



**FOWLER CITY COUNCIL MEETING
AGENDA
TUESDAY, AUGUST 17, 2021
7:00 P.M.
CITY COUNCIL CHAMBER
128 SOUTH 5TH STREET
FOWLER, CA 93625**

In compliance with the Americans with Disabilities Act, if you need assistance or accommodations to access the City Council Chambers or participate in this meeting, please contact the Clerk at (559) 834-3113 x102. Notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

City Council meetings are open to the public at the physical address listed above. There are numerous ways to participate in the City Council meetings: you may attend in person, you may appear by telephone as described below, or you may submit written comments via email to avasquez@ci.fowler.ca.us. Please include your name and reference the agenda item you are commenting on, if any. Written comments received that do not specify an agenda item will be marked for the general public comment portion of the agenda. Emails received by 8:00 am on the date of the meeting will be provided to the City Council at the meeting and made part of the record of proceedings but will not be read aloud.

This meeting will be conducted pursuant to the provisions of the Governor's Executive Order N-25-20 which suspends certain requirements of the Ralph M. Brown Act. The telephone number listed below will provide access to the meeting via teleconference. Please note: when joining the teleconference you will be asked your name which will be used to identify you during any public comment period.

**Telephone Number: 978-990-5175
Meeting ID: 494026#**

It is requested that any member of the public attending while on the teleconference have their phone set on "mute" to eliminate background noise or other interference from telephonic participation.

Any writing or document that is a public record and provided to a majority of the City Council regarding an open session item on the agenda will be made available for public inspection at City Hall, in the City Clerk's office, during normal business hours. In addition, such writings and documents may be posted on the City's website at www.fowlerciv.org.

Resolutions and Ordinances - With respect to the approval of resolutions and ordinances, the reading of the title thereto shall be deemed a motion to waive a reading of the complete resolution or ordinance and unless there is a request by a Councilmember that the resolution or

ordinance be read in full, further reading of the resolution or ordinance shall be deemed waived by unanimous consent of the Council.

1. Meeting Called to Order
2. Roll Call
3. Public Comment

This portion of the meeting is reserved for persons desiring to address the Council on any matter not described on this agenda. Presentations are limited to 5 minutes per person and no more than 15 minutes per topic.

4. Consent Calendar

Items on the Consent Calendar are considered routine and include a recommended action, and shall be approved by one motion of the Council. If a Councilmember or member of the public requests additional information or wishes to comment on an item, the vote should be held until the questions or comments are made, and then a single vote should be taken. If a Councilmember opposes the recommended action for an item, the item should be removed and discussed and acted upon as a separate item.

4-A. RATIFY Warrants for August 17, 2021

4-B. APPROVE Minutes of the August 3, 2021 City Council Special Meeting

4-C. APPROVE Minutes of the August 3, 2021 City Council Meeting

4-D. APPROVE Resolution No. 2510 establishing a Fund Balance Policy for Financial Statement Reporting in compliance with Governmental Accounting Standards Board Statement No. 54 ("GASB 54"). (Finance)

4-E. APPROVE a disposition and development agreement between the City of Fowler and Richard and Lucinda Wadda for the property located at 128 South Sixth Street. (City Manager)

4-F. APPROVE Communications Site Lease Agreement with unWired Broadband, LLC, to lease space on the Water Tower for the installation and operation of wireless communications antennas and related equipment, and authorize the City Manager to sign the lease agreement. (Public Works)

5. General Administration

5-A. Finance

- i. APPROVAL of items pertaining to the use of the Coronavirus State and Local Fiscal Recovery funds under the American Rescue Plan Act of 2021.

1. Adopt Resolution No. 2512 amending the 2021-2022 Adopted Budget to reflect Coronavirus State and Local Fiscal Recovery

funds received under the American Rescue Plan Act (ARPA) in the amount of \$812,156 in revenues, and appropriate \$575,000 for various expenditures including a one-time premium pay to essential city employees; to upgrade city water meters; and a Council Chambers Audio-Visual system.

2. Adopt Resolution No. 2513 of the City Council of the City of Fowler authorizing a one-time premium payment to eligible city employees performing essential work, who have been and continue to be relied upon to maintain continuity of city operations.

5-B. Planning

- i. PUBLIC HEARING to Consider Introduction of Zoning Text Amendment No. 21-01 to Amend Section 17, of Article 22, of Chapter 5, of Title 9 of the Fowler Municipal Code – Special Use Signs, to allow multiple drive-through menu boards.

5-C. Public Works

- i. PUBLIC HEARING to APPROVE Resolution No. 2511, a Resolution Confirming Diagram and Assessment of Annual Levy – 2021/22 for Landscaping and Storm Drainage Facilities Maintenance District No. 1.

5-D. City Manager's Office

- i. COVID-19 Update
- ii. CONSIDER various projects for potential Economic Development Administration (EDA) grant opportunity.

6. Staff Communications (City Manager)

7. Councilmember Reports and Comments

8. Closed Session

8-A. Government Code Section 54956.8

Conference with Real Property Negotiator

Property: APNs 343-233-02ST and 343-233-03ST (NW corner of S. 7th St. and E. Vine St.)

Agency Negotiator: Wilma Quan, City Manager

Negotiating Party: Abdallah Qawadri

Under Negotiation: Price and terms of potential sale

9. Adjourn

Next Ordinance No. 2021-04

Next Resolution No. 2514

CERTIFICATION: I, Angela Vasquez, Deputy City Clerk of the City of Fowler, California, hereby certify that the foregoing agenda was posted for public review on Friday, August 13, 2021.

A handwritten signature in blue ink, appearing to read "Angela Vasquez", with a stylized, cursive script.

*Angela Vasquez
Deputy City Clerk*

CITY OF FOWLER
WARRANTS LIST
August 17, 2021

<u>ACCOUNTS PAYABLE CHECKS</u>	<u>CHECK NUMBERS</u>	<u>CHECK DATES</u>	<u>AMOUNT</u>
Regular checks	38157-38209	July 29 thru Aug 10	\$ 83,157.12
TOTAL ACCOUNTS PAYABLE CHECKS			<u>\$ 83,157.12</u>
<u>PAYROLL COSTS</u>			
First August Bi-Monthly Payroll		August 15, 2021	95,090.58
TOTAL PAYROLL COSTS			<u>\$ 95,090.58</u>
TOTAL CASH DISBURSEMENTS			<u>\$ 178,247.70</u>

NOTE: Check #38192 Void check
Check #38194-#38201 Void checks

ITEM

4A

SUPERION
DATE: 08/12/2021
TIME: 12:25:09

SELECTION CRITERIA: transact.check_no between '38157' and '38209'
ACCOUNTING PERIOD: 2/22

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 1
ACCTPA21

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	38157	07/29/21	12895	ROBERTS OF CALIFORNIA	5000	CITY HALL FRONT CNTR	0.00	5,774.00
1001	38158	08/04/21	14131	CENTRAL VALLEY SWEEPING,	2250	STREET SWEEPING JUNE	0.00	2,750.00
1001	38159	08/04/21	13275	FERGUSON WATERWORKS #142	5000	COLLECTOR FOR REPAIRS	0.00	1,852.58
1001	38159	08/04/21	13275	FERGUSON WATERWORKS #142	5000	METER PURCHASES	0.00	1,297.39
TOTAL CHECK							0.00	3,149.97
1001	38160	08/04/21	11626	GARCIA & SANCHEZ SMOG &	6260	REPAIR RADIATOR	0.00	210.00
1001	38161	08/04/21	12431	HEIMAN INC	6130	SUPPLIES	0.00	160.25
1001	38162	08/04/21	11688	PAPE MACHINERY	6200	BACKHOE REPAIRS	0.00	2,199.83
1001	38163	08/04/21	10249	QUILL	6700	SUPPLIES	0.00	358.46
1001	38163	08/04/21	10249	QUILL	6030	SUPPLIES	0.00	64.92
1001	38163	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	35.95
1001	38163	08/04/21	10249	QUILL	6030	SUPPLIES	0.00	34.86
1001	38163	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	26.69
1001	38163	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	23.96
1001	38163	08/04/21	10249	QUILL	6030	SUPPLIES	0.00	23.09
1001	38163	08/04/21	10249	QUILL	6030	SUPPLIES	0.00	13.94
1001	38163	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	10.88
1001	38163	08/04/21	10249	QUILL	6200	SUPPLIES	0.00	7.62
TOTAL CHECK							0.00	600.37
1001	38164	08/04/21	10251	R & R AUTO REPAIR SHOP	5000	PICK UP REPAIRS	0.00	486.59
1001	38164	08/04/21	10251	R & R AUTO REPAIR SHOP	5000	REPAIRS & MAINTENANCE	0.00	436.43
TOTAL CHECK							0.00	923.02
1001	38165	08/04/21	11880	RJ BERRY JR INC	5000	RENTAL DIESEL TRACTOR	0.00	1,200.00
1001	38166	08/04/21	11195	ROBERT V JENSEN INC	5000	FUEL	0.00	706.10
1001	38166	08/04/21	11195	ROBERT V JENSEN INC	6260	FUEL	0.00	260.95
1001	38166	08/04/21	11195	ROBERT V JENSEN INC	6200	FUEL	0.00	236.29
1001	38166	08/04/21	11195	ROBERT V JENSEN INC	6130	FUEL	0.00	109.24
1001	38166	08/04/21	11195	ROBERT V JENSEN INC	6160	FUEL	0.00	95.14
TOTAL CHECK							0.00	1,407.72
1001	38167	08/04/21	10024	BSK ASSOCIATES	5000	TESTING	0.00	182.00
1001	38167	08/04/21	10024	BSK ASSOCIATES	5000	TESTING	0.00	230.00
TOTAL CHECK							0.00	412.00
1001	38168	08/04/21	10045	CASCADE FIRE EQUIPMENT C	6130	SUPPLIES	0.00	109.74
1001	38169	08/04/21	14356	COMCAST	6700	SERVICES	0.00	105.54
1001	38169	08/04/21	14356	COMCAST	6030	SERVICES	0.00	118.38
TOTAL CHECK							0.00	223.92
1001	38170	08/04/21	14162	DANNY FAIJO	6400	FARMERS MARKET	0.00	500.00
1001	38171	08/04/21	14473	FORTNERS TOWING	5000	TOW SERVICE	0.00	100.00

SUPERION
DATE: 08/12/2021
TIME: 12:25:09

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 2
ACCTPA21

SELECTION CRITERIA: transact.check_no between '38157' and '38209'
ACCOUNTING PERIOD: 2/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	38172	08/04/21	12499	FRESNO PIPE & SUPPLY	5000	SUPPLIES	0.00	11.63
1001	38173	08/04/21	10141	H & H TIRE SERVICES #3,	6200	TIRE DISPOSAL	0.00	105.00
1001	38173	08/04/21	10141	H & H TIRE SERVICES #3,	6120	TIRE REPLACEMENT	0.00	34.36
TOTAL CHECK								
1001	38174	08/04/21	14259	IMAGESOURCE	6700	COPIES 07/22/21	0.00	168.93
1001	38174	08/04/21	14259	IMAGESOURCE	6150	COPIES 07/22/21	0.00	168.93
1001	38174	08/04/21	14259	IMAGESOURCE	6160	COPIES 07/22/21	0.00	168.93
1001	38174	08/04/21	14259	IMAGESOURCE	6020	COPIES 07/22/21	0.00	168.94
TOTAL CHECK								
1001	38175	08/04/21	12076	KEY DESIGN LOCKSMITHING	6200	KEYS	0.00	118.08
1001	38176	08/04/21	10191	LIFE ASSIST, INC	6130	NITRILE GLOVES & AFD	0.00	313.85
1001	38176	08/04/21	10191	LIFE ASSIST, INC	6130	SUPPLIES	0.00	338.79
TOTAL CHECK								
1001	38177	08/04/21	14474	LOCK AND SAFE	6020	PLANNING TRAILER KEYS	0.00	125.00
1001	38178	08/04/21	10779	NAPA AUTO PARTS	6200	WHEEL CHARGER	0.00	200.05
1001	38179	08/04/21	14428	NAVIA BENEFIT SOLUTIONS	6020	COBRA JULY COVERAGE	0.00	36.45
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	6200	UTILITIES	0.00	11.51
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	6200	UTILITIES	0.00	36.95
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	2250	UTILITIES	0.00	76.74
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	2250	UTILITIES	0.00	119.33
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	6200	UTILITIES	0.00	124.40
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	6700	UTILITIES	0.00	1,163.03
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	6200	UTILITIES	0.00	3,318.79
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	2250	UTILITIES	0.00	4,367.62
1001	38180	08/04/21	10237	P G & E - SACRAMENTO	5000	UTILITIES	0.00	9,370.72
TOTAL CHECK								
1001	38181	08/04/21	14475	PARCELQUEST	6150	SERVICES 07/21-09/22	0.00	1,799.00
1001	38182	08/04/21	10249	QUILL	6030	SUPPLIES	0.00	10.34
1001	38182	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	18.72
1001	38182	08/04/21	10249	QUILL	6700	SUPPLIES	0.00	19.17
1001	38182	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	26.69
1001	38182	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	32.64
1001	38182	08/04/21	10249	QUILL	6130	SUPPLIES	0.00	36.17
1001	38182	08/04/21	10249	QUILL	6160	SUPPLIES	0.00	39.74
1001	38182	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	51.71
1001	38182	08/04/21	10249	QUILL	6150	SUPPLIES	0.00	82.73
1001	38182	08/04/21	10249	QUILL	6020	SUPPLIES	0.00	83.19
1001	38182	08/04/21	10249	QUILL	6120	SUPPLIES	0.00	105.67
1001	38182	08/04/21	10249	QUILL	6160	SUPPLIES	0.00	152.33
1001	38182	08/04/21	10249	QUILL	6030	SUPPLIES	0.00	196.15
1001	38182	08/04/21	10249	QUILL	6120	SUPPLIES	0.00	344.32

SUPERION
DATE: 08/12/2021
TIME: 12:25:09

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ACCTPA21

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

SELECTION CRITERIA: transact-check_no between '38157' and '38209'
ACCOUNTING PERIOD: 2/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	38193	08/04/21	14290	XEROX FINANCIAL SERVICES	6150	COPY LEASE 0625-0724	0.00	82.21
1001	38193	08/04/21	14290	XEROX FINANCIAL SERVICES	6160	COPY LEASE 0625-0724	0.00	82.21
1001	38193	08/04/21	14290	XEROX FINANCIAL SERVICES	6700	COPY LEASE 0625-0724	0.00	164.41
1001	38193	08/04/21	14290	XEROX FINANCIAL SERVICES	6020	COPY LEASE 0625-0724	0.00	383.63
1001	38193	08/04/21	14290	XEROX FINANCIAL SERVICES	6120	COPY LEASE 0625-0724	0.00	383.63
TOTAL CHECK							0.00	1,096.09
1001	38202	08/10/21	10064	COLONIAL LIFE INSURANCE	100	EMPLOYEE DEDUCTION	0.00	83.34
1001	38202	08/10/21	10064	COLONIAL LIFE INSURANCE	100	EMPLOYEE DEDUCTION	0.00	159.38
TOTAL CHECK							0.00	242.72
1001	38203	08/10/21	14472	FLORES, JAIME	500	UB REFUND	0.00	56.37
1001	38204	08/10/21	14471	HERNANDEZ, ENGELBERTO E	500	UB REFUND	0.00	100.00
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	8500	EMPLOYEE BENEFITS	0.00	72.00
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	6160	EMPLOYEE BENEFITS	0.00	351.25
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	6030	EMPLOYEE BENEFITS	0.00	503.99
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	6150	EMPLOYEE BENEFITS	0.00	702.49
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	6400	EMPLOYEE BENEFITS	0.00	719.99
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	6700	EMPLOYEE BENEFITS	0.00	719.99
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	100	EMPLOYEE BENEFITS	0.00	2,137.49
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	6020	EMPLOYEE BENEFITS	0.00	2,367.27
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	5000	EMPLOYEE BENEFITS	0.00	3,770.16
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	6200	EMPLOYEE BENEFITS	0.00	6,748.41
1001	38205	08/10/21	13496	KEENAN & ASSOCIATES	6120	EMPLOYEE BENEFITS	0.00	11,404.62
TOTAL CHECK							0.00	29,497.66
1001	38206	08/10/21	14476	KEYSHA ISLER	6400	08/11 BAND FRMRS MRKT	0.00	500.00
1001	38207	08/10/21	13135	STATE WATER RESOURCE CON	5000	EXAM FEE CHARLIE M	0.00	45.00
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	8500	EMPLOYEE BENEFITS	0.00	3.31
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	6400	EMPLOYEE BENEFITS	0.00	33.18
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	6700	EMPLOYEE BENEFITS	0.00	33.18
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	6030	EMPLOYEE BENEFITS	0.00	39.82
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	6150	EMPLOYEE BENEFITS	0.00	69.66
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	6020	EMPLOYEE BENEFITS	0.00	99.54
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	5000	EMPLOYEE BENEFITS	0.00	159.25
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	6160	EMPLOYEE BENEFITS	0.00	164.36
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	6200	EMPLOYEE BENEFITS	0.00	368.28
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	6120	EMPLOYEE BENEFITS	0.00	453.54
1001	38208	08/10/21	13647	SUN LIFE FINANCIAL	100	EMPLOYEE BENEFITS	0.00	1,157.30
TOTAL CHECK							0.00	2,581.42
1001	38209	08/10/21	11335	VISION SERVICE PLAN - (C	6200	EMPLOYEE BENEFITS	0.00	127.99
1001	38209	08/10/21	11335	VISION SERVICE PLAN - (C	6120	EMPLOYEE BENEFITS	0.00	216.60
1001	38209	08/10/21	11335	VISION SERVICE PLAN - (C	100	EMPLOYEE BENEFITS	0.00	246.95
1001	38209	08/10/21	11335	VISION SERVICE PLAN - (C	8500	EMPLOYEE BENEFITS	0.00	0.99
1001	38209	08/10/21	11335	VISION SERVICE PLAN - (C	6400	EMPLOYEE BENEFITS	0.00	9.85
1001	38209	08/10/21	11335	VISION SERVICE PLAN - (C	6700	EMPLOYEE BENEFITS	0.00	9.85
1001	38209	08/10/21	11335	VISION SERVICE PLAN - (C	6030	EMPLOYEE BENEFITS	0.00	11.81

SUPERION
DATE: 08/12/2021
TIME: 12:25:09

PAGE NUMBER: 5
ACCTPA21

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

SELECTION CRITERIA: transact.check_no between '38157' and '38209'
ACCOUNTING PERIOD: 2/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	DESCRIPTION	SALES TAX	AMOUNT
1001	38209	08/10/21	11335	VISION SERVICE PLAN -	(C 6160	EMPLOYEE BENEFITS	0.00	19.70
1001	38209	08/10/21	11335	VISION SERVICE PLAN -	(C 6020	EMPLOYEE BENEFITS	0.00	49.22
1001	38209	08/10/21	11335	VISION SERVICE PLAN -	(C 5000	EMPLOYEE BENEFITS	0.00	65.96
TOTAL	CHECK						0.00	758.92
TOTAL	CASH ACCOUNT						0.00	83,157.12
TOTAL	FUND						0.00	83,157.12
TOTAL	REPORT						0.00	83,157.12

**MINUTES OF THE FOWLER CITY COUNCIL
SPECIAL MEETING
TUESDAY AUGUST 3, 2021**

Mayor Cardenas called the meeting to order at 5:33 p.m. Roll call was taken.

