



**FOWLER CITY COUNCIL MEETING
AGENDA
TUESDAY, MARCH 15, 2022
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.

Consistent with Government Code 54953 as amended by AB 361, and City Council Resolution No. 2522, this meeting may be accessed by members of the public or City Council members via Zoom.

The telephone number and Zoom link listed below will provide access to the meeting via teleconference or video conference.

<https://us06web.zoom.us/j/84797353236?pwd=cGJEd2NidGdhbnRHOExjT1lYKy93dz09>

Telephone Number: (253) 215-8782

Meeting ID: 847 9735 3236

Passcode: 982901

Persons accessing the meeting will have an opportunity to provide comments at appropriate times during the meeting. To speak during a public comment period, press *9 on your phone to raise your hand or click "raise hand" in the webinar. At the appropriate time, you will be prompted to unmute yourself, and asked to identify yourself when providing public comment.

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.fowlercity.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. Invocation by Pastor Raul Moreno of Fowler Baptist Church
4. Pledge of Allegiance
5. 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.

6. Consent Calendar

Items on the Consent Calendar are considered routine and include a recommended action from Staff and shall be acted on by one motion of the Council. If a Councilmember requests additional information or would like to pull an item for discussion, that item shall be pulled from the Consent Calendar and acted upon separately. A Councilmember may register an action on an individual item without pulling the item from the Consent Calendar. A motion to approve the Consent Calendar is deemed to include a motion to waive the full reading of any ordinance or resolution on the Consent Calendar. For adoption of ordinances, only those which received a unanimous vote of the Councilmembers present at introduction shall be eligible for placement on the Consent Calendar.

6-A. RATIFY Warrants for March 15, 2022

6-B. APPROVE Minutes of the March 1, 2022 City Council Meeting

6-C. APPROVE Resolution No. 2551, A Resolution of the City Council of the City of Fowler Authorizing Continued Use of Remote Teleconferencing for City Council Meetings and Commission Meetings During Declared State of Emergency in Accordance with Government Code Section 54953 as amended by AB 361. (City Attorney)

6-D. ACCEPT the City of Fowler 2021 Annual Progress Report for the City of Fowler General Plan and Housing Element, and direct staff to submit the report to the

California Office of Planning and Research (OPR), and the California Department of Housing and Community Development (HCD). (Planning)

- 6-E. APPROVE a Revised and Restated Disposition and Development Agreement between the City of Fowler and Qawadri, LLC for the property located at the northwest corner of South 7th Street and East Vine Street and authorize the City Manager to execute the Agreement. (Planning)
- 6-F. APPROVE First Amendment to the Professional Services Agreement with Robina Wright Architect & Associates, Inc. dated December 6, 2021 for on-call plan check services, increasing the contract amount by \$26,000 for a total contract amount not to exceed \$75,000. (Planning)
- 7. Contested Consent Calendar – Items pulled from the Consent Calendar will be heard individually immediately after action is taken on the Consent Calendar.
- 8. General Administration
 - 8-A. City Attorney
 - i. APPROVE Items Pertaining to City Manager Employment Agreement and Salary Classification Schedule
 - A. Approve Payment of \$5,000 Performance Bonus Pursuant to City Manager Employment Agreement Dated February 16, 2021.
 - B. Approve Resolution No. 2552 Adopting Salary Classification Schedule for All Employees.
 - C. Approve First Amendment to City Manager Employment Agreement with Wilma Quan
 - 8-B. Public Works
 - i. CONSIDER alternatives and provide staff direction regarding potential request to Caltrans to add median treatment to the State Route 99 improvement project.
 - 8-C. City Manager's Office
 - i. COVID-19 Update
- 9. Staff Communications (City Manager)
- 10. Councilmember Reports and Comments
- 11. Closed Session
 - 11-A. Government Code Section 54956.9(d)(2)
Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation
Unknown number of potential cases, but at least five

12. Adjourn

Next Ordinance No. 2022-03

Next Resolution No. 2553

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, March 11, 2022.

Angela Vasquez

*Angela Vasquez
Deputy City Clerk*

CITY OF FOWLER
WARRANTS LIST
March 15, 2022

	<u>CHECK NUMBERS</u>	<u>CHECK DATES</u>	<u>AMOUNT</u>
<u>ACCOUNTS PAYABLE CHECKS</u>			
Regular checks	39050-39119	March 2 thru March 9	\$ 215,153.00
TOTAL ACCOUNTS PAYABLE CHECKS			<u>\$ 215,153.00</u>
<u>PAYROLL COSTS</u>			
Second February Bi-Monthly Payroll		February 28, 2022	\$92,763.23
TOTAL PAYROLL COSTS			<u>\$ 92,763.23</u>
TOTAL CASH DISBURSEMENTS			<u><u>\$ 307,916.23</u></u>

NOTE:

Check #39050
Check #39053
Check #39097

Void check
Void check
Void check

SUPERION
DATE: 03/10/2022
TIME: 13:49:49

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 1
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39050' and '39119'
ACCOUNTING PERIOD: 9/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39050 V	02/23/22	12132	FRESNO POLICE REGIONAL	T 6120	TUITION SOLIAN	0.00	-121.00
1001	39050	02/23/22	12132	FRESNO POLICE REGIONAL	T 6120	TUITION SOLIAN	0.00	121.00
TOTAL	CHECK						0.00	0.00
1001	39051	02/23/22	12132	FRESNO POLICE REGIONAL	T 6120	TUITION SOLIAN	0.00	121.00
1001	39052	02/23/22	12132	FRESNO POLICE REGIONAL	T 6120	TUITION CORTEZ	0.00	121.00
1001	39053	02/23/22	12132	FRESNO POLICE REGIONAL	T 6120	TUITION MIRANDA	0.00	121.00
1001	39053 V	02/23/22	12132	FRESNO POLICE REGIONAL	T 6120	TUITION MIRANDA	0.00	-121.00
TOTAL	CHECK						0.00	0.00
1001	39054	03/02/22	12809	49ER COMMUNICATIONS	6130	HAND MICS	0.00	407.50
1001	39055	03/02/22	14576	ANGELA VASQUEZ	6025	HOTEL CLERK CERT TRN	0.00	588.61
1001	39056	03/02/22	10045	CASCADE FIRE EQUIPMENT	C 6130	INITIAL ATTACK PACK	0.00	503.97
1001	39057	03/02/22	10064	COLONIAL LIFE INSURANCE	100	EMPLOYEE DEDUCTION	0.00	142.02
1001	39057	03/02/22	10064	COLONIAL LIFE INSURANCE	100	EMPLOYEE DEDUCTION	0.00	100.70
TOTAL	CHECK						0.00	242.72
1001	39058	03/02/22	10124	COUNTY OF FRESNO	6120	DISPATCH DEC20	0.00	8,525.95
1001	39058	03/02/22	10124	COUNTY OF FRESNO	6120	DISPATCH JAN21	0.00	8,525.95
1001	39058	03/02/22	10124	COUNTY OF FRESNO	6120	DISPATCH AUG21	0.00	8,525.95
1001	39058	03/02/22	10124	COUNTY OF FRESNO	6120	RMS/JMS NOV20	0.00	77.06
1001	39058	03/02/22	10124	COUNTY OF FRESNO	6120	RMS/JMS JAN21	0.00	77.06
TOTAL	CHECK						0.00	25,731.97
1001	39059	03/02/22	14512	CSG CONSULTANTS	6160	INSPECTIONS	0.00	990.00
1001	39060	03/02/22	14573	DITCH WITCH WEST	5000	SERVICE ENGINE	0.00	1,401.90
1001	39061	03/02/22	10122	FRESNO COUNTY FIRE PROTE	6130	DISPATCH FEES	0.00	2,878.45
1001	39062	03/02/22	11626	GARCIA & SANCHEZ SMOG &	6260	ALTERNATOR	0.00	458.79
1001	39063	03/02/22	10141	H & H TIRE SERVICES #3,	6120	TIRE MOUNT	0.00	30.00
1001	39064	03/02/22	14259	IMAGESOURCE	6160	COPIER SVCS 02/04/22	0.00	108.98
1001	39064	03/02/22	14259	IMAGESOURCE	6020	COPIER SVCS 02/04/22	0.00	108.97
1001	39064	03/02/22	14259	IMAGESOURCE	6150	COPIER SVCS 02/04/22	0.00	108.97
1001	39064	03/02/22	14259	IMAGESOURCE	5000	COPIER SVCS 02/04/22	0.00	108.98
TOTAL	CHECK						0.00	435.90
1001	39065	03/02/22	14575	JPRC PLUMBING	6700	REPAIR ABS PIPE	0.00	1,900.00
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6130	EMPLOYEE BENEFITS	0.00	187.85
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	8500	EMPLOYEE BENEFITS	0.00	314.82
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6025	EMPLOYEE BENEFITS	0.00	413.27
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6400	EMPLOYEE BENEFITS	0.00	768.90
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6700	EMPLOYEE BENEFITS	0.00	768.90

SUPERION
DATE: 03/10/2022
TIME: 13:49:49

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 2
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39050' and '39119'
ACCOUNTING PERIOD: 9/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6030	EMPLOYEE BENEFITS	0.00	1,039.14
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6160	EMPLOYEE BENEFITS	0.00	1,502.80
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6150	EMPLOYEE BENEFITS	0.00	1,753.23
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6020	EMPLOYEE BENEFITS	0.00	2,078.82
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	100	EMPLOYEE BENEFITS	0.00	2,461.40
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6260	EMPLOYEE BENEFITS	0.00	4,007.30
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	5000	EMPLOYEE BENEFITS	0.00	5,866.75
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6200	EMPLOYEE BENEFITS	0.00	6,456.77
1001	39066	03/02/22	13496	KEENAN & ASSOCIATES	6120	EMPLOYEE BENEFITS	0.00	10,366.50
TOTAL	CHECK						0.00	37,986.45
1001	39067	03/02/22	14485	KOFF & ASSOCIATES, INC.	6020	CLASS & COMP STUDY	0.00	2,440.00
1001	39068	03/02/22	10189	LEAGUE OF CALIFORNIA CIT	6010	MEMBERSHIP DUES 2022	0.00	114.05
1001	39069	03/02/22	10194	LOZANO SMITH	6060	CID NEGOTIATIONS	0.00	42.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	RECREATION COMM	0.00	105.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	PANZAK, GORDEN CLAIM	0.00	105.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	MAXCO SITE PLAN	0.00	168.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	ELIAS CIVIL COST REC	0.00	168.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	SURPLUS SALES LEASE	0.00	168.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	JOHNSON, JILL ABATE	0.00	210.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	CODE ENFORCEMENT	0.00	294.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	SOLAR/ENERGY CONSR	0.00	336.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	PUBLIC WORKS	0.00	336.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	FOWLER RETAINER	0.00	672.40
1001	39069	03/02/22	10194	LOZANO SMITH	6060	LANDSCAPE MAINTENANCE	0.00	756.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	PD/FD LEGAL FEE	0.00	1,659.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	PERSONNEL LEGAL FEE	0.00	2,751.00
1001	39069	03/02/22	10194	LOZANO SMITH	6060	GENERAL LEGAL MATTER	0.00	3,858.50
1001	39069	03/02/22	10194	LOZANO SMITH	6060	PLANNING/ZONING	0.00	4,121.35
TOTAL	CHECK						0.00	15,750.25
1001	39070	03/02/22	10201	METRO UNIFORM & ACCESSOR	6120	UNIFORM - MACIAS	0.00	475.84
1001	39071	03/02/22	10203	MID VALLEY PACKAGING & S	6200	WHITE NAPKIN	0.00	88.65
1001	39071	03/02/22	10203	MID VALLEY PACKAGING & S	6020	COPY PAPER	0.00	139.87
1001	39071	03/02/22	10203	MID VALLEY PACKAGING & S	6200	TISSUE/TOWEL	0.00	1,106.81
TOTAL	CHECK						0.00	1,335.33
1001	39072	03/02/22	14428	NAVIA BENEFIT SOLUTIONS	6020	COBRA-FEB22	0.00	36.45
1001	39073	03/02/22	12941	NFPA	6130	MEMBERSHIP	0.00	175.00
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	6200	429 E MERCED 1-23-22	0.00	2.94
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	5000	MAGNOL/PALM 1-28-22	0.00	9.86
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	6200	363 N TEMPER 1-27-22	0.00	9.88
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	2250	MAN/GLDST 1-27-22	0.00	17.46
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	6130	127 S 6TH 1-27-22	0.00	20.52
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	2250	300 MERCED 1-27-22	0.00	39.57
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	6200	3079 E MANN 1-21-22	0.00	65.35
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	2250	ADAMS/TRFSGL 1-28-22	0.00	82.20

SUPERION
DATE: 03/10/2022
TIME: 13:49:49

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 3
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39050' and '39119'
ACCOUNTING PERIOD: 9/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	2250	GLDST/MAN SIG 1-27-22	0.00	119.31
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	6200	630 W FRESNO 1-21-22	0.00	198.76
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	6150	122 S 5TH #A 1-27-22	0.00	204.25
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	2250	MERCED/8TH 1-27-22	0.00	221.18
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	5000	325 S 5TH 1-27-22	0.00	437.93
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	2250	700 MERCED #A 1-27-22	0.00	653.86
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	6130	220 E MAIN 1-23-22	0.00	727.52
1001	39074	03/02/22	10237	P G & E - SACRAMENTO	6200	UTILITIES	0.00	4,371.70
TOTAL	CHECK						0.00	7,182.29
1001	39075	03/02/22	10249	QUILL	6150	BOXES/DOORSTOP	0.00	59.86
1001	39075	03/02/22	10249	QUILL	6200	DIVIDER TABS	0.00	65.12
1001	39075	03/02/22	10249	QUILL	6020	PENS/FILES	0.00	96.71
1001	39075	03/02/22	10249	QUILL	6200	BINDERS/PENS	0.00	103.00
TOTAL	CHECK						0.00	324.69
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	8500	EMPLOYEE BENEFITS	0.00	10.61
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6400	EMPLOYEE BENEFITS	0.00	33.18
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6700	EMPLOYEE BENEFITS	0.00	33.18
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6150	EMPLOYEE BENEFITS	0.00	86.25
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6030	EMPLOYEE BENEFITS	0.00	112.78
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6020	EMPLOYEE BENEFITS	0.00	150.61
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6160	EMPLOYEE BENEFITS	0.00	185.79
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	5000	EMPLOYEE BENEFITS	0.00	190.43
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6260	EMPLOYEE BENEFITS	0.00	199.08
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6200	EMPLOYEE BENEFITS	0.00	368.28
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	6120	EMPLOYEE BENEFITS	0.00	719.97
1001	39076	03/02/22	13647	SUN LIFE FINANCIAL	100	EMPLOYEE BENEFITS	0.00	1,503.04
TOTAL	CHECK						0.00	3,593.20
1001	39077	03/02/22	10725	VERIZON WIRELESS	6160	CELL PHONE 2/20-03/19	0.00	41.33
1001	39077	03/02/22	10725	VERIZON WIRELESS	6030	CELL PHONE 2/20-03/19	0.00	41.33
1001	39077	03/02/22	10725	VERIZON WIRELESS	6150	CELL PHONE 2/20-03/19	0.00	41.33
1001	39077	03/02/22	10725	VERIZON WIRELESS	6160	CELL PHONE 2/20-03/19	0.00	50.61
1001	39077	03/02/22	10725	VERIZON WIRELESS	6020	CELL PHONE 2/20-03/19	0.00	51.33
1001	39077	03/02/22	10725	VERIZON WIRELESS	6120	CELL PHONE 02/19/22	0.00	624.02
TOTAL	CHECK						0.00	849.95
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6130	EMPLOYEE BENEFITS	0.00	4.92
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	8500	EMPLOYEE BENEFITS	0.00	4.93
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6400	EMPLOYEE BENEFITS	0.00	9.85
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6700	EMPLOYEE BENEFITS	0.00	9.85
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6150	EMPLOYEE BENEFITS	0.00	12.80
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6260	EMPLOYEE BENEFITS	0.00	19.69
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6030	EMPLOYEE BENEFITS	0.00	25.59
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6020	EMPLOYEE BENEFITS	0.00	43.31
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6160	EMPLOYEE BENEFITS	0.00	75.79
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	5000	EMPLOYEE BENEFITS	0.00	85.65
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6200	EMPLOYEE BENEFITS	0.00	127.99
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	6120	EMPLOYEE BENEFITS	0.00	210.68
1001	39078	03/02/22	11335	VISION SERVICE PLAN - (C	100	EMPLOYEE BENEFITS	0.00	269.60
TOTAL	CHECK						0.00	900.65

