CITY OF HUGHSON
CITY COUNCIL MEETING
CITY HALL COUNCIL CHAMBERS
7018 Pine Street, Hughson, CA

AGENDA
MONDAY, AUGUST 10, 2015 – 7:00 P.M.

CALL TO ORDER: Mayor Matt Beekman

ROLL CALL: Mayor Matt Beekman
Mayor Pro Tem Jeramy Young
Councilmember Jill Silva
Councilmember George Carr
Councilmember Harold Hill

FLAG SALUTE: Mayor Matt Beekman

INVOCATION: Hughson Ministerial Association

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1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken):

Members of the audience may address the City Council on any item of interest to the public pertaining to the City and may step to the podium, state their name and city of residence for the record (requirement of name and city of residence is optional) and make their presentation. Please limit presentations to five minutes. Since the City Council cannot take action on matters not on the agenda, unless the action is authorized by Section 54954.2 of the Government Code, items of concern, which are not urgent in nature can be resolved more expeditiously by completing and submitting to the City Clerk a "Citizen Request Form" which may be obtained from the City Clerk.

2. PRESENTATIONS:

3. CONSENT CALENDAR:

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council unless otherwise requested by an individual Councilmember for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

3.1: Approve the Minutes of the Regular Meeting of July 27, 2015.

3.2: Approve the Warrants Register.

3.3: Review and approve the City of Hughson Treasurer's Report for May 2015.

3.4: Approve the Economic Development Committee's (EDC) recommendation to award Business Incentive Funds, in the form of a loan, for an existing business (Kids First Learning Center & Daycare) at 2419 Charles Street.

3.5: Approve the 2015-2016 Allocation Agreement for the Community Development Block Grant (CDBG) Entitlement Funds with Stanislaus County.

4. UNFINISHED BUSINESS:

4.1: Discuss and Provide Direction on the Draft Request for Proposals (RFP) and lease agreement for farming of property located on Leedom Road near the Waste Water Treatment Facility.

5. PUBLIC HEARING TO CONSIDER THE FOLLOWING:

5.1: Adopt Ordinance 2015-10, an Ordinance of the City Council of the City of Hughson amending the Development Agreement relating to the development known as Feathers Glen.

6. NEW BUSINESS:

7. CORRESPONDENCE:

8. COMMENTS:

8.1: Staff Reports and Comments: (Information Only – No Action)

City Manager:

City Clerk:

Community Development Director:

Director of Finance:

Police Services:

City Attorney:

8.2: Council Comments: (Information Only – No Action)

8.3: Mayor's Comments: (Information Only – No Action)

9. CLOSED SESSION TO DISCUSS THE FOLLOWING:

10. REPORT FROM CLOSED SESSION:

ADJOURNMENT:

WAIVER WARNING

If you challenge a decision/direction of the City Council in court, you may be limited to raising only those issues you or someone else raised at a public hearing(s) described in this Agenda, or in written correspondence delivered to the City of Hughson at or prior to, the public hearing(s).

UPCOMING EVENTS:

August 10	▪ City Council Meeting, @ City Hall Chambers, 7:00 p.m
August 13	▪ Hughson Farmer's Market, Downtown Hughson, Charles St, 4:00-8:00 p.m
August 13	▪ Stanislaus County Day Reporting Center Dedication, 9:30pm (Ceres, CA)
August 14	▪ Hughson Historical Society Annual Appreciation Dinner, St. Anthony's Church
August 24	▪ City Council Meeting, @ City Hall Chambers, 7:00 p.m
August 27	▪ Hughson Farmer's Market, Downtown Hughson, Charles St, 4:00-8:00 p.m
September 10	▪ Hughson Farmer's Market, Downtown Hughson, Charles St, 4:00-8:00 p.m
September 14	▪ City Council Meeting, @ City Hall Chambers, 7:00 p.m
September 19	▪ Hughson Fruit and Nut Festival 10a.m-5p.m
September 20	▪ Hughson Fruit and Nut Festival 10 a.m-4p.m
September 28	▪ City Council Meeting, @ City Hall Chambers, 7:00 p.m

RULES FOR ADDRESSING CITY COUNCIL

Members of the audience who wish to address the City Council are requested to complete one of the forms located on the table at the entrance of the Council Chambers and submit it to the City Clerk. **Filling out the card is voluntary.**

AFFIDAVIT OF POSTING

DATE: August 6, 2015 **TIME:** 5:00 pm

NAME: Marilyn Castaneda **TITLE:** Management Intern

AMERICANS WITH DISABILITIES ACT/CALIFORNIA BROWN ACT NOTIFICATION FOR THE CITY OF HUGHSON

This Agenda shall be made available upon request in alternative formats to persons with a disability; as required by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132) and the Ralph M. Brown Act (California Government Code Section 54954.2).

Disabled or Special needs Accommodation: In compliance with the Americans with Disabilities Act, persons requesting a disability related modification or accommodation in order to participate in the meeting and/or if you need assistance to attend or participate in a City Council meeting, please contact the City Clerk's office at (209) 883-4054. Notification at least 48-hours prior to the meeting will assist the City Clerk in assuring that reasonable accommodations are made to provide accessibility to the meeting.

Notice Regarding Non-English Speakers:

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Hughson City Council shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

General Information: The Hughson City Council meets in the Council Chambers on the second and fourth Mondays of each month at 7:00 p.m., unless otherwise noticed.

Council Agendas: The City Council agenda is now available for public review at the City's website at www.hughson.org and City Clerk's Office, 7018 Pine Street, Hughson, California on the Friday, prior to the scheduled meeting. Copies and/or subscriptions can be purchased for a nominal fee through the City Clerk's Office.

Questions: Contact the City Clerk at (209) 883-4054

CITY OF HUGHSON AGENDA ITEM NO. 3.1
SECTION 3: CONSENT CALENDAR

Meeting Date: **July 27, 2015**
Subject: **Approval of the City Council Minutes**
Presented By: **Marilyn Castaneda, Management Intern**

Approved By: _____

Staff Recommendation:

Approve the Minutes of the Regular Meeting of July 27, 2015.

Background and Overview:

The draft minutes of the July 27, 2015 meeting are prepared for the Council's review.

CITY OF HUGHSON
CITY COUNCIL MEETING
CITY HALL COUNCIL CHAMBERS
7018 Pine Street, Hughson, CA

MINUTES
MONDAY, JULY 27, 2015 – 7:00 P.M.

CALL TO ORDER: Mayor Matt Beekman

ROLL CALL:

Present**:**
Mayor Matt Beekman
Mayor Pro Tem Jeramy Young
Councilmember Jill Silva
Councilmember George Carr
Councilmember Harold Hill

Staff Present:
Raul L. Mendez, City Manager
Daniel J. Schroeder, City Attorney
Jaylen French, Community Development Director
Lisa Whiteside, Finance Manager
Jaime Velazquez, Utilities Superintendent
Marilyn Castaneda, Management Intern

FLAG SALUTE: Mayor Matt Beekman

INVOCATION: Hughson Ministerial Association

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1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken):

Kris Bayes addressed City Council and public, sharing her frustration with the two local football teams fighting for Starn Park and having to share park facilities. She also stated that it was an inconvenience and hassle to have to use Lebright Fields since it had no restroom facilities available.

Donna Maracini addressed the City Council hoping to get some answers about the loud noise, drinking and partying done around her residence.

Zorra Nacsente addressed the City Council sharing her concern with the non-existent sidewalks at the intersection of Whitmore Avenue and Santa Fe Avenue. She also shared concerns about the new water rates and impact to seniors that were on fixed incomes.

Kristen Cole addressed the City Council stating her appreciation for all City Councils hard work on the public services provided to residents. Mrs. Cole shared frustration with the change in garbage service and the new model under Gilton Solid Waste Management going away from the blue container. She shared information regarding the benefits of recycling. She asked that the City Council and City staff make the environment a factor in future decisions when selecting service providers.

2. PRESENTATIONS:

2.1: Introduction of New Employee Jose Vasquez, Maintenance Worker I/II

Director French introduced Jose Vasquez as Hughson's new Maintenance Worker I/II to City Council and the public.

3. CONSENT CALENDAR:

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council unless otherwise requested by an individual Councilmember for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

3.1: Approve the Minutes of the Regular Meeting of July 13, 2015.

3.2: Approve the Warrants Register.

3.3: Consider the Request by the Hughson Chamber of Commerce to Have and Sell Alcohol at the Hughson Fruit and Nut Festival - Saturday, September 19 and Sunday, September 20, 2015

3.4: Approve the lease agreement with Holtzclaw Compliance to occupy office space at the Hughson Business Incubation Center (City Hall Annex Building) at 7012 Pine Street and authorize the City Manager to execute the lease agreement inclusive of any final edits by the City Attorney.

3.5: Waive the second reading of Ordinance No. 2015-07, an Ordinance of the City Council of the City of Hughson, adding a new Chapter to the Hughson Municipal Code (HMC), Chapter 17.03.062 – Reasonable Accommodation

3.6: Waive the second reading of Ordinance No. 2015-08, an Ordinance of the City Council of the City of Hughson, amending the Hughson Municipal

Code (HMC) Chapter 17 – Zoning, regarding Transitional and Supportive Housing.

3.7: Waive the second reading of Ordinance No. 2015-09, an Ordinance of the City Council of the City of Hughson, amending the Hughson Municipal Code (HMC) Chapters 8.08.010 – Definitions, 8.08.035 – Animals as a nuisance, 8.26.020 – Definitions, 8.26.050 – Property maintenance standards and unlawful conditions, 10.32.290 – Commercial vehicle parking, 17.02.008 – Residential zones, 17.02.012 – Commercial zones, and 17.02.020 – Public use zones.

3.8: Review and Approve the Treasurer's Report: Investment Portfolio Report – May 2015

3.9: Review and approve the City of Hughson Treasurer's Report for May 2015.

Mayor Beekman pulled Consent Calendar item 3.9 and indicated it would be brought back for consideration at the next regular City Council Meeting noting some minor errors in the attachment.

Mayor Pro Tem Young pulled Consent Calendar item 3.7. He requested clarification from City staff regarding how dog kennels were defined in the ordinance. City Attorney indicated that the definition was included in the original ordinance and would be looked at again for consistency in the next revision.

Beekman/Hill 5-0 motion passes to approve Consent Calendar items 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.8.

Beekman /Carr 5-0 motion passes to approve Consent Calendar item 3.7.

4. UNFINISHED BUSINESS: None.

5. PUBLIC HEARING TO CONSIDER THE FOLLOWING: None.

6. NEW BUSINESS: None.

6.1: Adopt Resolution No. 2015-23, awarding the Hughson Avenue Improvement Project to McFadden Construction, Inc. in the amount of $131,975 and authorizing a 10% construction contingency as well as a 10% set-aside for construction testing and inspections.

Director French presented the staff report on this item. Director French shared with City Council and pubic the good news that the lowest bid by McFadden

Construction, Inc. for the Hughson Avenue Improvement Project had come in under the Engineer's Estimate. He further shared that they were coordinating the start date with the Hughson Unified School District to minimize the impact and interruption to activities during the start of the new school year.

Carr/Silva 5-0 motion passes to Adopt Resolution No. 2015-23, awarding the Hughson Avenue Improvement Project to McFadden Construction, Inc. in the amount of $131,975 and authorizing a 10% construction contingency as well as a 10% set-aside for construction testing and inspections.

7. CORRESPONDENCE: None.

8. COMMENTS:

8.1: Staff Reports and Comments: (Information Only – No Action)

City Manager: **City Manager Mendez reminded the City Council and public about National Night Out on August 4th, the Stanislaus County Board of Supervisors dedication of the new Day Reporting Center in Ceres in August 13th, and the Hughson Historical Society Annual Dinner honoring the Beck and Zambruno Family on August 14th.**

City Clerk:

Community Development Director: **Director French updated the City Council and public on the Tully Road Project—of which Phase I was substantially complete. The second phase of the project will start August 24th and scheduled to be done by October 13th. Director French announced that the East Stanislaus Resource Conservation District (ESRCD) had selected Bonnie Aguiniga as the Assistant Hughson Farmers Market Manager in**

training for the 2016 Hughson Farmers Market.