Councilmembers Present: Cardenas, Rodriquez, Kazarian, Mejia, Parra

City Staff Present: City Manager Quan, City Attorney Cross, Community Development Director Gaffery, City Planner Marple, Deputy City Clerk Vasquez

3. Consider Land Use Alternatives Summary & Recommendations report as presented by staff and SELECT a preferred land use alternative for the City of Fowler General Plan.

City Planner, Dawn Marple, and the project consultant, Sara Allinder, provided an overview of the land use alternatives with staff recommendations. Residents asked questions and provided feedback. Various Councilmembers had questions about growth boundaries and densities. After discussion, it was the consensus of the Council to accept staff's recommendation of Alternative 4 with changes.

Councilmember Kazarian made a motion to accept staff's recommendation of Alternative 4 with Tiered Urban Growth Boundaries with the following changes 1) square off the planning area boundary to extend to Temperance and Locan in Growth Tier 2 on the north-east side and assign a low density residential designation to that property; 2) integrate light industrial properties on the north end of Growth Tier 2 into Growth Tier 1; 3) integrate light industrial properties in Growth Tier 4 into Growth Tier 1; 4) redesignate the twenty acres of property planned high density residential located along the west side of Armstrong Avenue in Growth Tier 3 to the medium-high density residential land use designation; 5) explore a dual designation of the twenty acres at the south-west corner of Adams Avenue and Temperance Avenue to potentially be a combination of commercial and re-charge basin, seconded by Councilmember Mejia. The motion carried by roll call vote: Ayes: Kazarian, Mejia, Cardenas, Rodriquez. Absent: Parra

**Councilmember Parra excused himself at 5:37 p.m. and declared his support for staff's recommendation of Alternative 4.*

4. ADJOURNMENT

Councilmember Kazarian made a motion to adjourn, seconded by Councilmember Mejia. The motion carried and the meeting adjourned at 6:47 p.m.

MINUTES OF THE FOWLER CITY COUNCIL MEETING
Tuesday August 3, 2021

Mayor Cardenas called the meeting to order at 7:02 p.m.

Councilmembers Present: Cardenas, Rodriquez (via phone), Kazarian, Mejia, and Parra (via phone)

City Staff Present: City Manager Quan, City Attorney Cross, Public Works Director Dominguez, Community Development Director Gaffery, Recreation Coordinator Hernandez, City Planner Marple, Finance Director Moreno, City Engineer Peters, Deputy City Clerk Vasquez

3. PUBLIC COMMENT

Fowler residents Andy Gonzales and Bob Martin addressed the Council.

4. CONSENT CALENDAR

Councilmember Kazarian made a motion to approve the consent calendar, seconded by Mayor Pro-Tem Rodriquez. The motion carried by roll call vote: Ayes: Kazarian, Rodriquez, Cardenas, Mejia, Parra.

5. GENERAL ADMINISTRATION

5-A. PLANNING DEPARTMENT

i. APPROVE design direction for Merced Street Streetscape improvements

Community Development Director Gaffery provided an overview of the walking tours staff had with Councilmembers and presented recommendations of potential Merced Street updates. Community Development Director Gaffery stated staff will solicit proposals for alley scape design, parklet design, and artist's mural portfolios, and will bring back design concepts and artist selection to Council for feedback. Staff also recommend removing the south temporary dining platform and retaining the north temporary dining platform. After discussion, it was the consensus of the Council to remove the south temporary dining platform and contact Mr. Wong about potentially using his property for outdoor dining.

ii. Actions pertaining to housing starts related to Tract 6188 and Tract 6274.

- 1. Consider Letter Amendment to Subdivision Agreement for Marshall Estates (KB Homes) – Tract 6188 amending the subdivision agreement allowing for early housing starts.**
- 2. Consider Letter Amendment to Subdivision Agreement for Woodside Homes – Tract 6274 amending the subdivision agreement allowing for early housing starts.**

City Engineer Peters provided an overview of the subdivisions currently underway. He reported both KB Homes and Woodside Homes updated their subdivision proposals per Council's request. A representative from KB Homes and Woodside Homes spoke to Council about their individual subdivisions. Various Councilmembers had questions about the amenities and delivery timelines.

Councilmember Kazarian made a motion to approve the letter amendment for both Tract 6188 and Tract 6274 as amended with up-lighting on entryway signage, seconded by Councilmember Parra. The motion carried by roll call vote: Ayes: Kazarian, Parra, Cardenas Noes: Mejia, Rodriquez

5-B. PUBLIC WORKS

- i. Public Hearing to APPROVE Resolution No. 2511 Confirming the Diagram and Assessment for the 2021-2022 Annual Levy of Assessments for the City of Fowler Landscape and Storm Drainage Facilities Maintenance District No. 1**

Councilmember Mejia made a motion to continue this item to August 17, 2021, City Council meeting, seconded by Councilmember Kazarian. The motion carried by roll call vote: Ayes: Mejia, Kazarian, Cardenas, Parra, Rodriquez

- ii. Consider proposals from vendors for the City's Solar/Energy Conservation Project and provide Staff direction on the selected consultant to begin negotiating a Project Agreement**

Councilmember Parra recused himself from this item. Councilmember Mejia inquired if Councilmember Kazarian needed to recuse himself as well. City Attorney Cross noted because Councilmember Kazarian is not receiving a financial benefit if Pickett Solar is the chosen solar provider, he does not need to recuse himself and being a former customer would not result in a conflict of interest or recusal.

Public Works Director Dominguez reported Barrier Solar withdrew from the process. He provided spreadsheets containing a breakdown of the solar

providers' costing, performance guarantees, and energy management services. Council asked numerous questions to the remaining solar providers in an attempt to determine the best proposal for the city. After much deliberation, council directed staff to work with a third-party solar consultant to review the proposals and bring one recommendation back to Council.

5-C CITY MANAGER'S OFFICE

i. COVID-19 Update

City Manager Quan reported the Fresno County Department of Public Health's data shows Fowler's vaccination rate is 59% and remains one of the highest in the County. City Manager Quan reported nineteen people were vaccinated at last week's Farmers Market.

6. STAFF COMMUNICATIONS – (CITY MANAGER)

6-A. FINANCE DEPARTMENT

Finance Director Moreno shared HDL's first quarter sales tax update.

6-B. SENIOR/REC CENTER

Recreation Coordinator Hernandez reported last week's Fowler Farmers Market was a success and thanked Council for attending. She also announced the Market's upcoming festivities.

6-C. PUBLIC WORKS

Public Works Director Dominguez reported a notice was sent to all customers in their water bill notifying them the data collector issue has been resolved.

7. COUNCILMEMBER REPORTS AND COMMENTS

There were no reports.

8. CLOSED SESSION

No reportable action was taken on any of the three items.

9. ADJOURNMENT

Having no further business, the meeting adjourned at 9:49 p.m.



ITEM NO: 4-D

REPORT TO THE CITY COUNCIL

August 17, 2021

FROM: Margarita Moreno, Finance Director**SUBJECT**

Governmental Fund Balance Financial Reporting Policy GASB 54

RECOMMENDATION

Staff recommend the City Council approve Resolution No. 2510 establishing a Fund Balance Policy for Financial Statement Reporting in compliance with Governmental Accounting Standards Board statement No. 54 ("GASB 54").

BACKGROUND

This Governmental Fund Balance Financial Reporting Policy sets forth the policy direction for the Finance Department's preparation of financial statements which accurately categorize fund balance in accordance with GASB 54. The requirements of the Policy are currently effective for reporting of financial statements. The objective of the Policy is to improve the usefulness, including the understandability, of governmental fund balance information.

This Policy establishes the new fund balance classifications for governmental funds for external financial reporting purposes such as in the City's Comprehensive Annual Financial Report. Certain commitments and assignments of fund balance will help ensure there will be adequate financial resources to protect the City against unforeseen circumstances and events such as revenue shortfalls and unanticipated expenditures. The fund balance disclosures, consistent with GASB 54, provide more clearly defined categories to make the nature and extent of the limitations placed on the City's fund balance more transparent. The increased transparency provides users of the financial statements information necessary to understand the processes under which constraints are imposed upon the use of resources and how those constraints may be modified or eliminated.

Fund Balance is defined as the excess of total assets as compared to total liabilities in a governmental fund. As defined by GASB 54, the financial statement reporting for governmental funds will classify fund balances based primarily on the extent to which the government is bound to honor constraints on the specific purpose for which those funds can be spent.

Attachments:

- **Resolution No. 2510 Adopting a Fund Balance Policy for Financial Statement Reporting**
- **City of Fowler Governmental Fund Balance Financial Reporting Policy**

RESOLUTION No. 2510

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER
ADOPTING A FUND BALANCE POLICY FOR FINANCIAL STATEMENT REPORTING**

WHEREAS, the Government Standards Accounting Board (GASB) has issued Statement No. 54, establishing a hierarchy clarifying the constraints that govern how a government entity can use the amounts reported as fund balances; and

WHEREAS, the City of Fowler has determined that compliance with GASB No. 54 will clearly define new fund balance classifications; identify the City's highest decision-making level of authority; identify authority and actions that lead to committed and assigned fund balances.

WHEREAS, the City has prepared the City of Fowler Governmental Fund Policy (GASB No. 54) attached hereto which establishes a fund balance policy for financial statement reporting purposes in compliance with GASB No. 54.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fowler that the City of Fowler Governmental Fund Policy (GASB No. 54) attached to this Resolution is hereby approved and adopted.

The foregoing resolution of the City of Fowler was duly and regularly adopted by the City Council of the City of Fowler at a regular meeting held on August 17, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

David Cardenas, Mayor

ATTEST:

Angela Vazquez, Deputy City Clerk

City of Fowler
Governmental Fund Balance Financial Reporting Policy
(GASB No. 54)

PURPOSE

The purpose of the Governmental Fund Balance Financial Reporting Policy ("Policy") is to set forth the policy direction for the implementation of Governmental Accounting Standards Board Statement No. 54, ***Fund Balance Reporting and Governmental Fund Type Definitions*** which establishes a hierarchy of fund balance classifications which are based primarily on the extent to which the City is bound by constraints placed on resources.

POLICY

This Governmental Fund Balance Financial Reporting Policy sets forth the policy direction for the Finance Department's preparation of financial statements which accurately categorize fund balance in accordance with Governmental Accounting Standards Board ("GASB") Statement No. 54, ***Fund Balance Reporting and Governmental Fund Type Definitions*** ("GASB 54" or the "Statement"). The requirements of the Statement are effective for financial statements covering reporting periods beginning after June 15, 2010. The objective of the Statement is to improve the usefulness, including the understandability, of governmental fund balance information. This Policy establishes the new fund balance classifications for governmental funds for external financial reporting purposes such as in the City's Comprehensive Annual Financial Report. Certain commitments and assignments of fund balance will help ensure there will be adequate financial resources to protect the City against unforeseen circumstances and events such as revenue shortfalls and unanticipated expenditures. The fund balance disclosures, consistent with GASB 54, provides more clearly defined categories to make the nature and extent of the limitations placed on the City's fund balance more transparent. The increased transparency provides users of the financial statements information necessary to understand the processes under which constraints are imposed upon the use of resources and how those constraints may be modified or eliminated.

FUND BALANCE DEFINITION

Fund Balance is defined as the excess of total assets as compared to total liabilities in a governmental fund. As defined by GASB 54, the financial statement reporting for governmental funds will classify fund balances based primarily on the extent to which the government is bound to honor constraints on the specific purpose for which those fund can be spent.

FUNDS TYPES DEFINITION

Governmental funds are used to account for governmental activities. Governmental funds are classified as the following: General Fund, Special Revenue Funds, Capital Project Funds, Debt Service Funds, Permanent Funds and specifically excludes proprietary and fiduciary funds. For purposes of GASB 54, only governmental funds will be required to be classified under the new fund balance classifications. The classification of proprietary funds and fiduciary funds will not be affected by the implementation of GASB 54.

GOVERNMENTAL FUND TYPE DEFINITIONS

GASB 54 provides further clarification on the use of various governmental fund types: General Fund, Special Revenue Funds, Capital Projects Funds, Debt Service Funds, and Permanent Funds.

- **General Fund:** Account for and report all financial resources not accounted for and reported in another fund.
- **Special Revenue Funds:** Account for and report the proceeds of specific revenue sources that are:
 1. Restricted or committed to expenditure for specified purposes other than debt service or capital projects.
 2. Proceeds of specific revenue sources establish that one or more specific restricted or committed revenues should be the foundation for a Special Revenue Fund. The specific restricted or committed revenues may be initially received in another fund and subsequently distributed to a special revenue fund.
 3. The restricted or committed proceeds of specific revenue sources should be expected to continue to comprise a substantial portion of the inflows reported in the fund.
 4. Other resources (investment earnings and transfers from other funds, for example) also may be reported in the Special Revenue Fund if those resources are restricted, committed, or assigned to the specified purpose of the fund.
 5. Special Revenue Funds should not be used to account for resources held in trust for individuals, private organizations, or other governments.

Notes to the financial statements should disclose the purpose for each major Special Revenue Fund including identifying which revenues and other resources are reported in each of the Special Revenue Funds.

- **Capital Projects Funds:** Account for and report financial resources that are restricted, committed, or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets.
- **Debt Service Funds:** Account for and report financial resources that are restricted, committed, or assigned to expenditure for principal and interest. Debt service funds should be used to report resources if legally mandated. Financial resources that are being accumulated for principal and interest maturing in future years should be reported in Debt Service Funds.
- **Permanent Funds:** Account for and report financial resources that are restricted to the extent that only earnings, and not principal, may be used for purposes that support the City's programs for the benefit of the City and residents.

NEW FUND BALANCE CLASSIFICATIONS

GASB 54 outlines the requirement to report the fund balance for governmental funds in specific classifications which create a hierarchy primarily based on the extent to which the City is bound to the constraints on the specific purposes for which funds can be spent.

- **Nonspendable Fund Balance:** Amounts that are not in a spendable form, such as inventories, prepaid items, and long-term receivables. It also includes amounts that are legally or contractually

required to be maintained intact or required to be retained in perpetuity, such as the principal of an endowment fund.

- **Restricted Fund Balance:** Amounts reported as restricted when constraints placed on use of resources are either (1) externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or (2) imposed by law through constitutional provisions or enabling legislation.
- **Committed Fund Balance:** Amounts that have been limited to specific purposes as defined in the City Charter or through a formal budgetary action of the City Council occurring through adoption of an ordinance or resolution. These commitments may be changed or lifted, but only by the same formal action that was used to impose the constraint originally. City Council action to commit fund balance must occur within the fiscal reporting period while the amount committed may be subsequently determined.
 1. **Highest Level of decision making authority** – City Council
 2. **Formal Action Required to Establish/Modify/Rescind** – City Council resolution or ordinance or voter approval in the case of modifying or rescinding funds established in the City Charter.
- **Assigned Fund Balance:** Amounts that are intended to be used for specific purposes through City Council budgetary actions. For all governmental funds other than the General Fund, any remaining positive amounts not classified as nonspendable, restricted or committed must be designated as Assigned Fund Balance.
 1. **Body/Official Authorized to Assign Amounts** – City Council through budget adoption and amendments
 2. **Policy Established by City Council to Delegate Authorization** – “Governmental Fund Balance Financial Reporting Policy”, however no delegation is provided.
- **Unassigned Fund Balance:** Amounts within the General Fund, the residual resources, either positive or negative, in excess of what can be properly classified in one of the other four fund balance categories. Within all other governmental funds, the negative residual resources in excess of what can be properly classified as nonspendable, restricted, or committed.

ORDER OF FUNDS SPENDING

The City will spend the most restricted dollars in accordance with restrictions imposed before less restricted in the following order:

- a. Nonspendable
- b. Restricted
- c. Committed
- d. Assigned
- e. Unassigned

STABILIZATION ARRANGEMENTS AND FUNDS

Stabilization Arrangements and Funds (“Stabilization Funds”) can be established for items such as revenue shortfalls, emergencies or for covering unplanned budgetary imbalances. The Stabilization Funds are restricted to the controls that dictate the circumstances under which they can be spent.

For the purpose of reporting fund balance under GASB 54, stabilization is considered a specific purpose and to which the government is bound to honor constraints on the specific purposes or circumstances for which amount in those funds can be spent. The City has set aside any amounts that have been previously set aside by the City as reserves in accordance with GASB 54 provided that the following requirements are met:

- **Highest Level of decision making authority** – City Council
- **Formal Action Required to Establish/Modify/Rescind** – City Council resolution or ordinance.
- **Parameters for Establishment** --Established through formal City Council action which describes the specific circumstances under which need for Stabilization Fund arises and parameters for spending funds

Any changes or the removal of the reserve balances and any modifications to the specified use will require the same type of formal action taken to establish the reserve balance.



ITEM NO: 4-E

REPORT TO THE CITY COUNCIL

August 17, 2021

FROM: Wilma Quan, City Manager

SUBJECT

APPROVE a Disposition and Development Agreement between the City of Fowler and Richard and Lucinda Wadda for the property located at 128 South Sixth Street and authorize the City Manager to sign the Agreement.

RECOMMENDATION

Staff recommend the City Council approve a Disposition and Development Agreement (DDA) between the City of Fowler and Richard and Lucinda Wadda (Developer) for the property located at 128 South Sixth Street and authorize the City manager to sign the Agreement.

BACKGROUND

Council previously declared the Old Fire Station/City Hall located at 128 South Sixth Street (Property) surplus and Staff initiated the Surplus Land Act process. Following conclusion of that process, offers were entertained and Staff recommend the sale of the Property as stated above.

The attached DDA allows the City to sell the Property but also ensures that development of the Property results in a beneficial use to the community. Key terms of the DDA include:

- The DDA requires the Developer to establish a taproom business serving beer and wine and operate other permissible uses.
- The Developer must obtain construction financing and obtain all necessary planning and building approvals prior to the close of escrow.
- Escrow must close within 180 days of execution of the DDA. A building permit must be issued within 30 days of close of escrow. Construction must be complete within 12 months of issuance of a building permit.
- The City has right to reenter and take possession of the Property if Developer fails to perform the requirements outlined in the DDA.