SUPERION
DATE: 03/10/2022
TIME: 13:49:49

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 4
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39050' and '39119'
ACCOUNTING PERIOD: 9/22

FUND - 100 - GENERAL FUND									
CASH	ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001		39080	03/09/22	10007	ALERT-O-LITE, INC	6200	SWEATSHIRT	0.00	49.57
1001		39080	03/09/22	10007	ALERT-O-LITE, INC	6200	DUEL LED LIGHT	0.00	192.84
		TOTAL CHECK						0.00	242.41
1001		39081	03/09/22	14519	AMAZON CAPITAL SERVICES	6030	SUPPLIES OFFICE	0.00	19.60
1001		39081	03/09/22	14519	AMAZON CAPITAL SERVICES	6025	FOOTREST	0.00	32.66
1001		39081	03/09/22	14519	AMAZON CAPITAL SERVICES	6700	SENIOR CRAFT SUPPLIES	0.00	208.12
		TOTAL CHECK						0.00	260.38
1001		39082	03/09/22	14330	B&P PEST PROS	6020	PEST CONTROL	0.00	90.00
1001		39082	03/09/22	14330	B&P PEST PROS	6700	PEST CONTROL	0.00	95.00
		TOTAL CHECK						0.00	185.00
1001		39083	03/09/22	10026	BCT CONSULTING	6030	COMPUTER SVC XOBEE	0.00	246.25
1001		39083	03/09/22	10026	BCT CONSULTING	6150	COMPUTER SVC XOBEE	0.00	246.25
1001		39083	03/09/22	10026	BCT CONSULTING	6120	COMPUTER SVC XOBEE	0.00	246.25
1001		39083	03/09/22	10026	BCT CONSULTING	5000	COMPUTER SVC XOBEE	0.00	246.25
		TOTAL CHECK						0.00	985.00
1001		39084	03/09/22	14211	BEATWARE	6120	UNIFORM MIRANDA	0.00	118.23
1001		39085	03/09/22	10024	BSK ASSOCIATES	5000	COLIFORM & E COLI	0.00	182.00
1001		39086	03/09/22	10025	BUFORD OIL COMPANY	6120	FUEL	0.00	53.21
1001		39087	03/09/22	12654	COMCAST	6700	CABLE 02/25-03/24	0.00	107.23
1001		39088	03/09/22	10124	COUNTY OF FRESNO	6120	RMS/JMS FEB 22	0.00	77.06
1001		39088	03/09/22	10124	COUNTY OF FRESNO	6120	DISPATCH MAR 22	0.00	8,525.95
		TOTAL CHECK						0.00	8,603.01
1001		39089	03/09/22	14512	CSG CONSULTANTS	6160	PLAN CHECK	0.00	2,654.97
1001		39090	03/09/22	14574	DAVID LEWIS	100	REFUND H&S LEWIS	0.00	100.21
1001		39091	03/09/22	14558	DOG WASTE DEPOT	6270	DOG WASTE BAGS	0.00	10.00
1001		39092	03/09/22	10792	FASTENAL COMPANY	6200	SUPPLIES	0.00	7.29
1001		39093	03/09/22	13275	FERGUSON WATERWORKS #142	5000	T10 R9001	0.00	1,476.93
1001		39094	03/09/22	14252	FOWLER ACE HARDWARE	6700	SUPPLIES	0.00	46.13
1001		39095	03/09/22	10306	FOWLER FLORAL SHOP, THE	6120	FUNERAL FLOWERS	0.00	1,759.93
1001		39096	03/09/22	10488	FOWLER UNIFIED SCHOOL DI	2040	21-22 CONTRIBUTION	0.00	25,000.00
1001		39097	03/09/22	13419	FRESNO ECONOMIC OPPORTUN	6700	SENIOR MEAL FEB	0.00	1,315.04
1001		39097	03/09/22	13419	FRESNO ECONOMIC OPPORTUN	6700	SENIOR MEAL FEB	0.00	-1,315.04
		TOTAL CHECK						0.00	0.00

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CITY OF FOWLER
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SELECTION CRITERIA: transact.check_no between '39050' and '39119'
ACCOUNTING PERIOD: 9/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39098	03/09/22	12567	FRESNO MOBILE RADIO INC	5000	RADIO SERVICES FEB 22	0.00	240.00
1001	39099	03/09/22	10141	H & H TIRE SERVICES #3,	6130	EMT P101 TIRES	0.00	240.00
1001	39100	03/09/22	13477	HDL SOFTWARE LLC	6030	SERVICE JAN-MAR 22	0.00	987.46
1001	39101	03/09/22	14259	IMAGESOURCE	6160	COPIER SVCS	0.00	182.38
1001	39101	03/09/22	14259	IMAGESOURCE	5000	COPIER SVCS	0.00	182.38
1001	39101	03/09/22	14259	IMAGESOURCE	6150	COPIER SVCS	0.00	182.38
1001	39101	03/09/22	14259	IMAGESOURCE	6020	COPIER SVCS	0.00	182.38
TOTAL CHECK							0.00	729.52
1001	39102	03/09/22	14537	LINDE GAS & EQUIPMENT	6130	MEDICAL AIR BOTTLES	0.00	129.82
1001	39103	03/09/22	14559	M.E.D. ENTERPRISES INC.	2000	CONSULTING SVC-2/28/2	0.00	3,660.00
1001	39104	03/09/22	10201	METRO UNIFORM & ACCESSOR	6130	UNIFORM PANTS - LUNA	0.00	76.23
1001	39104	03/09/22	10201	METRO UNIFORM & ACCESSOR	6130	UNIFORM - LOPEZ	0.00	584.90
1001	39104	03/09/22	10201	METRO UNIFORM & ACCESSOR	6120	UNIFORM	0.00	709.40
TOTAL CHECK							0.00	1,370.53
1001	39105	03/09/22	10885	NELSONS POWER CENTER	6260	AUTO CUT	0.00	28.84
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	5TH/FRESNO 1-31-22	0.00	7.15
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	5000	MAGNOL/PALM 3-1-22	0.00	10.51
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	MERCED/6TH 1-31-22	0.00	10.52
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	1291 W SOUTH 1-31-22	0.00	10.52
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	363 1 TEMPER 2-28-22	0.00	10.55
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	5TH/FRESNO 1-31-22	0.00	11.46
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	WALTER/FRESNO 2-14-22	0.00	11.90
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	2250	MAN/GLDST 2-27-22	0.00	15.68
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	2250	MANN/GLD ST 1-25-22	0.00	15.77
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	MERCED/7TH 1-31-22	0.00	18.83
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6130	127 S 6TH 2-28-22	0.00	22.08
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	7TH/TULARE 1-31-22	0.00	26.43
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	127 S 6TH 1-31-22	0.00	26.83
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	2250	300 MERCED 2-28-22	0.00	35.41
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	TRACT 5834 2-14-22	0.00	39.44
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	4218 GLDN STAT 1-31-2	0.00	53.95
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	3079 E MANN 2-18-22	0.00	65.16
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	2831 E MANN 1-31-22	0.00	66.15
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	TRACT 5212 2-14-22	0.00	82.58
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	2250	ADAMS/TRFSG 3-1-22	0.00	89.62
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	429 E MERCED 2-23-22	0.00	101.04
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	2250	GLDNST/MAN SIG 3-1-22	0.00	116.17
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	GLDNST B 1-31-22	0.00	122.29
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	TRACT 5088 2-14-22	0.00	128.56
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	TRACT 5198 2-14-22	0.00	134.05
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6700	420 E MERCED 1-31-22	0.00	144.56
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6150	122 S 5TH #A2-28-22	0.00	191.45
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	420 E MERCED 1-31-22	0.00	194.69
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	2250	MERCED/8TH 2-28-22	0.00	208.62

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CITY OF FOWLER
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ACCTPA21

SELECTION CRITERIA: transact.check_no between '39050' and '39119'
ACCOUNTING PERIOD: 9/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	5000	325 S 5TH 2-28-22	0.00	215.09
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	630 W FRESNO 2-22-22	0.00	221.27
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	5000	TEMP/GOLDN 1-31-22	0.00	221.49
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6260	9TH/MERCED	0.00	221.69
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	2250	700 MERCED#A 2-28-22	0.00	273.59
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	212 E MERCED 1-31-22	0.00	276.03
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6080	128 S 5TH 1-31-22	0.00	295.44
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6080	128 S 5TH 1-31-22	0.00	394.21
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	5TH/FRESNO 1-31-22	0.00	423.48
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6700	420 E MERCED 1-31-22	0.00	449.85
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6260	500 E MERCED 1-31-22	0.00	637.29
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	5000	ADAMS/5TH 1-31-22	0.00	809.70
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6080	MAIN/5TH 1-31-22	0.00	1,148.82
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6130	220 E MAIN 2-23-22	0.00	1,197.13
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	5000	WELL SITE 8 3-1-22	0.00	1,698.26
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	5000	SESWNW231521 1-31-22	0.00	1,733.83
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	5000	95 E ADAMS 1-31-22	0.00	2,760.68
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	6200	UTILITIES	0.00	4,467.43
1001	39107	03/09/22	10237	P G & E - SACRAMENTO	5000	WELL SITE 7 3-1-22	0.00	8,510.46
TOTAL CHECK							0.00	27,927.71
1001	39108	03/09/22	13095	PBM SUPPLY & MFG	6260	TEEJET TIP BRASS	0.00	17.37
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	SPR 21-02	0.00	79.80
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	CUP 19-02	0.00	167.30
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	CUP 21-04	0.00	168.00
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	SPR 21-03	0.00	249.90
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	CUP 21-05	0.00	354.90
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	SPR 21-22	0.00	446.60
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	SPR 21-28	0.00	617.40
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	SPR 21-25	0.00	696.50
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	ANNEX PREZ 19-03	0.00	883.30
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	TTM 21-0015	0.00	2,851.10
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	GRANT SVCS	0.00	2,956.20
1001	39109	03/09/22	13655	PROVOST & PRITCHARD	6150	ON CALL SVCS	0.00	7,128.50
TOTAL CHECK							0.00	16,599.50
1001	39110	03/09/22	13075	RAPID AUTOBODY AND WHEEL	6120	AUTO BODY WORK	0.00	2,844.45
1001	39111	03/09/22	11195	ROBERT V JENSEN INC	6130	FUEL	0.00	303.54
1001	39111	03/09/22	11195	ROBERT V JENSEN INC	6130	FUEL	0.00	587.79
TOTAL CHECK							0.00	891.33
1001	39112	03/09/22	13187	SECOND CHANCE ANIMAL SHE	6270	ANIMAL CONTROL SERV	0.00	1,000.00
1001	39113	03/09/22	10518	SIGNMAX!	6200	SIGN/DECAL	0.00	44.42
1001	39114	03/09/22	10288	SMART & FINAL	6700	SUPPLIES FEB 22	0.00	84.47
1001	39114	03/09/22	10288	SMART & FINAL	6700	SUPPLIES FEB 22	0.00	124.76
1001	39114	03/09/22	10288	SMART & FINAL	6700	FEB MEAL/SUPPLIES	0.00	137.85
TOTAL CHECK							0.00	347.08

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CITY OF FOWLER
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ACCOUNTING PERIOD: 9/22

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39115	03/09/22	14358	SPARKLETTES	6020	WATER SERVICES	0.00	76.61
1001	39116	03/09/22	10085	STATE OF CA DEPARTMENT O	6120	FINGERPRINT FEES	0.00	64.00
1001	39117	03/09/22	10242	U S POSTMASTER	5000	FIRST CLASS PRESORT	0.00	265.00
1001	39118	03/09/22	13543	UNIFIRST CORPORATION	6700	JANITORIAL	0.00	46.12
1001	39118	03/09/22	13543	UNIFIRST CORPORATION	6700	JANITORIAL	0.00	47.28
1001	39118	03/09/22	13543	UNIFIRST CORPORATION	6020	MATS& MOPS	0.00	59.10
1001	39118	03/09/22	13543	UNIFIRST CORPORATION	6020	MATS & MOPS	0.00	59.10
1001	39118	03/09/22	13543	UNIFIRST CORPORATION	6130	MATS & MOPS	0.00	69.09
1001	39118	03/09/22	13543	UNIFIRST CORPORATION	6130	MATS & MOPS	0.00	69.09
1001	39118	03/09/22	13543	UNIFIRST CORPORATION	5000	UNIFORM	0.00	235.89
1001	39118	03/09/22	13543	UNIFIRST CORPORATION	6200	UNIFORM	0.00	253.74
TOTAL CHECK							0.00	839.41
1001	39119	03/09/22	10725	VERIZON WIRELESS	5000	CELL PHONE 2/20-03/19	0.00	341.96
TOTAL CASH ACCOUNT							0.00	207,412.90
TOTAL FUND							0.00	207,412.90

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CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

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ACCTPA21

SELECTION CRITERIA: transact.check_no between '39050' and '39119'
ACCOUNTING PERIOD: 9/22

FUND - 503 - TCP FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39079	03/02/22	13655	PROVOST & PRITCHARD	5030	TCP TREATMENT DESIGN	0.00	7,740.10
TOTAL CASH ACCOUNT							0.00	7,740.10
TOTAL FUND							0.00	7,740.10
TOTAL REPORT							0.00	215,153.00

MINUTES OF THE FOWLER CITY COUNCIL MEETING
Tuesday March 1, 2022

Mayor Cardenas called the meeting to order at 7:00 p.m.

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

City Staff Present: City Manager Quan, City Attorney Cross, Police Chief Alcaraz, Public Works Director Dominguez, Community Development Director Gaffery, City Planner Marple, City Engineer Peters, Deputy City Clerk Vasquez

5. PUBLIC COMMENT

There was no public comment.

5-A. Caltrans District 6, State Route 99 update

Caltrans staff provided an update on State Route 99 from Selma to Fowler Rehab Project. They shared approximate construction dates and ramp closure timing. They responded to questions from various Councilmembers.

6. CONSENT CALENDAR

Councilmember Parra made a motion to approve the Consent Calendar, seconded by Councilmember Kazarian. The motion carried by roll call vote: Ayes: Parra, Kazarian, Cardenas, Mejia, Rodriquez

7. CONTESTED CONSENT CALENDAR

N/A

8. GENERAL ADMINISTRATION

8-A. FINANCE

i. WORKSHOP on a proposed Capital Improvement Plan

Public Works Director Dominguez provided an overview of the Capital Improvement Plan (CIP). He stated as a CIP has not been brought before the Council for adoption, staff felt it was important for Council to provide feedback prior to budget introduction.

City Manager Quan thanked Public Works Director Dominguez for his work, and Community Development Director Gaffery for developing the format. She stated the CIP will be updated often and brought before Council annually.

Councilmember Parra requested clarification on the water well location and inquired if the water tower was going to be resurfaced. City Manager Quan stated staff is currently working on the procurement process for the water tower resurfacing. Councilmember Kazarian inquired if the fire station sleeping quarters and showers are included in the 2nd floor improvements previously discussed. City Manager Quan verified the sleeping quarters and showers are included in the 2nd floor improvements and staff is working with Peters Engineering Group on the design and cost estimate.

ii. WORKSHOP on consolidation of City fees into a Master Fee Schedule

Finance Director Moreno reported that currently the City's fees for services are codified across multiple ordinances and resolutions. She reported as fees are adopted or modified; they will be presented to Council as an amendment to the Master Fee Schedule. Finance Director Moreno reported staff plans to bring a full review of the Master Fee Schedule to Council for adoption each December.

iii. APPROVE Resolution No. 2550 amending the City's salary classification schedule and Fiscal Year 2021-2022 budget to include a 2% Cost of Living (COLA) salary adjustment effective March 1, 2022

City Manager Quan provided an update on the consultant's progress completing the City's classification and compensation study. She indicated the last COLA was 2% in August 2020. She recommended that, given the timing of completion of the classification and compensation study, a 2% COLA should be provided.