Director of Finance:

Police Services: **Chief Seymour and Deputy Dennis Wallace, Hughson Police Services, provided the City Council with the monthly statistic Report. Deputy Wallace informed the City Council that Hughson Police Services will be preparing for National Night Out and also discussed some incidents in the City since the last meeting.**

City Attorney:

8.2: Council Comments: (Information Only – No Action)

Councilmember Carr shared his excitement for the upcoming National Night Out event. He also updated the City Council and the public on the increase in mosquitoes in the region. He also instructed the public to call Turlock Mosquito Abatement District at (209) 634-1234 for any service or to report any issue.

Mayor Pro Tem Young provided an update on his attendance at the EDC meeting, with helping 2 businesses and continuing to promoted business in the downtown.

Councilmember Hill provided an update on his attendance at the Hughson Farmers' Market and how pleased he has been with the inaugural season.

8.3: Mayor's Comments: (Information Only – No Action)

Mayor Beekman shared with the City Council how satisfied he was with the EDC meeting. Mayor Beekman also instructed City staff to get an estimate on restroom facilities and lights for Lebright Fields. Also, he recommended that staff work with the Parks and Recreation Commission to have them review the rental use guidelines for Starn Park and Lebright Fields to provide preference to local groups.

9. CLOSED SESSION TO DISCUSS THE FOLLOWING: 8:31 P.M

9.1: PUBLIC EMPLOYEE PERFORMANCE EVALUATION pursuant to Government code Section 54957:

Title: City Manager

10. REPORT FROM CLOSED SESSION:

No reportable action was taken.

ADJOURNMENT:

CARR/BEEKMAN motion passes to adjourn the meeting at 8:49 P.M.

Matt Beekman, Mayor

Dominique Spinalie Romo, City Clerk

CITY OF HUGHSON AGENDA ITEM NO. 3.2
SECTION 3: CONSENT CALENDAR

Meeting Date: **August 10, 2015**
Subject: **Approval of Warrants Register**
Enclosure: **Warrants Register**
Presented By: **Shannon Esenwein, Director of Finance**

Approved By: _____

Staff Recommendation:

Approve the Warrants Register as presented.

Background and Overview:

The warrants register presented to the City Council is a listing of all expenditures paid from 7/29/15 – 7/31/15

Fiscal Impact:

There are reductions in various funds for payment of expenses.

RW

Check Number	Check Date	Vendor Number	Name	Gross Amount	Invoice #	Description
				...yment Information----------		
46704	7/29/2015	COS01	COSTCO WHOLESALE	$ 209.63	B50729	SUPPLIES FOR NATIONAL NIGHTOUT
46705	7/29/2015	CHA01	CHARTER COMMUNICATION	$ 137.84	B50729	IP ADDRESS PW SHOP
46706	7/31/2015	PER01	P.E.R.S.	$ 6,855.56	B50730	RETIREMENT
46707	7/31/2015	STA23	CalPERS SUPPLEMENTAL INCO	$ 632.50	B50730	DEFERRED COMPENSATION
46708	7/31/2015	COS01	COSTCO	$ 175.27		NATIONAL NIGHT OUT
46709	7/31/2015	CAB04	CABAL'S WELDING	$ 546.70	1808	METAL PLATES FOR WATER TANK
46710	7/31/2015	CON14	CONDOR EARTH TECHNOLOGIES	$ 968.10	71445	GROUNDWATER MONITORING
				$ 980.00	71469	MS 4 GENERAL PERMIT SUPPORT
46711	7/31/2015	JIM05	JIMENEZ, MAURA DAMARISS	$ 210.00	B50806	DAMAGE DEPOSIT REFUND
46712	7/31/2015	MCR01	MCR ENGINEERING INC	$ 5,770.00	11067	2014 CCR & HUGHSON AVE
46713	7/31/2015	MIN00	MINTIERHARNISH PLANNING CONSULTANTS	$ 3,297.95	HUGHHEU07	HUGHSON 5TH CYCLE HOUSING ELEMENT UPDATE
46714	7/31/2015	NEU01	NEUMILLER & BEARDSLEE	$ 1,200.00	269990	LEGAL SERVICES FOR MAY
46715	7/31/2015	ABS00	ABS PRESORT	$ 5,000.00	20150717	POSTAGE ADVANCE
46716	7/31/2015	AFL01	AFLAC	$ 880.70	894364	AFLAC
46717	7/31/2015	ATT01	AT&T	$ 3,255.11	B50806	PHONE
46718	7/31/2015	ATT02	AT&T MOBILITY	$ 166.16	7272015	PHONE
46719	7/31/2015	ATT03	AT&T	$ 13.36	6851797	PHONE
46720	7/31/2015	AVA01	AVAYA, INC	$ 101.83	733489986	PHONE
46721	7/31/2015	BAY02	BAY ALARM CO	$ 547.38	42150715M	MONITORING OF ALARM WWTP BURGLAR
46722	7/31/2015	BRE01	W.H. BRESHEARS	$ 1,369.06	266882	DIESEL
46723	7/31/2015	CEN31	CENTRAL VALLEY ELECTRONIC	$ 833.00	13718	INSTALLATION & SETUP NEW WIRELESS SYSTEM
46724	7/31/2015	CHA01	CHARTER COMMUNICATION	$ 166.56	B50806	IP ADDRESS - PINE ST
46725	7/31/2015	DEP08	DEPT. OF CONSERVATION	$ 335.03	B50806	SMIP FEES FOR APR-JUNE 2015
46726	7/31/2015	EMP01	STATE OF CALIFORNIA	$ 1,487.38	B50806	PAYROLL TAXES
46727	7/31/2015	ENV02	ENVIRONMENTAL SYSTEMS	$ 1,788.93	27176	STREET SWEEPING
46728	7/31/2015	EWI00	EWING IRRIGATION PRODUCTS	$ 147.17	363	WEEK KILLER & VALVE FOR P ARKS DEPT
46729	7/31/2015	EXP00	EXPRESS PERSONNEL SERVICE	$ 629.32	160946380	EXTRA HELP WEEK ENDING 7/26/15
46730	7/31/2015	FAR03	FARMERS BROTHERS COFFEE	$ 67.25	62288155	COFFEE
46731	7/31/2015	HOL06	HOLLISTER POWERSPORTS	$ 236.04	156012	REPAIR TO E-4 ELECTRIC VEHICLE
				$ 195.00	156014	REPAIR TO E-2 ELECTRIC VEHICLE
			Check Total: $431.04			
46732	7/31/2015	PER01	P.E.R.S.	$ 1,400.00	B50806	RETIREMENT
46733	7/31/2015	PGE01	PG & E	$ 30.18	B50806	UTILITIES
				$ 75.32	B50807	UTILITIES
				$ 19.14	B50808	UTILITIES
				$ 15.12	B50809	UTILITIES
			Check Total: $139.76			
46734	7/31/2015	POS01	POSTAGE BY PHONE	$ 22.00	B50806	POSTAGE REFILL
46735	7/31/2015	POS02	POSTER COMPLIANCE CENTER	$ 237.00	2464861RN	1 YR POSTER COMPLIANCE

Check Number	Check Date	Vendor Number	Name	Gross Amount	Payment Information--------- Invoice #	Description	
46736	7/31/2015	RAM13	RAMOS, JUAN	$ 90.00	B50806	DAMAGE DEPOSIT REFUND	
46737	7/31/2015	SAL02	SALGADO, TANYA	$ 175.00	B50806	DAMAGE DEPOSIT REFUND	
46738	7/31/2015	SHR02	SHRED-IT CENTRAL CA	$ 129.34	406610554	SHREDDING	
46739	7/31/2015	STA36	STANISLAUS FARM SUPPLY	$ 94.00	1255651	GOPHER KILLER FOR PARKS	
46740	7/31/2015	STA47	STANISLAUS COUNTY SHERIFF	$ 115,290.53	1415-272	LAW ENFORCEMENT SERVICE	Jun-15
46741	7/31/2015	STE07	STEELEY, JARED WATER & WA	$ 2,275.00	6005	CONSULTING SERVICES FOR J	Jul-15
46742	7/31/2015	UNI12	UNIVERSITY POLICE DEPARTM	$ 57.00	15-7952	LIVE SCAN FINGERPRINTING	
46743	7/31/2015	VIS00	VISTA PAINT	$ 461.02	195687	PAINT FOR STREETS	
46744	7/31/2015	WHI03	LISA WHITESIDE	$ 115.89	B50806	REIMBURSEMENT FOR DEPT SUPPLIES & RDA POSTAGE	
46745	7/31/2015	WIL01	CORBIN WILLITS SYSTEM	$ 571.40	B507151	ENHANCEMENT & SERVICE FEE	
46746	7/31/2015	YEP01	YEPEZ, ALDO R.	$ 210.00	B50806	DAMAGE DEPOSIT	
46747	7/31/2015	\A009	AVILA, RICHARD	$ 71.16	000B50701	MQ CUSTOMER REFUND FOR AVI0009	
46748	7/31/2015	\B006	BROWN, MYRA & ALAN	$ 150.58	000B50701	MQ CUSTOMER REFUND FOR BRO0026	
46749	7/31/2015	\C004	CENTRAL CALIF CHILD DEV,	$ 103.45	000B50701	MQ CUSTOMER REFUND FOR CEN0004	
46750	7/31/2015	\E001	EDWARDS, JASON & SHARMONE	$ 75.56	000B50701	MQ CUSTOMER REFUND FOR EDW0002	
46751	7/31/2015	\F002	FARIAS, FRANCISCO	$ 71.12	000B50701	MQ CUSTOMER REFUND FOR FAR0007	
46752	7/31/2015	\J002	JAMES, STEWART	$ 52.64	000B50701	MQ CUSTOMER REFUND FOR JAM0001	
46753	7/31/2015	\K005	KIPER DEVELOPMENT,	$ 112.80	000B50701	MQ CUSTOMER REFUND FOR KIP0029	
46754	7/31/2015	\K006	KIPER DEVELOPMENT,	$ 145.36	000B50701	MQ CUSTOMER REFUND FOR KIP0031	
46755	7/31/2015	\P010	PULIDO, HECTOR	$ 78.37	000B50701	MQ CUSTOMER REFUND FOR PUL0001	
46756	7/31/2015	\R012	RICARDO, SCOTT & JEANNETT	$ 57.92	000B50701	MQ CUSTOMER REFUND FOR RIC0021	
46757	7/31/2015	\V002	VASQUEZ, LEOPOLDO	$ 134.30	000B50701	MQ CUSTOMER REFUND FOR VAS0014	
46758	7/31/2015	\W008	WOODSIDE MANAGEMENT GROUP	$ 137.26	000B50701	MQ CUSTOMER REFUND FOR WOO0018	
			Cash Account Total:	$ 160,661.29			
			Total Disbursements:	$ 160,661.29			

CITY OF HUGHSON AGENDA ITEM NO. 3.3
SECTION 3: CONSENT CALENDAR

Meeting Date: **August 10, 2015**
Subject: **Approval of the Treasurer's Reports – May 2015**
Presented By: **John Padilla, City Treasurer**

Approved By: _____

Staff Recommendation:

Review and approve the City of Hughson Treasurer's Report for May 2015.

Summary:

The City Treasurer is required to review the City's investment practices and approve the monthly Treasurer's report. Enclosed is the City of Hughson's Treasurer's Report for May 2015. As of May 2015, the City of Hughson's total cash and investment balance is $12,624,727.02 and is in compliance with the City's investment policy. The City has sufficient cash flow to meet the City's expected expenditures for the next six months.