- For the first 10 years after commencement of business, if the Developer ceases to operate in compliance with the DDA, the City has the option to purchase the Property at the purchase price paid by Developer plus the Developer's costs of improvements as outlined in the DDA.
- The City retains the Right of First Refusal to acquire the Property at a Fair Market Value for 50 years.

FISCAL IMPACT

This action will generate \$181,000 in one-time proceeds to the General Fund. After escrow has closed and the City has received the funds, staff will bring forward a budget resolution for Council to determine allocation of the funds.

Attachments:

- Disposition and Development Agreement

*Recorded By and For the Benefit of,
And When Recorded Return to:*

CITY OF FOWLER
128 South 5th Street
Fowler, California 93625
ATTN: City Clerk

(Space Above for Recorder's Use)

**DISPOSITION AND DEVELOPMENT AGREEMENT
127 SOUTH 6th STREET, FOWLER CA
OLD CITY HALL/FIRE STATION**

APN # 343-172-08T

CITY OF FOWLER

AND

RICHARD AND LUCINDA WADDA

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ATTACHMENTS

Attachment No. 1	Legal Description and depiction of Property
Attachment No. 2	Form of Grant Deed
Attachment No. 3	Schedule of Performance
Attachment No. 4	Release of Construction Covenants
Attachment No. 5	Notice of Reversionary Interest

DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (“Agreement” or “DDA”) is entered into Effective August __, 2021, between the City of Fowler, a California municipal corporation and general law city (“City”) and Richard Wadda and Lucinda Wadda, husband and wife (“Developer”), with respect to the following Recitals, which are a substantive part of this Agreement:

RECITALS

A. City owns real property at 127 South 6th Street in the City of Fowler, Fresno County, State of California, commonly known as the Old City Hall/Fire Station (“Property”). The Property is legally described and depicted in **Attachment No. 1**. The Property consists of an approximately 6,750 square foot parcel with a two-story building of approximately 4,700 square feet constructed in approximately 1942. The Property is in the Form-Based Code zone district, allowing a multitude of uses compatible with the central business district.

B. After following the California Surplus Land Act, the City made the Property available for sale and private development. Developer expressed interest in purchasing the Property to establish a taproom business serving beer and wine and operating other permissible uses. This use shall hereinafter be referred to as “Confirming Business Activities.”

C. Developer is an experienced commercial developer or has otherwise contracted with experienced commercial developers, contractors, architects, and other professionals for the purposes of developing the Property with a viable commercial business, as proposed. City desires to sell the Property to Developer for the purposes set forth in these Recitals, as further described in this Agreement. The improvements to the Property required by this Agreement shall hereinafter be referred to as “Developer Improvements” or “Improvements”.

D. City’s disposition of the Property, and the construction, completion, and operation of the Developer Improvements pursuant to the terms of this Agreement, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and will serve the public purpose of real property redevelopment in City’s downtown.

NOW, THEREFORE, City and Developer agree as follows:

1. CONVEYANCE OF THE PROPERTY.

A. Disposition of the Property. Developer agrees to purchase the Property from City, and City agrees to sell the Property to Developer, in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, for the “Purchase Price” set forth below. The conveyance of the Property shall be by “Grant Deed” substantially in the form of **Attachment No. 2**.

B. Purchase Price and Deposit. The purchase price for the Property shall be One Hundred Eighty-One Thousand Dollars (\$181,000.00) ("Purchase Price"). The parties agree the Purchase Price constitutes not less than fair market value of the Property and the rights conveyed, and does not reflect any economic assistance by City. Upon opening of Escrow, Developer shall deposit the sum of Eighteen Thousand One Hundred Dollars (\$18,100.00) in Escrow ("Developer Deposit"). The Developer Deposit shall be applied to the Purchase Price. The Developer Deposit shall not be refundable to Developer and shall be retained by City as liquidated damages if Escrow fails to close, except in the event that Escrow fails to close due to the failure of a Developer's Conditions of Closing as described in Section 1L(2).

C. Escrow. Within ten (10) days after the execution of this Agreement by both parties, the parties shall open escrow ("Escrow") with the Chicago Title Company in its Reedley office, or another escrow company mutually satisfactory to both parties ("Escrow Agent").

D. Costs of Escrow. Developer shall pay all costs for the Title Policy as set forth in Section 1K hereof; City shall pay for the documentary transfer taxes due, if any, with respect to the conveyance of the Property; and Developer shall each pay all other usual fees, charges, and costs which arise from Escrow.

E. Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and City, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties agree to do all acts reasonably necessary to close this Escrow in the shortest possible time.

If in the opinion of Developer or the City's City Manager it is necessary or convenient in order to accomplish the Closing, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful, or appropriate to effectuate the provisions of this Agreement.

F. Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(1) Pay and charge City for the premium of the Title Policy and any endorsements thereto as set forth in Section 1K and any amount necessary to place title in the condition necessary to satisfy Section 1J of this Agreement.

(2) Pay and charge Developer and City for their respective shares of any escrow fees, charges, and costs payable under Section 1D of this Agreement.

(3) Disburse funds and deliver and record the Grant Deed when both the Developer's Conditions of Closing and the City's Conditions of Closing as described in Section 1K herein have been fulfilled or waived by Developer and City.

(4) Do such other actions as necessary to fulfill its obligations under this Agreement.

(5) Do such other actions as necessary to comply with any federal, state, or local reporting requirements, including directing City and Developer to execute any required forms, statements, or certificates.

G. Closing. This transaction shall close escrow ("Closing") after satisfaction of all of City and Developer Conditions of Closing as set forth in Section 1L of this Agreement, but in no event later than One Hundred Eighty (180) days after Escrow is opened ("Closing Deadline"), unless otherwise extended by written agreement approved by the City's City Council and signed by Developer and the City Manager. Closing shall mean the time and day the Grant Deed is filed for record with the Fresno County Recorder.

H. Termination. If Escrow is not in condition to close by the Closing Deadline, then either party which has fully performed under this Agreement may, in writing, demand termination of the Escrow. Under these circumstances, Escrow Agent shall return all money, papers, and documents deposited in Escrow to the respective depositing party, except that Developer Deposit shall be delivered to City in accordance with Section 1B above unless otherwise provided in Section 1B. If either party makes a written demand for termination of Escrow, Escrow shall not terminate until ten (10) days after Escrow Agent shall have delivered copies of such demand to the other party at the address shown in this Agreement. If any objections are raised within that ten (10) day period, Escrow Agent is authorized to hold all money, papers, and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of Escrow shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, Escrow Agent shall proceed with Closing as soon as possible.

I. Closing Procedure. Escrow Agent shall close Escrow as follows:

(1) Record the Grant Deed with instructions for the Fresno County Recorder to deliver the Grant Deed to Developer.

(2) Instruct the Title Company to deliver the Title Policy to Developer and a copy of the Title Policy to City.

(3) File and deliver any informational reports, forms, statements, and certificates as required by federal, state or local law.

(4) Forward to both Developer and City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

J. Review of Title. City shall cause Escrow Agent to deliver to Developer a standard preliminary title report ("Title Report") with respect to title to the Property, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Title Report, within fifteen (15) days after the Escrow is opened. Developer shall have the right to reasonably approve or disapprove the Exceptions; provided Developer hereby approves the following Exceptions:

(1) Any Redevelopment Plans of the former Fowler Redevelopment Agency which do not preclude Developer's use of the Property as proposed herein.

(2) Property interests held by a public body or public bodies, including without limitation easements, franchises, licenses, or other property interests of the public body or public bodies, on the Property and/or within the public rights-of-way around the perimeter of the Property, which do not preclude Developer's use of the Property as proposed herein.

(3) The lien of any non-delinquent property taxes and assessments (to be prorated at Closing).

(4) Any incidental easements or other matters affecting title which do not preclude Developer's use of the Property as proposed herein.

(5) Such other exceptions to title as may hereafter be mutually approved by City and Developer.

Developer shall have fifteen (15) days from the date of its receipt of the Title Report to give written notice to City and Escrow Agent of Developer's approval or disapproval of any of the Exceptions. Developer's failure to give written disapproval of the Title Report within such time limit shall be deemed approval of the Title Report. If Developer notifies City of its disapproval of any Exceptions in the Title Report, City shall have the right, but not the obligation, to remove any disapproved Exceptions within fifteen (15) days after receiving written notice of the Developer's disapproval or provide assurances satisfactory to Developer that such Exception(s) will be removed on or before Closing. If City cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer shall have fifteen (15) days after the expiration of the fifteen (15) day period to give City written notice that Developer elects to terminate this Agreement. The Exceptions to title approved by Developer as provided herein shall hereinafter be referred to as the "Condition of Title."

K. Title Insurance. Upon recordation of the Grant Deed, the Title Company shall issue to Developer an California Land Title Association (CLTA) policy of title insurance ("Title Policy"), together with such endorsements as are reasonably requested by Developer, issued by the

Title Company insuring the title to the Property is vested in Developer in the condition required by Section 1J of this Agreement. The Title Policy shall be for the amount of the Purchase Price. The Title Company shall provide City with a copy of the Title Policy. Developer shall be responsible for the cost of the Title Policy and the cost of any additional endorsements Developer desires.

L. Conditions of Closing. Closing is conditioned upon satisfaction of the following terms and conditions within the times designated below:

(1) City's Conditions of Closing. City's obligation to proceed with Closing is subject to the fulfillment or waiver by City of each and all of the conditions precedent (a) through (f), inclusive, described below ("City Conditions of Closing"), which are solely for the benefit of City, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Close of Escrow, Developer shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

(b) Execution of Documents. Developer shall have executed the Grant Deed and any other documents required hereunder and delivered such documents into Escrow.

(c) Payment of Funds. Prior to Closing, Developer shall have deposited the Purchase Price and all required costs of Closing into Escrow in accordance with Sections 1B and 1D hereof.

(d) Financing. Developer shall have provided evidence of Construction Financing to complete the Developer Improvements, as provided in Section 2N hereof, and such financing shall fund prior to Closing, or be ready to fund within thirty (30) days after Closing.

(e) Design Review. Developer shall have obtained City approval of Development Plans, as provided for in Section 2C.

(f) Insurance. Developer shall have provided proof of insurance as required by Section 2F hereof.

(2) Developer's Conditions of Closing. Developer's obligation to proceed with Closing of the purchase of the Property is subject to the fulfillment or waiver by Developer of each and all the conditions precedent (a) through (f), inclusive, described below ("Developer Conditions of Closing"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Close of Escrow, City shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of City contained herein shall be true and correct in all material respects.

(b) Execution of Documents. City shall have executed the Grant Deed and any other documents required hereunder and delivered such documents into Escrow.

(c) Review and Approval of Title. Developer shall have reviewed and approved the condition of title of The Property, as provided in Section 1J hereof.

(d) Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide to Developer the Title Policy for the Property upon Close of Escrow, in accordance with Section 1K hereof.

(e) Due Diligence. Developer shall have determined that the Property is suitable for the proposed development pursuant to Section 1N.

(f) Land Use Approvals. Developer shall have obtained approval of any Land Use Entitlements for the Developer Improvements, as provided for in Section 2D.

M. Representations and Warranties.

(1) City Representations. City represents and warrants to Developer as follows:

(a) Authority. City has the full right, power and lawful authority to acquire, grant, sell and convey the Property as provided herein, and the execution, performance and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City.

(b) Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). City is not a "foreign person" within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or that City has complied and will comply with all the requirements under FIRPTA or any similar state statute.

(c) No Conflict. To the best of City's knowledge, City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(d) Litigation. To the best of City's knowledge, there are no actions, suits, material claims, legal proceedings or any other proceedings affecting the Property, or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign.

Until Closing, City shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 1M(1) not to be true as of Closing, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation shall not be deemed a breach by City hereunder but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of The Property. If Developer elects to close Escrow following disclosure of such information, City's representations and warranties contained herein shall be deemed to have

been made as of Closing, subject to such exception(s). If, following the disclosure of such information, Developer elects to not close Escrow, then this Agreement and Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. Under these circumstances the Developer Deposit shall be returned to Developer.

All of the representations and warranties set forth in this Section 1M(1) are made with the acknowledgment that they are material, and with the intention that Developer shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 1M(1) shall each survive the execution of this Agreement and Closing.

(2) Developer Representations. Developer represents and warrants to City as follows:

(a) Authority. Developer has the full right, power and lawful authority to purchase and accept the conveyance of the Property, or any portion thereof, and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer.

(b) Experience. Developer is an experienced developer and operator of commercial properties, or has otherwise contracted with experienced commercial developers, contractors, architects, and other professionals for the purposes of developing the Property.

(c) No Conflict. To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(d) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or other insolvency proceeding.

(e) FIRPTA. Developer is not a "foreign person" within the parameters of FIRPTA or any similar state statute or is exempt from the provisions of FIRPTA or any similar state statute, or Developer has complied and will comply with all the requirements under FIRPTA or any similar state statute.

(f) Deliveries. All documents, instruments and other information delivered by Developer to City pursuant to this Agreement are, to the best of Developer's knowledge, true, correct and complete.

(g) Commissions. To the best of the Developer's knowledge, there are no broker's commissions or finder's fees payable in connection with The Property.

Until Closing, the Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1M(2) not to be true as of the

Closing, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Property. If City elects to close Escrow following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of Closing, subject to such exception(s). If, following the disclosure of such information, City elects to not close Escrow, then this Agreement and Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder.

All of the representations and warranties set forth in this Section 1M(2) are made with the acknowledgment that they are material, and with the intention that City shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 1M(2) shall each survive the execution of this Agreement and Closing.

N. Condition of The Property.

(1) Disclosure. Developer acknowledges that the Building was constructed in approximately 1942, needs substantial rehabilitation, and may contain Hazardous Materials as defined in Section 1N(5). Upon Closing, it will be Developer's obligation to take any required remedial actions, at its sole cost and expense, to render the Property and Building suitable for development. In that regard, Developer and City have entered into a Right of Entry Agreement to allow Developer an opportunity to conduct due diligence inspections of the Property and Building, which will remain in place through Closing. Copies of any reports obtained by Developer regarding the condition of the Property shall be provided to City within Ten (10) days after receipt and prior to Closing.

Except as noted, City and Developer hereby represent and warrant to the other that they have no actual knowledge and have not received any notice or communication from any government agency having jurisdiction over the Property, notifying such party of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Property, or any portion thereof. "Actual knowledge," as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of City and Developer employees and agents who have participated in the preparation of this Agreement.

(2) No Further Warranties As To Property; Release of City. Notwithstanding any provisions of this Agreement to the contrary, the conveyance of all or any portion of the Property shall be conveyed to the Developer in an "AS IS" condition, with no warranty, express or implied by City, as to the condition of the Building, the Property, improvements on the Property, the soil, its geology, the presence of known or unknown faults or Hazardous Materials, and Developer

agrees to and shall indemnify and hold City, and their officers, agents, employees, and volunteers, harmless from and against all liability, loss, damages, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the existence of such faults or substances. It shall be the sole responsibility of Developer at its expense to investigate and determine the condition of the Building and the soil and improvement conditions on the Property for the development to be constructed. If the Building or soil environmental condition is not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of Developer to take such action as may be necessary to place the Building and Property in a condition entirely suitable for its development.

Developer hereby waives, releases and discharges forever City, and its officers, agents, employees, and volunteers, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the condition of the Building, the Property, any Hazardous Materials in or on the Building and the Property, or the existence of Hazardous Materials contamination due to the generation of Hazardous Materials from the Property, however they came to be placed there, except that arising out of the negligence or misconduct of the City or its employees, officers, agents or representatives which occur after Closing.

Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

As such relates to this Section 1N, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

RICHARD AND LUCINDA WADA

By: _____
Richard Wadda

By: _____
Lucinda Wadda

(3) Developer Precautions After Closing. Upon Closing, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials

which are located in, on or under the Property. Such precautions shall include compliance with all governmental requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

(4) Developer Indemnity. Upon Closing, Developer agrees to indemnify, defend and hold City, and its officers, agents, employees, and volunteers, harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon: (a) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property which occurs after Closing; or (b) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property which occurs after Closing. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. At the request of Developer, City shall cooperate with and assist Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that City shall not be obligated to incur any expense in connection with such cooperation or assistance.

(5) Hazardous Materials Definition. For purposes of this Section 1N, Hazardous Materials means any substance, material, or waste which is or becomes defined and is regulated as hazardous by any governmental authority, the State of California, or the United States government, but shall not include commercially reasonable amounts of such materials in the ordinary course of the development and operation of the Property which are used and stored in accordance with all applicable environmental laws, ordinances and regulations.

2. DEVELOPMENT OF THE PROPERTY.

A. Developer's Obligation to Construct Improvements. Developer shall develop or cause the development of the Developer Improvements in accordance with the Schedule of Performance (**Attachment No. 3**), the City of Fowler Municipal Code, and the plans, drawings and documents submitted by Developer and approved by City as set forth herein. Specifically, Developer shall be responsible for the following:

(1) Improve the Building to current codes so that the Building may be used as a taproom business serving beer and wine or other permissible uses.

(2) Maintain the existing plate glass window with the Fowler Fire Department logo and text on the Building's facade. Developer may incorporate a tap room logo with the written permission of City.

(3) Not make character defining changes to the Building exterior, including retention of awnings on the west façade.

(4) Maintain the aesthetic look of the existing roll up doors. Developer may incorporate functional roll up doors into the Improvements, subject to code compliance.

(5) Install an interpretive marker on the Property outside the Building on or as near as possible to the 6th Street façade. The marker shall contain text identifying the history of the Property. The marker's text, design, size and location shall be approved by City, but shall not exceed 36" by 36" unless otherwise agreed to by Developer.

B. City Obligations With Respect to the Building. City shall do the following with respect to the Building:

(1) Remove the existing storage units from Property.

(2) Transfer ownership of the safe to Developer, at no cost, as evidenced by written documentation.

(3) Remove all contents from the safe.

(4) Remove any historically significant memorabilia from the Building, as determined by City.

(5) Remove and relocate the noon siren.

C. Design Review.

(1) Design, Site Plan, and Construction Drawings. Within the respective times set forth in the Schedule of Performance, Developer shall submit the following:

(a) Design drawings for the Developer Improvements, including materials, color board, elevations of all four facades of the Developer Improvements, and a rendered perspective, as required by City's Community Development Director and in conformance with applicable City Code and guidelines ("Design Drawings").

(b) Site plan as required by City's Community Development Director and in conformance with City guidelines ("Site Plan").

(c) Detailed construction plans and drawings prepared by a registered civil engineer with respect to the Developer Improvements (“Construction Plans”).

The Design Drawings, Site Plan, and Construction Plans are collectively referred to as the “Development Plans”.