Councilmembers discussed the item. Councilmember Parra inquired about the possibility of retroactive pay. City Manager Quan stated that she confirmed with the City Attorney that the City cannot retroactively pay for work already performed.

Councilmember Kazarian made a motion to APPROVE Resolution No. 2550 amending the City's salary classification schedule and Fiscal Year 2021-2022 budget to include a 2% Cost of Living (COLA) salary adjustment effective March 1, 2022. Seconded by Councilmember Parra. The motion carried by roll call vote: Ayes: Kazarian, Parra, Cardenas, Rodriquez and Mejia.

8-B. PLANNING

- i. **APPROVE Side Letter Amendment to the Subdivision Agreement for Tract 5952 to address park and pipeline construction timing.**

Mayor Cardenas recused himself from this item due to past recusal on the item.

City Engineer Peters provided an overview of the tentative map for Subdivision Tract 5952 approved on May 7, 2019, which did not include phasing and proposed the project in its entirety as a single phase. He stated K. Hovnanian Homes purchased Tract 5952 from the previous developer and has now proposed to construct the project in two phases.

Councilmember Mejia inquired if K. Hovnanian Homes were to sell the land prior to the completion of Phase II, would K. Hovnanian Homes be responsible to complete the improvements to the park. City Engineer Peters confirmed the park must be completed by the developer.

Robert Sprague, of K. Hovnanian Homes spoke regarding the side letter and asked for additional considerations not included in the side letter. Councilmember Mejia inquired about this being a non-agenized item. City Manager Quan advised Council she would have staff reach out to K. Hovnanian Homes for further discussion and bring any action forward to City Council, if appropriate.

Councilmember Kazarian made a motion to APPROVE side letter amending the Subdivision Agreement for Tract 5952 to address park and pipeline construction timing, seconded by Mayor Pro-Tem Rodriquez. Motion carried by roll call vote: Ayes: Kazarian, Rodriquez, Parra, and Mejia. Abstain/Recusal: Cárdenas

8-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 remains at 75% and staff continues to keep in close communication with FCDPH on any regulatory changes.

9. STAFF COMMUNICATIONS – (CITY MANAGER)

9-A. FINANCE DEPARTMENT

Finance Director Moreno reported that in February she and Account Technician, Krystle Woodward attended the California Society Municipal Finance Officers Conference. She stated Ms. Woodward was awarded a scholarship in the amount of \$470 to help offset her

cost of attendance. Finance Director Moreno reported they both attended several educational sessions and networked with other local finance directors.

9-B. CITY CLERK DEPARTMENT

Deputy City Clerk Vasquez reminded Council to file the FPPC Form 700 electronically before the April 1, 2022 deadline.

9-C. PLANNING DEPARTMENT

City Planner Marple stated the City's Fresno COG Measure C TOD grant application was submitted, and notification of award will be in June 2022.

9-D. PUBLIC WORKS DEPARTMENT

Public Works Director Dominguez provided an update on upcoming Arbor Day events. He reported there will be workshop on Saturday, March 5, 2022 and a tree planting event on Saturday, March 12, 2022. He also reported Mayor Cardenas participated in an Arbor Day PSA for airing on local media.

9-E. POLICE DEPARTMENT

Chief Alcaraz announced the hiring of new Police Officer, Carlos Macias. He advised Council that there will be a swearing in ceremony at a future Council meeting.

9-F PLANNING DEPARTMENT

City Engineer Peters shared the design concept from Caltrans for the median concrete barrier decorative treatment along State Route 99. After discussion, Council asked for the concept to be modified. Staff will work with Caltrans and will provide a revised concept at a future Council meeting. City Manager Quan stated that if Council had any further design ideas, they should submit them to City Engineer Peters and herself.

10. COUNCILMEMBER REPORTS AND COMMENTS

Mayor Cardenas provided an update on the Measure C renewal. He also stated he was proud to take part in the Arbor Day Public Service Announcement, giving exposure to the community of Fowler for the Arbor Day tree planting. Mayor Cardenas also provided an update on the Lions Club community service fund donation and announced they'll be holding a high school scholarship dinner and dance at Jocy's on March 12, 2022.

Mayor Pro-Tem Rodriguez announced the Mother's Club will be holding their annual event at Panzak Park tentatively scheduled for May 2022.

Councilmember Parra reminded Council of the League of California Cities dinner in Woodlake on Thursday, March 10, 2022. He requested all RSVP's go through Deputy City Clerk Vasquez.

Councilmember Kazarian suggested naming a wing or part of the new police station in honor of Sergeant Duron. Chief Alcaraz reported he is developing ideas to memorialize Sergeant Duron.

11. CLOSED SESSION

No reportable action was taken on the two items.

12. ADJORN

Having no further business, Councilmember Kazarian made a motion to adjourn, Councilmember Parra seconded. The meeting adjourned at 9:25 p.m.



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-C

REPORT TO THE CITY COUNCIL

March 15, 2022

FROM SCOTT CROSS, City Attorney

SUBJECT

APPROVE Resolution No. 2551, A Resolution of the City Council of the City of Fowler Authorizing Continued Use of Remote Teleconferencing for City Council Meetings and Commission Meetings During Declared State of Emergency in Accordance with Government Code Section 54953 as amended by AB 361

RECOMMENDATION

Approve Resolution No. 2551 if the City Council makes the findings required by Government Code Section 54953(e)(3) to continue to allow City Council members to attend City Council meetings via remote teleconferencing without following typical Brown Act requirements for teleconference participation by City Council members at City Council meetings. The Resolution also authorizes the City's other commissions to continue meeting remotely for as long as the City Council authorizes.

BACKGROUND

The City Council approved Resolution No. 2522 on October 19, 2021, authorizing remote teleconferencing for City Council and City commission meetings in accordance with Government Code Section 54953 as amended by AB 361 during the COVID-19 declared emergency. To continue with the "relaxed" remote teleconferencing for City Council and other commission meetings Government Code Section 54953 requires the City Council to make findings every 30 days that (1) it has reconsidered the circumstances of the state of emergency, and either (a) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (b) state or local officials continue to impose or recommend measures to promote social distancing.

Fowler City Council meetings are currently conducted in a manner that allows the public and Council members to attend in person or via teleconference in compliance with applicable legal requirements. Approving this resolution would not change the way members of the public are allowed to participate in meetings (both in-person and teleconference attendance is allowed) and would also allow City Council members to continue to attend meetings via teleconference, if desired, without complying with the typical Brown Act requirements for teleconferencing attendance at City Council meetings.

The proclaimed COVID-19 emergency is still in effect and there may be occasions when the proclaimed emergency directly impacts the ability of members of the public or Council members to meet safely in person. Also, some state and local officials continue to recommend measures to promote social distancing. As a result, the necessary findings can be made, if desired, to continue with remote teleconferencing for City Council and other commission meetings. These findings must be made every 30 days to continue with the relaxed Brown Act teleconference requirements.

ENVIRONMENTAL REVIEW

This action does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

No fiscal impact is anticipated whether this Resolution is approved or not.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Resolution No. 2551

RESOLUTION NO. 2551

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER AUTHORIZING CONTINUED USE OF REMOTE TELECONFERENCING FOR CITY COUNCIL MEETINGS AND COMMISSION MEETINGS DURING DECLARED STATE OF EMERGENCY IN ACCORANCE WITH GOVERNMENT CODE SECTION 54953 AS AMENDED BY AB 361

WHEREAS, on March 4, 2020, the Governor of California declared a state of emergency in the State as a result of the COVID-19 pandemic; and

WHEREAS, pursuant to Resolution 2461, approved by the Fowler City Council on March 17, 2020, the City Council declared a local emergency as a result of the threatened spread of COVID-19 in the City, surrounding areas, and the state; and

WHEREAS, on March 17, 2020, with the issuance of Executive Order N-29-20, the Governor suspended certain provisions of the Ralph M. Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other remote means; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which placed an end date of September 30, 2021, for agencies to meet remotely; and

WHEREAS, AB 361 was enacted on September 16, 2021, enacting certain changes to the Brown Act for teleconferencing and remote participation at public meetings as set forth in Government Code Section 54953; and

WHEREAS, the state of emergency proclaimed by the Governor on March 4, 2020, has not been rescinded and remains in effect; and

WHEREAS, the City Council has determined that teleconferencing from remote locations by the public and City Council members has not limited participation of members of the public, Council members, or other attendees at City Council or other City commission meetings; and

WHEREAS, on October 19, 2021, the City Council approved Resolution No. 2522 authorizing remote teleconferencing for City Council and City commission meetings in accordance with Government Code Section 54953 as amended by AB 361; and

WHEREAS, Government Code Section 54953, as amended by AB 361, requires the City Council to make certain findings every 30 days after approving Resolution No. 2522 in order to continue with remote teleconferencing.

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

1. The City Council has reconsidered the circumstances of the COVID-19 state of emergency and finds that the following circumstances exist:

- A. The state of emergency continues to directly impact the ability of members of the public, City Council members, and members of other City commissions to meet safely in person; and
- B. State or local officials continue to recommend measures to promote social distancing.

2. This Resolution shall be effective immediately and a similar resolution shall be a standing item on City Council meeting agendas each month to reconsider the circumstances of the COVID-19 state of emergency and determine whether the state of emergency continues to directly impact the ability of members of the public, City Council members, and members of other City commissions to meet safely in person, or whether state or local officials continue to impose or recommend measures to promote social distancing, until the necessary findings required for continuing remote teleconferencing are no longer approved by the City Council.

PASSED, APPROVED AND ADOPTED this 15th day of March 2022, 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



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-D

REPORT TO THE CITY COUNCIL

March 15, 2022

FROM DAWN E. MARPLE, City Planner

SUBJECT

ACCEPT the City of Fowler 2021 Annual Progress Report for the City of Fowler General Plan and Housing Element, and direct staff to submit the report to the California Office of Planning and Research (OPR), and the California Department of Housing and Community Development (HCD).

RECOMMENDATION

Staff recommend that the City Council of the City of Fowler accept the 2021 Annual Progress Report for the City of Fowler General Plan and Housing Element, and direct staff to submit the report to OPR and HCD.

The Planning Commission heard this item at its meeting on March 3, 2021 and recommended that the City Council accept the 2021 Annual Progress Report.

BACKGROUND

Staff has completed the Annual Progress Report for the City of Fowler General Plan and Housing Element for the calendar year of 2021 pursuant to Government Code Section 65400, which requires the City to prepare an Annual Progress Report addressing the status of the General Plan and progress made toward implementing its goals and policies, including the City's progress in meeting its share of regional housing needs. The progress report must be submitted by April 1 of each year to the City Council, the Governor's Office of Planning and Research (OPR), and the State Housing and Community Development Department (HCD).

The attached Annual Progress Report represents the City's development activity for calendar year 2021.

General Plan. California Government Code Section 65300 requires each city and county to adopt a general plan for the physical development of the jurisdiction. The City of Fowler incorporated in 1908 and adopted its first comprehensive General Plan in 1976. In 2004, the City updated its original General Plan with revisions to the Land Use and Circulation chapters and the addition of an Economic Development chapter, which was the first update of the document since its adoption. The 2025 Fowler General Plan was adopted in June 2004 and contained the following chapters, which addressed all the required elements of a general plan in accordance with the Government Code at the time of adoption:

- Land Use
- Circulation
- Housing
- Economic Development
- Environmental Resources Management
- Public Facilities

General Plan Progress Report.

General Plan Update Progress:

Staff has continued to work towards the completion of the General Plan Update. In 2021 the City of Fowler completed both Planning Commission and City Council public workshops and study sessions on General Plan Land Use Alternatives. An Interactive Story Map was created and placed on the City's website for public use. This map allows the public to actively search parcels for the associated existing and proposed land use. General Plan draft policies were anticipated to be completed by the end of 2021 and reviewed by City staff in early 2022.

Development Approvals:

In 2021, staff processed several building permits and entitlement applications to facilitate the buildout of the General Plan. 110 residential building permits were issued, and 10 industrial and commercial project entitlements were processed.

Economic Development:

Staff has been working diligently on efforts to promote economic development within the City. In 2021 the City of Fowler entered into a Disposition and Development Agreement (DDA) for the old fire station to be converted into a tap house and for the two vacant parcels at 7th and Vine Streets to be developed into a mixed-use development. In addition to the two DDAs the City continues to work with the Fresno County Economic Development Corporation (EDC) to site businesses in Fowler.

Housing Element. The Housing Element of the Fowler General Plan was more recently adopted in April of 2016, as required by the Government Code, and was updated as part of a coordinated effort with Fresno County and 12 of the 15 cities in Fresno County. The Multi-Jurisdictional Housing Element created a regional plan for addressing the housing needs of Fresno County. The General Plan incorporates the adopted Multi-Jurisdictional Housing Element by reference.

The City's Regional Housing Needs Allocation (RHNA) for the current eight-year projection period from December 2015 through December 2023, is 524 housing units and is equivalent to an annual production rate of 66 units. A portion of the City's current RHNA goal (39%) is focused on the categories of Extremely-Low Income (ELI) households, Very-Low Income (VLI) households, and Low Income (LI) households, as defined by HCD. These categories serve those households with the greatest housing need but are also the hardest to build because of the significant subsidies required to develop these homes.

In 2021, the City of Fowler processed 110 building permits for residential development. 108 of those were for single family dwelling units while the remaining 2 were for accessory dwelling units. Of the 110 units permitted, 76 were in the Moderate category and 34 were in the Above Moderate category.

The City has completed 346 units of its 524 housing unit allocation. As outlined in Table B of the Housing Element Annual Progress Report, the City has met its Moderate Income category while still needing to develop housing units in the VLI, LI, and Above Moderate Categories.

On March 3, 2022, the Planning Commission recommended the City Council accept the 2021 Annual Progress Report for the City of Fowler General Plan and Housing Element. The Planning Commission discussed multiple areas of the Annual Progress Report during their review. Those items included:

- Methods on how to achieve the housing unit allocations in the VLI and LI categories. *Staff provided an overview of ongoing efforts to work with local entities to explore senior housing developments to meet this need and these allocation categories.*
- Questions on if the City will achieve the overall target of 524 housing units in this cycle of the Housing Element. *Staff explained the City has already achieved 346 units of the 524 housing unit allocation, and the City has until December 2023 to build out the remaining units. Staff stated it is likely that the City will achieve the 524 housing unit allocation by the end of this Housing Element cycle based on currently approved entitlements and development projects underway. However, most of those units have been built in the Moderate and Above Moderate income categories.*

ENVIRONMENTAL REVIEW

These annual reports are exempt from the requirements of the California Environmental Quality Act (CEQA) as they do not meet the definition of a "Project" per CEQA Guidelines Section 15378.

FISCAL IMPACT

There is no fiscal impact anticipated from the acceptance of the annual progress reports.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- 2021 General Plan Annual Progress Report



CITY OF **FOWLER**
California

GENERAL PLAN ANNUAL PROGRESS REPORT

GENERAL PLAN UPDATE

FEBRUARY 2022

Prepared For:

CITY OF FOWLER PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
128 S. 5TH STREET
FOWLER, CA 93625

Prepared By:

PROVOST & PRITCHARD CONSULTING GROUP
445 WEST FIR AVENUE
CLOVIS, CA 93611



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INTRODUCTION

PURPOSE OF THIS REPORT

California law requires each city and county to adopt a comprehensive, long-term General Plan to guide the physical development of the incorporated city and land outside city boundaries that bears a relationship to its planning activities (California Government Code Section 65300). The General Plan serves as a blueprint for future growth and development. As such, the plan contains policies and programs designed to provide decision makers with a solid foundation for land use and development decisions.