Background and Overview:

The Treasurer report for May 2015 reflects the most current representation of the City's funds and investments and provides a necessary outlook for both past, present, and future investment and spending habits. While investments and funds differ from time to time, it is the goal of the City to maintain safety and stability with its funds, while additionally promoting prudence and growth.

Enclosed is the City of Hughson Treasurer's Report for May 2015 along with supplementary graphs depicting the percentage of the City's total funds, a breakdown of the May 2015 Developer Impact Fees, and an additional line plot graph further demonstrating the Developer Impact Fees. This graph depicts the Developer Impact Fees' actual balance for the past five years, and continues with a projection based on the average rate of change for each fund over the next few years. After review and evaluation of the report, City staff has researched funds with a significant deficit balance and submit the following detailed explanation:

Fund Miscalculations:

As the result of a formulaic error with the previously submitted Treasurer's Report on July 27, 2015, the following funds have been revised and adjusted to depict the proper difference between the following funds: Redevelopment – Debt Services, Gas Tax 2106, General Fund, IT Reserve, Park Project, Water O & M, Garbage/Refuse, 94-STBG-799 Grant, Developer Impact Fees, Storm Drain, and Parks DIF. While the calculation errors did not affect much of the overall Treasurer's Report, City Staff will be sure to carefully revise and monitor upcoming reports.

Public Facilities Development Streets Fund:

The Public Facilities Development Streets Fund currently reflects a negative balance of ($230,278.67), reflecting a positive difference of $293,929.38 or a 56.07% increase from the previous year. The deficit is a result of the Euclid Bridge Project, which was constructed in Fiscal Year 2006/2007, for approximately $1.3 million. The project was completed in anticipation of funding from Developer Impact Fees collected from new development. Unfortunately, the housing market declined significantly and the new development never materialized. Once the economy strengthens and new building starts again, the City can recognize additional developer impact fees and reduce the deficit more quickly.

Water Developer Impact Fee Fund:

The Water Developer Impact Fee Fund currently reflects a negative balance of ($314,750.52), reflecting a positive difference of $214,037.71 or a 40.48% increase from the previous year. After extensive review, City staff discovered that the remaining deficit is attributable to settlement arrangements that were made in Fiscal Year 2008/2009 and Fiscal Year 2009/2010 for the Water Tank on Fox Road near Charles Street. The Project Cost of the Water Tower Project was $2,400,000. During that period, the City paid out $650,000 in settlements. This account will be in a deficit position until additional development occurs and developer impact fees are collected to cover those unanticipated settlement costs.

Based on a staff review of 2012 Water Development and Street funds, the City would need development in the Feathers Glen (42 units) and Euclid South (69 units) subdivisions, or about 110 units to be built to see a positive balance in the Water and Street Development funds. These units reflect the areas that are most likely to see development. Currently, 19 units have been developed in the remaining lots of the Fontana Ranch North subdivision, 10 of which are pending final status.

Transportation Capital Project and CDBG Public Works Street Projects Fund:

The Transportation Capital Project Fund currently reflects a negative balance of ($305,004.85), reflecting a positive difference of $14,740.50 or a 5.08% increase from the previous year. The CDBG Public Works Street Project Fund currently reflects a

negative balance of ($216,571.27) reflecting negative difference of ($143,103.34) or a 194.78% decrease from the previous year. The City currently has 4th and 5th Street projects that are complete. While the 4th Street project has been reimbursed, 5th Street project's reimbursement remains pendant. Reimbursement for both infill projects are from CMAQ (Congestion Mitigation Air Quality) and CDBG (Community Development Block Grant) funds.

Fiscal Impact:

As of May 2015, the total cash and investments balance for the City of Hughson is $12,624,727.02. This compares to May 2014's total cash and investments balance of $9,841,821.72, demonstrating a $2,782,905.30 or a 28.28% increase.

City of Hughson
Treasurer's Report
May 2015

	MONEY MARKET	GENERAL	REDEVELOPMENT**	TOTAL
Bank Statement Totals	$ 9,828,896.32	$ 358,546.28	$ 206,385.34	$ 10,393,827.94
Adjustment-Direct Deposit Payroll		$ -		$ -
Outstanding Deposits +	$ -		$ -	$ -
Outstanding Checks/transfers -	$ 21,688.93	$ (359,533.78)	$ -	$ (337,844.85)
ADJUSTED TOTAL	$ 9,850,585.25	$ (987.50)	$ 206,385.34	$ 10,055,983.09
Investments: Various				$ 1,038,226.80
Multi-Bank WWTP				$ 1,451,799.92
Investments: L.A.I.F.		$ 39,421.29	$ 39,295.92	$ 78,717.21
TOTAL CASH & INVESTMENTS				**$ 12,624,727.02**

	Books - All Funds	**May 2014**	**May 2015**	**Difference**
2	Water/Sewer Deposit	35,963.77	55,363.21	19,399.44
8	Vehicle Abatement	14,571.30	12,501.56	-2,069.74
11	Traffic Congestion Fund	97,908.60	135,793.34	37,884.74
13	Redevelopment - Debt Service	36,349.86	145,046.93	108,697.07
17	Federal Officer Grant	6,620.00	6,620.00	0.00
18	Public Safety Realignment	17,871.85	28,476.76	10,604.91
19	Asset Forfeiture	6,995.43	6,995.43	0.00
25	Gas Tax 2106	-4,671.82	-9,180.49	-4,508.67
30	Gas Tax 2107	13,608.32	18,298.09	4,689.77
31	Gas Tax 2105	4,185.32	38,163.26	33,977.94
35	Gas Tax 2107.5	5,422.14	2,672.14	-2,750.00
40	General Fund	759,281.15	1,568,114.32	808,833.17
401	General Fund Contingency Reserve	672,924.80	674,358.71	1,433.91
43	Trench Cut	75,465.40	75,728.20	262.80
48	Senior Community Center	12,621.10	9,814.23	-2,806.87
49	IT Reserve	46,976.41	69,692.31	22,715.90
50	U.S.F. Resource Com. Center	-2,381.17	690.60	3,071.77
51	Self-Insurance	73,703.49	73,703.49	0.00
53	SLESF (Supplemental Law Enforcement Services Fund)	28,869.31	2,806.67	-26,062.64
54	Park Project	441,824.15	547,223.58	105,399.43
60	Sewer O & M	2,099,994.83	2,230,354.87	130,360.04
61	Sewer Fixed Asset Replacement	2,221,112.25	2,672,891.89	451,779.64
66	WWTP Expansion 2008	197,926.33	8,144.71	-189,781.62
69	LTF Non Motoriz	0.00	5,208.00	5,208.00
70	Local Transportation	173,786.80	135,675.63	-38,111.17
71	Transportation	-290,264.35	-305,004.85	-14,740.50
100/200	LLD's and BAD's	144,898.17	187,408.40	42,510.23
80	Water O & M	239,570.83	280,943.30	41,372.47
82	Water Fixed Asset Replacement	472,076.41	681,281.59	209,205.18
88	PW CDBG Street Project	-73,467.93	-216,571.27	-143,103.34
80	Water Reserve-USDA GRANT	21,524.50	21,524.50	0.00
90	Garbage/Refuse	65,146.30	110,730.31	45,584.01
91	Misc. Grants	0.00	0.00	0.00
92	98-EDBG-605 Small Bus. Loans	93,595.60	93,595.60	0.00
94	96-EDBG-438 Grant	403.43	403.43	0.00
95	94-STBG-799 Grant	158,503.35	159,868.43	1,365.08
96	HOME Program Grant (FTHB)	35,041.19	35,041.19	0.00
97	96-STBG-1013 Grant	136,188.40	195,380.01	59,191.61
98	HOME Rehabilitation Fund	0.00	40,000.00	40,000.00
	Developer Impact Fees ***	1,801,676.20	2,824,968.94	1,023,292.74
	TOTAL ALL FUNDS:	**9,841,821.72**	**12,624,727.02**	2,782,905.30

I hereby certify that the investment activity for this reporting period conforms with the Investment Policy adopted by the Hughson City Council, and the California Government Code Section 53601. I also certify that there are adequate funds available to meet the City of Hughson's budgeted and actual expenditures for the next six months.

	Break Down of Impact Fees * **			
10	Storm Drain	236,891.45	360,578.55	123,687.10
20	Community Enhancement	87,220.07	99,742.30	12,522.23
41	Public Facilities Development	1,566,026.55	1,427,094.24	-138,932.31
42	Public Facilities Development-Streets	-524,208.05	-230,278.67	293,929.38
55	Parks DIF	33,612.78	411,937.73	378,324.95
62	Sewer Developer Impact Fees	930,921.63	1,070,645.31	139,723.68
81	Water Developer Impact Fees	-528,788.23	-314,750.52	214,037.71
	Break Down of Impact Fees * **	**1,801,676.20**	**2,824,968.94**	1,023,292.74

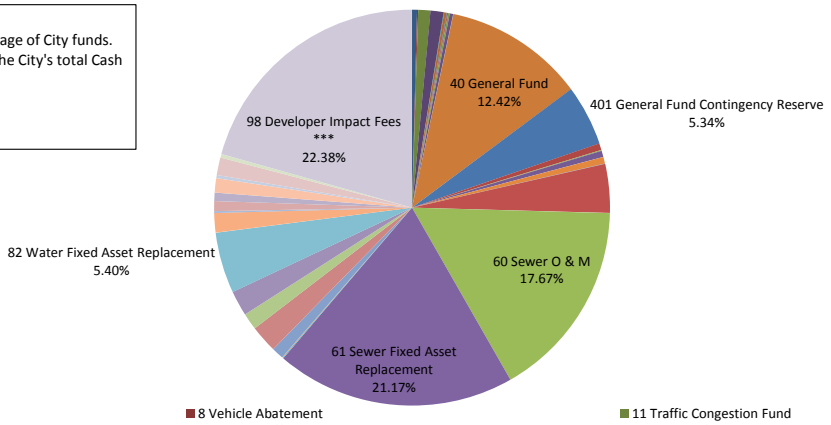
John Padilla, Treasurer

Date

Treasurer's Report - Charts and Graphs
May 2015

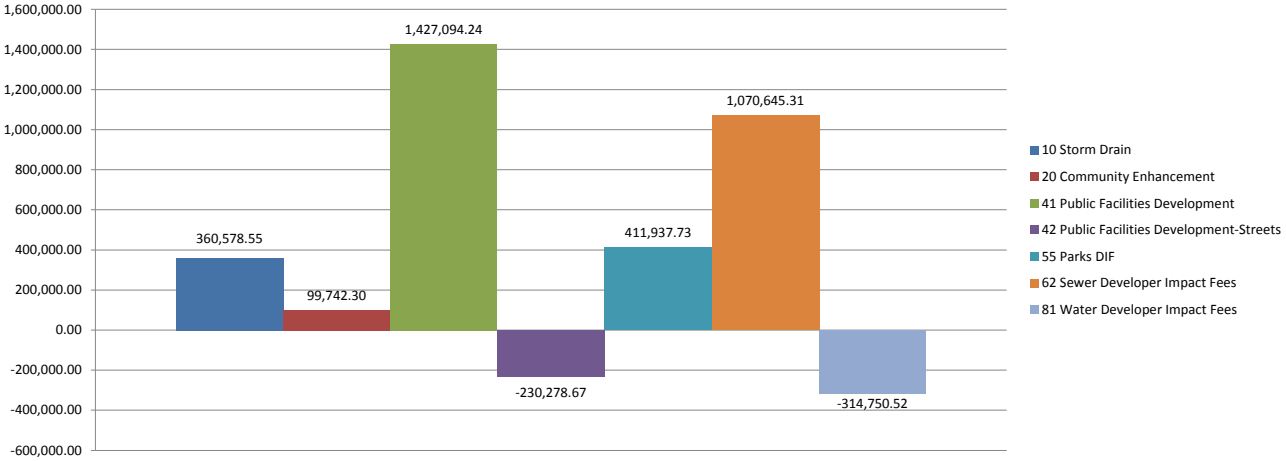
Percentage of all Funds for May 2015

Note:
Data displayed represents largest percentage of City funds. All other funds represent less than 5% of the City's total Cash and Investments.



