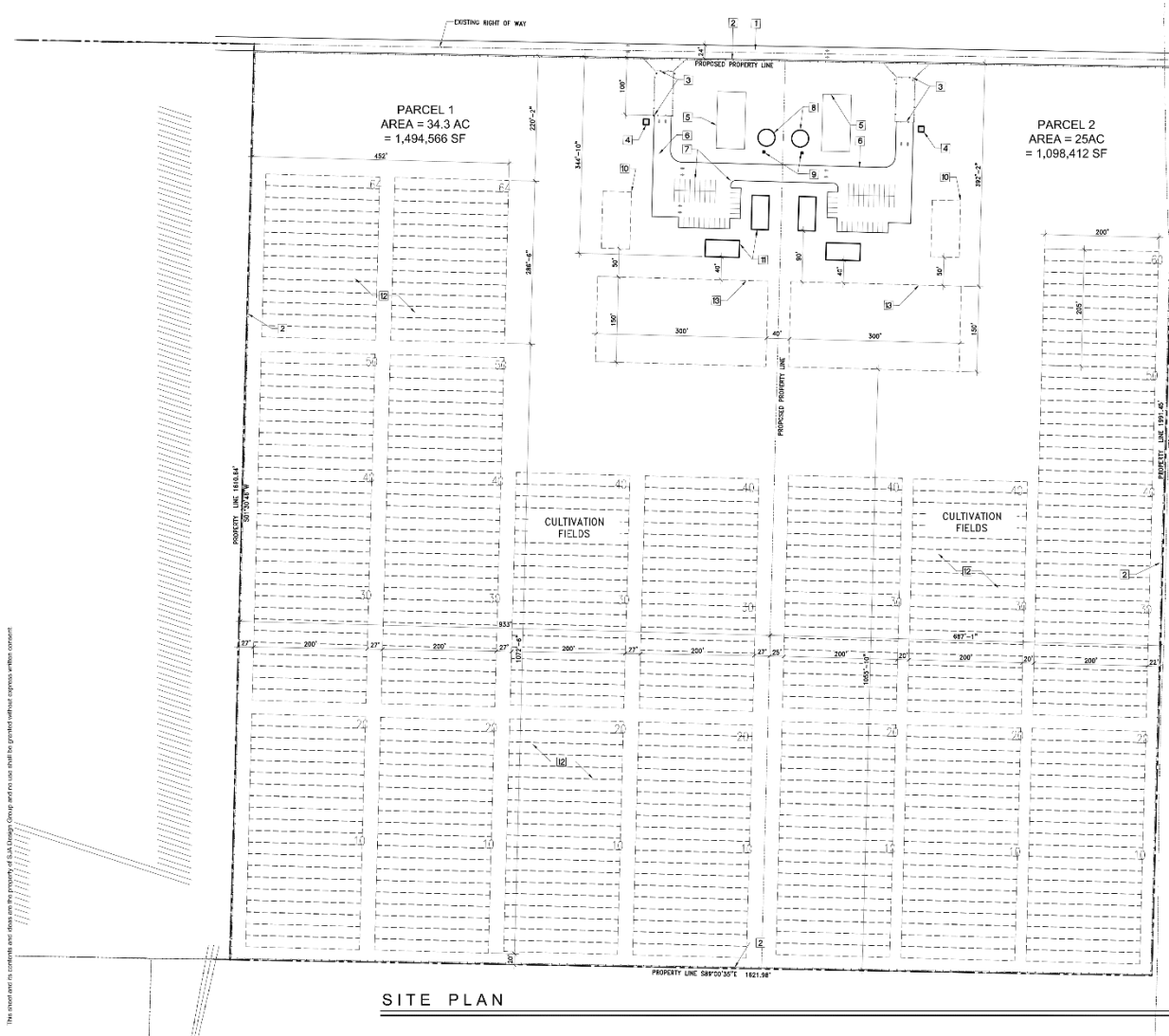
NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

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



PROJECT DATA	
APPLICANT:	VALLEY AGRICULTURAL HOLDINGS, LLC 2155 CONVENTION CENTER WAY, STE 222 COTUIDGE, CA 91704
ADDRESS:	W. BELMONT AVE MENDOTA, CA 93640
APN #	013-055-066 / ABA: 114 AC
EXISTING ZONING:	PUBLIC FACILITIES
EXISTING LAND USE:	VACANT
PROPOSED USE:	CANNABIS CULTIVATION, EXTRACTION AND DISTRIBUTION
PROPOSED ZONING:	ML LIGHT INDUSTRIAL