State law further requires each jurisdiction to complete an Annual Report on the General Plan that is submitted to the local planning agency (the City Council), to the State Office of Planning and Research, and to the State Department of Housing and Community Development (California Government Code Section 65400). This report must:

- Identify compliance with the State General Plan law and State General Plan Guidelines;
- Identify status of the General Plan and the process towards its implementation;
- Describe the City's progress in meeting its Regional Housing Needs Allocation;
- Describe progress in addressing/removing governmental constraints to the maintenance, improvement, and development of housing; and
- Identify any surplus lands within the jurisdiction.

State law requires that the General Plan Annual Report be submitted by April 1 of each year and cover progress made during the previous calendar year (January through December). This Annual Report looks at the City's progress towards implementing its General Plan during the 2021 planning year and is completed for the April 2022 deadline.

2025 FOWLER GENERAL PLAN

The City of Fowler incorporated in 1908 and adopted its first comprehensive General Plan in 1976. In 2004, the City updated its original General Plan with revisions to the Land Use and Circulation chapters and the addition of an Economic Development chapter, which was the first update of the document since its adoption. The 2025 Fowler General Plan was adopted in June 2004 and contained the following chapters, which addressed all the required elements of a general plan in accordance with the Government Code at the time of adoption:

- Land Use
- Circulation
- Housing
- Economic Development
- Environmental Resources Management
- Public Facilities

The Housing Element of the Fowler General Plan was more recently adopted in April of 2016, as required by the Government Code, and was updated as part of a coordinated effort with Fresno County and 12 of

the 15 cities in Fresno County. The Multi-Jurisdictional Housing Element created a regional plan for addressing the housing needs of Fresno County. The General Plan incorporates the adopted Multi-Jurisdictional Housing Element by reference.

AMENDMENTS

No General Plan Amendments were processed in 2021.

ANNEXATIONS

The City requests that Fresno County refer all proposals for industrial development located within the City's Sphere of Influence to the City for annexation. In cases where annexation is not feasible, the City may request that the County attach conditions of approval to such applications to ensure that the development will conform to City standards, will agree to annex when feasible, and will not be detrimental to future urban development. The City's Sphere of Influence and phasing of annexation is used to provide for logical and efficient growth and prevent the premature conversion of agricultural land. Extension of urban services without annexation is discouraged. Residential land is annexed to the City as determined by growth management policies. Proposals for pre-zoning and annexation are rejected if they do not satisfy General Plan requirements relating to orderly and contiguous development and public services and facilities.

2021 Activities

- Tentative Subdivision Tract Map No. 5952 facilitated the annexation of approximately 70 acres on the west side of the City, located on the south side of E South Avenue, on both the east and west side of S Sunnyside Avenue.

GENERAL PLAN UPDATE

Currently the City is in the process of a General Plan update which looks ahead to the year 2040, making adjustments based on current issues and emergent trends, and positioning the City of Fowler for the next 20 years. It is anticipated that the General Plan update and associated Environmental Impact Report will be completed in early 2023.

General Plan Update Objectives

- Confirm the vision for the community,
- Provide clear goals and policies to support the community vision and guide decision-making,
- Prepare a plan to implement the goals and policies,
- Comply with state requirements and incorporate best planning practices, and
- Create a user-friendly General Plan.

2021 Accomplishments

In 2021 the City of Fowler completed the following General Plan Update activities:

- Planning Commission and City Council public workshops and study sessions on General Plan Land Use Alternatives
- Interactive Story Map
- Planning Commission and City Council public meetings to select a General Plan Land Use Alternative
- General Plan draft policies, to be reviewed by City staff in 2022

The Interactive Story Map was developed as part of the public outreach component of the General Plan Update. The map, available on the City's website, provides information on the update and the proposed land use changes in both English and Spanish. The final component of the story map is an interactive land use map, which was used to collect parcel-specific comments about the proposed land use map. Although the comment period has closed, the map is still available for the public to access.

GENERAL PLAN IMPLEMENTATION PROGRESS

The following sections represent the progress the City has made towards implementing the actions of the current General Plan during the 2021 reporting period.

LAND USE ELEMENT

The Land Use Element assists in the orderly development of the community and designates general distribution of land for housing, business, public buildings and grounds, and other categories of public and private land use. The element also establishes standards of population density and building intensity. The General Plan provides Policies and Standards for each of the following land use types, which are summarized below.

Residential Projects

Four residential categories are proposed that range in density from a maximum of three units per acre up to 21.8 units per acre. These categories are intended to identify areas which are acceptable for housing; clarify the overall type of housing to be developed within each category; and allow for a mixture of housing types, lot sizes, and affordability. Each residential category includes a unit per acre minimum and maximum density specified in a range of units per gross acre. Units per gross acre is used because it is easier to understand and convey. Types of housing include single family units, multiple family units including duplexes and apartments, and mobile homes.

2021 Activities

- K Hovnanian continued to build out Tract 5834 on the north side of South Avenue between South Sunnyside and South Stanford Avenues.
- 110 building permits were issued for new residential construction.
- City Council denied Rezone No. 20-01 and Site Plan Review No. 20-08 to legalize an existing fourth dwelling unit and to construct two additional dwelling units. The applicant subsequently filed for and received a ministerial approval for an Accessory Dwelling Unit to legalize the unit.
- Three Accessory Dwelling Unit entitlements were approved.

Commercial/Industrial Projects

Four categories also exist for commercial land use designations. Additionally, the City's General Plan locates new Neighborhood Commercial uses along major traffic ways in consolidated centers that utilize common access and parking for commercial uses and reserves the Community Commercial designation for the downtown and major community shopping areas. The General Commercial designation is located along arterial streets to provide commercial support for Fowler and nearby communities.

2021 Activities

- Site Plan Review No. 21-01 approved the addition of a 36,000 square foot storage canopy at Maxco Supply.
- Site Plan Review No. 21-02 approved a 4,000 square foot metal building for Jay's Autobody.
- Site Plan Review No. 21-05 approved a 257,500 square foot expansion for mandarin orange processing for Bee Sweet Citrus.
- Site Plan Review No. 21-06 approved a 1,620 square foot expansion of Diesel Specialties.
- Site Plan Review No. 21-07 approved the construction of a 9,625-square foot fruit processing building for the National Raisin Company.
- Site Plan Review No. 21-22 approved the construction of a 6,000 square foot shop, 9,240-square foot warehouse, and outdoor storage for Central Valley Concrete.
- Conditional Use Permit No. 21-03 approved a recycling center.

Mixed Use Projects/Form Based Code Area

Mixed use residential uses are also permitted in Community Commercial locations by Conditional Use Permit where appropriate. Additionally, mixed use projects of 80 acres or more should prepare a specific plan incorporating land use, circulation, open space, and public facility issues for adoption by the City prior to approval of tentative tract maps, site plans, or use permits.

In 2013, the City of Fowler amended its zoning ordinance with the addition of Article 17, establishing the City's first form-based code area. The form-based code area is in the central portion of the City, bound by East Tuolumne Street on the north, South 5th Street on the east, and South 8th Street on the west. Form based codes are a unique method of land use regulation which offers a more design-forward approach than traditional zoning. Form based codes seek to provide a high-quality urban environment by using physical form as the organizing principle of regulation rather than the separation of land use, as seen in traditional zoning practice.

2021 Activities

- Site Plan Review No. 21-03 approved the construction of a 4,680-square foot medical office building for United Health Centers.
- Conditional Use Permit No. 21-01 allowed the Mi Favorito restaurant to operate with fewer operating restrictions, including live entertainment and reduced food service.
- Conditional Use Permit No. 21-04 approved a taproom serving regional beer and wine.

CIRCULATION ELEMENT

The purpose of the Circulation Element is to provide for a safe, convenient, and efficient transportation system. The Circulation Element has been designed to accommodate anticipated transportation needs based on the land use element. In compliance with state law, all city and county general plans must contain a circulation element that designates future road improvements and extensions, addresses non-motorized transportation alternatives, and identifies funding options. The intent of the Element is to:

- identify transportation needs and issues within the City, as well as regional relationships that affect the transportation system;
- consider alternatives other than the single-occupant vehicle as essential in providing services and access to facilities; and

- establish policies that coordinate regional transportation planning circulation system with General Plan and area plan land use maps and provide direction for future decision-making.

2021 Activities

- Street sections were completed along Armstrong, Adams, Sunnyside and Sumner Avenues.
- Curb ramps and pavement improvements were completed on Main Street between 7th and 3rd.
- Curb ramps and pavement improvements were completed on Adams Avenue between 5th and Temperance.
- Design of roadway improvements were completed on Manning Avenue from SR99 to the east City limit.
- Design of sidewalk improvements were completed on South Avenue south of Fresno Street.
- Pedestrian crossing Improvements were completed at the Temperance / Walter intersection.

ECONOMIC DEVELOPMENT

Fowler's economic strength comes from its residents, businesses, schools, community organizations, and government. Economic development efforts within the City work to expand resources for those groups. General Plan policies that foster infrastructure improvements, downtown preservation, and business friendly practices guide City leaders to enhance the quality of life and economy in Fowler.

2021 Activities

- The City entered into a Disposition and Development Agreement (DDA) for the old fire station to be converted into a tap house.
- The City entered into a DDA for the two vacant parcels at 7th and Vine Streets to be developed into a mixed-use development.
- The City continues to work with the Fresno County Economic Development Corporation (EDC) to site businesses in Fowler.

HOUSING ELEMENT

The Housing Element is an important State-mandated requirement of the General Plan. The Housing Element establishes comprehensive goals, policies, and programs to meet a jurisdiction's share of Regional Housing Needs Allocation (RHNA). The determination of regional housing need begins with the California Department of Housing and Community Development (HCD) and California Department of Finance (DOF), which first calculate statewide housing needs based upon population projections and regional population forecasts used in preparing regional transportation plans. The Statewide need is then distributed to regional Councils of Government (COGs) throughout California, who work with cities and counties within their purview to assign each jurisdiction its share of the RHNA. The RHNA itself is divided into five income categories that encompass all levels of housing need. RHNA goals are measured by the number of housing units entitled and/or permitted by a local jurisdiction in a given timeframe.

The City of Fowler is a member of the Fresno County Council of Governments (Fresno COG), which is composed of the 15 cities and the unincorporated areas of Fresno County. Fresno COG is responsible for distributing the RHNA to the local governments through an allocation methodology that is consistent with development and growth patterns. Fowler's RHNA for the current eight-year projection period from December 2015 through December 2023 is 524 housing units and is equivalent to an annual production rate of 66 units. A large portion of Fowler's current RHNA goal (39%) is focused on the categories of

Extremely-Low Income (ELI) households, Very-Low (VLI) Income households, and Low Income (LI) households, as defined by HCD. These categories serve households with the greatest housing need but are also the hardest to build because of the significant subsidies required to develop these homes.

The City Council elected to collectively prepare a multi-jurisdictional Housing Element with the cities of Clovis, Coalinga, Huron, Kerman, Kingsburg, Mendota, Parlier, Reedley, San Joaquin, Sanger, Selma, and the unincorporated areas of Fresno County as part of the Fresno Multi-Jurisdictional 2015-2023 Housing Element (MJHE).

The City Council adopted the 2015-23 Housing Element on April 5, 2016. HCD certified the Housing Element on July 22, 2016. The Housing Element establishes a comprehensive policy framework to implement Fowler's residential strategies and outlines the City's plan for meeting community housing needs.

2020 Activities

- In accordance with Section 65400 of the California Government Code, the City is required to prepare an annual report on the status and progress in implementing the City's Housing Element using forms and definitions adopted by the Department of Housing and Community Development. The completed forms for the 2021 calendar year are attached in Attachment A to this report.

ENVIRONMENTAL RESOURCES MANAGEMENT ELEMENT

There are currently four City parks in Fowler, all of which are managed by the Public Works Department. There are no State or regional parks located in the planning area. The City of Fowler also operates the Edwin Blayney Senior Center, which offers a meeting place and specialized recreation opportunities for senior citizens.

2021 Activities

-
- Tract 6188 (Kb Home) neighborhood park constructed
- Tract 6274 (Woodside) neighborhood park under construction
-
- Grant applications were submitted for improvements to Donny Wright Park and for the construction of a new park on Harris Street.

PUBLIC FACILITIES ELEMENT

The public facilities and services, including utilities, provided by the City of Fowler or quasi-public organizations, are services that include education, library, law enforcement, fire protection and emergency response, landscape and lighting, water, wastewater, stormwater, and solid waste.

2021 Activities

- The City issued a Request for Proposals (RFP) for the design of a new police headquarters and senior center, to be located at the northwest corner of Merced and 3rd Streets.

ATTACHMENT A: HOUSING ELEMENT ANNUAL PROGRESS REPORT

CITY OF FOWLER ANNUAL PROGRESS REPORT

Please Start Here

General Information	
Jurisdiction Name	Fowler
Reporting Calendar Year	2021
Contact Information	
First Name	Wilma
Last Name	Quan
Title	City Manager
Email	wquan@ci.fowler.ca.us
Phone	5598343113
Mailing Address	
Street Address	128 S 5th Street
City	Fowler
Zipcode	93625

Optional: Click here to import last year's data. This is best used when the workbook is new and empty. You will be prompted to pick an old workbook to import from. Project and program data will be copied exactly how it was entered in last year's form and must be updated. If a project is no longer has any reportable activity, you may delete the project by selecting a cell in the row and typing ctrl + d.

v 1_13_2022

Jurisdiction	Fowler	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	12/31/2015 - 12/31/2023

Building Permits Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	76
Above Moderate		34
Total Units		110

Note: Units serving extremely low-income households are included in the very low-income permitted units totals

Units by Structure Type	Entitled	Permitted	Completed
SFA	0	0	0
SFD	0	108	51
2 to 4	0	0	0
5+	0	0	0
ADU	0	2	2
MH	0	0	0
Total	0	110	53

Housing Applications Summary	
Total Housing Applications Submitted:	4
Number of Proposed Units in All Applications Received:	77
Total Housing Units Approved:	3
Total Housing Units Disapproved:	0

Use of SB 35 Streamlining Provisions	
Number of Applications for Streamlining	0
Number of Streamlining Applications Approved	0
Total Developments Approved with Streamlining	0
Total Units Constructed with Streamlining	0

Units Constructed - SB 35 Streamlining Permits			
Income	Rental	Ownership	Total
Very Low	0	0	0
Low	0	0	0
Moderate	0	0	0
Above Moderate	0	0	0
Total	0	0	0

Cells in grey contain auto-calculation formulas

Jurisdiction	Fowler	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	12/31/2015 - 12/31/2023

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation

Note: "+" indicates an optional field
Cells in grey contain auto-calculation formulas

(CCR Title 25 §6202)

Table A
Housing Development Applications Submitted

Project Identifier					Unit Types		Date Application Submitted	Proposed Units - Affordability by Household Incomes								Total Approved Units by Project	Total Disapproved Units by Project	Streamlining	Density Bonus Applications		Application Status	Notes
1					2	3	4	5								7	8	9	10		11	12
Prior APN ⁺	Current APN	Street Address	Project Name ⁺	Local Jurisdiction Tracking ID ⁺	Unit Category (SFA,SFD,2 to 4,5+,ADU,MH)	Tenure R=Renter O=Owner	Date Application Submitted+ (see instructions)	Very Low-Income Deed Restricted	Very Low-Income Non Deed Restricted	Low-Income Deed Restricted	Low-Income Non Deed Restricted	Moderate-Income Deed Restricted	Moderate-Income Non Deed Restricted	Above Moderate-Income	Total PROPOSED Units by Project	Total APPROVED Units by project	Total DISAPPROVED Units by Project	Was <u>APPLICATION SUBMITTED</u> Pursuant to GC 65913.4(b)? (SB 35 Streamlining)	Was a Density Bonus requested for this housing development?	Was a Density Bonus approved for this housing development?	Please indicate the status of the application.	Notes ⁺
Summary Row: Start Data Entry Below								0	0	0	0	0	0	0	77	77	3	0				
	343-242-03	415 E Fresno St		SPR 21-17	ADU	R	7/12/2021							1	1	1		No	No	N/A	Approved	
	343-173-04	124 S Fourth St		SPR 21-21	ADU	R	10/11/2021							1	1	1		No	No	N/A	Approved	
	343-192-16	704 East Main St		SPR 20-08; Rezone 20-01	2 to 4	R	7/8/2020							1	1		1	No	No	N/A	Disapproved	
	343-192-16	704 E Main St		SPR 21-08	ADU	R	7/22/2021							1	1	1		No	No	N/A	Approved	
	340-130-14	6660 S Armstrong Ave		TSM 21-0015	SFD	O	9/8/2021							74	74			No	No	N/A	Pending	
															0							

Jurisdiction	Fowler	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	12/31/2015 - 12/31/2023

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

This table is auto-populated once you enter your jurisdiction name and current year data. Past year information comes from previous APRs.