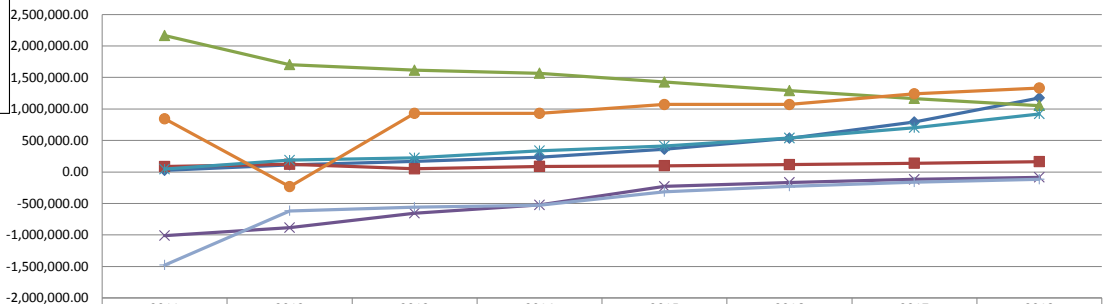
- 2 Water/Sewer Deposit
- 8 Vehicle Abatement
- 11 Traffic Congestion Fund
- 13 Redevelopment - Debt Service
- 17 Federal Officer Grant
- 18 Public Safety Realignment
- 19 Asset Forfeiture
- 25 Gas Tax 2106
- 30 Gas Tax 2107
- 31 Gas Tax 2105
- 35 Gas Tax 2107.5
- 40 General Fund
- 401 General Fund Contingency Reserve
- 43 Trench Cut
- 48 Senior Community Center
- 49 IT Reserve
- 50 U.S.F. Resource Com. Center
- 51 Self-Insurance
- 53 SLESF (Supplemental Law Enforcement Services Fund)
- 54 Park Project
- 60 Sewer O & M
- 61 Sewer Fixed Asset Replacement
- 66 WWTP Expansion 2008
- 69 LTF Non Motoriz
- 70 Local Transportation
- 71 Transportation
- 100/200 LLD's and BAD's
- 80 Water O & M
- 82 Water Fixed Asset Replacement
- 88 PW CDBG Street Project
- 80 Water Reserve-USDA GRANT
- 90 Garbage/Refuse
- 91 Misc. Grants
- 92 98-EDBG-605 Small Bus. Loans
- 94 96-EDBG-438 Grant
- 95 94-STBG-799 Grant
- 96 HOME Program Grant (FTHB)
- 97 96-STBG-1013 Grant
- 98 HOME Rehabilitation Fund

May 2015 Breakdown of Developer Impact Fees



Note:
Calculated estimations are based on each fund's average annual rate of change.

5 Year Trend & Estimate for Developer Impact Fees for the Month of May



	2011	2012	2013	2014	2015	2016	2017	2018
Storm Drain	25,087.87	110,860.91	169,403.18	236,891.45	360,578.55	534,687.95	792,868.01	1,175,713.22
Community Enhancement	86,686.94	121,471.78	49,639.77	87,220.07	99,742.30	117,460.35	138,325.81	162,897.77
Public Facilities Development	2,163,806.27	1,704,881.76	1,614,301.98	1,566,026.55	1,427,094.24	1,290,149.48	1,166,346.01	1,054,422.79
Public Facilities Development-Streets	-1,009,891.43	-883,949.33	-655,477.33	-524,208.05	-230,278.67	(164,410.20)	(117,382.62)	(83,806.72)
Parks DIF	44,850.79	187,683.97	222,216.16	336,123.78	411,937.73	538,559.57	704,102.57	920,530.34
Sewer Developer Impact Fees	842,971.83	-232,631.35	929,632.36	930,921.63	1,070,645.31	1,070,646.39	1,238,966.90	1,332,805.40
Water Developer Impact Fees	-1,476,158.50	-616,641.91	-559,830.40	-528,788.23	-314,750.52	(225,470.30)	(161,514.77)	(115,700.47)

CITY OF HUGHSON AGENDA ITEM NO. 3.4
SECTION 3: CONSENT CALENDAR

Meeting Date: **August 10, 2015**
Subject: **Consider Approving the Business Incentive Fund Request for Improvements to an Existing Business (Kids First Learning Center and Daycare) at 2419 Charles Street**
Enclosure: **Business Incentive Fund Request and Cost Proposal**
Presented By: **Jaylen French, Community Development Director**

Approved By: _____

Staff Recommendation:

Approve the Economic Development Committee's (EDC) recommendation to award Business Incentive Funds, in the form of a loan, for an existing business (Kids First Learning Center & Daycare) at 2419 Charles Street.

Background and Overview:

On September 23, 2013, the City Council approved the expansion of the Hughson Business Assistance Programs through the creation of a new incentive element for existing and new business. The following are the general parameters:

> Purpose: (1) attract business to Hughson, (2) retain business in Hughson (3) occupy vacant commercial/industrial property, (4) promote sustainability through business plan development, (5) promote certain business types in Hughson.
>
> Incentive: Assistance from $1,000 to $30,000 for general business use, operating capital, rehabilitation of building, business fee reimbursement, etc.
>
> Recommended Funding Source: $30,000 from the General Fund.
>
> Criteria: (1) locate to vacant commercial/industrial building, (2) develop a business plan, (3) participation in pre-development meeting, (4) enter into lease agreement, (5) provide minor recordkeeping (in the initial year), and (6) create or retain jobs.

Recently, City staff has been working with Ms. Nancy Juarez on a proposal to increase the capacity of her existing preschool and daycare facility located at 2419 Charles Street.

Kids First Learning Center & Daycare (Kids First) was started in Hughson as a small in-home daycare with a capacity of 6 to 8 children and quickly grew a “large daycare home” with a capacity of 12 to 14 children as regulated by the State of California. Kids First reached the new capacity in a matter of months. The proposed business incentive funding will go towards interior improvement to the facility, which will provide additional space and amenities. This would help achieve the ‘daycare/preschool center’ designation to accommodate additional children. Eventually, the business could expand to a capacity of 30 children at any one time.

The goal of Kids First is to obtain a license as a “Center”. This would allow for approximately double the capacity and provide more local families with quality and affordable childcare in the area. According to Ms. Juarez, Kids First provides a safe, fun, nurturing and educational environment for children. They provide nutritious homemade meals and snacks at no additional cost to the families and promote a healthy lifestyle through the food program and the music and movement activities.

On July 27, 2015, the EDC discussed and ultimately approved the requested business incentive funds in the form of a loan for improvements to the existing facility.

Discussion:

The EDC has developed parameters or guidelines which dictate how the funds, specifically the grant portion, should be used. First, funds should be directed toward physical improvements to a building or site, so that these improvements benefit the overall City and have a lasting effect. Second, funds should be paid through an invoice process directly to the contractor responsible for the work.

In this case, the EDC approved funding in the form of a loan. Nevertheless, the City has received a proposal for the cost to perform the desired work and the loan amount matches that cost proposal. The work, which is estimated to cost $8,500, is to remove interior walls, install two new toilets with sinks and other restroom accessories, new walls, finish carpentry, painting and new flooring.

This item is intended to seek approval of the EDC recommendation to award $8,500 in business incentive funds, in the form of a loan, to Kids First Learning Center and Daycare located at 2419 Charles Street for the work described above. Like other business incentive fund loans, it will be serviced by Evergreen Note Servicing at the standard 1% interest rate and EDC recommended 24 month repayment schedule.

Fiscal Impact:

Per the adopted Hughson Fiscal Year 2015-2016 Preliminary Budget, $30,000 has been allocated for the purposes of providing business incentive funds. If approved,

this would be the first funds distributed this fiscal year and will leave a remaining balance of $21,500 in the City's business incentive program.

To: City of Hughson Economic Development Committee

Subject: Request for Business Incentive Funds for the Remodeling of an Existing (Successful) Business – Kids First Learning Center & Daycare

From: Nancy Juarez, Owner

INTRODUCTION

Kids First Learning Center & Daycare ("Kids First"), located at 2419 Charles Street, is a preschool and daycare designed to prepare young students for Kindergarten.

Kids First was started in Hughson as a small in-home daycare with a capacity of 6 to 8 children. The need for quality and affordable child care was in such high demand that within a few months Kids First applied for and received a license for a large daycare home with a capacity of 12 to 14 children. We quickly reached our capacity under the large daycare designation. The success of Kids First prompted us to acquire a larger facility in which to eventually expand into a small daycare/preschool center with a capacity of 30.

GOAL

The goal of Kids First is to obtain a license as a "Center". This would allow for approximately double the capacity and provide more local families with quality and affordable childcare in the area. We are already providing a safe, fun, nurturing and educational environment for children. Kids First provides nutritious homemade meals and snacks at no additional cost to the families. We promote a healthy life style through our food program and our music and movement activities. All families with young children, of which there are many in this family friendly community, even the children of stay at home parents will benefit from Kids First preschool and kindergarten readiness programs.

LOGISTICS

Location Analysis
Hughson is a city with a small town feel. It's a desirable place to live and raise children. The City sits between the cities of Turlock and Modesto, making it a convenient location for parents to drop their child off and then head to work. Additionally, Kids First is located directly across from Hughson elementary school, which makes it convenient for parents with multiple children to drop off their children. Not to mention one of the services that Kids First provides is school drop-off for busy parents.

Established Customers
Kids First has reached its current capacity of 12-14 students at one time in the facility; however there is a total of 23 children enrolled. The waiting list is growing longer by the day with anywhere between 1 to 5 new inquiries a week. I project, once Kids First is designated a center, we will reach capacity (30) at one time in the school within the first three months of operation.

We have been very successful in this area for almost four years now. It's now time to expand!

Benefits to City and to Downtown
Kids First is centrally located in Hughson's downtown area, adjacent or in close proximity to local markets, shops, restaurants and health care providers. Residents as well as those that live outside of the City are able to easily utilize these businesses or restaurants to run errands conveniently before or after the work day as the drop-off or pick-up their child(ren). This benefits the City by bringing more people into downtown and thus more potential customers for the businesses downtown.

Organizational Timeline
In order for Kids First to reach this goal of becoming a Center with a capacity of 30, the building itself needs to be remodeled and expanded. After much consideration and review of the requirements of a Center, we have determined that two child bathroom stalls and two sinks need to be installed, one set for each 15 students. Further, walls will need to be taken down and/or moved to provide an open and more functional space. Drinking fountains are very much needed in our outside play yard. To be designated a Center, these improvements are required prior to submittal of the application to the State to be designated a Center. We estimate that the remodeling project would take approximately 1 to 2 weeks. However, we currently require additional funds to complete this needed project.

We have worked hard to raise money. We are currently holding several fund raisers. As of today, July 15, 2015 I've raised approximately $500 with my GoFundMe site. I also have an EZFund order circulating through my clients and others. With this fund raiser we are selling snacks and treats for 45%-50% profit. I will know the outcome of the EZFund fundraiser by the 24th of June.

Additionally, in November 2014, I held a lasagna dinner fundraiser to help fund a sprinkler system and sod for the front yard area of the facility. The fundraiser was successful enough to also be able to have the outside of the building painted as well. We feel that the property looks much better now than in the past because of these efforts.

It is felt that we have done as much as we can on our own and I am now asking for help from the City to help expand this important and successful business.

A bid for this project is attached. Most of this work can be done by my husband, who is a contractor as well as contractor friends of the family. This is a benefit as it will keep the cost down.