Code Analysis	
B OCCUPANCY (WORKER BLDGS)	
TYPE V-B, UNLIMITED AREA BLDG	
SPRINKLER:	NO
TABLE 531.3: BASIC ALLOWABLE FLOOR:	45 FEET
TABLE 531.4: BASIC ALLOWABLE STORY:	2-STORY
TABLE 536.2: BASIC ALLOWABLE AREA FACTOR:	0.000 SQ. FT.
F1 OCCUPANCY (HEAD HOUSE)	
CONDT: TYPE V-B, UNLIMITED AREA BLDG	
SPRINKLER:	YES (1-STORY w/ BACKUP)
TABLE 531.3: BASIC ALLOWABLE FLOOR:	65 FEET
TABLE 531.4: BASIC ALLOWABLE STORY:	2-STORY
TABLE 536.2: BASIC ALLOWABLE AREA FACTOR:	25,500 SQ. FT. (5M)
PARCEL 1 = 34 ACRES	
BUILDING AREA	
WORKER BUILDINGS BLDG 1 = +/- 2,000 SF	
WORKER BUILDINGS BLDG 2 = +/- 2,000 SF	
TRAP STRUCTURE BLDG 3 = +/- 45,000 SF	
TOTAL AREA	= 49,000 SF
CULTIVATION FIELDS	
AREA INCLUDING AISLES	= 1,045,000 SF / 34 AC (71% COVERAGE)
PARCEL 2 = 25 ACRES	
BUILDING AREA	
WORKER BUILDINGS BLDG 1 = +/- 2,000 SF	
WORKER BUILDINGS BLDG 2 = +/- 2,000 SF	
TRAP STRUCTURE BLDG 3 = +/- 45,000 SF	
TOTAL AREA	= 49,000 SF
CULTIVATION FIELDS	
AREA INCLUDING AISLES	= 584,000 SF / 15.7 AC (63% COVERAGE)

Site Keynotes	
No.	Description
1	NEW GRAVEL ACCESS ROAD
2	7 FOOT HIGH FORMER FENCE WITH SHARPS WIRE AND RAILOR WIRE
3	(2) 15' WIDE ROLLING GATES WHICH LEADS INTO HOLDING AREA / SALLYPORT ENTRY
4	10' SQUARE SECURITY GUARD BUILDING
5	CATCH BASIN FOR STORM WATER RETENTION
6	NEW ACCESS ROAD 4" AC COVER, 12" SCARIFIED, WOOTENED TO AT LEAST THE STORM WATERS CONTENT AND COMPACTED TO A MIN RELATIVE COMPACTION OF 90 PERCENT (AS PER DISTRICT) NATIVE MATERIAL
7	EMPLOYEE PARKING SPACES
8	FIRE TANK
9	FIRE TANK PUMP
10	SEPTIC SYSTEM / LEACH FIELD
11	MODULAR / MOBILE OFFICE & EMPLOYEE BUILDINGS FOR RESTROOMS & BREAK ROOMS
12	CULTIVATION FIELDS
13	FUTURE (LAND) STRUCTURE +/- 45,000 SF 1 STORY BUILDING

Date: 09/29/2020
 Drawn By: Susan Jones
 Project #: 190304

Proposed Site Plan

Revisions
 Δ X

SHEET No.
A1



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



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 PM₁₀ 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.

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

**A RESOLUTION OF THE PLANNING COMMISSION RESOLUTION NO. PC 20-08
OF THE CITY OF MENDOTA RECOMMENDING
THAT THE CITY COUNCIL OF THE CITY OF MENDOTA
MAKES A DETERMINATION PURSANT TO THE CALI-
FORNIA ENVIRONMENTAL QUALITY ACT, APPROVES
A GENERAL PLAN AMENDMENT AND A CORRESPON-
DING CHANGE OF ZONE, AND ENTERS INTO A DEV-
ELOPMENT AGREEMENT WITH VALLEY AGRICULTURAL
HOLDINGS, LLC REGARDING COMMERCIAL CANNABIS
ACTIVITIES AS DETAILED IN APPLICATION NO. 20-23
(PORTION OF APN 013-030-68ST)**

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, pursuant to Government Code section 65353, if a city has a planning commission authorized to make recommendations regarding an amendment to a general plan, said planning commission shall conduct at least one public hearing on the matter before forwarding a recommendation to the city council; and

WHEREAS, pursuant to Government Code section 65854, *et seq.*, the planning commission shall conduct at least one public hearing on a proposal to amend the zoning ordinance before forwarding a recommendation to the city council; 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, 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, as part of Application No. 20-23, a conditional use permit was considered and approved by the Planning Commission in part upon the condition that said conditional use permit would not become operative until approval of the requisite amendments to the General Plan and zoning map and the recordation of a development agreement pursuant to Mendota Municipal Code Section 8.37.060

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, Government Code Section 65865 provides that any city may enter into a development agreement with any person having a legal authority or equitable interest in real property for the development of such property; and