(2) City Review and Approval. City shall have the right to review and reasonably approve the Development Plans in its sole and reasonable discretion. Developer acknowledges and agrees that City approval is required in order to satisfy City’s obligation to promote the sound development and redevelopment of land within the former redevelopment project area, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City of Fowler. Developer shall not be entitled to any monetary damages or compensation as a result of the City’s disapproval or failure to approve or disapprove the Development Plans.

Notwithstanding any provision of this Agreement to contrary effect, the times for review and action upon the Development Plans by City shall not be deemed to be commenced unless and until the corresponding submittals by Developer are complete.

City shall state in writing the reasons for disapproval. Developer, upon receipt of a disapproval based upon powers reserved by the City hereunder, shall revise such portions and resubmit to City by the time established therefor in the Schedule of Performance.

(3) Consultation and Coordination. During the preparation of the Development Plans, staff of City and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of the Development Plans. The staff of City and Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to City can receive prompt and thorough consideration. City shall designate an employee to serve as the project manager who is responsible for the coordination of City’s activities under this Agreement and for expediting the land use approval and permitting process.

(4) Revisions. If Developer desires to propose any revisions to City-approved Development Plans, Developer shall submit such proposed changes to City, and shall also proceed in accordance with any and all State and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance. At the sole discretion of City, if any change in the basic uses of the Property is proposed in the Development Plans from the basic uses of the Property as provided for in this Agreement, then this Agreement is subject to renegotiation of all terms and conditions. If the Development Plans, as modified by the proposed change, generally and substantially conform to the requirements of this Section 2C, the City Manager shall review the proposed change and notify the Developer in writing within thirty (30) days after submission to City as to whether the proposed change is approved or disapproved. The City Manager is authorized to approve changes to City-approved Development Plans provided such changes: (a) do not significantly modify the scope and character of the Improvements; (b) do

not reduce the quality of materials to be used; and (c) do not reduce the imaginative and unique qualities of the project design. Any and all change orders or revisions required by City and its inspectors which are required under the Municipal Code and all other applicable codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by Developer in its Development Plans and completed during construction of the Developer Improvements.

(5) Defects in Plans. City shall not be responsible either to Developer or to third parties in any way for any defects in the Development Plans, nor for any structural or other defects in any work done according to the approved Development Plans, nor for any delays reasonably caused by the review and approval processes established by this Section 2C. Developer shall hold harmless, indemnify and defend City, and its officers, agents, employees, and volunteers, from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Development Plans, including without limitation the violation of any laws, and for defects in any work done according to the approved Development Plans.

(6) Use of Plans. City shall not have the right to use Development Plans which are submitted to City by Developer pursuant to this Section 2C, nor shall the City confer any rights to use such drawings or plans to any person or entity.

D. Land Use Approvals.

(1) Land Use Entitlements. Within the respective times set forth in the Schedule of Performance, Developer shall secure, or cause to be secured, all land use and other discretionary entitlements by City or any other governmental agency necessary to complete the Developer Improvements.

(2) Other Approvals. Before commencement of construction of Developer Improvements or other related works of improvement upon or adjacent to the Property, Developer shall secure or cause to be secured any other permits and approvals which may be required by City or any other governmental agency affected by such construction or work.

(3) Developer Cost and Expense. All land use entitlements and other permits shall be secured by Developer at Developer's sole cost and expense.

(4) No Precommitment by City. Nothing in this Agreement is intended to or shall operate to commit City's discretion with respect to land use and other entitlements, permits, and approvals which may be required by Developer with respect to the Developer Improvements.

E. Schedule of Performance and Conforming Business Activities.

(1) Schedule of Performance. Developer shall submit all Development Plans, obtain Land Use Approvals, commence and complete all construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement, within the respective times

established therefor in the Schedule of Performance. The Schedule of Performance shall be deemed a material part of this Agreement.

(2) Conforming Business Activities. Within a reasonable period of time following the completion of the Developer Improvements, not to exceed thirty (30) days after the issuance of a Certificate of Occupancy, Developer shall operate "Conforming Business Activities" within not less than Fifty Percent (50%) of the space available on the Property for such uses. "Conforming Business Activities" means the conduct of commercial and retail uses set forth in the Recitals or as otherwise permitted by applicable zoning and in accordance with the terms of this Agreement.

Developer shall operate Conforming Business Activities for a period of not less than ten (10) continuous years after opening.

(a) Continuous shall mean the business is not closed during its normal or customarily operated business days for the type of business, for more than a cumulative total of thirty (30) days in any calendar year, except as may be required during any enforced delay event as provided in Section 4B herein.

(b) Non-operation due to government ordered shutdowns beyond the control of the Developer, shall be deducted from the ten-year period.

(c) Non-operation for repairs or remodeling that are diligently pursued to completion shall be deducted from the ten-year period.

After ten (10) years, City's ordinary codes shall apply regarding continuous operation of the business.

F. Cost of Construction. All of the costs of planning, designing, developing, and constructing the Developer Improvements, including all permits and entitlements, shall be borne solely by the Developer.

G. Insurance Requirements. Developer shall take out prior to commencement of construction of the Developer Improvements, and maintain or shall cause its contractor to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 2M of this Agreement, a comprehensive general liability policy in the amount of Five Million Dollars (\$5,000,000) combined single limit policy, and if Developer owns automobiles, a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000), combined single limit, or such other policy limits as City may approve at its discretion, including contractual liability, as shall protect Developer and City from claims for such damages, and which policy shall be issued by an "A" rated insurance carrier. Such policy or policies shall be written on an occurrence form. Developer shall also furnish or cause to be furnished to City evidence satisfactory to City that the Developer and any contractor with whom it has contracted for the performance of work on The Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Developer shall furnish a notarized certificate of

insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its respective officers, agents, employees, and volunteers, as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City. The required certificate shall be furnished by Developer at the time set forth therefor in the Schedule of Performance or, if no time is specified, prior to the commencement of construction of the Developer Improvements.

H. Developer's Indemnity. Developer shall defend, indemnify, assume all responsibility for, and hold the City and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation thereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any acts or omissions of Developer in the performance under this Agreement, whether such activities, performance, or omissions be by Developer or by anyone directly or indirectly employed or contracted with by Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. Developer shall not be liable for property damage or bodily injury occasioned by the sole negligence or willful misconduct of City or its agents or employees, or the failure of City or its agents or employees to follow accepted safety standards in connection with accessing the Property pursuant to Section 2I, below.

I. Rights of Access. Prior to the issuance of a Release of Construction Covenants (as specified in Section 2M of this Agreement), for purposes of assuring compliance with this Agreement, including construction of the Developer Improvements, representatives of City shall have the right of access to the Property conveyed to Developer without charges or fees, at normal construction hours during the period of construction. City representatives shall comply with all safety rules during any such inspection.

J. Compliance With Laws. Developer shall carry out the design, construction and operation of the Developer Improvements in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable accessibility requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., California Government Code Section 4450, et seq., California Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

K. Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of any protected class under State of California or Federal law.

L. Taxes and Assessments. Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Property conveyed to Developer. Developer shall remove or have removed any levy or attachment made on any portion of the Property, or assure the satisfaction thereof within a reasonable time. Developer shall not apply for or receive any exemption from the payment of property taxes or assessments on any interest in or to the Property or the Developer Improvements.

M. Release of Construction Covenants. Promptly after completion of the Developer Improvements in conformity with this Agreement, City shall furnish Developer with a "Release of Construction Covenants," substantially in the form of **Attachment No. 4** hereto which is incorporated herein by reference. City shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Developer Improvements in accordance with the terms of this Agreement and the Release of Construction Covenants shall so state.

If City refuses or fails to furnish the Release of Construction Covenants, after written request from Developer, City shall, within fifteen (15) days of written request therefor, provide Developer with a written statement of the reasons City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain City's opinion of the actions the Developer must take to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

N. Financing of Improvements.

(1) Evidence of Financing. Prior to Closing, Developer shall submit evidence satisfactory to City of construction financing ("Construction Financing") as follows:

(a) The obtainment of sufficient equity capital or a firm and binding commitment for construction financing necessary to undertake development of the Property and the construction of the Developer Improvements in accordance with this Agreement.

(b) The Construction Financing must fund prior to Closing, or be ready to fund within thirty (30) days after Closing. If the Construction Financing fails to fund as provided herein, the City may exercise its rights under this Agreement, including without limitation its right to reenter the Property and revesting of title to the Property in accordance with Section 3E herein.

(c) If City is not satisfied with the evidence of Construction Financing, City shall notify Developer within twenty (20) days of receipt of a complete submission stating the reasons for such dissatisfaction and Developer shall promptly obtain and submit to City new evidence of financing. City shall not unreasonably withhold or condition its approval of satisfactory Construction Financing.

(d) Evidence of obtaining Construction Financing shall include the following: (i) a copy of a legally binding, firm and enforceable loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for financing to fund the construction, completion, operation and maintenance of the Developer Improvements, subject to such lenders' reasonable, customary and normal conditions and terms; and/or (ii) a certification from the chief financial officer of Developer that Developer has sufficient funds for such construction, and that such funds have been committed to such construction, and/or other documentation satisfactory to City as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the construction and completion of the Developer Improvements, less financing authorized by those loans set forth in subparagraph (a) above.

(2) No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. Mortgages, deeds of trust and sales and leases-back shall be permitted before the completion of the Developer Improvements only with the City's prior written approval, which shall not be unreasonably withheld or delayed, and only for the purpose of securing loans of funds to be used for financing construction of the Developer Improvements (including architecture, engineering, legal, and related direct costs as well as indirect costs), permanent financing, and any other purposes necessary and appropriate in connection with development under this Agreement. In no event, however, shall the amount or amounts of indebtedness secured by mortgages or deeds of trust exceed the projected cost of constructing the Developer Improvements, as evidenced by a pro forma and a construction contract which set forth such construction costs. The words "mortgage" and "trust deed" as used hereinafter shall include sale and lease-back.

(3) Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Developer Improvements or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(4) Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever City may deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Developer Improvements, City shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Developer Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City by written agreement reasonably satisfactory to City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 2M of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Property which shall have been conveyed to Developer if and to the extent any such holder has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default.

(5) Failure of Holder to Complete Developer Improvements. In any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Property receives a notice from City of a default by Developer in completion of construction of any of the Developer Improvements under this Agreement, and such holder has not exercised the option to construct as set forth in this Section 2N, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, City may purchase the mortgage or deed of trust by payment of the Purchase Price (\$181,000.00) to the holder, and such payment by City shall be City's only obligation to be entitled to any necessary reconveyance of the Property and reconveyance of the mortgage or deed of trust securing the Developer Improvements. Holder's recourse for any remaining principal and interest and all other sums secured by the mortgage or deed of trust shall be against Developer and Developer collateral and not against City or the Property. Nothing herein shall impact holder's rights to proceeds as authorized in Section 3E(2)(b) from a subsequent resale of the Property by City. If the ownership of the Property has vested in the holder, City, if it so desires, shall be entitled to a conveyance from the holder to City of the Property, as applicable, upon payment to the holder of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

- (b) All expenses with respect to foreclosure including reasonable attorneys' fees;
- (c) The costs of any improvements made by such holder;
- (d) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by City.

(6) Right of the City to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by Developer prior to the completion of the construction of any of the Developer Improvements or any part thereof, Developer shall immediately deliver to City a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, City shall have the right but no obligation to cure the default. In such event, City shall be entitled to reimbursement from Developer of all proper costs and expenses incurred by City in curing such default. City shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or deeds of trust pursuant to this Section 2N.

3. DEFAULTS AND REMEDIES

A. Default Remedies. Subject to the extensions of time set forth in Section 4B of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

B. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Fresno, State of California, or in the District of the United States District Court in which such county is located.

C. Termination by the Developer Prior to Conveyance of the Property. In the event that prior to the conveyance of the Property Developer is not in default under this Agreement and: (1) City does not tender title pursuant to the Grant Deed in the manner and condition and by the date provided in this Agreement; or (2) one or more of the Developer Conditions of Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not

caused by Developer; or (3) any default of City prior to Closing is not cured within the time set forth in Section 3A hereof, after written demand by Developer; then this Agreement may, at the option of Developer, be terminated by written Notice thereof to City. From the date of the Notice of termination of this Agreement by Developer to City and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties with respect to the Property by virtue of or with respect to this Agreement. Under these circumstances, Developer shall be entitled to a return of the Developer Deposit.

D. Termination by City Prior to Conveyance of the Property. In the event that prior to conveyance of the Property City is not in Default under this Agreement and: (1) Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Property in violation of this Agreement; or (2) one or more of the City Conditions of Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by City; or (3) Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 3A hereof; then this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of the Agreement or the Property, shall, at the option of City, be terminated by City by written Notice thereof to Developer. From the date of the Notice of termination of this Agreement by City to Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties. Under these circumstances, City shall be entitled to keep the Developer Deposit plus any accrued interest.

E. Reentry and Revesting of Title in the City for Failure to Timely Commence and Complete Developer Improvements, Begin Operation of Conforming Business Activities, or for an Unlawful Transfer.

(1) After Closing and Prior to Completion of the Developer Improvements or Opening of Conforming Business Activities. City has the right, at its election, to reenter and take possession of the Property transferred to Developer by Grant Deed pursuant to this Agreement, with all improvements thereon, and terminate and revest in City the estate conveyed to Developer if after the Closing Developer (or its successors in interest) shall:

(a) Fail to obtain Construction Financing within the time required in this Agreement or fail to provide evidence satisfactory to City of Construction Financing within the time required in this Agreement.

(b) Fail to start construction of the Developer Improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from City; or

(c) Abandon or substantially suspend construction of the Developer Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from the City, unless such abandonment or suspension is not caused by Developer's acts or omissions or as provided for in Section 4B; or

(d) Fail to complete the Developer Improvements within the time limits set forth in the Schedule of Performance; or

(e) Fail to open Conforming Business Activities within the time limits set forth in the Schedule of Performance; or

(f) Contrary to the provisions of Section 4C, Transfer or suffer any involuntary Transfer in violation of this Agreement.

(2) Conditions of Reentry and Revesting Rights. City's right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

(a) Any mortgage or deed of trust permitted by this Agreement; or

(b) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

City shall not unreasonably refuse any request to subordinate its right of reentry to a City-approved construction lender's mortgage or deed of trust securing a loan of funds for financing construction of the Developer Improvements.

The Grant Deed shall contain appropriate reference and provision to give effect to City's right as set forth in this Section 3E, to reenter and take possession of the Property, with all improvements thereon, and to terminate and revest in City the estate conveyed to Developer. Upon the revesting in City of title to the Property transferred to Developer by Grant Deed as provided in this Section 3E, City shall have the sole and absolute discretion with respect to the Property, including without limitation retaining the Property for City or other public use, or disposing of the Property in its sole and absolute discretion. If City decides to sell the Property City will use reasonable efforts to resell the Property as soon and in such manner as the City may find feasible to a qualified and responsible party or parties (as determined by City) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to City and in accordance with the uses specified for the Property. Upon such resale of the Property, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Property, which is permitted by this Agreement, may be applied:

(c) First, to reimburse City, on its own behalf or on behalf of City, all costs and expenses incurred by City, including, but not limited to, reasonable City staff costs and any expenditures by City in connection with the recapture, management and resale of the Property or any part thereof (but less any income derived by City from the Property or any part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Property or any part thereof which Developer has not paid (or, in the event that Property is exempt from taxation or assessment of such charges during the period of ownership thereof by City, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable

if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time or reversion of title thereto in City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property; and any amounts otherwise owing City; and in the event additional proceeds are thereafter available, then

(d) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of the costs incurred for the acquisition and development of the Property transferred to Developer by Grant Deed and for the Developer Improvements existing on such the Property at the time of the reentry and possession, less any gains or income withdrawn or made by Developer from the Property transferred to Developer by Grant Deed or the Developer Improvements thereon.

Any balance remaining after such reimbursements shall be retained by City as its property. The rights established in this Section 3E are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that City will have conveyed the Property to the Developer for redevelopment purposes, particularly for development and operation of commercial facilities, and not for speculation.

(3) Perfecting Reversionary Interest. City may perfect its revisionary interest by recording a Notice of Reversionary Interest in substantially the form set forth in **Attachment No. 5.**

F. Option to Purchase Property After Completion of Developer Improvements and Operation of Conforming Business Activities. If Developer ceases to operate conforming Business Activities in accordance with Section 2E(2), City shall have the "Option" to purchase the Property, and all improvements thereon.

(1) Exercise of Option. City may exercise this Option by delivering written notice of the exercise ("Exercise Notice") to Developer before the expiration of the ten (10) year Conforming Business Activity provision ("Option Term"). Upon exercise of the Option, the price to acquire the Property shall be the Purchase Price paid by Developer for the Property, plus the Developer's costs to construct the Developer Improvements, not to exceed the "Fair Market Value" of the Property ("Acquisition Cost").

(a) "Fair Market Value" of the Property shall be established by an MAI appraiser. City and Developer shall each select an MAI appraiser to prepare an appraisal at their own cost. The Fair Market Value for purposes of this section shall be the average of the two appraisals. Developer may forego obtaining an appraisal, in which case the Fair Market Value shall be established by City's appraisal.

(b) Developer's costs to construct the Developer Improvements shall be established by written receipts, and Developer shall be solely responsible for furnishing appropriate documentation to the satisfaction of the City.

(c) The principal balance of any mortgage, deed of trust, security instrument, or similar lien remaining on the Property at the close of escrow shall be deducted from the Acquisition Cost.

(d) City and Developer may agree to an alternative method of determining the Acquisition Cost, or any portion thereof.

(2) Execution of Purchase Agreement. After receipt of the Exercise Notice for purchase of the Property, Developer and City shall promptly prepare and execute a purchase and sale agreement ("Purchase Agreement"). The Purchase Agreement shall be on a customary commercial form used where public agencies acquire property, or otherwise in a form acceptable to Developer and City. City and Developer shall open escrow for the Property acquisition within thirty (30) days of the Exercise Notice.

G. Right of First Refusal. For a period of Fifty (50) years from the Effective Date of this Agreement, City shall have a "Right of First Refusal" to acquire the Property, including any improvements located thereon, at a Fair Market Value as described in Section 3F(1)(a). This Right of First Refusal shall apply to a proposed purchase or a single term lease in excess of ten (10) years that is not otherwise prohibited by this Agreement.

(1) Notification to City. Upon Developer's receipt of a bona fide offer to purchase or lease the Property and/or Building for a single period in excess of Ten (10) years ("Offer") from a party who is not affiliated with Developer ("Third Party"), which Offer Developer is willing to accept, Developer shall give notice to City ("Notice") that Developer intends to accept the Offer, and concurrently therewith provide City with a copy of the Offer.