Grupo Juarez, Inc

P.O Box 1299
Hughson, Ca 95326

P: 209-613-7568
F: Fax Number

Grupojuarezinc@hotmail.com
Website

Bill To: Kids Fist Learning Center
Address: 2419 Charles st Hughson

Phone: 209-648-0306
Fax:
Email:

Invoice #:2419KFLC
Invoice Date:

Invoice For:

Item #	Description	Qty	Unit Price	Discount	Price
1	DEMOLITION: REMOVE INTERIOR WALLS AS	1			
	SPECIFIED PER CLIENT AND HAUL AWAY DEBRIS				
2	PLUMBING:INSTALL TWO NEW TOILETS WITH	1			
	SINKS,FAUCETS,GRAB BARS,TP HOLDERS.ETC				
3	FINISHCARPENTRY: MATERIALS AND LABOR FOR	1			
	TRIM,BASEBOARD AND DOORS				
4	DRYWALL: ALL PATCHES FROM REMOVING WALLS	1			
	AND NEW DRYWALL AT BATHROOM				
5	PAINTING: MATERIALS AND LABOR TO PAINT	1			
	ALL ROOMS AFFECTED BY REMODEL				
6	FLOORING: MATCH OR INSTALL NEW FLOORING	1			
	AS PER CLIENT REQUEST. 400 SQFT AREA				

Invoice Subtotal	$8,500.00
Tax Rate	
Sales Tax	0
Other	
Deposit Received	
TOTAL	$8,500.00

Make all checks payable to Grupo Juarez, Inc.

Total due in <#> days. Overdue accounts subject to a service charge of <#>% per month.

CITY OF HUGHSON AGENDA ITEM NO. 3.5
SECTION 3: CONSENT CALENDAR

Meeting Date: **August 10, 2015**
Subject: **Approval of the 2014-2015 Allocation Agreement for Community Development Block Grant (CDBG) Entitlement Funds with Stanislaus County**
Presented By: **Jaylen French, Community Development Director**

Approved By: _____

Staff Recommendation:

1. Approve the 2015-2016 Allocation Agreement for the Community Development Block Grant (CDBG) Entitlement Funds with Stanislaus County.

2. Authorize the Mayor to sign the Agreement.

Background and Overview:

The City of Hughson joined the Urban County Consortium in 2010 because it guaranteed CDBG entitlement funds for City projects. At the September 8, 2014 meeting, the City Council approved renewing last fiscal year's cooperative agreement with Stanislaus County to continue being a part of the Stanislaus County Community Development Block Grant (CDBG) Consortium and to jointly undertake community development activities.

The Allocation Agreement specifies the share of CDBG entitlement funds the City of Hughson (and other participating cities with the County) will receive in Fiscal Year 2015-2016. The Urban County Consortium will receive $1,538,652, which is $600,412 less than last year's allocation. Fourteen percent or $219,768 will be allocated for public service grants, in which local non-profit agencies within Stanislaus County can apply. The Hughson Family Resource Center and United Samaritan's Foundation have participated in these local grant opportunities to help fund some of their programs in the past.

This year the City of Hughson will receive $122,532 $119,264 and is entitled to an additional $15,209 in administrative services costs. The total amount of funding available to the City is $137,741. Last fiscal year the City received $134,068.

The CDBG projects for this fiscal year include sidewalk infill improvements located on Fox Road from Charles to Tully, and the end of Hughson Avenue by the High School. This funding will be budgeted with other funding sources such as CMAQ and LTF to complete the projects.

Fiscal Impact:

Expenditures and revenue from the CDBG entitlement will be included in the final budget for this fiscal year.

COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT

This Subrecipient Agreement ("Agreement") is made by and between the County of Stanislaus (the "County") and the Cities of Ceres, Hughson, Newman, Oakdale, Patterson and Waterford (the "City" individually or "Cities" collectively) on July 1, 2015.

WITNESSETH

WHEREAS, Stanislaus County applied for and is qualified to receive an entitlement grant under the Community Development Block Grant ("CDBG") program for FY 2015-2016 in the amount **$2,197,687** as an "Urban County" as set forth under Title I of the Housing and Community Development Act of 1974, and Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992; and

WHEREAS, County has received a Community Development Block Grant ("CDBG") from the Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974, as amended (42 USC 5301 et seq.; the "Act"); and

WHEREAS, pursuant to such grant and to the Board of Supervisors Board Resolution No. 2015-202, County is undertaking certain programs and services necessary for the planning, implementation, or execution of such a Community Development Program; and

WHEREAS, COUNTY and CITY desire to enter into this Allocation Agreement ("Agreement") for the purpose of designating the City as a CDBG subrecipient; and

WHEREAS, the parties desire that CDBG entitlement funds received by the County as an "Urban County" be shared proportionally, as determined by poverty and population formula, among the parties;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

A. The County and each City shall receive an allocation based upon a population and poverty calculation as set forth below:

Jurisdiction	Poverty & Population
Stanislaus County	$611,854
Ceres	$244,987
Hughson	$122,532
Newman	$139,147
Oakdale	$153,530
Patterson	$138,993
Waterford	$127,609
TOTAL	**$1,538,652**

B. The Stanislaus Urban County shall also receive an amount not to exceed twenty percent of the total FY 2015-2016 CDBG entitlement funds for eligible general administrative services as defined in 24 CFR Part 570.206, which amount shall be set aside prior to any allocation of funds to the County and Cities under Section 1 of this Agreement. The following represents the Stanislaus Urban County administrative funding distribution breakdown:

Jurisdiction	Administration
Stanislaus County	$323,013
Ceres	$15,209
Hughson	$15,209
Newman	$15,209
Oakdale	$15,209
Patterson	$15,209
Waterford	$15,209
TOTAL	**$414,267**

C. An amount not to exceed ten percent of the total FY 2015-2016 CDBG entitlement funds, **$219,768**, shall be allocated for eligible public services, as defined in 24 CFR Part 570.201, and related projects under the Stanislaus County CDBG Public Service Grant Program.

D. An amount not to exceed **$25,000** shall be allocated for Urban County Fair Housing activities, as defined in 24 CFR Part 570.206 (c).

E. Upon notification of a City's intent to apply for grants available to "Urban Counties" under applicable law, the County, as lead agency, shall apply for such grants on behalf of that City.

F. Activities proposed by the Cities insofar as they are consistent with applicable statutes and regulations, shall be processed for inclusion by County in the Consolidated Plan and Annual Action Plan consistent with the recommendations of the Policy Committee or the majority of the parties to this agreement.

G. Each party has the responsibility to ensure its activities comply with the FY 2015-2016 grant program activities as identified in the FY 2015-2016 Stanislaus Urban County Annual Action Plan.

H. Each party agrees to comply with reporting requirements set forth in 2 CFR 200.500 et seq. (formerly OMB A-133) regarding standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments expending Federal awards.

I. Each party shall be strictly accountable for all CDBG entitlement funds allocated to that party.

J. An amount not to exceed **$50,000** shall be allocated for participation in the Neighborhood Stabilization Program Abandoned and Dangerous Building Abatement Program. Requirements for participation are outlined in Appendix A. Funds for this activity will come directly from NSP 1 or NSP 3 program funds and not part of the FY 2015-2016 CDBG funds subject to this agreement.

1. SCOPE OF WORK.

1.1 **General Scope.** City shall utilize CDBG funds to deliver its activities as described in the FY 2015-2016 CDBG Annual Action Plan.

1.2 **Term.** This Agreement shall be in effect until June 30, 2016, or until all Fiscal Year 2015-2016 CDBG funds are disbursed to City. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which City remains in control of CDBG funds or other CDBG assets, including program income.

2. COMPENSATION.

2.1 **Allocation Amount.** City shall be paid a total consideration amount as indicated in sections A and B above for CDBG activities and administrative activities respectively.

2.2 **Quarterly Draws.** All requests for grant fund draws shall be drawn at least once per quarter as follows: (1) City must request a first draw by September 15, 2015; (2) A second draw by December 15, 2015; (3) A third draw by March 15, 2016; and (4) A fourth and final draw by June 30, 2016. Additional draws may be required and shall be provided as requested by the County if all funds are not used by June 30, 2016.

2.3 **Certification of Expenses.** In every case, draws will be dispersed to City subject to receipt of a Request for Funds "RFF" specifying and certifying that such expenses are in conformance with this Agreement, and that City is entitled to receive the amount requisitioned under the terms of this Agreement. With each RFF an official authorized to bind Organization shall certify that "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

Grant fund draw requests will be dispersed upon request provided: (1) The RFF is returned with an original authorized signature; (2) That all requests are accompanied with back-up documentation verifying all requested expenses are specific to carrying out the grant activity scope.

2.4 **Authorized Personnel.** Person executing this agreement on behalf of City shall notify County in writing of all authorized personnel who shall be empowered to file requests for funds pursuant to this Agreement.

2.5 **Salaries.** The salaries paid under this Agreement shall be in accordance with the following provision of 2 CFR 200.430 (formerly OMB Circular A-87) and 24 CFR 570.206 Program Administrative Costs. City shall submit time sheets to document expenses for staff. Time sheets shall list the grant specifically and hours spent on the grant noted. Only hours spent on the grant will be paid, based on the hourly rate. If the employee is on salary, salary will be calculated based on the hours worked. If the total number of hours worked is not listed, then hourly rate will be based on an average 80 hour work week.

Fringe benefits, which includes taxes and insurance costs paid by the City on behalf of the staff person working on the grant, but does not include overhead costs, are limited to 20% of total salary costs. Paid Time-off (PTO), paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are NOT eligible expenses. Such costs are considered basic costs, not related to specific grant activity, and shall be covered by the City. Overtime or bonuses are not allowable expenses. Expenses related to travel are ineligible, except where gas costs have been incurred directly related to implementation of program activities.

3. USE OF FUNDS.

3.1 **General Use of Funds.** Use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Housing and Community Development Act of 1974 (as amended), 24 CFR Part 570, and other regulations governing the Block Grant Program, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. Further, any funded acti-

vity must be designed or so located as to principally benefit low/moderate income persons, aid in the prevention or elimination of slums or blight, or meet urgent community development needs, as defined in the program regulations.

3.2 **Compliance with Local Code.** City agrees to implement all activities supported with CDBG grant funds in compliance with all local codes and ordinances, including obtaining all necessary permits for such activities.

3.3 **In-eligible Uses of Funds.** In the event that City is found to have expended grant funds for in-eligible activities, pursuant to 24 CFR 570.207 and 2 CFR 200.420-200.475 (formerly OMB Circular No. A-87 "Cost Principles for State, Local, and Indian Tribal Governments"), such funds shall be returned to the County.

3.4 **Program Income.** Program income shall be handled in accordance with Section 24 CFR 570.504(c). City shall report to County any income generated by the expenditure of CDBG funds. Such program income may be retained by City to be used for CDBG eligible activities and must be accounted for and kept separately from other funds in compliance with CDBG regulations. County has the responsibility for monitoring and reporting to HUD on the use of program income, thereby requiring appropriate record keeping and reporting by City as may be needed for this purpose.

3.5 **Termination of Contract.** Pursuant to 2 CFR 200.339, suspension or termination of this Agreement may occur if City materially fails to comply with any term of the grant agreement, or for convenience, as set forth in section 13 below.

(1) City may not terminate an Assignment of Proceeds and Grant of Lien without written consent of County. All reports or accounting provided for herein shall be rendered whether or not falling due within the Agreement period.

3.6 **Reversion of Assets.** Upon grant expiration, termination, or upon City becoming insolvent, City shall transfer to County any grant funds on hand at the time of expiration and any accounts receivable attributable to the use of said grant funds. Any real property under City's control that was acquired or improved in whole or in part with grant funds (including grant funds provided to City in the form of a loan) shall be utilized in accordance with Section 3.1 General Use of Funds, of this Agreement, as long as needed for that purpose. When such property is no longer needed for the originally authorized purpose set forth in Section 3.1 of this Agreement, County shall obtain disposition instructions from HUD which shall provide for one of the disposition alternatives set forth in 2 CFR 200.311. All returned grant funds or payments, if any, shall be treated by County as program income.