WHEREAS, the proposed project meets the objectives of the project proponent as listed in the project application and ensures that certain requirements are implemented that promote the public health, safety, and welfare of the community, and assures the developer of certainty in the development of the property; and

WHEREAS, the Planning Commission of the City of Mendota has conducted a duly noticed public hearing, as required by law, to consider Application No. 20-23, which includes a proposed development agreement or development agreements a project site consisting of a portion of Assessor’s Parcel No. 013-030-68ST; and

NOW, THEREFORE, BE IT RESOLVED that the Mendota Planning Commission makes the following recommendations to the Mendota City Council:

1. That the City Council determines that, with mitigation incorporated, the activities proposed within Application No. 20-23 will not have a significant effect on the environment and that the City Council, consistent with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, adopts a mitigated negative declaration and mitigation monitoring & reporting program.
2. That the General Plan Land Use designation be for APN 013-30-68T be amended from Public/Quasi-Public Facilities to Light Industrial as illustrated in Exhibit “A” hereto.
3. That the zoning of APN 013-030-68ST be amended from P-F/CO (Public Facilities with the Commercial Cannabis Overlay District) to M-1/CO (Light Manufacturing with the Commercial Cannabis Overlay District) as illustrated in Exhibit “A” hereto.

4. That the City Council enters into a development agreement or development agreements in substantially the same form as 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 29th day of December 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