(2) Election of Right of First Refusal. If City elects to exercise its Right of First Refusal, it shall do so by delivering to Developer written notice of its election ("Election") to purchase or lease the Property on terms and conditions substantially the same (identical as to purchase price or lease price) set forth in the Offer, within one hundred twenty (120) days after the receipt of the Notice.

If City does not so notify Developer within said 120 days, City shall be deemed to have rejected the Offer and Developer may proceed to sell or lease the Property (free and clear of this Right of First Refusal) to the Third Party on the terms and conditions set forth in the Offer, or on terms which are better for Developer, but not worse for Developer.

(3) Execution of Purchase Agreement. If City elects to exercise its Right of First Refusal, Developer and City shall promptly prepare and execute a purchase and sale or lease agreement ("Purchase Agreement"). The Purchase Agreement shall be on a customary

commercial form used where public agencies acquire property, or otherwise in a form acceptable to Developer and City. City and Developer shall open escrow for the Property acquisition within Thirty (30) days of the Election.

(4) Continuation of Right of First Refusal. Upon the consummation of such purchase and sale or lease to the Third Party, this Right of First Refusal shall automatically and without further notice terminate. If, however, Developer does not consummate a sale or lease to the Third Party as aforesaid, this Right of First Refusal shall not terminate, but shall be revived and continue for the then remaining balance of term of this Right of First Refusal.

4. GENERAL PROVISIONS

A. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City Manager
 City of Fowler
 128 South 5th Street
 Fowler, California 93625
 Tel: (559) 834-3113
 Email: wquan@ci.fowler.ca.us

To Developer: Richard Wadda
 Lucinda Wadda
 6950 E. Floral Avenue
 Selma, CA 93622
 Tel: (559) 349-5533
 Email: rlwadda@gmail.com

Any written notice, demand or communication shall be deemed received: immediately if delivered by hand; 24 hours after delivery to a receipted, overnight delivery service such as Federal Express; 24 hours after delivery by e-mail with an acknowledgement of receipt by the intended recipient; and on the fourth (4th) day from the date it is postmarked if delivered by registered or certified mail.

B. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; pandemic; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; governmental restrictions or priority; litigation; acts or omissions of the other party; or acts or failures to act of City or any other public or

governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City, but where any unreasonable delay by City on an action required by this Agreement shall toll the timeframes for an amount of time equal to such unreasonable delays). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Developer Improvements shall not constitute grounds of enforced delay pursuant to this Section 4B.

C. Transfers of Interest in Property or Agreement.

(1) Prohibition. The qualifications and identity of Developer, as well as Developer's proposal, are of particular concern to City. Therefore, for the period commencing upon the date of this Agreement and until furnishing of the Release of Construction Covenants: (a) no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement; (b) nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Property or the Developer Improvements thereon; collectively referred to herein as a "Transfer," without the prior written approval of the City, except as expressly set forth herein.

(2) Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of a Transfer shall not be required in connection with any of the following:

(a) Any Transfer to an entity or entities in which Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

(b) Any requested assignment for financing purposes (subject to such financing being considered and approved by City pursuant to Section 2N herein), including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Developer Improvements.

In the event of a Transfer by Developer under subparagraph (a) above not requiring the City's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to City of such assignment and satisfactory evidence that the assignee has assumed in writing, through an assignment and assumption agreement in a form satisfactory to City's legal counsel, all of the obligations of this Agreement. Such assignment shall not, however, release the assigning Developer from any obligations to City hereunder.

(3) City Consideration of Requested Transfer. City agrees that it will not unreasonably withhold approval of a request for approval of a Transfer made pursuant to this Section 4C,

provided Developer delivers written Notice to City requesting such approval. Such Notice shall be accompanied by evidence regarding the proposed transferee's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 4C and as reasonably determined by City. City may, in considering any such request, take into consideration such factors as: (a) the quality of any new and/or replacement operator; (b) the sales tax revenues projected to be received from the Property; (c) the transferee's past performance as developer and operator of commercial facilities; (d) the current financial condition of the transferee, and similar factors. City's approval shall be by the City Council. City agrees not to unreasonably withhold its approval of any such requested Transfer, taking into consideration the foregoing factors.

An assignment and assumption agreement in form satisfactory to City's legal counsel shall also be required for all proposed Transfers requiring City approval. Within thirty (30) days after the receipt of Developer's written Notice requesting City approval of a Transfer pursuant to this Section 4C, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to City such further information as may be reasonably requested.

D. Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

E. Assignment by City. The City may assign or transfer any of its rights or obligations under this Agreement with the approval of Developer, which approval shall not be unreasonably withheld.

F. Relationship Between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Except as expressly provided herein or in the Attachments hereto, City shall not have any rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Developer Improvements.

G. No Third Party Beneficiaries Excepting City. Excepting only City, which shall be deemed to be a third party beneficiary of this Agreement, there shall be no third party beneficiaries of this Agreement.

H. City Approvals and Actions. City shall maintain authority over this Agreement and the authority to implement this Agreement through the City Manager. The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into

certain amendments of this Agreement on behalf of City so long as such actions do not materially or substantially change the uses or development permitted on the Property, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

I. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement shall be executed in three (3) originals, each of which is deemed to be an original.

J. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Attachment Nos. 1 through 5, which are incorporated herein.

K. Real Estate Brokerage Commission. City and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with Developer's acquisition of the Property from the City. The parties agree to defend and hold harmless the other party from any claim to any such commission or fee from any other broker, agent or finder with respect to this Agreement which is payable by such party.

L. Interpretation. As used in this Agreement, the word "including" shall be construed as if followed by the words "without limitation." This Agreement has been prepared with input from both parties, and shall be interpreted as though prepared jointly by both parties.

M. No Waiver. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Nor shall a waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

N. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

O. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

P. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

Q. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

R. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

S. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

T. Non-Liability of Officials and Employees of the City. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

U. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

V. Precedence of Documents. If there is any conflict between this Agreement and any supplemental escrow instructions, the order of precedence for resolving conflicts shall be as follows: first this Agreement, second the supplemental escrow instructions.

Signatures on Next Page

IN WITNESS WHEREOF, City and Developer have executed this Disposition and Development Agreement as of the date set forth above.

RICHARD AND LUCINDA WADDA

Richard Wadda

Date: _____

Lucinda Wadda

Date: _____

CITY OF FOWLER

Wilma Quan, City Manager

Date: _____

ATTEST:

Angela Vazquez, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

LOZANO SMITH

Scott Cross, City Attorney

Date: _____

ATTACHMENT NO. 1

LEGAL DESCRIPTION AND DEPICTION OF 127 SOUTH 6th STREET PROPERTY

LEGAL DESCRIPTION

FOWLER FIRE STATION

**LOT 21 AND THE NORTHEASTERLY 20 FEET OF LOT 20, IN BLOCK 33
OF THE TOWN, NOW CITY, OF FOWLER, COUNTY OF FRESNO, STATE
OF CALIFORNIA, ACCORDING TO THE MAP OF THE TOWN OF FOWLER
AND VILLA LOTS, THEREOF RECORDED MARCH 22, 1892, IN BOOK 5,
PAGE 7 OF PLATS, FRESNO COUNTY RECORDS**

NOTE:
 s for Assessment purposes only,
 be construed as portaying legal
 or divisions of land for purposes
 zoning or subdivision law.

SUBDIVIDED LAND IN POR. SEC. 15, T.15S., R.21E., M.D.B.&M.

Tax Rate Area
 4-000
 4-016

(02)

(14)

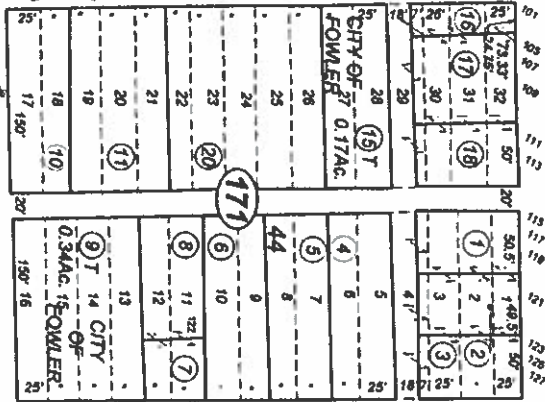
ST. 8

ST. 80

E. MERCED

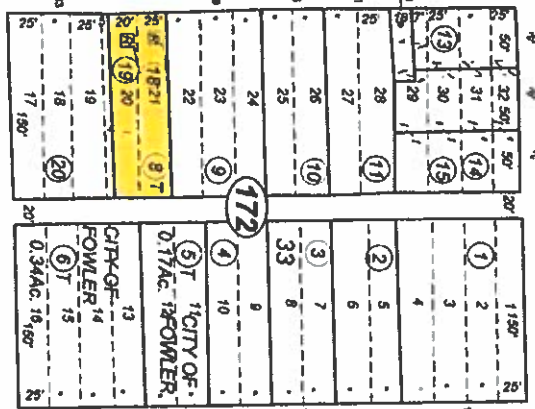
S. 7TH

E. MAIN



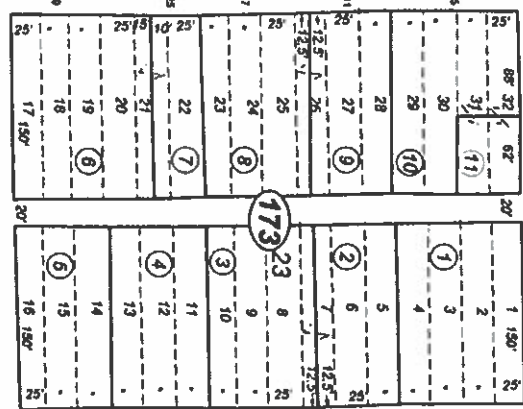
S. 6TH

ST. 80



S. 5TH

ST. 80



S. 4TH

ST. 80

ST. 8

Town of Fowler - Plat Bk. 4, Pg. 15
 Town of Fowler and Villa Lots - Plat Bk. 5, Pg. 7

(27)

Assessor's Map of
 County of Fresno
 Note - Assessor's Block Numbers Shown in Ellipses
 Assessor's Parcel Numbers Shown in Circles

ATTACHMENT NO. 2 FORM OF GRANT DEED

*Recorded By and For the Benefit of,
And When Recorded Return to:*

Richard and Lucinda Wadda
6950 E. Floral Avenue
Selma, California 93622

(Space Above for Recorder's Use)

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The City of Fowler, a California municipal corporation ("City"), hereby grants to Richard Wadda and Lucinda Wadda, husband and wife ("Developer"), the real property hereinafter referred to as the "Property," described in **Exhibit A** attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described therein.

1. Conveyance in Accordance Disposition and Development Agreement. The Property is conveyed in accordance with and subject to a Disposition and Development Agreement entered into between City and Developer dated August __, 2021 ("DDA"), a copy of which is on file with City at its offices as a public record and which is incorporated herein by reference. The DDA generally requires the Developer to construct certain improvements ("Developer Improvements") and other requirements as set forth therein. All terms used herein shall have the same meaning as those used in the DDA.

2. Permitted Uses. Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, that upon the date of this Grant Deed and during construction through completion of development and thereafter, Developer shall devote the Property to the uses specified in this Grant Deed for the periods of time specified therein. All uses conducted on the Property, including, without limitation, all activities undertaken by Developer pursuant to the DDA, shall conform to the DDA and all applicable provisions of the City of Fowler Municipal Code. The foregoing covenants shall run with the land.

3. Restrictions on Transfer and Encumbrances. Developer further agrees as follows:

A. For the period commencing upon the date of this Grant Deed and until the furnishing of the Release of Construction Covenants for the Developer Improvements, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under the DDA or this Grant Deed, nor shall Developer make any total or partial sale, transfer,

conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Property or the Developer Improvements thereon, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the facilities being operated upon the Property, without the prior written approval of the City pursuant to Section 4C of the DDA.

B. Except as approved in writing by City, Developer shall not place or suffer to be placed on the Property any lien or encumbrance, including but not limited to, mortgages, deeds of trust, or any other form of conveyance required for financing of the construction of the Developer Improvements on the Property and any other expenditures necessary and appropriate to develop the Property pursuant to the DDA, except as provided in Section 2N of the DDA.

C. All of the terms, covenants and conditions of this Grant Deed shall be binding upon Developer and the permitted successors and assigns of the Developer. Whenever the term "Developer" is used in this Grant Deed, such term shall include any other successors and assigns as herein provided.

4. Nondiscrimination. Developer herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any protected class under California State or federal law in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall Developer itself or any person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

5. City Right of Reentry. City has the right, at its election, to reenter and take possession of the Property, with all improvements thereon, and terminate and revest in City the estate conveyed to Developer if after the Closing Developer (or its successors in interest) shall:

A. Fail to start the construction of the Developer Improvements as required by the DDA for a period of thirty (30) days after written notice thereof from City; or

B. Abandon or substantially suspend construction of the Developer Improvements required by the DDA for a period of thirty (30) days after written notice thereof from the City, unless such abandonment or suspension is not caused by Developer's acts or omissions or as provided for in Section 4B of the DDA; or

C. Fail to complete the Developer Improvements within the time limits set forth in the DDA; or

D. Fail to open Conforming Business Activities within the time limits set forth in the DDA; or

E. Contrary to the provisions of Section 4C of the DDA, Transfer or suffer any involuntary Transfer in violation of the DDA.

The City's right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

- (1) Any mortgage or deed of trust permitted by the DDA; or
- (2) Any rights or interests provided in the DDA for the protection of the holders of such mortgages or deeds of trust.

City shall not unreasonably refuse any request to subordinate its right of reentry to a City-approved construction lender's mortgage or deed of trust securing a loan of funds for financing construction of the Developer Improvements in accordance with Section 2M of the DDA.

Upon the revesting in City of title to the Property as provided in this Section, City shall use its reasonable efforts to resell the Property as soon and in such manner as City shall find feasible to a qualified and responsible party or parties (as determined by City) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to City and in accordance with the uses specified for the Property. Upon such resale of the Property, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Property, which is permitted by this Agreement, shall be applied:

- (1) First, to reimburse City, on its own behalf or on behalf of City, all costs and expenses incurred by City, excluding City staff costs, but specifically, including, but not limited to, any expenditures by the City in connection with the recapture, management and resale of the Property or part thereof (but less any income derived by City from the Property or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Property or part thereof which Developer has not paid (or, in the event that the Property is exempt from taxation or assessment of such charges during the period of ownership thereof by City, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time or revesting of title thereto in City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property; and any amounts otherwise owing City; and in the event additional proceeds are thereafter available, then

- (2) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of the costs incurred for the acquisition and development of the Property and for

the Developer Improvements existing on the Property at the time of the reentry and possession, less any gains or income withdrawn or made by Developer from the Property or the Developer Improvements thereon.

Any balance remaining after such reimbursements shall be retained by City as its property. The rights established in this Section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that City will have conveyed the Property to Developer for redevelopment purposes, particularly for development and operation of commercial uses, and not for speculation.

6. Violations Do Not Impair Liens. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by Section 3 of this Grant Deed; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. Covenants Run With Land. All covenants contained in this Grant Deed shall be covenants running with the land. All of Developer's obligations hereunder except as provided hereunder shall terminate and shall become null and void upon completion of the Developer Improvements and the opening of Conforming Business Activities. Every covenant contained in this Grant Deed against discrimination contained in Section 4 of this Grant Deed shall remain in effect in perpetuity.

8. Covenants For Benefit of City. All covenants without regard to technical classification or designation shall be binding for the benefit of City, and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. City, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

9. Revisions to Grant Deed. Both City, its successors and assigns, and Developer and the successors and assigns of Developer in and to all or any part of the fee title to the Property, shall have the right with the mutual consent of City and Developer to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property. However, Developer and City are obligated to give written notice to and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed. The covenants contained in this Grant Deed,

without regard to technical classification, shall not benefit or be enforceable by any third party not a party to the DDA.

Signatures on Next Page

RICHARD AND LUCINDA WADDA

Richard Wadda

Date: _____

Lucinda Wadda

Date: _____

CITY OF FOWLER

Wilma Quan, City Manager

Date: _____

ATTEST:

Angela Vazquez, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

LOZANO SMITH

Date: _____

Exhibit A

LEGAL DESCRIPTION

FOWLER FIRE STATION

LOT 21 AND THE NORTHEASTERLY 20 FEET OF LOT 20, IN BLOCK 33 OF THE TOWN, NOW CITY, OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF THE TOWN OF FOWLER AND VILLA LOTS, THEREOF RECORDED MARCH 22, 1892, IN BOOK 5, PAGE 7 OF PLATS, FRESNO COUNTY RECORDS

ATTACHMENT NO. 3 SCHEDULE OF PERFORMANCE

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|---|--|
| 1. Execution of Agreement by City. The City shall execute this Agreement if approved by City Council, and shall deliver one executed copy thereof to Developer. | Within five (5) days after City Council approval, the City shall deliver three (3) executed copies of this Agreement to the Developer who shall execute and return to the City within five (5) days. |
| 2. Opening of Escrow. City shall open Escrow with Escrow Agent. | Within ten (10) days after City's receipt of fully executed Agreement. |
| 3. Evidence of of the Obtainment of Construction Financing. Developer submits evidence of Construction Financing as required by Section 2N. | Prior to Closing. |
| 4. Submission of Development Plans. Developer submits Design Drawings, Site Plan, and Construction Plans to City's Community Development Director. | Within thirty (30) days of Effective Date of this Agreement. |
| 5. City Approval or Disapproval of Development Plans. City's Community Development Director shall review the Design Drawings, Site Plan, and Construction Plans, and approve or disapprove same. | Within sixty (60) days after submittal. |
| 6. Revisions to Development Plans. Developer shall prepare revised Development Plans and resubmit them to the Community Development Director for review. | Within thirty (30) days after receipt of City comments. |

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| <p>7. Final Review of Development Plans. The Community Development Director shall approve or disapprove the revisions submitted by Developer provided that the revisions necessary to accommodate the Director's comments have been made.</p> | <p>Within thirty (30) days after submittal by the Developer.</p> |
| <p>8. Land Use Approvals. Developer shall obtain any required discretionary land use entitlements for the Developer Improvements as required by Section 2D.</p> | <p>Prior to Closing.</p> |
| <p>9. Conditions of Closing. Developer and City shall satisfy all of their respective Conditions of Closing.</p> | <p>Not later than one hundred eighty (180) days after Escrow is opened.</p> |
| <p>10. Close of Escrow for Conveyance of the Property. City shall convey the Property to Developer.</p> | <p>Not later than one hundred eighty (180) days after Escrow is opened.</p> |
| <p>11. Construction Permits. Developer shall obtain all construction and any other permits ("Building Permits") necessary to commence construction of the Developer Improvements as set forth in Section 2D.</p> | <p>Not later than thirty (30) days after Closing.</p> |
| <p>12. Insurance Certificate. Developer shall provide proof of insurance as required by Section 2G.</p> | <p>Prior to the commencement of construction.</p> |
| <p>13. Commencement of Construction. Developer shall commence construction of the Developer Improvements.</p> | <p>Within thirty (30) days after issuance of the first building permit.</p> |
| <p>14. Completion of Construction. Developer shall complete construction of the Developer Improvements.</p> | <p>Within twelve (12) months after issuance of the first building permit.</p> |
| <p>15. Opening of Developer Improvements for Business. "Conforming Business Activities" shall commence.</p> | <p>Within thirty (30) days after issuance of a certificate of occupancy.</p> |

- | | |
|--|---|
| 16. Option to Purchase. City shall have an Option to Purchase the Property as set forth in Section 3F. | For a period of ten (10) years after the opening of Conforming Business Activities. |
| 17. Right of First Refusal. City shall have a Right of First Refusal to acquire the Property as set forth in Section 3G. | For a period of fifty (50) years from Effective Date of Agreement. |
| 18. Release of Construction Covenants. City shall record the Release of Construction Covenants as set forth in Section 2M and Attachment No. 4. | In accordance with the DDA. |
| 19. Proof of ABC License. Developer shall provide City with proof of ABC license for serving alcohol at the Property. | Prior to commencement of Conforming Business Activities. |

ATTACHMENT NO. 4
RELEASE OF CONSTRUCTION COVENANTS

*Recorded By and For the Benefit of,
And When Recorded Return to:*

Richard and Lucinda Wadda
6950 E. Floral Avenue
Selma, California 93622

(Space Above for Recorder's Use)

RELEASE OF CONSTRUCTION COVENANTS

THIS RELEASE OF CONSTRUCTION COVENANTS ("Release") is made by the City of Fowler, a California municipal corporation ("City"), in favor of Wadda and Lucinda Wadda, husband and wife ("Developer"), as of the date set forth below.