4. PROGRAM ACTIVITY ELIGIBILITY.

4.1 **General Eligibility.** Eligibility of program activities, shall be evaluated and documented by City prior to identifying in Annual Action Plan to determine if activities meet the eligibility criteria established under 24 CFR 570.208.

4.2 **Income Standards.** City agrees to use the standards, in effect at the time of assistance to determine income eligibility and the verification requirements for entry into the CDBG Program. The method of Income eligibility must be determined based on the National Objective being met and scope of CDBG activity to be carried out.

4.3 **Eligible Stanislaus Urban County Areas.** Program beneficiaries must reside within the income eligible Stanislaus Urban County areas as defined by HUD or Stanislaus County. These areas include the CDBG eligible Census Block Groups within the Cities of Ceres, Hughson, Newman, Oakdale, Patterson, Waterford and the unincorporated areas of Stanislaus County.

4.4 **Environmental Review Record.** City is responsible for preparing the environmental review record for any project assisted through this Agreement in compliance with the California Environmental Quality Act, the National Environmental Protection Act, and 24 CFR 58. A copy of any such review shall be sent to the County for County's review, approval, and formal signature as Responsible Entity, prior to City entering into a commitment of CDBG funds for the subject activity.

5. DATA COLLECTION, REPORTING & MAINTAINENCE OF RECORDS.

5.1 **Documentation.** Implementation of program activities, including determinations of eligibility, evidence of eligible activity costs, fiscal management, and CDBG contract and subcontract records shall be documented.

5.2 **Quarterly/Closeout Reports.** City agrees to submit quarterly program status reports to County, in conformance with the requirements of CDBG and 2 CFR 200.301, including an estimate of the number of jobs created and/or retained by CDBG funds as well as any other information that is requested on the date of their monitoring appointment or by the deadline indicated within their monitoring letter. In addition, Organization shall submit, no later than 90 days after the expiration of this Agreement, any required close-out report, in conformance with the requirements of 2 CFR 200.343.

5.3 **HUD Sponsored Research.** Upon request, City shall participate in HUD-sponsored research and evaluation of CDBG during or after the completion of the program.

5.4 **DUNS Number Requirement.** City shall maintain an updated and valid DUNS number, which requires registering with Dun and Bradstreet and completing and annually renewing their registration in the Central Contractor Registration (CCR).

5.5 **Data Required.** City shall maintain activity beneficiary data such as area demographics, number of housing units, and number of people who will benefit from activities funded with grant funds. City also agrees to report the number of jobs created with CDBG funds, if applicable, in the quarterly report to be provided to County.

5.6 **General Records.** City shall keep and maintain all project records, books, papers and documents for a period of not less than five (5) years after the project terminates and grants County the option of retention of the project records, books, papers and documents. City agrees to keep all necessary books and records, including property, personnel and financial records, in connection with the operations and services performed under this Agreement, and shall document all transactions so that all expenditures may be properly audited. County, HUD, and any authorized representatives shall have access to and the right to examine all records, books, papers or documents related to the project for the purposes of making audit, evaluation, examination, excerpts and transcripts during normal business hours and during the period such records are to be maintained by City. Further, County and HUD shall have the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

5.7 **Privacy Procedures.** City shall develop and implement reasonable procedures to ensure: (1) The confidentiality of records pertaining to all program participants; and (2) That program participant's addresses will not be made public, except to the extent that this prohibition contradicts a preexisting privacy policy of the City.

5.8 **Audit Provision.** City agrees to provide to County, at City's cost, a certified audit performed by an accredited certified public accountant, of all funds received or utilized by City, including the distribution of any CDBG Grant Funds for Fiscal Year 2014-2015 and previous fiscal years. City agrees to provide additional audits upon request.

6. UNIFORM ADMINISTRATIVE REQUIREMENTS.

6.1 **General Uniform Administrative Requirements.** City shall comply with 24 CFR 570.502-Applicability of Uniform Administrative Requirements and the requirements and standards of 2 CFR 200.420-200.475 (formerly OMB Circular No. A–87, "Cost State, Local, and Indian Tribal Governments").

6.2 **Reasonable Grant Costs.** The County reserves the right to determine whether or not a request for CDBG grant fund reimbursement is reasonable. A cost is considered to be reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. In determining the reasonableness of a given cost, consideration shall be given to: (1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the City or the performance of the award; (2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award; (3) Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the City, its members, employees, and clients, the public at large, and the Federal Government; and (4) Significant deviations from the established practices of the City which may unjustifiably increase the award costs.

6.3 **Allocable Grant Costs.** The County reserves the right to determine whether or not a request for CDBG grant fund reimbursement is allocable, consistent with applicable federal regulations. A cost is considered to be allocable if it: (1) Is incurred specifically for the award; (2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received; or (3) Is necessary to the overall operation of the City, although a direct relationship to any particular cost objective cannot be shown.

7. HOLD HARMLESS AND INDEMNITY AGREEMENT.

7.1 **General Indemnification.** City shall hold the County, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of City, whether or not the act or omission arises from the sole negligence or other liability of City, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.

7.2 **Liability and Fees.** County shall not be responsible or liable for any debts, actions, obligations, negligence, or liabilities committed or incurred by City, its staff or program participants, and City hereby agrees to defend, hold harmless and indemnify County from and against any and all liabilities for debts, obligations, and negligence. No draw, however, final or otherwise, shall operate to release City from any obligations under this Agreement. Should either party be required to bring a legal action to enforce the provisions of this Agreement, the prevailing party shall be reimbursed for all court costs and all reasonable attorney's fees incurred in the prosecution or defense of said action.

8. NON-DISCRIMINATION & EQUAL OPPORTUNITY

8.1 **Compliance with Fair Housing and Civil Rights Laws.** During the performance of this Agreement, City and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex:

(1) City agrees to comply with all applicable fair housing, non-discrimination and civil rights requirements including all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation; (a) the County□s nondiscrimination policy; (b) the California Fair Employment and Housing Act (California Government Code sections 12900 et seq.); (c) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended; (d) California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; (e) Section 504 of the Rehabilitation Act of 1973; (f) Section of Title I of the Housing and Community Development Act of 1974; (g) Title II of the Americans with Disabilities Act of 1990; (h) Section 24 CFR 5.105 of the Code of Federal Regulations 24 CFR 5.105; (i) all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

(2) City agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(3) City will, in all solicitations or advertisements for employees placed by or on behalf of City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, sexual orientation, ancestry, national origin, familial status, or any other basis prohibited by applicable law.

(4) If the procedures that the grantee intends to use to make known the availability of services are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for such services, then City must establish additional procedures that will ensure that such persons are made aware of the services.

8.2 **Equal Participation of Religious Organizations.** Under CDBG, religious Organizations retain their independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. If CDBG funds are to be used to acquire, construct, rehabilitate or renovate a structure which will be used for both grant eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities. In addition, a CDBG-funded religious City retains its authority over its internal governance, and it may retain religious terms in its City's name, select its board members on a religious basis, and include religious references in its City's mission statements and other governing documents. An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

8.3 **Section 3 Compliance.** City agrees to comply with the rules and regulations set forth under Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the HUD regulations issued pursuant thereto under 24 CFR Part 135. This act requires that, to the greatest extent feasible, opportunities for training and employment be directed to low and very-low income persons, particularly those recipients of government assistance for housing, and to business concerns that provide economic opportunities to low and very-low income persons. .

8.4 **Americans with Disabilities Act (ADA) of 1990 and Architectural Barriers Act of 1968.** City shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), which insures that all federally funded facilities be designed, constructed, or altered to insure accessibility and use by disabled persons, and the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines.

8.5 **Labor Standards and Davis-Bacon and Related Act Requirements.** City shall comply with all applicable federal labor standards, as set forth in section 110(a) of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301, et seq.) and Davis Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5.

8.6 **Displacement, Relocation, Acquisition & Replacement of Housing**. Consistent with 24 CFR 570.606 and the Stanislaus Urban County's Anti-Displacement and Relocation Policy Plan, City shall take all reasonable steps to minimize the displacement of all persons as a result of Project activities.

8.7 **Eligibility Restrictions**. City agrees to comply with applicable eligibility restrictions for certain resident aliens, as set forth in 24 CFR 570.613 and 24 CFR Part 49.

9. CONSTRUCTION CONTRACTS

9.1 **Contract Provisions**: City and the County agree to include the following contract provisions in any construction contracts utilizing funds received pursuant to this Agreement:

(1) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all construction contracts shall include the equal opportunity clause provided under 41 CFR 60-1.4(b).

(2) Davis-Bacon Act. All prime construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148). Contractors shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week. City or County shall include a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. City or County shall report all suspected or reported violations to HUD.

(3) Copeland "Anti-Kickback" Act. All construction contracts shall include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3), prohibiting the contractor from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. City shall report all suspected or reported violations to HUD.

(4) Contract Work Hours and Safety Standards. Any construction contract in excess of $100,000 that involves the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5, which require each contractor to compute the wages of mechanics and laborers on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for hours worked in excess of the standard 40 hour work week. In addition, no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous.

(5) Byrd Anti-Lobbying Amendment, Any construction contract in excess of $100,000 shall require the contractor to file the required Byrd Anti-Lobbying certification, certifying that the contractor will not and has not used Federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence a Federal contract, grant, or award, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

9.2 **Debarment and Suspension**. No contract may be awarded to parties listed on the government-wide exclusions in the System for Award Management, in accordance with the OMB guidelines at 2 CFR 180.

10. CONFLICTS OF INTEREST.

10.1 **Hatch Act Incorporated.** Neither City program nor the funds provided therefore, nor the personnel employed in the administration of the program shall be in any way or to any extent engaged in the conduct of political activities in contravention of the Hatch Act (Chapter 15 of Title 5, United States Code).

10.2 **Conflict of Interest.** City shall comply with 2 CFR 200.112 (formerly 24 CFR 84.42) and all applicable federal standards of ethical conduct, which prohibit any employee, officer, or agent of City from participating in the selection, award, or administration of a federally funded contract if a real or apparent conflict of interest would be involved. With respect to all other decisions involving the use of CDBG funds, the following restriction shall apply: No person who is an employee, agent, consultant, officer, or elected or appointed official of the City and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

10.3 **Lobbying and Disclosure Requirements.** City certifies that no State or Federal appropriated funds have been paid, or will be paid for lobbying activities, in contravention of 2 CFR 200.450 or the Byrd Amendment (31 U.S.C. 1352) and its implementing regulations at 24 CFR part 87. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence this Agreement, City shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

10.4 **Campaign Contribution Disclosure.** City certifies that it has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has provided the appropriate disclosures to County.

11. DRUG-FREE WORK PLACE.

11.1 **Drug-free Workplace.** City will maintain a drug free work place and will comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et seq.) and HUD's implementing regulations at 24 CFR part 21.

12. ENVIRONMENTAL LAW COMPLIANCE

12.1 **Lead Poisoning Prevention Act**. City agrees to uphold the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.), as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.) and implementing regulations at 24 CFR part 35, subparts A, B, M, and R.

12.2 **Clean Air Act and Federal Water Pollution Control Act**. Organization agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended. (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. TERMINATION OF SERVICES & REVERSION OF ASSETS.

13.1 **Termination of Contract and Reversion of Assets.** It is expressly understood and agreed that either party shall have the right to terminate this Agreement upon fifteen (15) days written notice to the other party. Such notice shall include the reasons for termination. (1) City may not terminate an Assignment of Proceeds and Grant of Lien without written consent of County. All reports or accounting provided for herein shall be rendered whether or not falling due within the Agreement period. (2) County reserves the right to terminate this Agreement or to reduce the Agreement compensation amount for cause, or if City fails to comply with the terms and conditions of an award, including: (a) Failure of City to file required reports; (b) Failure of City to meet project dates; (c) Expenditure of funds under this Agreement for ineligible activities, services or items; (d) Failure to comply with written notice from County of substandard performance in scope of services under the terms of this Agreement. (3) Should County choose to terminate this Agreement the following steps shall be followed: (a) Written warning to City by County including steps to bring project into compliance with time frame; (b) Notification by County that said project has been determined deficient and that continued support of the project is not providing an adequate level of services to low/moderate income people; (c) Written notification from County that said Agreement is to be terminated and program funds curtailed, withdrawn, or otherwise restricted. (4) Upon expiration or termination of this Agreement, City shall transfer to the County any CDBG funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG funds.