Please contact HCD if your data is different than the material supplied here

Table B													
Regional Housing Needs Allocation Progress													
Permitted Units Issued by Affordability													
		1	2									3	4
Income Level		RHNA Allocation by Income Level	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	123	-	-	-	-	-	-	-	-	-	-	123
	Non-Deed Restricted		-	-	-	-	-	-	-	-	-		
Low	Deed Restricted	83	-	-	-	-	-	-	-	-	-	-	83
	Non-Deed Restricted		-	-	-	-	-	-	-	-	-		
Moderate	Deed Restricted	75	-	-	-	-	-	-	-	-	-	149	-
	Non-Deed Restricted		-	5	-	-	22	46	76	-	-		
Above Moderate		243	-	64	27	34	29	9	34	-	-	197	46
Total RHNA		524											
Total Units			-	69	27	34	51	55	110	-	-	346	252

Note: units serving extremely low-income households are included in the very low-income permitted units totals and must be reported as very low-income units.

Please note: For the last year of the 5th cycle, Table B will only include units that were permitted during the portion of the year that was in the 5th cycle. For the first year of the 6th cycle, Table B will include units that were permitted since the start of the planning period.

Please note: The APR form can only display data for one planning period. To view progress for a different planning period, you may login to HCD's online APR system, or contact HCD staff at apr@hcd.ca.gov.

Jurisdiction	Fowler	
Reporting Year	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	12/31/2015 - 12/31/2023

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Note: "+" indicates an optional field

Cells in grey contain auto-calculation formulas

Table C																	
Sites Identified or Rezoned to Accommodate Shortfall Housing Need and No Net-Loss Law																	
Project Identifier				Date of Rezone	RHNA Shortfall by Household Income Category				Rezone Type	Sites Description							
1				2	3				4	5	6	7	8		9	10	11
APN	Street Address	Project Name ⁺	Local Jurisdiction Tracking ID ⁺	Date of Rezone	Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income	Rezone Type	Parcel Size (Acres)	General Plan Designation	Zoning	Minimum Density Allowed	Maximum Density Allowed	Realistic Capacity	Vacant/Nonvacant	Description of Existing Uses
Summary Row: Start Data Entry Below																	

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Fowler		
Reporting Year	2021	(Jan. 1 - Dec. 31)	
Table D			
Program Implementation Status pursuant to GC Section 65583			
Housing Programs Progress Report			
Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.			
1	2	3	4
Name of Program	Objective	Timeframe in H.E	Status of Program Implementation
1: Regional Collaboration on Housing Opportunities	To ensure that regional housing needs are met collaboratively within Fresno County	Ongoing	The City of Fowler continues to participate in the Countywide Housing Element Technical Committee which collaborates on implementation including infrastructure challenges, homelessness, and fair housing.
2: Review Annexation Standards in Memorandum of Understanding	To remove barriers in the development of affordable housing	2023	The City of Fowler will work with Fresno County to review standards for annexation contained in the Memorandum of Understanding between the County and city as they may effect affordable housing. MOU standards require that a minimum of 50% of annexation areas have an approved development plan. Because annexation is therefore dependent on developers with "shovel ready" projects, the ability of cities to prezone land for affordable housing is limited.
3: Provision of Adequate Sites	Provide for a variety of housing types and ensure that adequate sites are available to meet RHN	Ongoing	The City created an inventory of undeveloped land resources in 2021 and will upload the inventory to the City's website.
4: Monitoring of Residential Capacity (No Net Loss)	To monitor and control the removal of needed housing units from the housing stock	Ongoing	The City of Fowler will continue to complete their Annual Progress Reports and participate in the RHNA allocation efforts beginning in 2023 to ensure that there is no net loss in land zoned for residential development.
5: Lot Consolidation and Lot Splits	To promote efficient use of land for residential development pursuant to the Subdivision Map Act	Ongoing	As part of the inventory of residential land resources the City will identify opportunities for lot consolidation or lot splitting by the end of 2019. SB 2 funds are being used to update the subdivision ordinance to make it more user-friendly and further facilitate residential development.
6: Water and Wastewater Capacity	To remove obstacles from the development of affordable housing	Ongoing	The City will continue to map water and wastewater capacity concerns. The City completed a water model in 2020 which identified areas of concern related to water capacity.
7: Affordable Housing Incentives	To provide incentives for the development of affordable housing	Ongoing	The City of Fowler will update their Density Bonus Ordinance as part of the ongoing comprehensive Zoning Ordinance update.
8: Farmworker Housing	To support and encourage the development of housing specifically aimed at farmworkers	Ongoing	The City will continue to work with the Fresno Housing Authority and Self-Help Enterprises in seeking grant funds for farmworker housing.
9: Preserving Assisted Housing	Annually monitor the status of assisted housing stock that may be at risk of converting to market rate.	Ongoing	The City assisted the Fresno Housing Authority in their efforts to obtain tax credit allocation for their Walnut Grove apartment complexe. The Magill Terrace project was completed in 2019. The City will continue to monitor their progress.
10: Accessory Units (Second Units)	To facilitate construction of affordable housing units	Ongoing	The City has amended their Accessory Dwelling Unit (ADU) ordinance to be compliant with new state law. City staff will be conducting an ADU education program in 2022.
11:Zoning Code Amendments	To amend the Zoning Code to address a variety of housing options, including special needs groups	Within one year of HE adoption with annual reviews	The City of Fowler will update their Density Bonus Ordinance as part of the ongoing comprehensive Zoning Ordinance update.
12: Monitoring Planning and Development Fees	To ensure fees do not undully constrain housing development	Ongoing	The City will continue to monitor their development fees each January.
13: Code Enforcement	To enforce substandard abatement and reinstate the City's Home Improvement Grant Program.	Ongoing	The City will continue to look for grant programs to assist property owners to bring their homes into compliance with City codes. The City reinstated the code enforcement division in 2019 and hired a Community Compliance Officer who will start in 2022.
14: First-Time Home Buyer Resources	To pursue and disseminate available resources to the public	Ongoing	The City will continually update their website to include available homebuyer resources.
15: Energy Conservation	To promote energy conservation in housing rehabilitation.	Ongoing	The City continues to support PG&E programs that provide energy efficiency rebates and implements the Building codes that support and encourage alternative energy.
16: Housing Choice Vouchers	To disseminate information, refer interested households to the Housing Authority, and encourage landlords to participate.	Ongoing	The City will continually update their website to include available homebuyer resources including information on the Housing Choice Voucher Program.
17: Fair Housing	To assist in promoting fair resources available in the region	Ongoing	The City will continually update their website and work with the Fair Housing Council of Central Valley and the Fresno Housing Authority to provide ediuication to lenders, real estate professiosnals, and the communtiy at large to promote fair shousing services available in the region.

Jurisdiction	Fowler	
Reporting Period	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	12/31/2015 - 12/31/2023

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Note: "+" indicates an optional field

Cells in grey contain auto-calculation formulas

Table E									
Commercial Development Bonus Approved pursuant to GC Section 65915.7									
Project Identifier				Units Constructed as Part of Agreement				Description of Commercial Development Bonus	Commercial Development Bonus Date Approved
1				2				3	4
APN	Street Address	Project Name ⁺	Local Jurisdiction Tracking ID ⁺	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Description of Commercial Development Bonus	Commercial Development Bonus Date Approved
Summary Row: Start Data Entry Below									

Jurisdiction	Fowler	
Reporting Period	2021	(Jan. 1 - Dec. 31)
Planning Period	5th Cycle	12/31/2015 - 12/31/2023

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Note: "+" indicates an optional field

Cells in grey contain auto-calculation formulas

Table F									
Units Rehabilitated, Preserved and Acquired for Alternative Adequate Sites pursuant to Government Code section 65583.1(c)									
Please note this table is optional: The jurisdiction can use this table to report units that have been substantially rehabilitated, converted from non-affordable to affordable by acquisition, and preserved, including mobilehome park preservation, consistent with the standards set forth in Government Code section 65583.1, subdivision (c). Please note, motel, hotel, hostel rooms or other structures that are converted from non-residential to residential units pursuant to Government Code section 65583.1(c)(1)(D) are considered net-new housing units and must be reported in Table A2 and not reported in Table F.									
Activity Type	Units that Do Not Count Towards RHNA ⁺ Listed for Informational Purposes Only				Units that Count Towards RHNA ⁺ Note - Because the statutory requirements severely limit what can be counted, please contact HCD to receive the password that will enable you to populate these fields.				The description should adequately document how each unit complies with subsection (c) of Government Code Section 65583.1 ⁺
	Extremely Low-Income ⁺	Very Low-Income ⁺	Low-Income ⁺	TOTAL UNITS ⁺	Extremely Low-Income ⁺	Very Low-Income ⁺	Low-Income ⁺	TOTAL UNITS ⁺	
Rehabilitation Activity									
Preservation of Units At-Risk									
Acquisition of Units									
Mobilehome Park Preservation									
Total Units by Income									

JurisdictionFowler

Reporting Period2021(Jan. 1 - Dec. 31)

Planning Period5th Cycle12/31/2015 - 12/31/2023

NOTE: This table must only be filled out if the housing element sites inventory contains a site which is or was owned by the reporting jurisdiction, and has been sold, leased, or otherwise disposed of during the reporting year.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Note: "+" indicates an optional field

Cells in grey contain auto-calculation formulas

Table G						
Locally Owned Lands Included in the Housing Element Sites Inventory that have been sold, leased, or otherwise disposed of						
Project Identifier						
1				2	3	4
APN	Street Address	Project Name ⁺	Local Jurisdiction Tracking ID ⁺	Realistic Capacity Identified in the Housing Element	Entity to whom the site transferred	Intended Use for Site
Summary Row: Start Data Entry Below						

Jurisdiction	Fowler		
Reporting Period	2021 (Jan. 1 - Dec. 31)		

Note: "+" indicates an optional field

Cells in grey contain auto-calculation formulas

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Table H						
Locally Owned Surplus Sites						
Parcel Identifier				Designation	Size	Notes
1	2	3	4	5	6	7
APN	Street Address/Intersection	Existing Use	Number of Units	Surplus Designation	Parcel Size (in acres)	Notes
Summary Row: Start Data Entry Below						

Jurisdiction	Fowler	
Reporting Year	2021	(Jan. 1 - Dec. 31)

ANNUAL ELEMENT PROGRESS REPORT					
Local Early Action Planning (LEAP) Reporting					
(CCR Title 25 §6202)					
Please update the status of the proposed uses listed in the entity’s application for funding and the corresponding impact on housing within the region or jurisdiction, as applicable, categorized based on the eligible uses specified in Section 50515.02 or 50515.03, as applicable.					
Total Award Amount	\$ 65,000.00		Total award amount is auto-populated based on amounts entered in rows 15-26.		
Task	\$ Amount Awarded	\$ Cumulative Reimbursement Requested	Task Status	Other Funding	Notes
Land Use Alternatives	\$25,000.00	\$0.00	Completed		Presented to Council in 2021
General Plan Update	\$20,000.00	\$0.00	In Progress	Local General Fund	
Program EIR	\$20,000.00	\$0.00	In Progress	Local General Fund	

Summary of entitlements, building permits, and certificates of occupancy (auto-populated from Table A2)

Completed Entitlement Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	0
Above Moderate		0
Total Units		0

Building Permits Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	76
Above Moderate		34
Total Units		110

Certificate of Occupancy Issued by Affordability Summary		
Income Level		Current Year
Very Low	Deed Restricted	0
	Non-Deed Restricted	0
Low	Deed Restricted	0
	Non-Deed Restricted	0
Moderate	Deed Restricted	0
	Non-Deed Restricted	39
Above Moderate		14
Total Units		53

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Note: "+" indicates an optional field
Cells in grey contain auto-calculation formulas

[illegible]



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-E

REPORT TO THE CITY COUNCIL

March 15, 2022

FROM THOMAS W. GAFFERY IV, Community Development Director

SUBJECT

APPROVE a Revised and Restated Disposition and Development Agreement between the City of Fowler and Qawadri, LLC for the property located at the northwest corner of South 7th Street and East Vine Street and authorize the City Manager to execute the Agreement.

RECOMMENDATION

Staff recommend the City Council approve a Revised and Restated Disposition and Development Agreement (DDA) between the City of Fowler and Qawadri, LLC for the property located at the northwest corner of South 7th Street and East Vine Street and authorize the City Manager to execute the Agreement.

BACKGROUND

Council previously declared the property located at the northwest corner of South 7th Street and East Vine Street surplus and Staff initiated the Surplus Land Act process. Following conclusion of that process, the City was allowed to accept offers and Staff recommend the sale of the Property as stated above. Council approved a Disposition and Development agreement on October 5, 2022.

The attached Revised and Restated DDA contains the following substantive revisions:

- The DDA requires the Developer to establish a retail dining establishment and mixed use building. The requirement for construction of a production bakery and order desk has been removed as the developer has located an existing facility outside of Fowler that met their needs.

- Escrow close has changed from six months to one year. Staff recommend this change based on the timeframe needed for the developer to produce, and City to plan check and approve development plans for a new mixed-use building. The first submittal of development plans must occur within 90 days of land use approval.
- The \$125,000 deposit has not changed, but the \$50,000 annual payments have been adjusted out one year to occur in 2023, 2024, and 2025.

ENVIRONMENTAL REVIEW

This does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

This action will generate \$275,000 in one-time proceeds to the General Fund per on the terms of the DDA. After escrow has closed and the City has received the deposit funds, staff will bring forward a budget resolution for Council to determine allocation of those funds.

CONFLICT OF INTEREST

A portion of the property is within 1000 feet of real property owned by Mayor Cardenas.

Attachments

- Revised and Restated Disposition and Development Agreement
- Revised and Restated Disposition and Development Agreement (redline)

*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

**REVISED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
NORTHWEST CORNER OF SOUTH 7TH STREET AND EAST VINE
STREET, FOWLER, CA**

APN 343-233-02ST AND 343-233-03ST

CITY OF FOWLER

AND

QAWADRI, LLC

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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

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AG

REVISED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

This Revised and Restated Disposition and Development Agreement (“Agreement” or “DDA”) is entered into Effective March __, 2022, between the City of Fowler, a California municipal corporation and general law city (“City”) and QAWADRI, LLC (“Developer”), with respect to the following Recitals, which are a substantive part of this Agreement:

RECITALS

A. City owns two parcels of real property at the northwest corner of South 7th Street and East Vine Street (APNs 343-233-02ST and 343-233-03ST) in the City of Fowler, Fresno County, State of California (“Property”). The Property is legally described and depicted in **Attachment No. 1**. The Property consists of approximately 37,025 square feet for both parcels. 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 retail dining establishment, mixed use building, 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.

E. City and Developer’s principal and sole member, Abdallah Qawadri, entered into a Disposition and Development Agreement dated _____, 202_ (“Original DDA”) for the Property, and each party now desires to enter into this Agreement which is intended to and shall replace and supersede the Original DDA. Further, Abdallah Qawadri assigns all rights in the Original DDA, and City consents to said assignment.