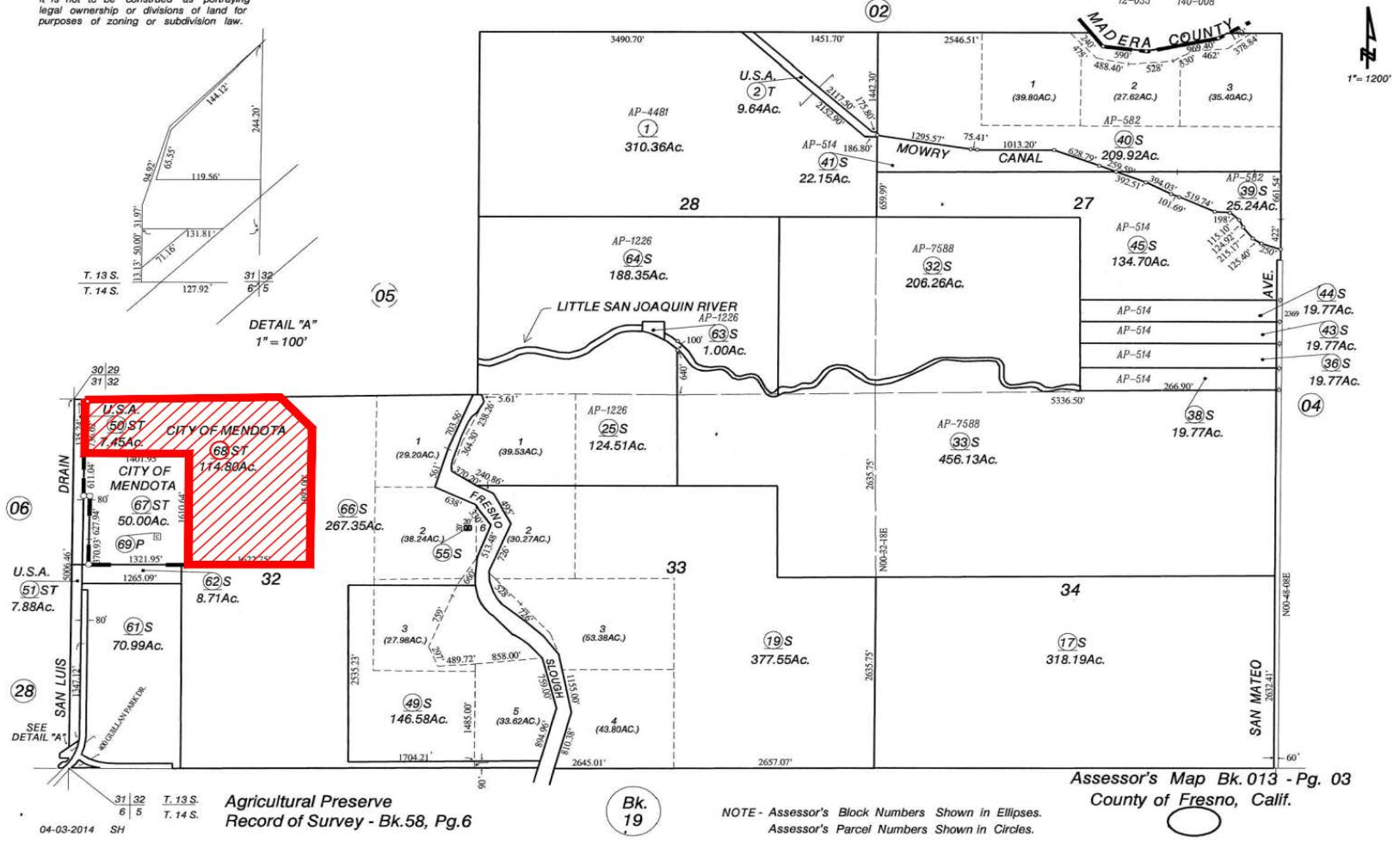
Celeste Cabrera-Garcia, City Clerk

--- NOTE ---
 This map is for Assessment purposes only.
 It is not to be construed as portraying
 legal ownership or divisions of land for
 purposes of zoning or subdivision law.

SUBDIVIDED POR. TWP. 13 S., R15 E. M.D.B. & M.

Tax Rate Area
 12-008 140-005
 12-035 140-008

013-03



Resolution No. PC 20-08
 Exhibit "A"

 General Plan - Public/Quasi-Public Facilities to Light Industrial
 Zoning - P-F/CO (Public Facilities/Commercial Cannabis Overlay District)
 to M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District)

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

**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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2020, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), **VALLEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("Developer"), and **THE AXIOM GROUP, LLC**, a California limited liability company ("Axiom"). City, Developer or Axiom 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

agreement. On or about October 22, 2019 the City and Developer 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 description attached hereto as **Exhibit A** and depicted on the Site Map attached hereto as **Exhibit B**.

E. Developer has two corporate members, Axiom, which holds a forty percent (40%) share in Developer’s assets, including the Property, and Odyssey Insights, LLC, a California limited liability company (“Odyssey”), which holds a sixty percent (60%) share in Developer’s assets, including the Property.

F. Prior to close of escrow on Developer’s purchase of the Property, Developer shall submit an application to the City to sub-divide the Property into two (2) separate legal parcels, with the first parcel being approximately sixty percent (60%) of the Property, or approximately thirty-five (35) acres, to be operated by Odyssey (“Odyssey Parcel”), and the second parcel being approximately forty percent (40%) of Property, or approximately twenty-four (24) acres, to be operated by Axiom (“Axiom Parcel”). The Axiom Parcel is more particularly described in the legal description attached hereto as **Exhibit C** and depicted on the Site Map attached hereto as **Exhibit D**.

G. Developer and/or Axiom proposes to improve, develop, and use the Property as a guard-gated and secure Cannabis Cultivation 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 and/or Axiom 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-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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

K. Prior to the City’s adoption of Ordinance No. 19-06, Developer 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. Government Code § 65867 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

M. On XXXXX, 2020, after a duly noticed and held meeting in accordance with Government Code § 65867, the City’s Planning Commission voted to recommend approval of Developer’s application for a development agreement for the Project.

N. On XXXXX, 2020, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. XXXX, an Ordinance to Approve a Development Agreement by and Between the City of Mendota and Valley Agricultural Holdings, LLC.

O. Pursuant to Government Code section 65867.5, on XXXX, 2019, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. XXX.

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

Q. City, Developer, and Axiom 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 Axiom.

R. The Parties intend through this Agreement to allow Developer and/or Axiom to develop and manage the Project in accordance with the terms of this Agreement.

S. 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 (Axiom Parcel)
Exhibit D	Site Map (Axiom 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

(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 Valley Agricultural Holdings, LLC and its assignees or successors as allowed herein. Developer also has the meaning set forth in Section 6.1.

(z) “Development Agreement Statute” has the meaning set forth in Recital E.

(aa) “Exhibits” has the meaning set forth in Section 1.3.

(bb) “Outdoor and Mixed Light Cultivation” means a Type 2B and Type 3B license classification as set forth in Business and Professions code 26061 (a) (7) and 26061 (a) (10).

(cc) “Gross Receipts” shall mean total revenue received or receivable by the Developer and/or Axiom 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

- (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) “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.

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

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

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

(hh) “Ministerial Fee” or “Ministerial Fees” has the meanings set forth in Section 4.1.

(ii) “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.

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

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

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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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

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

(oo) “Project” has the meaning set forth in Recital D.

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

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

(rr) “Site” has the meaning set forth in Recital G.

(ss) “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.

(tt) “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.

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

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

(ww) “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, Axiom, or the Project.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or Axiom to cease all Commercial Cannabis Activity, upon which Developer and/or Axiom 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 and/or Axiom shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer and/or Axiom shall resume paying any applicable fees after the Tolling Period ends. City and Developer and/or Axiom shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) **Developer/Axiom Tolling or Termination.** Neither Developer nor Axiom may 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/Axiom Termination.** Developer and/or Axiom may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer and/or Axiom 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 and/or Axiom’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, (d) Conditional Use Permit, and (e) 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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, and Developer 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.