13.2 **Insolvency.** If the City becomes insolvent, all unused CDBG funds shall be returned to the County for disposition.

14. GENERAL TERMS AND CONDITIONS.

14.1 **Other program requirements.** City agrees to carry out each activity in compliance with all Federal laws and regulations described in subpart K of 24 CFR 570, except that City does not assume County responsibility for initiating the process of reviewing federal financial assistance programs under the provisions of 24 CFR 52.

14.2 **Assignment.** Without written consent of County, this Agreement is not assignable by City, either in whole or in part.

14.3 **Amendment.** No amendment to, alteration of or variation in the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

14.4 **Provisions Required by Law Deemed Inserted**. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall forthwith be physically amended to make such insertion or correction.

14.5 **Construction.** Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

14.6 **Integration**. This Agreement represents the entire understanding of County and City as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both

written and oral. This Agreement may not be modified or altered except in accordance with section 14.3 or 14.4.

14.7 **Notice.** Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which City or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County:	County of Stanislaus Department of Planning and Community Development Attention: Planning Director 1010 Tenth Street, Suite 3400 Modesto, CA 95354
To City:	See Attachment 1 – Urban County City Notice Information

14.8 **Governing Law and Venue.** This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

14.9 **Authorization.** City has authorized the undersigned person signing as officers on behalf of City, to enter into this Agreement on behalf of said City and to bind the same to this Agreement, and, further that said City has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaws against entering into this Agreement.

14.10 **Counterparts.** This Agreement may be signed in counterparts and shall bind each signatory to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

– Signatures on following pages –

COUNTY OF STANISLAUS

By _____ _____
Terrance Withrow Dated
Chairman of the Board of Supervisors

ATTEST: Christine Ferraro-Tallman
Clerk of the Board of Supervisors
of the County of Stanislaus, State of California

By _____
Elizabeth King
Assistant Clerk

APPROVED AS TO CONTENT:
Angela Freitas, Director
Planning and Community Development Department

By _____
Angela Freitas
Director

APPROVED AS TO FORM:
John P. Doering
County Counsel

By _____
Thomas E. Boze
Assistant County Counsel

CITY OF HUGHSON

By _____ _____
Matthew Beekman Dated
Mayor

ATTEST:

By _____
Dominique Spinale
City Clerk

APPROVED AS TO CONTENT:

By _____
Raul Mendez
City Manager

APPROVED AS TO FORM:

By _____
Daniel J. Schroeder
City Attorney

Neighborhood Stabilization Program (NSP)
Abandoned and Dangerous Building (ADB) Abatement Program

In addition to the Community Development Block Grant (CDBG) Sub-recipient Agreement terms, the following terms shall apply to any Urban County member city who wishes to participate in Stanislaus County NSP Abandoned and Dangerous Building (ADB) Abatement Program:

WHEREAS the Neighborhood Stabilization Program (NSP) provides funding that can be used to reduce or eliminate blight;

WHEREAS, in August 2014, HUD approved the Stanislaus Urban County's NSP Substantial Amendment to allow the use of NSP program income funds to cover costs associated with ADB Abatement activities and costs as an effort to reduce or eliminate blight within NSP target areas;
WHEREAS, Stanislaus County wishes to allow Stanislaus Urban County member cities to access NSP program income funds for ADB activities thereby addressing blight within their communities;

NOW THEREFORE, the parties hereto do mutually agree as follows:

A. County and City understand that the Program will operate on a reimbursement basis;
B. $50,000 of NSP 1 funding is made available in year one of participation. Future year fund allocations will be considered based future year available funding and consideration of individual city needs;
C. Before incurring any ADB Program costs for which the city intends to be reimbursed for with NSP funds, City shall obtain approval of its ADB program from County by submitting City's program guidelines and procedures to County, to ensure that NSP regulations will be met. This will be a one-time review and approval unless guidelines undergo substantial changes. If substantial changes are made to the guideline, these will need to be discussed with Urban County Representatives to ensure continued program participation by the cities;
D. Upon County's approval of City's program guidelines and procedures, City agrees it will obtain County's approval for each property to be abated by providing the address of each property to ensure that it is located in an NSP eligible area before costs are incurred or abatement activities begin;
E. Upon County's approval of property address subject to ADB abatement, City must conduct environmental clearance before abatement activities begin;
F. City agrees to provide backup documentation of all costs incurred for which the City is requesting reimbursement;

G. City and County agree that reimbursement will be processed within 30-60 days provided no additional documentation is needed;

H. Any ADB program costs recovered via the City's abatement process shall become NSP Program Income. Program income shall be handled in accordance with Section 24 CFR 570.504(c). City shall report to County any income generated by the expenditure of NSP ADB funds. Such program income shall be returned to County on a monthly basis. County has the responsibility for monitoring and reporting to HUD on the use of program income, thereby requiring appropriate record keeping and reporting by City as may be needed for this purpose;

I. City agrees to be available for periodic monitoring of fiscal and program records. County agrees to notify the city at least 15-days prior to a monitoring appointment via email or phone call to set a monitoring appointment time. County will send specific requests and direction related to monitoring, to include the scope of the monitoring visit, to City contact to assist the City in preparing records for monitoring;

J. City agrees to submit quarterly program status reports to County, in conformance with the requirements of NSP, including an estimate of the number units abated via NSP ADB as well as any other information that is requested on the date of their monitoring appointment or by the deadline indicated within their monitoring letter.

K. City and County understand that CDBG Sub-recipient Agreement general terms shall prevail, as applicable, for the purposes of administering NSP ADB program.

Attachment 1
Urban County City Notice Information

City of Ceres
Department of Planning
2720 Second Street
Ceres CA 95307

City of Hughson
Department of Planning
P.O. Box 9
Hughson CA 95326

City of Newman
Department of Planning
P.O. Box 787
Newman CA 95360

City of Oakdale
Department of Planning
455 S. Fifth Street
Oakdale CA 95361

City of Patterson
Department of Planning
P.O. Box 667
Patterson CA 95363

City of Waterford
Department of Planning
P.O. Box 199
Waterford CA 95386

CITY OF HUGHSON AGENDA ITEM NO. 4.1
SECTION 4: UNFINISHED BUSINESS

Meeting Date: **August 10, 2015**
Subject: **Discussion and Direction on the Draft Request for Proposals (RFP) and Lease Agreement for Farming of Property Located on Leedom Road near the Waste Water Treatment Facility**
Presented By: **Raul L. Mendez, City Manager**
Dan Schroeder, City Attorney

Approved By: _____

Staff Recommendation:

Discuss and provide direction on the draft Request for Proposals (RFP) and lease agreement for farming of property located on Leedom Road near the Waste Water Treatment Facility.

Background and Overview:

On December 9, 2014, the Hughson City Council approved an amendment to extend the lease between the City of Hughson and Michael Noeller for approximately twelve (12) acres of City-owned property adjacent to the Waste Water Treatment Facility along Leedom Road to October 31, 2015 or completion of the harvest of the fall 2015 almond crop, whichever occurs later. The lease extension was executed shortly thereafter.

At that time, the City Council directed staff to bring back a discussion in March and April 2015 to begin exploring future options for the 12 acres Leedom property well in advance of the agricultural lease expiration date. Subsequently, further direction was provided to take a look at all available City property adjacent to the Waste Water Treatment Facility (which includes the 40 acre Lower Ponds) to begin developing a more comprehensive plan or approach. City staff began that process during the evaluation of the Noeller agricultural lease last fall.

Some of those details are provided again in summary form for reference. This is the initial discussion to provide some background to this item.

12 Acre Property – "Noeller Lease"

- Original term of the lease was January 1, 2010 to December 31, 2014.
- Agricultural lease with Michael Noeller extended and now due to expire October 31, 2015 or completion of the harvest of the fall 2015 almond crop, whichever occurs later.
- Butte and Padre portion of the City orchard consists of approximately 3.73 tree acres and the Non Pareil and Price consists of approximately 3.88 tree acres.
- Although the subject property consisted of approximately twelve (12) acres of property not all of that were tree acres and some of the area had been developed as part of the expansion of the Waste Water Treatment Facility.
- Average almond yields in Stanislaus County were 2,240 lbs/acre in 2011; 2,180 lbs/acre in 2012; 2,420 lbs/acre in 2013 (Stanislaus County Crop Reports).
- City's tree acreage estimated yield of the Butte and Padre at 1,605 lbs/acre and Non Pareil and Price at 1,239 lbs/acre.
- The current agricultural lease provides that the City receives 20% of the almond crop proceeds. To date $24,095.61 has been received by the City of Hughson although revenue from the 2014 harvest is still pending due to the timing involved from processing to payment.
- Per Carollo Engineers, who assisted the City of Hughson with construction of the new Waste Water Treatment Facility, the twelve acres were value engineered out during design of the facility since capacity of the new plant could be handled with five ponds on other City acreage.
- Carollo Engineers did indicate that if the City chose to sell the subject property it would have no additional capacity for the future growth above what was designed and would not be able to expand the plant until evidence was provided to the Central Valley Regional Water Quality Control Board that capacity to discharge the water was available.
- There is a monitoring well currently in place at the subject property and access and easement needs to be maintained for monitoring use.
- The City contacted the Hughson Unified School District to determine if they would be interested in farming the property similar to the District property near the corner of Seventh Street and Whitmore Avenue and they indicated that they weren't able to take on additional acreage and in a remote location.
- City staff has confirmed that the purchase of the original 32 acre property for expansion of the Waste Water Treatment Facility was done so using funds in the City's sewer fund for capital improvements.
- The State Revolving Loan secured by the City of Hughson in the amount of $23,100,000 for expansion of the Waste Water Treatment Facility, in September 2009, was specifically for infrastructure improvements and property acquisition was not an eligible expense.
- Sale of the subject property is an option as no specific restrictions were identified since the last Council discussion on this item.

On two occasions, March 23, 2015 and May 26, 2015, the City Council discussed a variety of options for all City owned properties near the Waste Water Treatment

Facility. At that time, City Council direction was provided to move forward with a Request for Proposals (RFP) for the property currently farmed by Mr. Noeller. City staff was also directed to bring back a strategy for the 40 acre Lower Ponds once some additional research was conducted with the State to determine some of the limitations with the future use of the property. This item is specific to the approximately 12 acres of City-owned property of which nearly 8 acres are currently farmed in almonds.

Request for Proposal and Lease Agreement

The City Manager did some initial research on a RFP for farming of property by researching a recent process initiated by the City of Waterford a few years ago. The RFP and lease agreement was shared with the City Attorney for review and comment. The City Attorney indicated that his firm had staff that specialized in developing these types of RFPs and lease agreements and hence it was determined that they would take the lead on the development of draft documents for City Council review and input.

The draft Request for Proposal and the lease agreement is attached. Some of the elements to highlight include:

- Term – 25 years (November 1, 2015 to December 31, 2040).
- Termination Notice – Lessor has the right to terminate the Lease upon the sale of the property or determining to change the use of the property.
- Crops – Almond and other crops.
- Rent – Lessee shall pay and hold Lessor harmless from any and all of the expenses, costs and expenditures of every nature.
- Rent Percentage – 25% of the gross proceeds. No rent for new almond trees to be planted on the 1975 Block until those trees come into production.
- Crop Records – Lessee shall keep, full, complete and accurate records and Lessor shall have right to audit for purposes of verification per the lease.
- Standard of Operation – Lessee shall be entirely responsible for the management and operation of the property in accordance with horticultural standards and practices which optimize returns.
- Orchard Development – Lessee shall pay and be fully liable for all costs and expenses which may be incurred to establish and develop an almond orchard on the 1975 Block and bring such orchard into production.
- Orchard Costs – Lessee shall pay and be fully liable for all costs and expenses which may be incurred to farm the property.