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 Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) ("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 One Hundred Twenty-Five Thousand Dollars (\$125,000.00) 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). The balance of the Purchase Price shall be paid to the City in three (3) equal annual installments of Fifty Thousand Dollars (\$50,000) due on December 31 of 2023, 2024, and 2025. Developer may prepay the remaining balance of the Purchase Price at any time without penalty.

C. Escrow. Within ten (10) days after the execution of this Agreement by both parties, the parties shall open escrow ("Escrow") with the Old Republic Title Company in its Kingsburg 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 year 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 Developer Deposit 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 the Property 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 suitable for development. In that regard, immediately following the execution of this Agreement and prior to Closing Developer and City may enter into a Right of Entry Agreement to allow Developer an opportunity to conduct due diligence inspections of the Property, 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 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 his expense to investigate and determine the condition of the soil and improvement conditions on the Property for the development to be constructed. If the 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 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 Property, any Hazardous Materials in or 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.

By: 
Abdallah Qawadri

(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 may arise due to any action or inaction of Developer or parties which Developer has supervision and/or control over, 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 construction of a mixed-use building suitable for retail dining.

B. *Reserved.*

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." "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 Two Million Dollars (\$2,000,000) 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. 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 attorney's 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. City shall defend, indemnify, assume all responsibility for, and hold the Developer and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to City's breach of this Agreement or 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, for any damages to property or injuries to persons, including accidental death (including attorney's fees and costs),

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 to the holder of the amount of the Purchase Price received by City at the time of Developer's default, 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 of 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 thirty (30) 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

To Developer: Abdallah Qawadri
8188 North Chance Avenue
Fresno, CA 93720

with a copy to:
David L. Emerzian, Esq.
7647 N. Fresno St.
Fresno, CA 93720

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.


ABDALLAH QAWADRI, as assignor



Abdallah Qawadri

Date: 3/11/22

QAWADRI, LLC



Abdallah Qawadri, Member/Manager

Date: 3/11/22

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: _____

J:\wdocs\00250\256\AGT\00888931.DOC

ATTACHMENT NO. 1

LEGAL DESCRIPTION AND DEPICTION OF ASSESSOR'S PARCEL NUMBERS 343-233-02ST and 343-233-03ST

LEGAL DESCRIPTION

NORTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

SOUTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

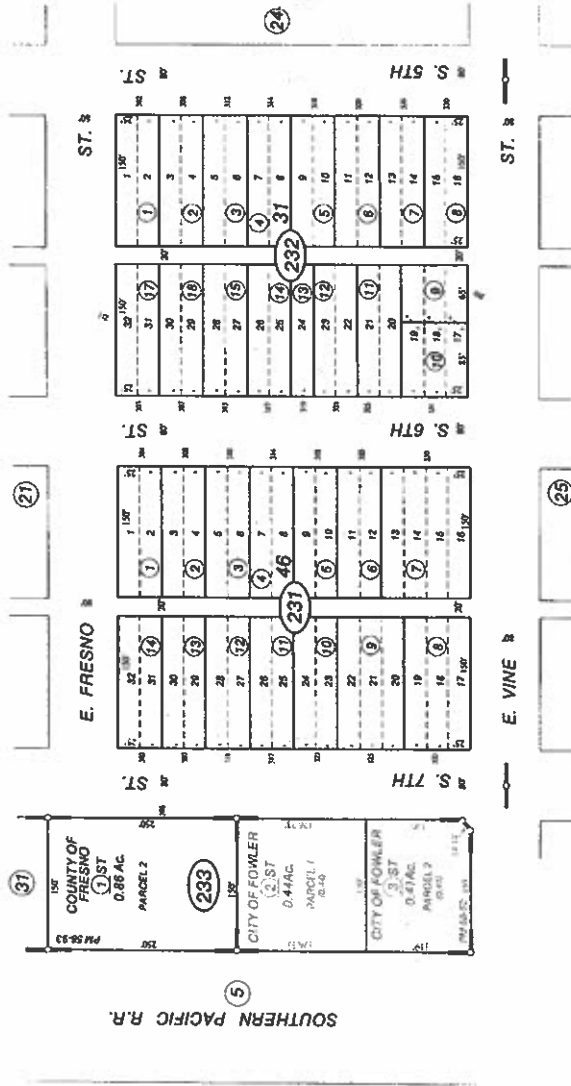
PARCEL 2 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

343-23

Tax Rate Area
4-000
4-001

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

NOTE ...
This map is for Assessment purposes only.
It is not to be construed as conveying
legal ownership or divisions of land for
purpose of holding or subdivision law.



Town of Fowler - Plat Bk.4, Pg.15
Town of Fowler & Villa Lots - Plat Bk.5, Pg.7
Parcel Map No. 95-1 - Bk.58, Pg.93
Parcel Map No. 97-1 - Bk.58, Pg.52

Assessor's Map Bk. 343 - Pg. 23
County of Fresno, Calif.

NOTE: Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

AG

ATTACHMENT NO. 2 FORM OF GRANT DEED

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

Abdallah Qawadri
8188 North Chance Avenue
Fresno, CA 93720

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The City of Fowler, a California municipal corporation ("City"), hereby grants to Qawadri, LLC ("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's predecessor in interest Abdallah Qawadri, dated October __, 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 ~

QAWADRI, LLC


Abdallah Qawadri, Member/Manager

Date: 3/11/22

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

NORTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

SOUTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

ATTACHMENT NO. 3
SCHEDULE OF PERFORMANCE
NORTHWEST CORNER OF SOUTH 7th STREET & VINE
STREET PROPERTY

1. Execution of Agreement by City. The City shall execute this Agreement if approved by City Council.	Within five (5) days after City Council approval, the City shall deliver two (2) 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 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 (90) days of Land Use Approvals.
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.

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.	Within thirty (30) days after submittal by the Developer.
8. Land Use Approvals. Developer shall obtain any required discretionary land use entitlements for the Developer Improvements as required by Section 2D.	Land use entitlement submittal shall occur not later than thirty days (30) from the date of this agreement and must be fully approved by the City prior to close of escrow.
9. Conditions of Closing. Developer and City shall satisfy all their respective Conditions of Closing.	Not later than one year from the date of this agreement.
10. Close of Escrow for Conveyance of the Property. City shall convey the Property to Developer.	Not later than one year from the date of this agreement.
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.	Not later than thirty (30) days after Closing.
12. Insurance Certificate. Developer shall provide proof of insurance as required by Section 2G.	Prior to the commencement of construction.
13. Commencement of Construction. Developer shall commence construction of the Developer Improvements.	Within thirty (30) days after issuance of the first building permit.
14. Completion of Construction. Developer shall complete construction of the Developer Improvements.	Within twelve (12) months after issuance of the first building permit.

<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>
<p>17. Right of First Refusal. City shall have a Right of First Refusal to acquire the Property as set forth in Section 3G.</p>	<p>For a period of fifty (50) years from Effective Date of Agreement.</p>
<p>18. Release of Construction Covenants. City shall record the Release of Construction Covenants as set forth in Section 2M and Attachment No. 4.</p>	<p>In accordance with the DDA.</p>

ATTACHMENT NO. 4
RELEASE OF CONSTRUCTION COVENANTS

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

Qawadri, LLC
8188 North Chance Avenue
Fresno, CA 93720

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 Qawadri, LLC ("Developer"), as of the date set forth below.

RECITALS

- A. City and Developer predecessor in interest, Abdallah Qawadri, have entered into that certain Disposition and Development Agreement dated October __, 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:

QAWADRI, LLC



Abdallah Qawadri, Member/Manager

Exhibit A

LEGAL DESCRIPTION

NORTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

SOUTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

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

NOTICE OF REVERSIONARY INTEREST

APNs 343-233-02ST and 343-233-03ST

RECITALS

WHEREAS, the City of Fowler, a California municipal corporation ("City"), and Qawadri, LLC ("Developer"), entered into that certain Disposition and Development Agreement dated October __, 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

AG,

Exhibit A

LEGAL DESCRIPTION

LEGAL DESCRIPTION

NORTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER,
COUNTY OF FRESNO, STATE OF CALIFORINIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN
BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

SOUTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER,
COUNTY OF FRESNO, STATE OF CALIFORINIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN
BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

AD

*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)

REVISED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
NORTHWEST CORNER OF SOUTH 7TH STREET AND EAST VINE
STREET, FOWLER, CA

APN 343-233-02ST AND 343-233-03ST

CITY OF FOWLER

AND

ABDALLAH QAWDRIQAWADRI, LLC

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

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REVISED AND RESTATED **DISPOSITION AND DEVELOPMENT AGREEMENT**

This **Revised and Restated** Disposition and Development Agreement (“Agreement” or “DDA”) is entered into Effective ~~October —, 2021~~March —, 2022, between the City of Fowler, a California municipal corporation and general law city (“City”) and ~~Abdallah Qawadri~~QAWADRI, LLC (“Developer”), with respect to the following Recitals, which are a substantive part of this Agreement:

RECITALS

A. City owns two parcels of real property at the northwest corner of South 7th Street and East Vine Street (APNs 343-233-02ST and 343-233-03ST) in the City of Fowler, Fresno County, State of California (“Property”). The Property is legally described and depicted in **Attachment No. 1**. The Property consists of approximately 37,025 square feet for both parcels. 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 retail dining establishment ~~and production bakery, mixed use building~~, 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.

E. City and Developer’s principal and sole member, Abdallah Qawadri, entered into a Disposition and Development Agreement dated _____, 202_ (“Original DDA”) for the Property, and each party now desires to enter into this Agreement which is intended to and shall replace and supersede the Original DDA. Further, Abdallah Qawadri assigns all rights in the Original DDA, and City consents to said assignment.

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 Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) (“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 One Hundred Twenty-Five Thousand Dollars (\$125,000.00) 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). The balance of the Purchase Price shall be paid to the City in three (3) equal annual installments of Fifty Thousand Dollars (\$50,000) due on December 31 of 20222023, 20232024, and 20242025. Developer may prepay the remaining balance of the Purchase Price at any time without penalty.

C. Escrow. Within ten (10) days after the execution of this Agreement by both parties, the parties shall open escrow (“Escrow”) with the Old Republic Title Company in its Kingsburg 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~~ one year 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 Developer Deposit 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 the Property 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 suitable for development. In that regard, immediately following the execution of this Agreement and prior to Closing Developer and City may enter into a Right of Entry Agreement to allow Developer an opportunity to conduct due diligence inspections of the Property, 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 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 his expense to investigate and determine the condition of the soil and improvement conditions on the Property for the development to be constructed. If the 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 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 Property, any Hazardous Materials in or 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.

By: _____
Abdallah Qawadri

(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~~ may arise due to any action or inaction of Developer or parties which Developer has supervision and/or control over, 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 construction of a mixed-use building suitable for retail dining ~~with a portion of the building also suitable for a production bakery.~~

B. Reserved.
~~B. Production Bakery Order Desk. Developer agrees, for a period of no less than five (5) years beginning upon the Opening of Developer Improvements for Business as set forth herein, to locate and designate the Property as the location of the order desk for purposes of sales from the production bakery so that the City of Fowler is deemed the point of sale, and so that the City shall receive its portion of sales tax revenue from sales from Developer's production bakery located on the Property.~~

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.” “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 Two Million Dollars (\$2,000,000) 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 attorneysattorney's 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. City shall defend, indemnify, assume all responsibility for, and hold the Developer and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to City's breach of this Agreement or 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, for any damages to property or injuries to persons, including accidental death (including attorney's fees and costs),

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 to the holder of the amount of the Purchase Price received by City at the time of Developer's default, 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 of 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

(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 twentythree~~ (12030) 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: Abdallah Qawadri
8188 North Chance Avenue
Fresno, CA 93720
~~(559) 704-4362~~
~~aqawadri@kababcityonline.com~~

with a copy to:
David L. Emerzian, Esq.
7647 N. Fresno St.
Fresno, CA 93720

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.

ABDALLAH QAWADRI, as assignor

Abdallah Qawadri

Date: _____

QAWADRI, LLC

Abdallah Qawadri, Member/Manager

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: _____

J:\wdocs\00250\256\AGT\00888931.DOC

ATTACHMENT NO. 1

LEGAL DESCRIPTION AND DEPICTION OF ASSESSOR'S PARCEL NUMBERS 343-233-02ST and 343-233-03ST

LEGAL DESCRIPTION

NORTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

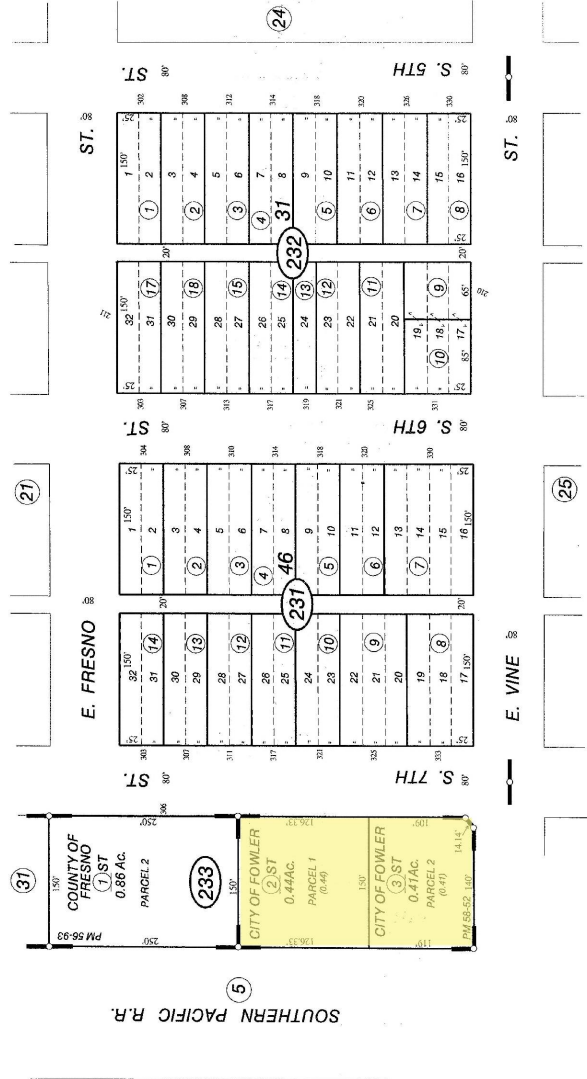
PARCEL 1 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

SOUTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

NOTE ---
This map is for Assessment purposes only.
It is not intended to show legal ownership or divisions of land for
purposes of zoning or subdivision law.



Town of Fowler - Plat Bk 4, Pg. 15
Town of Fowler & Villa Lots - Plat Bk 5, Pg. 7
Parcel Map No. 95-1 - Bk 56, Pg. 93
Parcel Map No. 97-1 - Bk 58, Pg. 52

Assessor's Map Bk. 343 - Pg. 23
County of Fresno, Calif.

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:*

Abdallah Qawadri
8188 North Chance Avenue
Fresno, CA 93720

(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 ~~Abdallah~~ Qawadri, LLC ("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's predecessor in interest Abdallah Qawadri, dated October __, 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 ~

ABDALLAH QAWADRI, LLC

Abdallah Qawadri, Member/Manager

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

NORTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORINIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

SOUTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORINIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

ATTACHMENT NO. 3
SCHEDULE OF PERFORMANCE
NORTHWEST CORNER OF SOUTH 7th STREET & VINE
STREET PROPERTY

1. Execution of Agreement by City. The City shall execute this Agreement if approved by City Council.	Within five (5) days after City Council approval, the City shall deliver two (2) 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 (60) days of Effective Date of this Agreement. <u>Within (90) days of Land Use Approvals.</u>
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.