(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/Axiom. During the Term, in developing the Site consistent with the Project described herein, Developer and Axiom 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 and Axiom and may not be modified or terminated by City except as set forth in this Agreement or with Developer’s or Axiom’s written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer and/or Axiom 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 and Axiom 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 or Axiom’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 and/or Axiom shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types (the “Authorized License”):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A
Cultivation Outdoor and Mixed Light	1B/2B/3B

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

License Description	State License Type(s)
Cultivation Nursery	4
Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Transportation	12
Cultivation Processor	C-P

Developer and/or Axiom 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 and/or Axiom or their tenants or assignees are applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer and/or Axiom, 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 Axiom or their tenants or assignees, Developer and/or Axiom or their tenants or assignees shall immediately cease Commercial Cannabis Activity on the Site. Developer and/or Axiom 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 and/or Axiom 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 and/or Axiom may request to add to the Authorized License one or more of the license types then authorized by the California Cannabis Laws. If City Council allows any Additional Licenses, City Council shall make a finding of whether Developer’s and/or Axiom’s or their tenants’ or assignees’ Additional Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer and/or Axiom 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 and/or Axiom commencing any development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site, Developer and/or Axiom are required to obtain from the City a Conditional Use Permit and any applicable Subsequent City Approvals. Developer and/or Axiom 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 and/or Axiom’s obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Project shall require Developer and/or Axiom 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 understands and acknowledges that City shall be under no obligation whatsoever to approve or to issue to Developer any development entitlement, including, but not limited to, a Conditional Use Permit or any applicable Subsequent City Approvals, related to Developer’s and/or Axiom’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 acknowledges and agrees 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 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 and Axiom 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 and/or Axiom 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 and Axiom 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 and/or Axiom 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Agreement.

Section 2.10. Developer’s Right to Rebuild. Developer and/or Axiom may renovate portions of the Site or the Axiom 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 and/or Axiom shall provide the other Party 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 and/or Axiom 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 and/or Axiom will attempt to preserve the terms of this Agreement and the rights of Developer and Axiom 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 and/or Axiom 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 or Axiom’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, 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or Axiom 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/Axiom. Consistent with the terms set forth herein, City agrees to cooperate with Developer and/or Axiom, 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 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 and Axiom that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

impacts that is commensurate with the private benefits conferred on Developer and Axiom (the “Public Benefit Fee”). Developer and Axiom 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 agrees to pay the fees 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 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 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 obtaining fee title interest to the Property. City acknowledges that Developer’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, and for so long as the developed portions of the Property are eight hundred thousand (800,000) square feet or greater, an annual “Public Benefit Fee” in the greater amount of either (a) four percent (4%) of the Project’s annual Gross Receipts, as defined in Section 1.4, or (b) FOUR HUNDRED THOUSAND DOLLARS (\$400,000). 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.

(b) Developer shall remit the Contribution Payment and the Public Benefit Fee as applicable, to City as described in subdivisions (a.1) and (a.2) of this Section. Failure to remit the Contribution Payment and Public Benefit Fee, as applicable, is a material breach of this Agreement. For purposes of clarity and avoidance of doubt, the Parties agree and acknowledge that Developer’s obligation to commence making the Public Benefit Fee payment to the City shall commence on the first day of Project operation and not prior to that date.

Section 4.3. Reporting. Developer and/or Axiom 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 and/or Axiom 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or Axiom shall make all records relating to this Article 4 available to City within three (3) calendar days.

Section 4.5. Late Fee. Developer and Axiom 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 or Axiom 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 and/or Axiom 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 or Axiom 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 and/or Axiom 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 and/or Axiom 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 and Axiom shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the foregoing, Developer and/or Axiom 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 pursuant to the Public Benefit Fee by an equal amount to any new tax on commercial cannabis businesses.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Section 4.8. Employing City Residents. Developer and/or Axiom 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 and/or Axiom 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 and/or Axiom 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 and/or Axiom 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 and/or Axiom 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 and Axiom 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 \$50,000 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

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 and/or Axiom 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 and/or Axiom 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

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

(\$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 and/or Axiom 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 and/or Axiom shall take out and maintain during the Term of this Agreement, workers' compensation insurance for all of Developer's and/or Axiom's employees employed at or on the Project, and in the case any of the work is subcontracted, Developer and/or Axiom 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 and/or Axiom. In case any class of employee engaged in work on the Project is not protected under any workers' compensation law, Developer and/or Axiom shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer and Axiom hereby indemnify City for any damage resulting from failure of Developer and/or Axiom, 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 and/or Axiom 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,

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or Axiom 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 and/or Axiom 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 shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit. Developer’s and/or Axiom’s failure to indemnify City shall be a waiver by Developer and/or Axiom of any right to proceed with the Project, or any portion thereof, and a waiver of Developer’s and/or Axiom’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 and/or Axiom’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 and/or Axiom and, therefore, Developer and/or Axiom hereby waive all claims for damages against City for breach of this Agreement. Developer and/or Axiom further acknowledges that under the Development Agreement Statute, land use approvals (including

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and Axiom 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 Axiom is opposed. Developer and Axiom 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 and Axiom waive all claims for damages against City in this regard.