RECITALS

A. City and Developer have entered into that certain Disposition and Development Agreement dated August __, 2021 ("DDA") concerning the development of certain real property situated in the City of Fowler, California as more fully described in **Exhibit A** attached hereto and made a part hereof.

B. As referenced in Section 2M of the DDA, City is required to furnish Developer or its successors with a Release of Construction Covenants upon completion of construction of the Developer Improvements, which Release is required to be in such form as to permit it to be recorded in the Recorder's office of Fresno County. This Release is conclusive determination of satisfactory completion of the construction and development required by the DDA for the Developer Improvements.

C. City has conclusively determined that such construction and development of the Developer Improvements has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. The Developer Improvements to be constructed by Developer have been fully and satisfactorily completed in conformance with the DDA. Any operating requirements and all use, maintenance or nondiscrimination covenants contained in the DDA and other documents executed and recorded pursuant to the DDA shall remain in effect and enforceable according to their terms.
2. Nothing contained in this Release shall modify in any other way any other provisions of the DDA.

IN WITNESS WHEREOF, the City has executed this Release this ___ day of _____
202_.

CITY OF FOWLER, a California municipal corporation

By: _____
Wilma Quan, City Manager

ATTEST:

City Clerk

APPROVED BY DEVELOPER:

RICHARD AND LUCINDA WADDA

Richard Wadda

Lucinda Wadda

Exhibit A

LEGAL DESCRIPTION

FOWLER FIRE STATION

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ATTACHMENT NO. 5
NOTICE OF REVERSIONARY INTEREST

*Recorded By and For the Benefit of,
And When Recorded Return to:*

CITY OF FOWLER
128 South 5th Street
Fowler, California 93625
ATTN: City Clerk

(Space Above for Recorder's Use)

NOTICE OF REVERSIONARY INTEREST

128 South Sixth Street, Fowler, CA 93625; APN 343-172-08T

RECITALS

WHEREAS, the City of Fowler, a California municipal corporation ("City"), and Richard Wadda and Lucinda Wadda, husband and wife ("Developer"), ("Developer"), entered into that certain Disposition and Development Agreement dated August __, 2021 ("DDA") concerning the development of certain real property situated in the City of Fowler, County of Fresno, State of California ("Property") as more fully described in **Exhibit A** attached hereto and made a part hereof; and

WHEREAS, pursuant to Section 2 of the DDA, Developer failed to complete certain Improvements by specified dates or otherwise failed to timely cure a breach of the DDA, and therefore Title to the Property has reverted back to City.

NOW, THEREFORE, City does hereby give notice that Title has reverted to City for the Property and City intends to exercise all rights to the Property.

IN WITNESS WHEREOF, City has duly executed this instrument this __ day of _____, 202__.

CITY OF FOWLER

By: _____
Wilma Quan, City Manager

Exhibit A

LEGAL DESCRIPTION

FOWLER FIRE STATION

LOT 21 AND THE NORTHEASTERLY 20 FEET OF LOT 20, IN BLOCK 33 OF THE TOWN, NOW CITY, OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF THE TOWN OF FOWLER AND VILLA LOTS, THEREOF RECORDED MARCH 22, 1892, IN BOOK 5, PAGE 7 OF PLATS, FRESNO COUNTY RECORDS



ITEM NO: 4-F

REPORT TO THE CITY COUNCIL

August 17, 2021

FROM: Dario Dominguez, Public Works Director

SUBJECT

Approve Communications Site Lease Agreement with unWired Broadband, LLC, to lease space on the Water Tower for the installation and operation of wireless communications antennas and related equipment, and authorize the City Manager to sign the lease agreement.

RECOMMENDATION

Staff recommends approval of an agreement with unWired Broadband, LLC to utilize the Water Tower located in the Public Works Yard for the installation and operation of wireless communication antennas and related equipment.

BACKGROUND

Pursuant to previous communications site lease agreement, unWired Broadband has been leasing space on the Water Tower to provide wireless communication services since 2011. The initial 5-year agreement was executed on April 1, 2011, and was extended an additional 5 years in 2016.

The lease has continued on a month-to-month basis since April, with unWired paying monthly rent of \$651.55. The terms of the new agreement have been updated, and staff is recommending approval of this new communications site lease agreement with a new 5-year term beginning on September 1, 2021, and ending on August 31, 2026. The agreement provides for two automatic renewals of the term for five years each, so the term may extend to August 31, 2036.

The agreement requires unWired to pay monthly rent of \$651.55 to the City as compensation for leasing space for up to 17 antennas. Each additional antenna will require City approval and the monthly rent payment will be increased \$35.00 for each new antenna beyond 17. The monthly rental fees will increase annually by 3% each September 1st during the term and any extended term.

FISCAL IMPACT

There are no negative fiscal impacts. Funds generated from this agreement are approximately \$7,818.60 per year.

Attachments:

- Communications Site Lease Agreement

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease") dated effective on September 1, 2021, is entered into by and between **unWired Broadband, LLC**, a California Limited Liability Company ("Lessee") whose address is 215 W. Fallbrook Avenue, Ste. 203, Fresno, CA 93711 and City of Fowler, a California municipal corporation ("Lessor") whose address is 128 South 5th Street, Fowler, CA 93625.

The parties hereto agree as follows:

1. **Premises:** Lessor leases the real property located in Fowler, Fresno County, California, legally described in Exhibit "A" attached hereto and made a part hereof and having Assessor's Parcel Number 343-213-07T and commonly known as the Public Works Yard ("Lessor's Property"). Located upon Lessor's Property is a water tower owned and operated by Lessor ("Water Tower" or "Tower") and used by other lessees as a wireless communications tower pursuant to a separate Non-Exclusive Water Tower Use Agreements entered into with Lessor in 2002. A communications building is also located adjacent to the Water Tower on the Lessor's property. Subject to the terms and conditions outlined in this Lease, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the communications building adjacent to the Water Tower and that portion of the Water Tower as depicted on Exhibit "B" attached hereto and made a part hereof ("Premises").
2. **Use:** The Premises may be used by Lessee for the installation and operation of Lessee's antennas and related equipment as substantially depicted on Exhibit "B" attached hereto and made a part hereof (collectively "Lessee's Facilities"). Lessee agrees it will use and operate Lessee's Facilities only to provide mobile/wireless communications services, including the transmission and the reception of radio communication signals. Lessee's use of the Premises shall be strictly in compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances. Lessee shall not use the Premises for any other purpose.
3. **Term:**
 - a. Except as otherwise provided in this Lease, the initial term of this Lease ("Term") shall be five (5) years commencing on September 1, 2021 ("Commencement Date") and ending at midnight, Pacific Time on August 31, 2026. The Term shall automatically extend for two (2) renewal period(s) of five (5) year(s) each unless either party provides written notice to the other of its election not to renew the Term, at least ninety (90) days prior to the end of the then current Term. Except that, should Lessee be in breach or default of any provision of this Lease on the date of giving written notice to Lessor of Lessee's exercise of its right to extend the Term of this Lease, such written notice shall be of no force or effect, and should Lessee be in breach or default of any provisions of this Lease on the date the Extended Term is to commence, the Extended Term shall not commence and this Lease shall terminate on the last day of the Term of this Lease. This Lease shall continue on a month-to-month basis (with either party having a right to terminate this Lease with three hundred sixty-five days (365) days prior written notice) in the event of a holdover by Lessee on the same terms and conditions as outlined in this Lease, except the Rent shall be increased as outlined in paragraph 5 (a) of this Lease.

- b. If Lessee determines within the first thirty (30) calendar days of the Term of this Lease that Lessee's communications equipment will not perform to specification due to circumstances beyond Lessee's control, such as radio frequency interference, Lessee will have the right to terminate this Lease during such thirty (30) calendar day period by providing Lessor with written notice of termination before the last day of said thirty (30) day period.

4. Rent:

- a. Upon the Commencement Date, Lessee shall pay Lessor, as rent, the sum of Six Hundred Fifty One Dollars and Fifty-Five Cents (\$651.55) ("Rent") per month, which shall be considered compensation for the installation of up to seventeen (17) radio transmitting and receiving antennae and associated cable, wiring, equipment upon Tower and equipment rack within the structure at the Tower location. Rent shall be payable on the 1st day of each month, in advance, to Lessor at Lessor's address specified in Section 17 of this Lease. Commencing on September 1, 2022, Rent shall be increased by three percent (3%) on September 1 of each year that this Lease remains in effect, including without limitation, the Extended Term or any holdover by Lessee.
- b. Should Lessee request the installation of any additional antennae on the Tower, starting with antennae #18, Lessee shall pay an additional Thirty-five dollars (\$35.00) per additional attachment per month to Lessor. Lessee shall submit the request in writing to Lessor along with information on the antenna and desired location at least five (5) days prior to the desired installation to allow Lessor time to review the request. Lessor shall review and provide a written response to the request to Lessee within three (3) business days of receiving the request.
- c. In the event any rental installment is not received by Lessor by the tenth (10th) day of any month, a delinquency charge, equal to ten percent (10%) of the outstanding amount due shall be paid by Lessee to Lessor concurrently with payment of the delinquent rental installment.

5. Electrical Power: Lessee currently pays the monthly bill for meter# 1010382498 for utility costs associated with Lessee's use of the Premises and operation and maintenance of Lessee's Facilities. Lessee shall continue to pay the monthly bill for the meter associated with Lessee's use of the Premises for the Term and any Extended Term of this Lease.

6. Improvements & Access:

- a. Lessee shall maintain, repair and operate Lessee's Facilities on the Premises at Lessee's sole expense.
- b. Lessee and Lessee's employees, contractors, and subcontractors shall have non-exclusive access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Lessee to the extent required to maintain, repair, and operate Lessee's Facilities on the Premises. Lessee's exercise of such access shall not interfere with Lessor's use of the Tower. Lessee acknowledges and agrees that no term or condition of this Lease or Lessee's exercise of its rights under this Lease shall in any way interfere with or prohibit Lessor's continual use, operation, maintenance, or repair of the Tower.

- c. Subject to the written approval of the Lessor, Lessee shall have the right (at Lessee's sole expense) to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's written approval of the location, which approval shall not be unreasonably withheld, Lessee shall have the right (at Lessee's sole expense) to place utilities under Lessor's Property to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute licenses evidencing this right.
 - d. Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation, and maintenance of Lessee's Facilities.
 - e. Lessee shall remove all Lessee's Facilities at its sole expense within 30 calendar days after the cancellation, expiration, or early termination of this Lease. Lessee shall repair any damage to the Premises caused by such removal and shall return the Premises to the condition which existed on the Commencement Date, reasonable wear and tear and damages beyond the control or without the fault or neglect of Lessee excepted.
 - f. Lessee shall not permit any liens to be recorded against title to the Lessor's Property for any labor or material furnished Lessee, in connection with work performed on Lessor's Property or the Premises, including without limitation, the installation, operation, use, maintenance, or repair of Lessee's Facilities. If for any reason, a valid lien is recorded against title to Lessor's Property or the Premises, Lessee shall within ten (10) days of the date of recordation of any such lien, pay the determined amount of such lien with all costs, fees, and charges, thereby releasing such lien. Lessee shall have the right to contest the validity, nature, or amount of any such lien but, upon the final determination of such questions, shall immediately pay any adverse judgment rendered with all proper costs and charges and shall have the lien released at its own expense. If Lessee desires to contest any such lien, then before commencing such contest, it will post a bond at its sole cost and expense, to release the lien and the lienholder must record a release of the lien.
7. **Interference with Communications:** Lessee's Facilities shall not disturb or interfere with the communications configurations, equipment, and frequency that exist on Lessor's Property on the date of this Lease ("Pre-existing Communications"). Specifically, Lessee acknowledges that the equipment located at or on Lessor's Property or Premises on the Commencement Date, which was installed by other carriers or Lessor, will not cause interference to Lessee and are Pre-existing Communications. Additionally, Lessee's Facilities shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Except for the Pre-existing Communications and except for uses of Lessor's Property and the Premises by Lessor, Lessor shall not knowingly permit the use of or any activity upon any portion of Lessor's Property which materially interferes with the communications operations of Lessee's Facilities. Notwithstanding the foregoing, Pre-existing Communications operating in the same manner as on the date of this Lease shall not be deemed interference.
8. **Taxes:** Lessee shall pay directly to any taxing agency, before delinquency, any taxes, including without limitation, personal property taxes and, possessory interest taxes that may be attributable to Lessee's Facilities, Lessor's Property, and Premises. Lessee acknowledges and

agrees that Lessee's leasing of the Premises could result in the assessment of a possessory interest tax which Lessee agrees to pay. If any such tax is paid by Lessor, Lessee shall reimburse Lessor for the amount of any such tax payment within sixty (60) days of receipt of sufficient documentation indicating the amount paid and the calculation of Lessee's share thereof. Lessee shall not be responsible for any interest, penalty, or late charges caused by Lessor's failure to pay real estate taxes payable by Lessor. Upon written request by Lessee, Lessor shall furnish Lessee with evidence of payment of all taxes and Lessee will provide Lessor with evidence of payment of taxes. Lessee may, in connection with providing protection against the filing of tax liens against Lessor's Property or the Premises, as required by applicable law, contest in good faith the legality or validity of any taxes attributable to the Premises or Lessee's Facilities.

9. **Termination:** This Lease shall terminate as follows: (i) in accordance with its terms; (ii) upon initiation of a bankruptcy or other insolvency proceeding by Lessee, whether voluntary or involuntary; (iii) upon thirty (30) days prior written notice by either party upon default of any covenant, condition, or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default; (iv) by Lessee if Lessee is unable to occupy or utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take-back of channels or change in frequencies; or (v) upon one hundred eighty (180) days written notice by either party for any reason. In addition to the remedies described in this Section 9, in the event of a default by Lessee, Lessor has all remedies available at law or in equity, including, without limitation, the remedy described in California Civil Code Section 1951.4 (Lessor may continue to lease in effect after Lessee's breach and abandonment and recover rent as it becomes due if Lessee has right to sublet or assign, subject only to reasonable limitations). If this Lease is terminated for any reason other than Lessee's breach Lessee will be entitled to a refund of the unearned portion of the monthly rental installment for the then-current month.

10. **Damage to or Destruction of Premises:**

- a. If the Premises or the Tower are damaged or destroyed by fire or another casualty, Lessor may terminate this Lease upon written notice to Lessee. In such case, Lessor will refund to Lessee the unearned rent for the then-current month if Lessee or its officers, directors, shareholders, agents, contractors, employees, or equipment are not the cause of the fire or other casualty. Lessor may elect to repair or construct the Premises and continue this Lease in effect, in which in any event the monthly rent paid by Lessee shall be reduced for the part of the Premises of which Lessee is deprived; Lessee shall pay the full rental amounts required once the Premises are repaired and Lessee's ability to utilize the Premises is fully restored.
- b. Lessor shall not be responsible for or liable to Lessee for any damages, direct, incidental, consequential, or otherwise, that Lessee may suffer as a result of damage to or destruction of the Premises or the Tower.
- c. Lessee reserves the right to enter the Premises at all reasonable times to make repairs that may be necessary or advisable on account of fire or other casualty or for the maintenance of the Premises.

- d. Lessee shall be solely responsible for all damage that Lessee or its contractors, employees, directors, officers, shareholders, agents, or equipment may cause to the Premises, the Water Tower, Lessor's Property, Lessor's equipment, or the Pre-existing Communications which may be installed on or about the Premises.

11. Condemnation: If a condemning authority takes all of Lessor's Property or a portion which in Lessee's reasonable opinion is sufficient to render the Premises unsuitable for Lessee's use, then this Lease shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation (which for Lessee shall include, the value of Lessee's Facilities, moving expenses, prepaid rent, business dislocation expenses, bonus value of the lease, and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of an eminent domain shall be treated as taking by a condemning authority. Any award for the taking of all or any part of the Premises under condemnation or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for the diminution in value of the leasehold, -for taking the property owned by Lessor, or as severance damages; provided, however, Lessee shall be entitled to any award for loss of or damage to Lessee's equipment, trade fixtures, and other personal property. Notwithstanding any provision hereof to the contrary, Lessee shall have the right to assert with the condemning authority an independent claim for the value of its leasehold interest and its improvements to the Premises.