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.	Within thirty (30) days after submittal by the Developer.
8. Land Use Approvals. Developer shall obtain any required discretionary land use entitlements for the Developer Improvements as required by Section 2D.	Prior to closing. <u>Land use entitlement submittal shall occur not later than thirty days (30) from the date of this agreement and must be fully approved by the City prior to close of escrow.</u>
9. Conditions of Closing. Developer and City shall satisfy all their respective Conditions of Closing.	Not later than one hundred eighty (180) days after Escrow is opened. <u>Not later than one year from the date of this agreement.</u>
10. Close of Escrow for Conveyance of the Property. City shall convey the Property to Developer.	Not later than one hundred eighty (180) days after Escrow is opened. <u>Not later than one year from the date of this agreement.</u>
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.	Not later than thirty (30) days after Closing.
12. Insurance Certificate. Developer shall provide proof of insurance as required by Section 2G.	Prior to the commencement of construction.
13. Commencement of Construction. Developer shall commence construction of the Developer Improvements.	Within thirty (30) days after issuance of the first building permit.
14. Completion of Construction. Developer shall complete construction of the Developer Improvements.	Within twelve (12) months after issuance of the first building permit.

<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>
<p>17. Right of First Refusal. City shall have a Right of First Refusal to acquire the Property as set forth in Section 3G.</p>	<p>For a period of fifty (50) years from Effective Date of Agreement.</p>
<p>18. Release of Construction Covenants. City shall record the Release of Construction Covenants as set forth in Section 2M and Attachment No. 4.</p>	<p>In accordance with the DDA.</p>

ATTACHMENT NO. 4

RELEASE OF CONSTRUCTION COVENANTS

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

Abdallah Qawadri, LLC
8188 North Chance Avenue
Fresno, CA 93720

~~(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 Abdallah Qawadri, LLC ("Developer"), as of the date set forth below.

RECITALS

- A. City and Developer predecessor in interest, Abdallah Qawadri, have entered into that certain Disposition and Development Agreement dated October __, 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:

~~ABDALLAH~~ QAWADRI, LLC

Abdallah Qawadri, Member/Manager

Exhibit A

LEGAL DESCRIPTION

NORTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORINIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

SOUTH CITY OWNED PARCEL AT VINE AND 7TH

THE LAND REFERRED TO HERIN BELOW IS SITUATED IN THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORINIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS

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

APNs 343-233-02ST and 343-233-03ST

RECITALS

WHEREAS, the City of Fowler, a California municipal corporation ("City"), and ~~Abdallah Qawadri, LLC~~ ("Developer"), ~~("Developer")~~, entered into that certain Disposition and Development Agreement dated October __, 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

LEGAL DESCRIPTION

NORTH CITY OWNED PARCEL AT VINE AND 7TH

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PARCEL 2 OF PARCEL MAP NO. 97-1 MAP THEREOF FILED DECEMBER 26, 1997 IN BOOK 58 OF PARCEL MAPS AT PAGE 52, FRESNO COUNTY RECORDS



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-F

REPORT TO THE CITY COUNCIL

March 15, 2022

FROM THOMAS W. GAFFERY IV, Community Development Director

SUBJECT

APPROVE First Amendment to the Professional Services Agreement with Robina Wright Architect & Associates, Inc. dated December 6, 2021 for on-call plan check services, increasing the contract amount by \$26,000 for a total contract amount not to exceed \$75,000.

RECOMMENDATION

Staff recommend City Council approve the First Amendment to the Professional Services Agreement with Robina Wright Architect & Associates, Inc. dated December 6, 2021 for on-call plan check services, increasing the contract amount by \$26,000 for a total contract amount not to exceed \$75,000.

BACKGROUND

On-call plan check services are utilized intermittently based on the size of a plan check project, complexity of the review involved, certifications necessary to conduct the plan check, and staff time required to complete the plan check in a timely manner. On-call plan check services are utilized once a project is submitted by a developer, and all on-call plan check expenses are fully offset by the City's plan check fees. In addition, the City's plan check fees also cover City staff time and overhead related to plan check processing.

Under the prior administration, plan check providers were not engaged under contract. Pursuant to the procurement policy, and under the City Manager's authority, a contract with Robina Wright Architect & Associates, Inc. in the amount of \$49,000 was executed on December 6, 2021 for on-call plan check services. The firm's prior experience with the City, value compared to other plan check providers, responsiveness, and problem solving skills, made them uniquely qualified to

perform on-call plan check services. Fiscal year paid to date is \$27,396.14. Based on current plan check workflow, staff anticipate exceeding the \$49,000 contract amount and are therefore bringing this Amendment to City Council.

ENVIRONMENTAL REVIEW

This does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

The cost of on-call plan check services are fully offset by plan check fees paid by developers.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Agreement
- First Amendment

**CITY OF FOWLER
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement ("Agreement") is entered into between the City of Fowler, a California general law city ("City") and Robina Wright Architect & Associates, Inc. ("Consultant") with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on October 22, 2021 ("Effective Date").

RECITALS

- A. City desires to obtain on-call plan check, and ADA CASp inspections, and related services ("Services") more fully described in **Exhibit A**, which is attached hereto and incorporated by reference.
- B. Consultant is engaged in the business of furnishing the Services and hereby warrants and represents that Consultant is qualified, experienced, and capable of performing the Services, and possesses any required licenses, certifications, security/bonding, and/or training necessary to perform the Services.
- C. City desires to retain Consultant, and Consultant desires to provide the City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. **Scope of Services.** Consultant shall perform the Services described in the Recitals and detailed in **Exhibit A**. Changes in the scope of Services, including the work performed and/or deliverables produced, shall be made in writing and particularly describe the changes in Services, including payment/costs and schedule/term, as applicable.
2. **Priority and Conflicts; Exclusions.** If the terms and requirements of this Agreement conflict with **Exhibit A**, this Agreement shall control. No contractual terms and/or conditions found in **Exhibit A** shall purport to waive, disclaim, or limit Consultant's liability, indemnification obligations, warranties, damages for breach or delay, or any security, bonding, or insurance requirements, and any such provisions shall have no force or effect with respect to this Agreement and the Services performed by Consultant.
3. **Term of Agreement; Commencement of Services; Schedule.** Consultant shall begin performing the Services upon notice from the City on or after the Effective Date, unless otherwise instructed by City, and continue with the Services until June 30, 2022 ("Completion Date"). This Agreement may be terminated prior to the Completion Date pursuant to Section 17 herein.
4. **Payment for Services.** City shall pay Consultant for the Services performed pursuant to this Agreement on a "time-and-materials" basis according to rate(s) set forth in **Exhibit A**. The total amount paid by City to Consultant for the Services shall not exceed Forty-Nine Thousand Dollars (\$49,000).

The foregoing is inclusive of all labor, equipment, materials, costs and expenses, taxes, and overhead. City shall pay Consultant for Services satisfactorily performed pursuant to this Agreement. Consultant shall submit monthly invoices to City containing detailed billing information regarding the Services provided and unless otherwise specified in **Exhibit A**, City shall tender payment to Consultant within thirty (30) days after receipt of invoice.

5. Independent Contractor Status. Consultant and its subcontractors, if any, shall perform the Services as independent contractors and not as officers, employees, agents or volunteers of City. Consultant is engaged in an independently established trade, occupation, or business to perform the Services required by this Agreement and is hereby retained to perform work that is outside the usual course of City's business. Consultant is free from the control and direction of City in connection with the manner of performance of the work. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City.

6. Consultant Representations; Standard of Care; Compliance with Law. Consultant represents that Consultant and any subcontractors utilized by Consultant are and will be qualified in the field for which Services are being provided under this Agreement and Consultant and any subcontractors are now, and will be throughout their performance of the Services under this Agreement, properly licensed, certified, secured/bonded, trained, and/or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement, as may be required by law. Consultant and its subcontractors shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with all applicable laws, regulations, and industry standards, including without limitation applicable law for properly safeguarding any financial data and information obtained from City necessary to perform the Services.

7. [Reserved]

8. Subcontractor Provisions. Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions and other work product prepared and performed by subcontractors for Consultant; and (c) entitle City to impose upon subcontractors the assignment rights found elsewhere in this Agreement.

9. Power to Act on Behalf of City. Consultant is not acting as an agent of City and shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

10. Record Keeping; Reports. Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports upon reasonable request by City and of all final reports prepared by Consultant under this Agreement.

11. Ownership and Inspection of Documents. All data, tests, reports, analyses, documents, records, conclusions, opinions, recommendations and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs or other electronic devices ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of City. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

12. Confidentiality. All Work Product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

13. [Reserved]

14. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an improper interest, present or contemplated, in the Services which would affect Consultant's or its employees' performance of the Services and the Work Product produced. Consultant further warrants that neither Consultant nor any of its employees have real property, business interests or income that will be affected by the Services. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission.

15. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Consultant, or any successors in interest, in the event of a default or breach by City for any amount which may become due Consultant or its successor, or for any breach of any obligation under the terms of this Agreement.

16. City Right to Employ Other Consultants. This Agreement and performance of the Services are non-exclusive and City reserves the right to employ other consultants in connection with the Services while this Agreement is in effect.

17. Termination of Agreement. This Agreement shall terminate as provided in Section 3, unless terminated earlier pursuant to the following:

a. Termination by City: For Convenience. City may at its discretion terminate this Agreement for convenience and without cause upon ten (10) days prior written notice to Consultant. Upon receipt of a termination notice pursuant to this subsection, Consultant shall promptly discontinue all Services affected, unless the notice directs otherwise.

b. Termination by City or Consultant: For Cause. Either party may terminate this Agreement upon ten (10) days prior written notice to the other party of a material breach, and a failure within that time period to cure or commence reasonable steps to cure the breach.

c. Compensation to Consultant Upon Termination. Consultant shall be paid compensation for Services satisfactorily performed prior to service of the written notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its Services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified Section 4. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

d. Effect of Termination. Upon termination of this Agreement, Consultant shall: (i) promptly discontinue all Services affected, unless the notice of termination directs otherwise; and (ii) deliver or otherwise make available to the City, without additional compensation, all Work Product and/or deliverables accumulated by the Consultant in performing this Agreement, whether completed or in process. Consultant may not refuse to provide such Work Product for any reason whatsoever.

18. Insurance. Consultant shall satisfy the insurance requirements set forth in **Exhibit B**.

19. Indemnity and Defense. Consultant hereby agrees to indemnify, defend and hold the City, its officials, officers, employees, agents, and volunteers harmless from and against all claims, demands, causes of action, actions, damages, losses, expenses, and other liabilities, (including without limitation reasonable attorney fees and costs of litigation) of every nature arising out of or in connection with the alleged or actual acts, errors, omissions or negligence of Consultant or its subcontractors relating to the performance of Services and the safeguarding of any financial data and information obtained from City necessary to perform the Services described herein to the fullest extent permitted by law, unless the injuries or damages are the result of City's sole negligence or willful misconduct, subject to any limitations imposed by law. Consultant and City agree that said indemnity and defense obligations shall survive the expiration or termination of this Agreement for any items specified herein that arose or occurred during the term of this Agreement.

20. Taxes. Consultant agrees to pay all taxes, licenses, and fees levied or assessed by any governmental agency on Consultant incident to the performance of Services under this Agreement, and unemployment and workers' compensation insurance, social security, or any other taxes upon the wages of Consultant, its employees, agents, and representatives. Consultant agrees to obtain and renew an annual business license from City and pay the applicable business license fee to City during the term of this Agreement.

21. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

22. Form and Service of Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be delivered to, served upon, or given to either party to this Agreement by the other party shall be in writing and shall be deemed properly delivered, served or given by one of the following methods:

a. Personally delivered to the party to whom it is directed. Service shall be deemed the date of delivery.

b. Delivered by e-mail to a known address of the party to whom it is directed provided the e-mail is accompanied by an acknowledgment of receipt by the other party. Service shall be deemed the date of acknowledgement.

c. Delivery by a reliable overnight delivery service, ex., Federal Express, receipted, addressed to the addressees set forth below the signatories to this Agreement. Service shall be deemed the date of delivery.

d. Delivery by deposit in the United States mail, first class, postage prepaid. Service shall be deemed delivered seventy-two (72) hours after deposit.

23. Entire Agreement. This Agreement, including the Exhibits and any other attachments, represents the entire Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.

24. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

25. [Reserved]

26. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

27. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by City and Consultant in the County of Fresno, California. Consultant shall perform the Services required under this Agreement in the County of Fresno, California.

28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

29. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

30. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

31. Alternative Dispute Resolution. If a dispute arises out of or relating to this Agreement, or the alleged breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

Demand for mediation shall be in writing and delivered to the other party to this Agreement. A demand for mediation shall be made within reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

32. Non-Discrimination. Consultant shall not discriminate based on any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

33. Performance Requirements. Notwithstanding, and in addition to the provisions of, Section 17 of this Agreement, if the Services performed hereunder are not in conformity with the requirements of this Agreement and other pertinent documents, City shall have the right to require Consultant to correct the work in conformity with the requirements of this Agreement at no additional increase in the payment to Consultant. Consultant shall promptly correct the work rejected by City for failing to conform to the requirements of the Agreement. Remedy for non-compliance or non-performance shall commence within 24 hours of notice. City shall also have the right to require Consultant to take all necessary steps to ensure future performance of the Services in conformity with the requirements of this Agreement. In the event Consultant fails to correct the work or fails to take necessary steps to ensure future performance of the Services in conformity with the requirements of this Agreement, City shall have the right to immediately terminate this Agreement for default.

34. Licensing. Consultant shall also obtain and maintain a City of Fowler Business License prior to commencing performance of the Services.

35. Prevailing Wages; Apprenticeship. When the Services constitute a public work under the Labor Code, the Services shall be performed in accordance with the provisions of Section 1770 et seq. of the Labor Code of the State of California, and all other applicable provisions concerning public works projects, which are hereby incorporated by reference and made a part hereof. Consultant shall be responsible for the payment of prevailing wages in accordance with State and Federal law, if applicable. Consultant shall further be responsible for ensuring any subcontractors comply with any requirements for the payment of prevailing wages in accordance with State and Federal law, if applicable. Consultant shall comply with all requirements and obligations relating to apprentices, apprenticeships, and/or apprenticeable crafts or trades, as applicable, including but not limited to Labor Code section 1775.5. Consultant shall register with the Department of Industrial Relations, if required.

Now, therefore, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT

By:  Robina Wright Architect & Associates, Inc.
Robina Wright

Digitally signed by Robina Wright
Architect
DN: c=US,
E=robina.wright@comcast.net,
O=Robina Wright Architect & Assoc.
Inc., OU=Robina Wright Architect &
Assoc, Inc., CN=Robina Wright Architect
Date: 2021.12.06 09:25:34-08'00'

Date: 12/6/2021

CITY OF FOWLER

By: 
Wilma Quan, City Manager

Date: 12/6/21

Party Identification and Contact Information:

Consultant
Robina Wright
Robina Wright Architect & Associates, Inc.
4025 North Fresno Street # 107
Fresno, CA 93726
(559) 307-7232

City of Fowler
Attn: Wilma Quan
City Manager
128 S. 5th Street
Fowler, CA 93625
(559) 834-3113

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EXHIBIT A

Scope of Services



October 26, 2021

Thomas W. Gaffery IV
Community Development Director
City of Fowler
559.834.3113 x103

Re: Proposal for Plan Review and Accessibility Inspection Consultant service

Dear Thomas:

Thank you for the opportunity to submit to you a proposal for Buildings Plan Review and Building Inspection Consultancy Services.

I am pleased to provide you the following cost proposal of the services we provide.

- ADA inspections: \$100/hour
- Plan check review: 65% of plan check fee / 55% of plan check fee when valuation is greater than \$1M
- Addendums / Revisions to approved construction documents: \$100/hour
- Solar Plan Review: \$100/hour
- Fire sprinkler: \$150/hour

I hope that this Proposal is acceptable. If you have any questions, please don't hesitate to contact me.

Sincerely,

Robina Wright
M. Arch, CASP, NCARB
AIA/CASI / ICC / Lion's/FAECC



Robina Wright Architect & Associates, Inc.