ARTICLE 7
MORTGAGEE PROTECTION

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 related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or Axiom 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 and/or Axiom until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer and/or Axiom are in default, Developer and/or Axiom shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer and/or Axiom 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 and/or Axiom 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 and/or Axiom 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 Axiom 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 and/or Axiom 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Section 8.3. Estoppel Certificates. City shall, with at least twenty (20) calendar days prior written notice, execute, acknowledge, and deliver to Developer and/or Axiom, Developers’ and/or Axiom’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 and/or Axiom’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 and/or Axiom’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 and/or Axiom shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer and/or Axiom.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City, Developer, and/or Axiom 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/Axioms’ Obligations. Termination of this Agreement shall eliminate any further obligation of Developer and/or Axiom 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 and/or Axiom to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or Axiom under this Agreement are personal to Developer and/or Axiom and neither Developer nor Axiom 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 and Axiom 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 and/or Axiom 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 and/or Axiom, notify Developer and/or Axiom 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 and/or Axiom 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 and/or Axiom 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

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and Axiom 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 and/or Axiom'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 and Axiom.

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer and Axiom 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

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Attention: John P. Kinsey, Esq.

If to Developer: 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.

If to Axiom: The Axiom Group, LLC
1201 K Street, Suite 920
Sacramento, CA 95814
Attention: Dustin Moore

And to: Dickinson Wright
150 E. Gay Street
Suite 2400
Columbus OH 43215
Attention: Benton B. Bodamer

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 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 and/or Axiom 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and Axiom agree that neither Developer nor Axiom may 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 and/or Axiom 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 and/or Axiom 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 and/or Axiom 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 and/or Axiom 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 and/or Axiom 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, and Axiom 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, and/or Axiom 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 or Axiom 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.](#)

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

(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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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]

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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: _____, 2020

CITY OF MENDOTA,
a California Municipal Corporation

By: Cristian Gonzalez
Its: City Manager

Attest:

City Clerk
Approved to as Form:

John P. Kinsey
City Attorney

"Developer"

Date: _____, 2020

VALLEY AGRICULTURAL HOLDINGS,

LLC, a California limited liability

company_____

By:
Its:

"AXIOM"

Date:_, 2020 THE AXIOM GROUP, LLC, a
California limited liability
company_____

By:
Its:

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 _____)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 _____)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

**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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2020, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), **VALLEY AGRICULTURAL HOLDINGS, LLC**, a California limited liability company ("Developer"), and **INDUSTRIAL INTEGRITY SOLUTIONS**, a New Mexico limited liability company ("IIS"). City, Developer or IIS 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 Developer 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 description attached hereto as **Exhibit A** and depicted on the Site Map attached hereto as **Exhibit B**.

E. Developer has two corporate members, IIS, which holds a sixty percent (60%) share in Developer’s assets, including the Property, and The Axiom Group, LLC, a California limited liability company (“Axiom”), which holds a forty percent (40%) share in Developer’s assets, including the Property.

F. Prior to close of escrow on Developer’s purchase of the Property, Developer shall submit an application to the City to sub-divide the Property into two (2) separate legal parcels, with the first parcel being approximately sixty percent (60%) of the Property, or approximately thirty-five (35) acres, to be operated by IIS (“IIS Parcel”), and the second parcel being approximately forty percent (40%) of Property, or approximately twenty-four (24) acres, to be operated by Axiom (“Axiom Parcel”). The IIS Parcel is more particularly described in the legal description attached hereto as **Exhibit C** and depicted on the Site Map attached hereto as **Exhibit D**.

G. Developer and/or IIS proposes to improve, develop, and use the Property as a guard-gated and secure Cannabis Cultivation 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 and/or IIS 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-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

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

operating within the City.

K. Prior to the City's adoption of Ordinance No. 19-06, Developer 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. Government Code § 65867 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

M. On XXXXX, 2020, after a duly noticed and held meeting in accordance with Government Code § 65867, the City's Planning Commission voted to recommend approval of Developer's application for a development agreement for the Project.