12. Insurance:

- a. Lessee shall maintain throughout the Term and any Extended Term the following insurance: (1) Commercial General Comprehensive Liability Insurance with limits of \$2,000,000.00 per occurrence, covering any act or omission to act of Lessee and any of Lessee's officers, directors, shareholders, agents, contractors or employees and the use, operation, repair or maintenance of Lessee's Facilities and the use of the Premises or Lessor's Property (2) Automobile Liability with a combined single limit of \$1,000,000.00 per accident, (3) Workers Compensation as required by law, and (4) Employer's Liability with limits of \$1,000,000.00 per occurrence. All insurance carried by Lessee shall be primary and non-contributory and Lessor and its officials, officers, employees, and agents shall be named as an additional insured. Lessee's policies shall state that they may not be modified or canceled herein without at least fifteen (15) calendar days before written notification to Lessor.
- b. Lessee's Indemnity. Except as otherwise provided in this Lease, Lessee shall indemnify, defend, and hold Lessor, its officials, officers, employees, agents, successors and assigns harmless from and against any and all loss, cost, claim, liability, action, damage, expense or injury (including reasonable attorneys' fees)(collectively "Claims"): (i) incurred or suffered by Lessee or Lessee's officers, directors, shareholders, contractors, employees, agents, or equipment while on the Lessor's Property or Premises; (ii) incurred or suffered by any person or entity and which are caused in whole or in part by any acts or omissions of the Lessee or any of Lessee's officers, directors, shareholders, contractors,

employees, agents, equipment or Lessee's Facilities; (iii) incurred or suffered by any person or entity as a result of the equipment or Lessee's Facilities installed and/or constructed on the Lessor's Property or Premises by Lessee or any of Lessee's officers, directors, shareholders, contractors, employees or agents; (iv) incurred or suffered by any person or entity as a result of the breach or default by Lessee or any of Lessee's directors, shareholders, agents, contractors or employees of any provision of this Lease, including without limitation, the provisions of Section 16 of this Lease. Lessee's duty to indemnify will not apply to Claims arising out of the gross negligence or willful misconduct of Lessor or any violation of law by Lessor or their agents or contractors.

- c. Survival. The foregoing indemnity shall survive the termination, cancellation, or expiration of this Lease.

13. Assignment: Lessee may not assign this Lease or sublet the Premises to any person or entity without the express prior written consent of Lessor, which consent shall not be unreasonably withheld. Any assignment or subletting approved by Lessor shall not, in any manner, release or relieve Lessee of its obligations and responsibilities under this Lease. Any attempted assignment or subletting of the Premises without the express prior written consent of Lessor shall be void and shall constitute a material breach of this Lease by Lessee. Lessor may assign this Lease at any time upon notice to Lessee.

14. Title and Quiet Enjoyment:

- a. Lessor warrants that the person executing this Lease on behalf of Lessor has full right, power, and authority to execute this Lease. So long as Lessee is not in breach or default of any provision of this Lease, Lessee shall have quiet enjoyment of the Premises during the Term of this Lease or any extension of the Term.
- b. Lessee warrants that the person executing this Lease on behalf of Lessee has full, right, power, and authority to execute this Lease.
- c. Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If in the opinion of the Lessee, such title report shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises, Lessee shall have the right, before the Commencement Date, to terminate this Lease immediately upon written notice to Lessor.

15. Repairs: Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors, or subcontractors.

16. Environmental: Lessor represents that to Lessor's actual knowledge, neither Lessor's Property nor the Premises have been used for the generation, storage, treatment, or disposal of hazardous materials, hazardous substances, or hazardous wastes. In addition, Lessor represents that to Lessor's actual knowledge, no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on Lessor's Property or the Premises. All references to Lessor's actual knowledge shall

mean and refer to the current, actual (as distinguished from implied, imputed, or constructive) knowledge of Dario Dominguez, Lessor's Public Works Director, without a duty of inquiry or investigation. The knowledge of any other person or entity, including without limitation any previous employees of Lessor, shall not be deemed to constitute the constructive knowledge of Lessor or otherwise be imputed to Lessor. The above-named individual, shall not, under any circumstances, have any personal liability of any kind whatsoever on account thereof, and any claims, demands, causes of action, losses, liabilities, damages, costs, or expenses arising out of or resulting from any actual or alleged breach by Lessor of any of the aforesaid representations shall only be asserted against and satisfied out of the assets of Lessor.

Lessee shall not use, generate, manufacture, produce, store or dispose of, on, under or about the Lessor's Property or Premises, or transport to or from the Lessor's Property or Premises any hazardous materials as defined in this Section 16, except for those contained in its back-up power batteries (lead-acid batteries) and materials incidental to and/or commonly used in similar telecommunications operations. Lessee and its contractors shall at all times and in all respects comply with all federal, state, and local laws, ordinances, and regulations (collectively "Hazardous Materials Laws") relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal, or transportation of any hazardous, toxic, contaminated or polluting materials, substances or wastes, including without limitation, "petroleum products", "hazardous substances", "hazardous waste", "hazardous materials", or "toxic substances" (collectively "Hazardous Materials"). Lessee shall at all its own cost, procure and maintain in effect during the entire term of this Lease or any extension thereof, and comply with all conditions of all permits, licenses, or governmental and regulatory approvals required for Lessee's use, disposal, or transportation of the Hazardous Materials on or from the Premises. Lessee shall in all respects use, handle, treat, deal, and manage all Hazardous Materials in, on, under, or about the Premises in total conformity with all applicable Hazardous Materials Laws and pursuant to prudent industry practices. Upon expiration or earlier termination of the Term of this Lease or any extension thereof, Lessee shall cause all Hazardous Materials to be removed from the Premises and transported for use, storage or disposal in accordance and compliance with all applicable Hazardous Materials Laws.

17. Miscellaneous:

- a. If any provision of the Lease is invalid or unenforceable for any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- b. This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.
- c. All notices under this Lease shall be in writing and shall be given by personal delivery; or by registered or certified U.S. mail, postage prepaid, return receipt requested; or by facsimile if transmitted by a machine that produces a transmission report verifying the date and time of transmission and the telephone number to which transmitted, and a confirming hard copy is mailed to the recipient; or by overnight delivery service that issues a receipt and addressed to the appropriate party at the address set forth below. Notice given: (a) by personal delivery will be effective upon delivery or refusal of

delivery, whichever is earlier; (b) by mail will be effective upon receipt or three (3) calendar days after the postmark date, whichever is earlier; (c) by facsimile will be effective on the date shown on the transmission receipt; (d) by email will be effective the next business day; and (e) by overnight service will be effective upon delivery or refusal of delivery, whichever is earlier.

Lessor: City of Fowler
Attn: Wilma Quan, City Manager
128 South 5th Street
Fowler, CA 93625
Telephone: 559-834-3113
Fax: 559-834-0185
Email: wquan@ci.fowler.ca.us

Lessor's Payee: City of Fowler
Attn: Maggie Moreno, Director of Finance
128 South 5th Street
Fowler, CA 93625
Telephone: 559-834-3113
Fax: 559-834-0185
Tax ID#: 94-6000337
Email: mmoreno@ci.fowler.ca.us

Lessee: unWired Broadband, LLC
Attn: Peter L. Sorensen, President
215 W. Fallbrook Ave., #203
Fresno, CA 93711
Phone: (559) 261-4444
Fax: (559) 261-4445
Email: Leasing@getunwired.com

The Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party.

- d. This Lease shall be governed under the laws of the State of California. The parties agree that the proper venue for any lawsuit involving this Lease shall be the Fresno County Superior Court, if in state court, or the United States District Court, Eastern District of California, Fresno Division, if in federal court.
- e. The prevailing party in any legal or equitable claim arising under this Lease shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.
- f. Terms and conditions of this Lease which by their sense and context survive the termination, cancellation, or expiration of this Lease shall so survive.
- g. This Lease constitutes the entire agreement and understanding between the parties and supersedes all offers, negotiations, and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Each party has relied on its examination of this Lease, the counsel of its

advisors, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either party to inspect the Premises, to read the Lease, or to obtain legal or other advice relevant to this Lease constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice. Any amendments to this Lease must be in writing and executed by both parties.

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

Dated: _____

LESSEE:

unWired Broadband, LLC
a California Limited Liability Company

By: _____
PETER L. SORENSEN, President

Dated: _____

LESSOR:

City of Fowler

By: _____
WILMA QUAN, City Manager

EXHIBIT A

LEGAL DESCRIPTION OF LESSOR'S PROPERTY

Lessor's Property of which Premises are a part is legally described as follows:

Beginning at the most northerly corner of Block 24, Lot 20, of the Town of Fowler, as recorded in Book 4 of Plats, Page 15, Fresno County Records; Thence southwesterly along the northwest line of said Lot 20, a distance of 20.0 feet; thence southeasterly parallel to the northeast line of said Lot 20, a distance of 20.0 feet; thence northeasterly parallel to the northwest line of said Lot 20, a distance of 20.0 feet more or less, to a point on the northeast line of said Lot 20; thence along said northeast line, 20.0 feet to the point of beginning.

Assessor's Parcel Number 343-213-07T

EXHIBIT B
DEPICTION OF PREMISES
[TO BE ATTACHED]



ITEM 5Ai

FOWLER CITY COUNCIL

ITEM NO: 5-Ai

REPORT TO THE CITY COUNCIL

August 17, 2021

FROM: Margarita Moreno, Finance Director

SUBJECT

Approval of items pertaining to the use of the Coronavirus State and Local Fiscal Recovery funds under the American Rescue Plan Act of 2021.

- Adopt Resolution No. 2512 amending the 2021-2022 Adopted Budget to reflect Coronavirus State and Local Fiscal Recovery funds received under the American Rescue Plan Act (ARPA) in the amount of \$812,156 in revenues, and appropriate \$575,000 for various expenditures including a one-time premium pay to essential city employees; to upgrade city water meters; and a Council Chambers Audio-Visual system.
- Adopt Resolution No. 2513 of the City Council of the City of Fowler authorizing a one-time premium payment to eligible city employees performing essential work, who have been and continue to be relied upon to maintain continuity of city operations.

RECOMMENDATION

Staff recommend the first tranche of \$812,156 ARPA funds be used for the following:

1. (\$75,000) One-time premium pay to City employees
2. (\$450,000) Water meters upgrades
3. (\$50,000) Modernization of the Audio-Visual system in Council Chambers
4. (\$237,156) Reserve for future initiatives

BACKGROUND

The ARPA appropriated Coronavirus State and Local Fiscal Recovery Funds for allocation by the U.S. Department of the Treasury to states, counties, metropolitan cities, and small cities with populations under 50,000 (referred to as non-entitlement units of local government). Award amounts are based on each entity's share of the population within each group. The California Department of Finance received notification of the funds available and the list of non-entitlement units of local government and their

respective populations via Treasury guidance issued on May 24, 2021. Based on this guidance, the state is required to allocate \$1,218,261,277 to 291 small cities and towns in California, with Fowler to receive \$1,624,012 total over two equal payments in July 2021 and July 2022. The first payment of \$812,156 has been received and the second payment will be made 12 months later.

City staff have used the last several months to comb through available information and regulations, confer with surrounding agencies, and review current budget priorities and needs to develop a proposed plan. Staff is recommending that Fowler's ARPA funds be used to upgrade a portion of the existing City water meters, modernize the Audio-Visual System in Council Chambers, and provide premium pay to City staff who have diligently served the community during the COVID-19 pandemic.

Staff is also recommending that the remaining unallocated portion of the ARPA funds; approximately \$237,156, be placed in reserves for future initiatives.

ARPA Fiscal Recovery Funds

From a policy perspective the ARPA Funds are intended to:

- Support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control;
- Replace lost revenue for eligible state, local, territorial, and Tribal governments to strengthen support for vital public services and help retain jobs;
- Support immediate economic stabilization for households and businesses;
- Address systemic public health and economic challenges that have contributed to the unequal impact of the pandemic.

From an operational standpoint, funds may be used:

- To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency;
- To make necessary investments in water, sewer, or broadband infrastructure.

ARPA Funds provide flexibility for each government to meet local needs—including support for households, small businesses, impacted industries, essential workers, and the communities hardest hit by the crisis. These funds can also be used to make necessary investments in water, sewer, and broadband infrastructure.

The U.S. Department of the Treasury has published an Interim Final Rule (IFR) that implements the provisions of this program. Staff have reviewed the document, conferred with staff in surrounding cities, and reviewed existing budget/project priorities to develop a proposed plan for just over half of Fowler's Local Fiscal Recovery Funds, detailed below.

ARPA funds are requested to be allocated for the following items:

City Employee Premium Pay - \$75,000

The attached Resolution No. 2513 would allow the City to make a one-time non-pensionable payment, within specific parameters, to eligible City employees and prorated part-time employees performing essential work, who have been and continue to be relied upon to maintain continuity of City operations.

The U.S. Department of Treasury Final IFR, 31 CFR Part 3 states, "Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others." And "During the public health emergency, employers' policies on COVID-19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face." And "The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to renumerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency."

During the height of the pandemic, substantially all City services remained in full operation, even with public facilities and staff offices closed to the public. The premium pay is in recognition of the organization-wide commitment, sacrifice and universal risk of exposure that management and non-management employees worked through in a highly uncertain time.

City staff contacted numerous cities in the Central Valley, to obtain information concerning premium pay. In short, almost every city in the surrounding area is considering some form of premium pay for their employees, ranging from \$3,000-\$12,000/per employee to a percentage-based payment. Staff is recommending a flat premium pay for eligible employees.

Eligible City employees and part-time employees are defined as working in an active status during the 'measurement period' of March 1, 2020 thru March 1, 2021, and must be in an active employment status with the City of Fowler as of August 17, 2021:

- Eligible full-time employees would receive a one-time non-pensionable flat payment of \$3,000 each.
- Eligible part-time employees would receive a prorated one-time flat payment of eligible wages during the measurement period.

If approved, Finance staff will issue the premium pay to eligible employees immediately.

Water Meter Upgrade - \$450,000

City staff is recommending the replacement of approximately 1100 old 450i smart meters to the latest and greatest in the industry R900i Mach10 smart meters. The old meters have had communication issues and many of them are becoming faulty and eventually are going out of service. Furthermore, these meters will be discontinued at the end of the year. The new smart meters will be more efficient, accurate, and will become compatible with our existing R900i collector.

The City currently has two data collectors, a 450i collector and an R900i collector. The 450i automatically reads approximately 1100 accounts monthly and the R900i automatically reads approximately 50 accounts (this collector was installed in late 2019). Staff recommends the purchase of a new R900i data collector to have as a backup in case the other collector goes down. Our existing 450i data collector has aged and recently became faulty, causing billing issues to all of its accounts for several billing cycles.

If approved staff will return to Council at a later date with a contract to purchase the meters.

Modernization of the Audio-Visual System in Council Chambers - \$50,000

This initiative will allow for more effective virtual public participation and engagement and consist of:

- Replace aged speakers and microphones
- Install a larger display screen for the public and small display screens on the dais to improve the visibility of presentations
- Install fixed cameras for improved video quality during meetings
- Transition to zoom (or similar) based video meetings to enhance public participating, simplify the recording process, and provide better meeting controls to the Clerk.

If approved staff will return to council with a consulting agreement to purchase and install the audio visual upgrades.

Timeline & Reporting for Use of ARPA Funds

The current regulations from the U.S. Treasury permits the funds to be used to cover costs incurred beginning on March 3, 2021. All funds must be obligated to their specific use by December 31, 2024 and fully expended by December 31, 2026.

Nonentitlement units of local government (such as Fowler) will be required to submit annual project and expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

FISCAL IMPACT

The appropriation of ARPA Funds will not adversely impact existing City funds, operations, or budgeted programs and projects. ARPA Funds will have a significant positive effect in improving the City's water meter system, outdated audio-visual system in council chambers, and retention of committed and qualified City staff who have diligently served the community during the COVID-19 pandemic.

Attachments:

- Resolution 2512 and Request for Budget Amendment
- Resolution 2513

RESOLUTION NO. 2512

**A RESOLUTION OF THE COUNCIL OF THE CITY OF FOWLER
APPROVING AND ADOPTING THE BUDGET AMENDMENT FOR THE AMERICAN
RESCUE PLAN ACT (ARPA) FUND FOR FISCAL YEAR 2021/2022**

WHEREAS, the FY 2021/2022 Annual Budget reflects the City of Fowler's ongoing commitment to providing core services; and

WHEREAS, the FY 2021/2022 Annual Budget was approved by the City Council on June 15, 2021, by Resolution 2504, and any subsequent amendments must be approved by Resolution; and

WHEREAS, the budget amendment request attached hereto specifies the details of the proposed ARPA Fund budget amendment.

NOW, THEREFORE, BE IT RESOLVED, the Fowler City Council hereby resolves that the FY 2021/2022 budget be amended to reflect ARPA Fund revenues and appropriations as described in the attachment hereto.

PASSED, APPROVED AND ADOPTED this 17th day of August 2021, at a regular meeting of the Fowler City Council by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

David Cardenas, Mayor

ATTEST:

Angela Vasquez, Deputy City Clerk



REQUEST FOR BUDGET AMENDMENT Resolution 2512

Requested by: Margarita Moreno		Budget Amounts	
Account Numbers:	Fund Name Description	Increase	Decrease
Revenues:			
212.3650	American Rescue Plan Act (ARPA) funding	\$812,156	
Appropriations:			
212.5010	Salary FT-Employee stipend	\$ 67,150	
212-5020	Salary PT-Employee stipend	\$ 1,350	
212.5081	Tax & Allow-Employee stipend	\$ 6,500	
212.5715	Equipment- Audio-Visual system	\$ 50,000	
212.5715	Equipment-Water Meter Upgrade	\$450,000	

Reason(s) for Budget Amendment:

To align the expenses and revenues to the first quarter of FY 2021/2022 budget, staff is requesting budget amendments to the following funds:

- To estimate revenues received for the first half of ARPA funding received on July 2021.
- To appropriate a one-time premium pay to city employees, the modernization of the audio-visual system to council chambers, and water meter updates.

Department Director Margarita Moreno Date 8/13/2021

Approval Required Budget Amendment:

Finance Director Margarita Moreno Date 8/13/2021
Signature

City Manager _____ Date _____
Signature

City Council: ☐ Approved ☐ Resolution # _____ ☐ Denied Date _____

RESOLUTION NO. 2513

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER AUTHORIZING A ONE-TIME PREMIUM PAYMENT TO ELIGIBLE CITY EMPLOYEES PERFORMING ESSENTIAL WORK, WHO HAVE BEEN AND CONTINUE TO BE RELIED UPON TO MAINTAIN CONTINUITY OF CITY OPERATIONS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY

WHEREAS, the American Rescue Plan Act of 2021 (ARPA) appropriated Coronavirus State and Local Fiscal Recovery Funds for allocation by the U.S. Department of the Treasury to states, counties, metropolitan cities, and small cities with populations under 50,000 (referred to as non-entitlement units of local government); and

WHEREAS, the City of Fowler shall receive \$1,624,312 total over two equal payments in July 2021 and July 2022; and

WHEREAS, the U.S. Department of Treasury Final Interim Final Rule, 31 CFR Part 3 states, "Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others." And "During the public health emergency, employers' policies on COVID-19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face." And "The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to renumerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency."; and

WHEREAS, the Local Fiscal Recovery Funds may be used, subject to certain restrictions, to provide premium pay to eligible workers that have, and continue to, perform essential work serving the City of Fowler during the COVID-19 public health emergency.