EXHIBIT B

Insurance Requirements

Prior to commencement of the Services, Consultant shall take out and maintain at its own expense the insurance coverage required by this **Exhibit B**. Consultant shall cause any subcontractor with whom Consultant contracts for the performance of Services pursuant to this Agreement to take out and maintain equivalent insurance coverage. Said insurance shall be maintained at all times during Consultant's performance of Services under this Agreement, and for any additional period specified herein. All insurance shall be placed with insurance companies that are licensed and admitted to conduct business in the State of California and are rated at a minimum with an "A:VII" by A.M. Best Company, unless otherwise acceptable to the City.

a. Minimum Limits of Insurance. Consultant shall maintain the following types of insurance with limits no less than specified:

(i) Professional Liability Insurance (Errors and Omissions) in an amount not less than \$1,000,000.00 per occurrence or claim and \$1,000,000 in the aggregate. Said insurance shall be maintained for an additional period of five years following the earlier of completion of Consultant's Services under this Agreement or termination of this Agreement.

(ii) General Liability Insurance (including operations, products and completed operations coverages) in an amount not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(iii) Worker's Compensation Insurance as required by the State of California.

(iv) Automobile Liability Insurance in an amount not less than \$2,000,000 per accident for bodily injury and property damage.

(v) Umbrella or Excess Liability. In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

If Consultant maintains higher limits than the minimums shown above, the City shall be entitled to coverage at the higher limits maintained.

b. Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(i) For any claims related to the Services performed pursuant to this Agreement, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of and non-contributory to the Consultant's insurance and shall not contribute with it. The Consultants coverage shall be primary and be endorsed using

Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents are additional insureds under such policy(s). For construction projects, an endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent), is also required.

(ii) Each insurance policy required by this section shall be endorsed to state that the City shall receive written notice at least thirty (30) days prior to the cancellation, non-renewal, or material modification of the coverages required herein.

(iii) Consultant grants to the City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(iv) Any deductibles or self-insured retentions must be declared to and approved by the City of Fowler. The City may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

c. Evidence of Coverage. Consultant shall deliver to City written evidence of the above insurance coverages, including the required endorsements prior to commencing Services under this Agreement; and the production of such written evidence shall be an express condition precedent, notwithstanding anything to the contrary in this Agreement, to Consultant's right to be paid any compensation under this Agreement. City's failure, at any time, to object to Consultant's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance), shall not be deemed a waiver of City's right to insist upon such insurance later.

d. Maintenance of Insurance. If Consultant fails to furnish and maintain the insurance required by this section, City may (but is not required to) purchase such insurance on behalf of Consultant, and the Consultant shall pay the cost thereof to City upon demand, and City shall furnish Consultant with any information needed to obtain such insurance. Moreover, at its discretion, City may pay for such insurance with funds otherwise due Consultant under this Agreement.

e. Subcontractors. If the Consultant should subcontract all or any portion of the work to be performed in this Agreement, the Consultant shall cover the subcontractor, and/or require each subcontractor to adhere to all the requirements contained herein. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.

f. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

g. Indemnity and Defense. Except as otherwise expressly provided, the insurance requirements in this section shall not in any way limit, in either scope or amount, the indemnity and defense obligations separately owed by Consultant to City under this Agreement.

**FIRST AMENDMENT TO THE
CITY OF FOWLER
PROFESSIONAL SERVICES AGREEMENT**

- A. The City entered into an agreement for on-call plan check services with Robina Wright Architect & Associates, Inc. on December 6, 2021.
- B. The total amount paid by the City to Robina Wright Architect & Associates, Inc. as stated in Section 4 of the Agreement is revised to not exceed seventy-five thousand dollars (\$75,000).
- C. All other terms and conditions remain unchanged. It is the intention of the parties that except for the changes explicitly listed above, all other terms and conditions of the Agreement and any other Exhibits, Attachments or Addenda thereto shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have entered into this First Amendment as of the last date set forth below.

Dated: _____, 2022

CITY OF FOWLER

By _____
Wilma Quan
City Manager
City of Fowler
128 South 5th Street
Fowler, CA 93625

Dated: March 9, 2022

ROBINA WRIGHT ARCHITECT & ASSOCIATES, INC.

By _____
Robina Wright
Robins Wright Architect & Associates, Inc.
4025 North Fresno Street #107
Fresno, CA 93726



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 8-Ai

REPORT TO THE CITY COUNCIL

March 15, 2022

FROM SCOTT CROSS, City Attorney

SUBJECT

APPROVE Items Pertaining to City Manager Employment Agreement and Salary Classification Schedule

- A. Approve Payment of \$5,000 Performance Bonus Pursuant to City Manager Employment Agreement Dated February 16, 2021.
- B. Approve Resolution No. 2552 Adopting Salary Classification Schedule for All Employees.
- C. Approve First Amendment to City Manager Employment Agreement with Wilma Quan.

RECOMMENDATION

For the City Council to approve the payment of a \$5,000 performance bonus to Wilma Quan pursuant to the terms of her City Manager Employment Agreement; approve Resolution No. 2552 adopting the new salary classification schedule for all employees; and approve a First Amendment to City Manager Employment Agreement with Wilma Quan

BACKGROUND

Ms. Quan was selected as the new City Manager in February 2021 following a competitive search and recruitment process. She began as City Manager on March 1, 2021. The terms of her current employment agreement provide that she is eligible to receive a \$5,000 performance bonus if approved by the City Council following her first year performance evaluation. The performance evaluation has been completed, and the City Council is authorized to approve the payment of the performance bonus. If approved, payment will be made this month.

Upon her appointment last year, Ms. Quan was placed at Step E of the City Manager classification on the City's salary classification schedule. Step E is the highest step on the schedule. Her employment agreement provides she is eligible to receive a salary increase on the basis of an annual performance evaluation as approved by the City Council. Consideration and approval of a modification to the City Manager classification on the salary schedule is necessary to accommodate any salary increase.

On March 1, 2022, the City Council approved a 2% cost of living adjustment increase to the City's salary classification schedule for all employees. The salary classification schedule has been modified to remove steps A-D from the City Manager salary classification. Salaries for those steps may be updated as part of the upcoming classification and compensation study in the coming months. In the meantime, to accommodate an increase in salary, Step E will be the monthly salary agreed upon in Ms. Quan's employment agreement, which is proposed to be \$15,356.

Finally, the First Amendment to City Manager Employment Agreement includes the following changes in the compensation and benefits to be paid to Ms. Quan:

- Monthly Salary of \$15,356 (\$184,272 annually) (Step E of the proposed salary schedule for City Manager);
- Elimination of the \$5,000 performance bonus payment;
- Reduction of monthly automobile allowance from \$750.00 to \$500.00;
- If Quan opts out of City paid employee and dependent health benefits (net annual savings to the City of approximately \$20,443) City will begin making a monthly contribution of \$1,708.33 (\$20,500.00 annualized) to a qualified Internal Revenue Code Section 457 eligible deferred compensation plan of Quan's selection. Monthly 457 Plan contributions will cease if City paid employee or dependent health coverage is thereafter selected.

Please also note the initial advancement/allocation of 96 hours of administrative leave upon her initial hire was already made as a one-time advancement, and she will now continue to receive the normal administrative leave allocation of 96 hours each July 1 in accordance with applicable City policy.

REASONS FOR RECOMMENDATION

The performance evaluation for the City Manager has been completed. She is eligible to receive the performance bonus if approved by the City Council. Also, she is eligible to receive a salary increase as approved by the City Council and agreed upon in an amendment to her employment agreement.

ENVIRONMENTAL REVIEW

This action does not constitute a "project" pursuant to the California Environmental Quality Act.

FISCAL IMPACT

Approval will result in a one-time \$5,000 performance bonus payment to Ms. Quan, and a 5% increase in monthly compensation in the form of salary above the monthly compensation total the City currently pays Ms. Quan.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Resolution No. 2552
- Resolution No. 2552 Exhibit A
- First Amendment to City Manager Employment Agreement

RESOLUTION NO. 2552

**A RESOLUTION OF THE COUNCIL OF THE CITY OF FOWLER
ADOPTING SALARY CLASSIFICATION SCHEDULE FOR ALL EMPLOYEES**

WHEREAS, Government Code Section 36506 requires the City Council, by resolution or ordinance, to fix the compensation for all appointive officers and employees of the city; and

WHEREAS, the Salary Classification Schedule attached as Exhibit “A” to this Resolution has been reviewed and considered by the City Council; and

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

1. The Salary Classification Schedule attached hereto as Exhibit “A” is adopted.
2. All prior resolutions concerning compensation of City employees that are in conflict with this Resolution or the attached Salary Classification Schedule are hereby repealed, and this Resolution shall be effective March 15, 2022.

The foregoing Resolution was duly passed, approved, and adopted on the 15th day of March 2022, 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

Exhibit A

SALARY CLASSIFICATIONS & CORRESPONDING STEP PER POSITION

FISCAL YEAR 2021-2022

After COLA

2%

Effective 3/1/2022

REV 3/15/2022

FULL TIME POSITION TITLE	MONTHLY PAY				
	STEP A	STEP B	STEP C	STEP D	STEP E
CITY MANAGER *	-	-	-	-	15,356
CITY CLERK/ASST PERSONNEL DIR	7,378	7,748	8,136	8,543	8,973
EXEC & HR ASST/DEP CITY CLERK	4,936	5,183	5,444	5,715	5,998
FINANCE DIRECTOR	8,035	8,437	8,860	9,300	9,766
ACCOUNT CLERK	3,247	3,412	3,578	3,760	3,945
ADMINISTRATIVE ASSISTANT	3,533	3,710	3,895	4,093	4,296
ACCOUNTING TECHNICIAN	4,708	4,945	5,194	5,452	5,726
SECRETARY/PLANNING ASSISTANT	3,810	4,001	4,200	4,411	4,632
COMMUNITY DEVELOPMENT DIRECTOR	7,817	8,207	8,619	9,049	9,501
BUILDING OFFICIAL	5,309	5,574	5,854	6,146	6,454
POLICE CHIEF + 5% POST	8,419	8,837	9,282	9,747	10,233
POLICE LIEUTENANT	5,449	5,720	6,007	6,310	6,623
POLICE LIEUTENANT + 5% POST	5,720	6,007	6,310	6,623	6,956
POLICE SERGEANT	4,700	4,937	5,183	5,444	5,716
POLICE SERGEANT + 2% POST	4,796	5,034	5,287	5,552	5,830
POLICE SERGEANT + 5% POST	4,937	5,183	5,444	5,716	5,999
POLICE CORPORAL	4,452	4,678	4,908	5,153	5,413
POLICE CORPORAL + 2% POST	4,543	4,769	5,009	5,258	5,522
POLICE CORPORAL + 5% POST	4,678	4,908	5,153	5,413	5,684
POLICE OFFICER	4,239	4,452	4,678	4,908	5,153
POLICE OFFICER + 2% POST	4,326	4,543	4,769	5,009	5,258
POLICE OFFICER + 5% POST	4,452	4,678	4,908	5,153	5,413
PUBLIC WORKS DIRECTOR	7,378	7,748	8,136	8,543	8,973
PUBLIC WORKS SUPERVISOR	5,444	5,716	5,999	6,302	6,617
MAINTENANCE WORKER I	3,037	3,191	3,354	3,519	3,695
MAINTENANCE WORKER II	3,412	3,578	3,760	3,945	4,142
MAINTENANCE WORKER III	4,029	4,232	4,443	4,666	4,898
WATER OPERATOR	4,257	4,471	4,693	4,930	5,177
SENIOR CENTER/RECREATION COORDINATOR	3,205	3,365	3,533	3,761	3,895

*City Manager salary set by city council approved employment agreement

FIRST AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

This First Amendment to City Manager Employment Agreement (“First Amendment”) is entered into effective March 15, 2022, by and between the City of Fowler, a municipal corporation (“City”) and Wilma Quan (“Quan”), with respect to the following Recitals, which are a substantive part of this First Amendment:

RECITALS

A. City and Quan entered into a City Manager Employment Agreement on February 16, 2021 (“Agreement”), under which City placed Quan at Step E of the City Manager’s salary schedule.

B. City and Quan both desire to make amendments to the Agreement.

NOW, THEREFORE, in view of the above recitals and in consideration for the mutual promises set forth in the Agreement and this First Amendment, City and Quan agree as follows:

AGREEMENT

1. Section 3 of the Agreement is amended to read as follows:

3. Salary. Quan shall be placed at Step E (\$15,356.00 monthly salary) of the City Manager classification on the City’s adopted salary classification schedule. Quan shall be eligible to receive an increase in salary and/or benefits and consideration of advancement on any subsequently adopted salary classification schedule on the basis of an annual performance evaluation as approved by the City Council. Quan shall be entitled to cost of living adjustments as approved for all employee salary classifications of the City. Quan’s participation in any salary reductions or other cost saving measures during her employment with City shall be completely voluntary at Quan’s sole discretion. Nothing herein shall be deemed to impair the City’s authority to revise the City Manager’s salary schedule.

2. Section 7 of the Agreement is amended to read as follows:

7. Automobile Allowance. Quan shall, at her expense, provide an automobile for use in carrying out her duties as City Manager, and in connection therewith. City shall pay Quan a monthly automobile allowance of Five Hundred Dollars (\$500.00) for Quan’s use of a personal vehicle for City business. Quan shall not be entitled to reimbursement for automobile use or mileage reimbursement for business travel. No documentation is required in order to receive this automobile allowance and Quan shall have the sole discretion regarding the expenditure of this allowance. Quan shall be solely responsible for all expense to use, maintain, operate, and insure the vehicles and automobiles used by Quan. This allowance is not considered additional compensation for the purposes of PERS, but shall be taxable according to IRS and

Franchise Tax Board regulations.

3. Section 8 of the Agreement is amended to read as follows:

8. Health, Retirement, and Other Benefits. City shall provide Quan and her eligible dependents with the same health, dental, life, and vision insurance coverage and benefits as are provided other executive management employees of the City, including the City paying the annual premium for a \$50,000.00 term life insurance policy covering Quan during her period of employment with the City as City Manager. Quan shall have the sole discretion in designating any beneficiary(ies) under such life insurance policy. Quan is entitled to receive any monthly opt-out compensation paid to employees who opt-out of City paid health, dental, and vision insurance coverage. Quan understands and acknowledges that all such health, dental, life, and vision insurance coverages and opt-out compensation are subject to change in the future and may be modified from time to time.

(a) If Quan opts out of City paid employee and dependent health benefits City will begin making a monthly contribution of \$1,708.33 (\$20,500.00 annualized) to a qualified Internal Revenue Code Section 457 eligible deferred compensation plan of Quan's selection. Such monthly contribution shall be made on the first of each month beginning the first month after Quan opts-out of City paid employee and dependent health benefits. City's monthly contribution to the 457 eligible deferred compensation plan shall immediately cease upon Quan and/or any of her eligible dependents choosing to become covered or otherwise being reinstated to any City paid health insurance coverage.

4. Except as amended in this First Amendment all other provisions of the Agreement shall continue in full force and effect.

CITY OF FOWLER

CITY MANAGER

By: _____
David T. Cardenas, Mayor

By: _____
Wilma Quan

APPROVED AS TO FORM

Scott G. Cross, City Attorney



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 8-Bi

REPORT TO THE CITY COUNCIL

March 15, 2022

FROM DAVID PETERS, City Engineer

SUBJECT

CONSIDER alternatives and provide staff direction regarding potential request to Caltrans to add median treatment to the State Route 99 improvement project.

RECOMMENDATION

Select an alternative and direct staff to request adding median barrier treatments within Fowler city limits.

BACKGROUND

Caltrans is currently beginning construction on an improvement project on State Route 99 from Fowler to Selma to add additional lanes to the freeway. The project will construct a concrete median barrier in the area currently occupied by oleanders to accommodate the additional lane. There is an opportunity to add City themed stenciling on the barrier within the Fowler city limits. The project will cost \$67M and will be completed by Fall 2023.

ENVIRONMENTAL REVIEW

This action does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

None. The median treatments would be paid for as part of the Caltrans project.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- None