N. On XXXXX, 2020, the City Council, in a duly noticed public hearing, introduced and conducted the first reading of Ordinance No. XXXX, an Ordinance to Approve a Development Agreement by and Between the City of Mendota and Valley Agricultural Holdings, LLC.

O. Pursuant to Government Code section 65867.5, on XXXX, 2019, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. XXX.

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

Q. City, Developer, and IIS 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 IIS.

R. The Parties intend through this Agreement to allow Developer and/or IIS to develop and manage the Project in accordance with the terms of this Agreement.

S. 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 (IIS Parcel)
Exhibit D	Site Map (IIS 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

(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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

- (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 Valley Agricultural Holdings, LLC and its assignees or successors as allowed herein. Developer also has the meaning set forth in Section 6.1.
- (z) “Development Agreement Statute” has the meaning set forth in Recital E.
- (aa) “Exhibits” has the meaning set forth in Section 1.3.
- (bb) “Outdoor and Mixed Light Cultivation” means a Type 2B and Type 3B license classification as set forth in Business and Professions code 26061 (a) (7) and 26061 (a) (10).
- (cc) “Gross Receipts” shall mean total revenue received or receivable by the Developer and/or IIS 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

- (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) “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.

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

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

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

(hh) “Ministerial Fee” or “Ministerial Fees” has the meanings set forth in Section 4.1.

(ii) “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.

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

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

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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

4.3.

- (mm) “Notice of Termination” has the meaning set forth in Section 9.1.
- (nn) “Processing Costs” has the meaning set forth in Section 1.11.
- (oo) “Project” has the meaning set forth in Recital D.

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

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

- (rr) “Site” has the meaning set forth in Recital G.

- (ss) “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.

- (tt) “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.

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

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

- (ww) “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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

venturer of Developer, IIS, 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 and/or IIS to cease all Commercial Cannabis Activity, upon which Developer and/or IIS 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 and/or IIS shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer and/or IIS shall resume paying any applicable fees after the Tolling Period ends. City and Developer and/or IIS shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) **Developer/IIS Tolling or Termination.** Neither Developer nor IIS may 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/IIS Termination.** Developer and/or IIS may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer and/or IIS 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 and/or IIS’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, (d) Conditional Use Permit, and (e) 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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, and Developer 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.

(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/IIS. During the Term, in developing the Site consistent with the Project described herein, Developer and IIS 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 and IIS and may not be modified or terminated by City except as set forth in this Agreement or with Developer’s or IIS’s written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer and/or IIS 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 and IIS 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 or IIS’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 and/or IIS shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types (the “Authorized License”):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A
Cultivation Outdoor and Mixed Light	1B/2B/3B

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

License Description	State License Type(s)
Cultivation Nursery	4
Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Transportation	12
Cultivation Processor	C-P

Developer and/or IIS 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 and/or IIS or their tenants or assignees are applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer and/or IIS, 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 IIS or their tenants or assignees, Developer and/or IIS or their tenants or assignees shall immediately cease Commercial Cannabis Activity on the Site. Developer and/or IIS 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 and/or IIS 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 and/or IIS may request to add to the Authorized License one or more of the license types then authorized by the California Cannabis Laws. If City Council allows any Additional Licenses, City Council shall make a finding of whether Developer’s and/or IIS’s or their tenants’ or assignees’ Additional Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer and/or IIS 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 and/or IIS commencing any development or construction activities on the Site, or the operation of any Commercial Cannabis Activity on the Site, Developer and/or IIS are required to obtain from the City a Conditional Use Permit and any applicable Subsequent City Approvals. Developer and/or IIS 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 and/or IIS’s obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Project shall require Developer and/or IIS 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 understands and acknowledges that City shall be under no obligation whatsoever to approve or to issue to Developer any development entitlement, including, but not limited to, a Conditional Use Permit or any applicable Subsequent City Approvals, related to Developer’s and/or IIS’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 acknowledges and agrees 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 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 and IIS 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 and/or IIS 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 and IIS 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 and/or IIS 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Section 2.10. Developer’s Right to Rebuild. Developer and/or IIS may renovate portions of the Site or the IIS 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 and/or IIS shall provide the other Party 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 and/or IIS 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 and/or IIS will attempt to preserve the terms of this Agreement and the rights of Developer and IIS 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 and/or IIS 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 or IIS’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, 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or IIS 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/IIS. Consistent with the terms set forth herein, City agrees to cooperate with Developer and/or IIS, 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 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 and IIS 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 and IIS (the “Public

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Benefit Fee”). Developer and IIS 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 agrees to pay the fees 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 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 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 obtaining fee title interest to the Property. City acknowledges that Developer’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, and for so long as the developed portions of the Property are eight hundred thousand (800,000) square feet or greater, an annual “Public Benefit Fee” in the greater amount of either (a) four percent (4%) of the Project’s annual Gross Receipts, as defined in Section 1.4, or (b) SIX HUNDRED THOUSAND DOLLARS (\$600,000). 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.