WHEREAS, on March 17, 2020, the City Manager, acting as the Emergency Services Director for the City of Fowler under Emergency Services Director Order under Resolution No. 2461 "A Resolution of the City Council of the City of Fowler Proclaiming the Existence or Threatened Existence of a Local Emergency (COVID-19)", declared all employees of the City to be Disaster Service Workers, and that City employees who are not ill, who are found to be fulfilling essential services and for which work is available, will be required to work at the City or by telework; and

WHEREAS, The Emergency Services Director determined that, in the interest of ensuring continuity of City operations, that vital facilities providing essential public services, including, but not limited to, City Hall, Police Headquarters, Fire Station, Recreation/Senior Center, Public Works Corporation Yard, and all City operations were to remain fully available to the public, and that management and non-management staff were to physically report to work, with limited exceptions for telework; and

WHEREAS, unless specifically prohibited by State or Local public health order or Executive Order, substantially all City services remained in full operation and public facilities remained open

to the public with appropriate safety and mitigation measures in place; and

WHEREAS, in recognition of the organization-wide commitment, sacrifice and universal risk of exposure that management, non-management employees and part-time worked through in a highly uncertain time, the City Council wishes to utilize a portion of Local Fiscal Recovery Funds to provide a one-time premium payment to all eligible City employees, subject to the parameters set forth in this resolution, and not to exceed a total outlay of \$75,000; and

WHEREAS, eligible City employees shall be defined as working in an active status during the measurement period of March 1, 2020 thru March 31, 2021, and must be in an active employment status with the City of Fowler as of August 17, 2021; and

WHEREAS, premium pay for eligible full-time employees shall be a one-time payment flat amount of \$3,000, and shall be non-pensionable. Full-time employees hired during the measurement period shall have their payment adjusted for length of service if they were not serving in a part-time capacity immediately prior to appointment to a full-time position; and

WHEREAS, premium pay for eligible part-time employees shall be a one-time flat payment equivalent prorated eligible wages during the measurement period; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Fowler authorizes the use of ARPA Local Fiscal Recovery Funds to make a one-time non-pensionable payment, as defined by this resolution, on the first regular payroll following adoption, to eligible City employees performing essential work, who have been and continue to be relied upon to maintain continuity of City operations.

This foregoing resolution is hereby adopted this 17th day of August, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

David Cardenas, Mayor

ATTEST:

Angela Vazquez, Deputy City Clerk

**FOWLER CITY COUNCIL**

ITEM NO: 5Bi

REPORT TO THE CITY COUNCIL

August 17, 2021

FROM: Dawn E. Marple, City Planner**SUBJECT**

Public Hearing to Consider Introduction of Zoning Text Amendment No. 21-01 to Amend Section 17, of Article 22, of Chapter 5, of Title 9 of the Fowler Municipal Code – Special Use Signs, to allow multiple drive-through menu boards.

RECOMMENDATION

Both Staff and the Planning Commission recommend the City Council adopt an amendment to Section 9-5.22.17 – Special Use Signs of the Fowler Zoning Ordinance to allow two (2) drive-through menu boards with up to 40 square feet in total sign area per drive-through lane.

BACKGROUND

The City of Fowler Zoning Ordinance currently allows for restaurant uses with a drive-through to have one (1) additional sign for menu board purposes. Staff has received several development proposals recently requesting multiple menu boards for their multi-lane drive-throughs. These proposals cannot be fulfilled as the zoning ordinance allows only one drive-through sign per restaurant. The applicant, Commercial Neon Signs on behalf of Nematzadeh Enterprises Inc., proposed the following changes:

- Drive-through uses would be allowed two (2) menu boards per drive-through lane. Uses with two (2) drive-through lanes could have a total of four (4) menu boards.
- Each menu board would be allowed to be 27.1 square feet, up from 20 square feet.

A 2019 Drive-Thru Performance Study prepared by QSR (Quick Service Retail) Magazine studied 10 chains across 1,500 visits, and found that total time spent was reduced by 12 seconds per order with the inclusion of a second menu board.

Below is a comparison of the City's sign standards to other area jurisdictions.

Jurisdiction	Max. Number of Boards	Maximum Area per Board	Total Sign Area Allowed (in square feet)
Fowler	1 per restaurant	20 square feet	20
Reedley	2 per restaurant	40 square feet	80
Fresno City, Clovis, Madera City	2 per drive-thru	20 square feet	40 per drive-thru
Selma	No standard		75
Fowler (Applicant-proposed)	2 per drive-thru	27.1 square feet	54.2 per drive-thru

After discussion with the applicant, staff recommend the following changes:

- Drive-through uses would be allowed two (2) menu boards per drive-through lane. This means uses with two (2) drive-through lanes could have a total of four (4) menu boards.
- Each drive-through lane would be allowed up to 40 square feet in total signage, with a maximum of 25 square feet per sign.
- Each drive-through sign's speaker box must be positioned away from residential district or residential use.

The proposed text amendment would align the City's standards with the standards of most surrounding cities, while also allowing for some flexibility for restaurants needing more menu board sign area. Restaurants that need more sign area can seek administrative approval of a minor deviation to sign standards.

The Planning Commission reviewed the proposal at a July 1, 2021 regular meeting and recommended adopting staff's recommended version of the proposal.

ENVIRONMENTAL FINDINGS

Zoning Text Amendment No. 21-01 has been reviewed pursuant to the California Environmental Quality Act (CEQA) and has been determined to be exempt pursuant to CEQA Guidelines Section 15311 (Accessory Structures). There are six (6) restaurant locations in the City of Fowler with drive-throughs. Should these restaurants apply for a second drive-through menu board, no significant environmental impacts would occur. Future locations of menu boards would be reviewed and approved under the Conditional Use Permit process.

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project. The proposed text amendment is not expected to have any significant effect on the environment.

Attachments:

- A. City Council Ordinance

ORDINANCE NO. 2021- 03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOWLER AMENDING SECTION 17, OF ARTICLE 22, OF CHAPTER 5, OF TITLE 9 OF THE FOWLER MUNICIPAL CODE, TO ALLOW MULTIPLE DRIVE-THROUGH MENU BOARDS

THE CITY COUNCIL OF THE CITY OF FOWLER DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 17, of Article 22, of Chapter 5, of Title 9 of the Fowler Municipal Code is hereby amended to read as follows:

Certain uses, because of their special sign needs or their allowance in several districts, have been specifically listed in this section. Where such uses are approved, the sign standards allowed for such uses shall as follows:

Auto/RV Sales (new only with incidental used vehicle sales)	1.	One freestanding sign may be provided per separate new car showroom. The minimum distance between freestanding signs shall be 50 ft.
	2.	Freestanding signs for incidental used car sales shall be no higher than 14 ft. nor contain more than 36 sq. ft. in area. One used car freestanding sign shall be allowed per site with distance between signs the same as for new car sales.
Churches		Not exceeding 32 sq. ft. in total sign area for freestanding signs. One allowed per street frontage. Wall signs not to exceed one-quarter sq. ft. per front foot of building.
Drive-in or Drive-up Uses		In addition to the sign area normally allowed, drive-up restaurants shall be allowed one two menu boards <u>per drive-through lane</u> not to exceed 20 25 sq. ft. in area nor 6 ft. in height. <u>The total sign area per drive-through lane shall not exceed 40 sq. ft. All outdoor speakers shall be directed away from any residential district or residential use.</u>
Group Care Facilities		One wall-mounted sign, not to exceed 3 sq. ft.
Motels, Hotels		In addition to signs normally allowed, one "vacancy" sign not to exceed 5 sq. ft.
Movie Theaters		One sq. ft. of sign area per front foot of building facing a public street not to exceed 100 sq. ft. per frontage, and one freestanding sign not to exceed 35 sq. ft. per screen up to a maximum of 200 sq. ft. and a maximum height of 18 ft. Changeable copy may be used for movie listings.
Outdoor Uses other than Temporary/Seasonal		A maximum of 50 sq. ft. as approved by the Director.
Outdoor Uses Temporary Fireworks Sales		Temporary A-frame and I-frame signs may be used. Total number of signs per street frontage shall be one not to exceed 25 sq. ft. in size nor six ft. in height. Maximum sign area for all street frontages shall not exceed 50 sq. ft.
Service Stations Including Mini-Markets/Gas, Car Wash/Gas and Combinations	1.	Portable merchandise display signs may be located no farther than 6 ft. from the face of the principal building (connected canopy is not a part of the principal building) providing that each does not exceed 5 ft. in height, 3 ft. in width nor 30 cu. ft. in area. A-frame and I-frame signs are

		not considered "merchandise islands" within the meaning of this section.
	2.	Gasoline Price Signs. One permanently mounted free-standing price sign per street frontage shall be allowed. Such signs shall not exceed a total of 20 sq. ft. with a maximum height of 5 ft. unless mounted on the freestanding business sign or the pump island supports in which case the height shall not exceed those allowed for the district.
	3.	In addition to the gasoline signs allowed above, one or a combination of the following gasoline price sign locations not to exceed 20 sq. ft. per street frontage may be displayed: a. on-building or window locations b. pump island support locations.
Time/Temperature	1.	The area of the time/temperature sign shall be counted against the allowed sign area of the site.
	2.	The sign shall be in keeping with the scale of the site and structure and shall not be located within 500 ft. of a similar time/temperature sign.
	3.	If mounted on the building, the top of such sign shall not extend above the roof line.

SECTION 2. The City Council has determined that the Project is categorically exempt from the California Environmental Quality Act under CEQA Guidelines Section 15311 (Accessory Structures).

SECTION 3. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. The City Clerk is further directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated within the City of Fowler, within fifteen (15) days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

The foregoing ordinance was introduced at a regular meeting of the City Council held on August 17, 2021, and was adopted at a regular meeting of said Council held on August 17, 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Cardenas, Mayor

ATTEST:

Angela Vasquez, Deputy City Clerk



ITEM NO: 5-Ci

REPORT TO THE CITY COUNCIL

August 17, 2021

FROM: David Peters, City Engineer**SUBJECT**

Approve Resolution No. 2511, a Resolution Confirming Diagram and Assessment of Annual Levy – 2021/22 for Landscaping and Storm Drainage Facilities Maintenance District No. 1.

RECOMMENDATION

Staff recommends approving Resolution No. 2511, a Resolution Confirming Diagram and Assessment of Annual Levy – 2021/22 for Landscaping and Storm Drainage Facilities Maintenance District No. 1.

BACKGROUND

The City provides for the operations and maintenance of landscaping and storm drainage facilities within various improved developments throughout the City of Fowler. Landscaping and Storm Drainage Facilities Maintenance District No. 1 ("District"), which was formed pursuant to the Landscaping and Lighting Act of 1972, collects an annual assessment on parcels within these developed areas to fund these maintenance and operations activities. The City Council must annually approve the Engineer's Report, which describes the improvements to be maintained and the costs and proposed assessments. The City Council must also approve the levy of the assessment annually after conducting a public hearing.

On July 20, 2021, the City Council approved the Engineer's Report for the District and approved a Resolution of Intention which set the public hearing for August 3, 2021, and authorized proceedings for the annual levy and collection of assessments. The public hearing was continued to August 17, 2021, with the consent of the Fresno County Auditor-Controller.

Staff recommends that the City Council approve a resolution confirming the diagram and approving the levy of annual assessments for the District for fiscal year 2021-2022, and directing the City Clerk to file the resolution with the Fresno County Auditor-Controller.

FISCAL IMPACT

The annual assessments remain unchanged from the previous year.

ATTACHMENT

- Resolution No. 2511

RESOLUTION NO. 2511

**A RESOLUTION OF THE CITY COUNCIL
OF THE
CITY OF FOWLER, CALIFORNIA**

**CONFIRMING DIAGRAM AND ASSESSMENT
OF ANNUAL LEVY – 2021/22 FOR
LANDSCAPING AND STORM DRAINAGE FACILITIES
MAINTENANCE DISTRICT NO. 1**

WHEREAS, on March 12, 1985, pursuant to Part 2 of Division 15 of the Streets and Highways Code, the Landscaping and Lighting Act of 1972, the City Council of the City of Fowler did adopt its Resolution Initiating Proceedings for formation of the Landscaping and Storm Drainage Facilities Maintenance District No. 1 of the City of Fowler (herein "L&SDMD No. 1 "); and

WHEREAS, the Council did thereafter declare its intention to form and did form the said L&SDMD No. 1 and did levy and collect the first assessment and subsequent annual assessments for the maintenance and operation of the landscaping facilities in said L&SDMD No. 1; and

WHEREAS, in accordance with Streets and Highways Code section 22656 et seq., the City Engineer prepared and filed a report with the City Clerk entitled "Engineer's Report of the City of Fowler Landscaping and Storm Drainage Facilities Assessment District No. 1, 2021/22" ("Engineer's Report"), a copy of which is attached hereto; and

WHEREAS, on July 20, 2021, the City Council approved the Engineer's Report and approved Resolution No. 2506, a Resolution of Intention in accordance with Streets and Highways Code section 22624, which set a public hearing on the levy of the proposed assessment for August 3, 2021 at 7:00 p.m.; and

WHEREAS, the proposed annual assessments for L&SDMD No. 1 as contained in the Engineer's Report do not constitute increased assessments as described in Government Code section 54954.6; and

WHEREAS, the Resolution of Intention was published in accordance with applicable law, and the August 3, 2021 public hearing was duly noticed; and

WHEREAS, the duly noticed public hearing was continued to August 17, 2021 at 7:00 p.m. with the consent of the Fresno County Auditor-Controller; and

WHEREAS, the public hearing was duly conducted on August 17, 2021, and all oral statements and written protests were received and considered by the City Council, and a majority protest was not filed.

NOW, THEREFORE, IT IS RESOLVED AND ORDERED, as follows:

1. The Council hereby determines that the territory within the L&SDMD No. 1, whose boundaries are set forth in the Engineer's Report and on file with the City Clerk, will be the territory benefited by the maintenance and servicing of the improvements described in said Engineer's Report.
2. The hearing on said annual levy of assessment was held in accordance with applicable law, and a majority protest was not filed.

3. The Engineer's Report, the diagram for the assessment district, and the assessment of the estimated costs of the improvements contained therein and each and every part of said Engineer's Report, is adopted, confirmed, and approved; the assessment of the total amount of the costs and the individual assessments thereof upon the several subdivisions of land in said L&SDMD No. 1 in proportion to the benefits to be received by said subdivisions, respectively, from said improvements, and of the expenses incidental thereto, be and the same hereby is finally approved and confirmed as the assessment to pay the costs.
4. The City Council hereby orders the levy of the assessments described in said Resolution of Intention and the Engineer's Report.
5. The assessment diagram showing the assessment district referred to in said Resolution of Intention and also the subdivisions of land within the District, as contained in said Engineer's Report, be and it is hereby, finally approved and confirmed as the diagram of the properties to be assessed to pay the costs of the improvements.
6. The City Clerk shall promptly file the diagram and assessment, as confirmed, or a certified copy thereof, with the Auditor of the County of Fresno.

The foregoing resolution was regularly introduced and adopted by the City Council of the City of Fowler at a regular meeting held on the 17th day of August 2021, at the City Hall in the City of Fowler, by the following vote:

AYES:	COUNCILMEMBER:
NOES:	COUNCILMEMBER:
ABSENT:	COUNCILMEMBER:

David Cardenas, Mayor of the City of Fowler

ATTEST:

Angela Vasquez, Deputy City Clerk of the City of Fowler



ITEM NO: 5-Dii

REPORT TO THE CITY COUNCIL

August 17, 2021

FROM: Wilma Quan, City Manager

SUBJECT

Consider various projects for potential Economic Development Administration (EDA) grant opportunity

BACKGROUND

Two Councilmembers have requested staff consider various projects for a potential EDA grant application to help advance economic development within the City of Fowler. As part of the due diligence and to give each of the projects equal consideration, staff worked closely with the Fresno County Economic Development Corporation (EDC) to analyze each project. This due diligence period included staff meeting with the EDC, and Will Marshall of the EDA, to discuss the EDA grant application requirements, required City match, and to get Mr. Marshall's recommendation on each project's level of competitiveness. After the meeting, staff drafted a summary memo of the meeting and the feedback from Mr. Marshall on each project. Excerpts of this summary are below for Council's consideration – note that paraphrased comments from Mr. Marshall are in italics.

1. Police Headquarters with a Community, Senior or Youth Center

No chance for EDA funding. EDA does not fund anything for sole benefit of a public agency's operations. This includes no funding for public jobs, recreational programs or public facilities.

Based upon EDA's feedback, staff believe this would not be a worthwhile project to pursue.

2. Community Center with job training

An EDA grant could be used to build a new facility or modernize an existing facility for a project of this type. EDA would require job training and placement for specific private sector jobs for 3-5 companies within the City. The companies would need to fill out the 900B form and commit to a certain number of jobs over a 5-10 year period. Placing the center in an Opportunity Zone would be helpful to achieve the 80/20 match. If placed outside of an Opportunity Zone it would be a 50/50 match.

Staff believe that if directed to pursue this project, the logical next step would be to identify the private sector companies and their job training needs for the Form 900B and then work on developing a location, preferably on existing City-owned property.

3. Water Infrastructure Expansion into County-owned Public Utility Easement (PUE) into City's Sphere of Influence (SOI) – project is in an Opportunity Zone

Since this project is located in an Opportunity Zone it would be an 80/20 grant in which EDA would fund 80% of the total project costs and the local agency would be responsible for 20% of the total project costs. Since this project would most likely occur within County owned right of way (PUE) the County would either need to be the lead or a co-applicant for the EDA grant application. The application would need to include 900B forms from companies that would show/commit to expansion opportunities with the new water infrastructure in place. EDC could assist the City with obtaining these letters. Mr. Marshall recommended developing a plan for annexation as well as commitment of expansion of 3-5 companies for a competitive application.

Staff believe that if directed to pursue this project, the logical next steps would be to meet with County staff to determine the feasibility of using the PUE, discuss an annexation strategy, and discuss the application and determine the lead applicant. City Engineer, Dave Peters, has developed an estimate of approximately \$5.7 million for this project which includes an additional well or water lift station.

Mr. Marshall also indicated the EDA generally takes more than 90 days to review each application and there is currently ample EDA funding. EDA confirmed that as part of the application process, staff would need to prove that we have the ability to fund our share of the total project cost. Staff would need to identify the available funds for the City's match and show they are currently available on hand and unencumbered. If awarded, the City's share of the project costs would be used upfront for the initial project costs.

FISCAL IMPACT

Exact City grant match is unknown at this time and would be determined if Council selects a project and directs staff to apply for an EDA grant.

Attachments:

- Opportunity Zone Map showing approximate location of all 3 projects