(b) Developer shall remit the Contribution Payment and the Public Benefit Fee as applicable, to City as described in subdivisions (a.1) and (a.2) of this Section. Failure to remit the Contribution Payment and Public Benefit Fee, as applicable, is a material breach of this Agreement. For purposes of clarity and avoidance of doubt, the Parties agree and acknowledge that Developer’s obligation to commence making the Public Benefit Fee payment to the City shall commence on the first day of Project operation and not prior to that date.

Section 4.3. Reporting. Developer and/or IIS 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 and/or IIS 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or IIS shall make all records relating to this Article 4 available to City within three (3) calendar days.

Section 4.5. Late Fee. Developer and IIS 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 or IIS 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 and/or IIS 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 or IIS 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 and/or IIS 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 and/or IIS 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 and IIS shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the foregoing, Developer and/or IIS 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 pursuant to the Public Benefit Fee by an equal amount to any new tax on commercial cannabis businesses.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

Section 4.8. Employing City Residents. Developer and/or IIS 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 and/or IIS 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 and/or IIS 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 and/or IIS 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 and/or IIS 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 and IIS 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 \$50,000 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

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 and/or IIS 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 and/or IIS 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,

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or IIS 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 and/or IIS shall take out and maintain during the Term of this Agreement, workers’ compensation insurance for all of Developer’s and/or IIS’s employees employed at or on the Project, and in the case any of the work is subcontracted, Developer and/or IIS 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 and/or IIS. In case any class of employee engaged in work on the Project is not protected under any workers’ compensation law, Developer and/or IIS shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer and IIS hereby indemnify City for any damage resulting from failure of Developer and/or IIS, 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 and/or IIS 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.

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

(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 and/or IIS 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 and/or IIS 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 shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit. Developer's and/or IIS's failure to indemnify City shall be a waiver by Developer and/or IIS of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's and/or IIS'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 and/or IIS'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 and/or IIS and, therefore, Developer and/or IIS hereby waive all claims for damages against City for breach of this Agreement. Developer and/or IIS further acknowledges 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 and IIS 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 IIS is opposed. Developer and IIS further acknowledge that, as an instrument which must be approved by ordinance,

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and IIS waive all claims for damages against City in this regard.

ARTICLE 7
MORTGAGEE PROTECTION

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 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

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or IIS 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 and/or IIS until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer and/or IIS are in default, Developer and/or IIS shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer and/or IIS 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 and/or IIS 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 and/or IIS 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 IIS 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 and/or IIS 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 and/or IIS, Developers' and/or IIS'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 and/or IIS'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 and/or IIS's performance of the Agreement or violation of any City ordinances, regulations, and policies

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and/or IIS shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer and/or IIS.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City, Developer, and/or IIS 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/IISs’ Obligations. Termination of this Agreement shall eliminate any further obligation of Developer and/or IIS 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 and/or IIS 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.

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

ARTICLE 10

OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. The rights granted to Developer and/or IIS under this Agreement are personal to Developer and/or IIS and neither Developer nor IIS 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 and IIS 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 and/or IIS 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 and/or IIS, notify Developer and/or IIS 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 and/or IIS 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 and/or IIS 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 and IIS 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 and/or IIS’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

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 and IIS.

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer and IIS 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: 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.

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

If to IIS: Industrial Integrity Solutions, LLC
2151 E. Convention Center Way, Suite 222
Ontario, CA 91764
Attention: Richard Munkvold

And to: Industrial Integrity Solutions, 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 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 and/or IIS 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 and IIS agree that neither Developer nor IIS may 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 and/or IIS 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 and/or IIS for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer and/or IIS 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 and/or IIS 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 and/or IIS 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, and IIS 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, and/or IIS 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 or IIS 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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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

EXHIBIT “B” TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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]

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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"

"Developer"

Date: _____, 2020

Date: _____, 2020

CITY OF MENDOTA,
a California Municipal Corporation

VALLEY AGRICULTURAL HOLDINGS,

By: Cristian Gonzalez
Its: City Manager

LLC, a California limited liability

company_____

Attest:

City Clerk
Approved to as Form:

By:
Its:

"IIS"

John P. Kinsey
City Attorney

Date:_, 2020
INDUSTRIAL INTEGRITY SOLUTIONS,
LLC, a California limited liability
company_____

By:
Its:

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 _____)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

EXHIBIT "B" TO RESOLUTION NO. PC 20-08
DRAFT DEVELOPMENT AGREEMENTS

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 _____)

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

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

Witness my hand and official seal.

(Signature)

(Seal)