The tentative schedule for its release and evaluation is as follows and subject to modification. The goal is to have a new lease in place by the expiration of the current agreement.

Tentative Schedule for Selection

Release Request for Proposal	August 14, 2015
Proposals Due to City of Hughson	August 28, 2015, 5pm
Evaluation Process (and/or Interviews)	August 31-September 4, 2015

Hughson City Council Approval	September 14, 2015
Completion of Agreement	September 28, 2015
Current Contract Expiration Date	October 31, 2015
New Contract Effective Date	November 1, 2015

Fiscal Impact:

Upon conclusion of the Request for Proposals process, City staff will return with a recommendation for selection, approval of the lease agreement and related items. Revenue estimates will be provided as anticipated for the term of the agreement.

REQUEST FOR PROPOSALS

FOR

LEASE AGREEMENT FOR FARMING

PROPOSALS MUST BE RECEIVED
NO LATER THAN
5:00 PM, _____, 2015

SEND PROPOSALS TO:
Raul L Mendez
City Manager

City of Hughson
7018 Pine Street | P.O. Box 9
Hughson, California 95326

967257-1

PURPOSE

The City of Hughson is soliciting proposals from an experienced farming entity, capable of developing, managing, and maintaining productive agricultural operations, to enter into a long-term lease to conduct farming activities on City-owned land. The tentative start date of the lease would be November 1, 2015, and end December 31, 2040. The purpose of the lease agreement is to maximize the revenue to the City from the property.

BACKGROUND

The City of Hughson is a small but prospering agricultural community situated in eastern Stanislaus County. Hughson is the smallest incorporated city in Stanislaus County, but has grown from a population of 3,259 in 1990 to around 7,000 today. The City owns property adjacent to its Waste Treatment Facility (on Leedom Road) of which approximately 8 acres are planted in almonds. The Butte and Padre portion of the City orchard consists of approximately 3.73 tree acres (planted in 2000) and the Non Pareil and Price (planted in 1975) consists of approximately 3.88 tree acres.

CONDITIONS AND INSTRUCTIONS

PROPOSAL DELIVERY LOCATION

Proposals shall be delivered or mailed to the attention of Raul Mendez, City Manager, City of Hughson, 7018 Pine Street | PO Box 9, Hughson, California 95326 prior to 5:00 PM on _____, 2015. Proposals received after that time will be returned unopened to the respective Firm and will not be considered for evaluation. No faxed or emailed proposals will be accepted.

REQUIRED CONTENT OF THE PROPOSAL

The proposal should be concise, well organized and demonstrate the proposer's qualifications and experience applicable to the scope of services. The following describes the information that at a minimum must be included:

1. Farm Lease Bid Submittal Form (*Appendix A*, attached)
2. List of Qualification (*Appendix B*, attached)
3. Form of Almond Orchard Development and Operation Lease (attached)

SCOPE OF WORK

Information regarding the Scope of Work is included in the Form of Almond Orchard Development and Operation Lease.

PROPOSED CONTRACT

The City's intent is to utilize the Lease format as shown in the attachment to formalize the landlord-tenant relationship envisioned by the City. Comments, if any, to any clause(s) in the Lease shall be included in writing with the proposal. Comments may consist of modifications or deletions to the proposed provisions within the Lease, or new provisions suggested by the Proposer. All comments must clearly identify the section or provision within the Lease to which they pertain.

Submittal Instructions

Proposers are required to submit one (1) original and two (2) additional copies of the proposal, including all required/desired attachments by the date, time and location specified in this Request for Proposals.

EVALUATION PROCESS

The objective of the evaluation process is to perform a thorough and fair assessment of each Proposer proposal and facilitate the selection of a Proposer that best satisfies the City's requirements.

City staff will review and evaluate each proposal which is received by the stated submittal deadline. The proposals will be evaluated based on the qualification of the Proposer, the quality of the orchard or farming operation proposed by the Proposer, and the nature of any revisions to the Lease. The Proposer should show a strong understanding of best farming practices.

The Proposer determined best suited to meet the needs of the City will be recommended to the City Council for final selection. The City Council has the sole and absolute discretion regarding final selection. Upon final selection, the Proposer and City will formalize the scope of services and associated contract fee in a lease agreement.

TENTATIVE SCHEDULE FOR SELECTION:

Release Request for Proposal	_____, 2015
Proposals due to City of Hughson	_____, 2015
Evaluation Process (and/or Interviews)	_____, 2015
Hughson City Council Approval	_____, 2015
Completion of Agreement	_____, 2015
Current Contract Expiration Date	October 31, 2015
New Contract Effective Date	November 1, 2015

PROPOSAL INQUIRIES:

Questions regarding this proposal shall be referred to:

Raul Mendez, City Manager
City of Hughson
7018 Pine Street | P.O. Box 9
Hughson, California 95326

(209) 883.4054
E-mail: **rmendez@hughson.org**

ADDITIONAL TERMS AND CONDITIONS

Cost of Preparation of Proposal and Contract

The City of Hughson shall not pay costs incurred in the proposal preparation, printing, demonstration process, or contract negotiation. All such costs shall be borne by the Proposer.

Rights to Pertinent Materials

All responses, inquiries, and correspondence relating to the Request For Proposal and all reports, charts, coverage maps, displays, exhibits, and other documentation produced by the Proposer are submitted as part of the proposal shall become the property of the City of Hughson after the proposal submission deadline.

Award

The City of Hughson reserves the right to award this contract to the Proposer whose total aggregate proposal is most responsive to the needs of the City.

APPENDIX A
FARM LEASE BID SUBMITTAL FORM

The undersigned, being familiar with local conditions, having made field inspections and investigations deemed necessary, having studied the Almond Orchard Development and Operation Lease suggested, and being familiar with all factors and other conditions affecting the work and costs thereof, hereby propose to furnish all labor, tools, materials, skills, equipment and all else necessary to completely farm the City of Hughson's property in accordance with the Farm Lease Agreement.

Name of Proposer: _____

Address: _____

Telephone: _____

E-mail Address: _____

Type of Business
[ ] Individual doing business under own name
[ ] Individual doing business using Proposer name
[ ] Corporation
[ ] Partnership
[ ] Joint Venture (Please attach Joint Venture Agreement)

_____
Type or Print Name and Title

_____
Signature

APPENDIX B
QUALIFICATIONS

Name of Proposer: _____

INFORMATION:

1. Please provide a brief summary of your experience in farming, years of experience, relevant education, and your ability to perform the required agricultural activities, or attach it hereto.

2. Please provide one professional reference from a land owner where you have held or hold an agricultural lease (Name/Phone Number). If "***NONE***", please indicate.

3. To the extent you farm land you or your immediate family owns, please indicate the nature and scope of those farming operations.

4. Please provide one personal reference (Name/Phone Number).

APPENDIX C
FORM OF ALMOND ORCHARD DEVELOPMENT AND OPERATION LEASE
(attached)

[Proposers may modify, delete, or add terms to the Form Lease—such revisions will be considered during the evaluation process]

APPENDIX D
MAP

ALMOND ORCHARD DEVELOPMENT AND OPERATION LEASE

SECTION I. PARTIES

Section 1.1 Parties. This Almond Orchard Development And Operation Lease ("**Lease**") is made and effective _____, 2015 by and between CITY OF HUGHSON, a municipal California corporation, ("**Lessor** ") and _____ ("**Lessee**") who agree as follows:

SECTION II. BACKGROUND

Section 2.1 Lessor is the owner of certain real property located in Stanislaus County, California commonly known as _____ [*insert address*], Assessor's Parcel Number _____ ("**Property**"). The Property is improved with an almond orchard, consisting of two portions: (i) approximately 3.88 acres of almond trees planted in or around 1975, which are old and dying ("**1975 Block**"); and (ii) approximately 3.73 acres of almond trees planted in or around 2000, which are currently in production ("**2000 Block**"). Lessee desires to lease the Property, replace the almond trees growing on the 1975 Block with new trees, and farm the Property as a contiguous almond orchard. The Term "Property" as used in this Lease shall include the Improvements (as such term is defined below) located on the Property.

Section 2.2 Lessee operates a farming business that is experienced in the development and operation of almond orchards. At its sole cost, Lessee will develop the Property as an almond orchard and thereafter farm and operate the Property.

Section 2.3 Lessor has conducted its due diligence to confirm the ability of Lessee to develop and operate an almond orchard on the Property and Lessor has selected Lessee as farmer best suited to develop an almond orchard on the Property. Lessor and Lessee now desire to enter into this Lease to set forth their respective rights and obligations regarding the development and operation of the almond orchard on the Property.

SECTION III. PROPERTY

Section 3.1 Description. Lessor hereby leases to Lessee and Lessee leases from Lessor the Property together with all appurtenances and improvements, including but not limited to all irrigation facilities, pipelines, utilities, and other improvements, now existing or located on the Property (which appurtenances and improvements are referred to generically in this Lease as the "**Improvements**").

Section 3.2 Oil, Gas and Mineral Rights. All rights in all minerals, oil, gas and other hydrocarbons located on or under the Property which have not previously been conveyed are reserved to Lessor and are excepted from the Property covered by the terms of this Lease. In the exercise of those reserved rights, Lessor and its agents and licensees

shall have a right to enter onto the surface of the Property for the purpose of exploring, drilling, extracting or mining of any minerals, oil or gas, so long as it does not inhibit the farming of more than one (1) acre on the Property. Lessor warrants and represents that there is no existing lease pertaining to those reserved rights.

Section 3.3 Use. Lessee agrees to develop and operate on the Property, as fully as soils and other physical characteristics of the Property will allow, a quality almond orchard. Lesee shall be responsible for obtaining any permits necessary for development and operation of the orchard and for complying with all governmental regulations, including any applicable wetlands or vernal pool regulations, and for satisfying any mitigation measures that may be required.

Section 3.4 Future Crops. During the term of this Lease and subject to the crop share interest of Lessor and Lessee's obligation to pay rentals, Lessee shall have a right to all almonds, cover crops and any other crops grown upon the Premise. Notwithstanding any other provisions contained herein, however, after termination of this Lease, the crops and all other improvements constructed or installed on the Property during the Lease Term will to Lessor, except to the extent that the then-current year's crop shall belong to Lessee to the extent that such crop may not have been harvested by the date of termination of this Lease. All expenses attributable to any crop grown on the Property during the Lease Term shall be paid in full by Lessee. This obligation shall survive termination of this Lease. At no time shall Lessee or any of its creditors acquire or encumber Lessor's interest in Lessor's share of the crops grown upon the Property. The legal title to that percentage of the crops grown on the Property and herein specifically reserved to Lessor as and for the source of the Percentage Rent (as defined in Section 5.3), and the proceeds therefrom, shall at all times be and remain vested in Lessor, and the Lessee shall not and cannot encumber Lessor's share of said crops. Lessor's title to and ownership of that percentage of each crop shall be vested in Lessor immediately on its set and shall remain in Lessor until it is delivered to the purchaser.

SECTION IV. TERM

Section 4.1 Term. The term of this Lease shall be for the period of twenty-five (25) years, commencing on _____ [e.g., *November 1, 2015*] ("**Term Commencement Date**") and shall terminate after the crops are harvested in the year 2040, but no later than December 31, 2040, unless terminated earlier as provided in this Lease ("**Lease Term**"). The final rental payments shall not terminate and shall continue to be obligations of Lessee until satisfied. Notwithstanding anything in this Lease to the contrary, during a period commencing after the harvest of the last of the crop produced on the Property in any given calendar year, and ending at 5:00 pm local time on February 1 of the following year, Lessor has the right to terminate this Lease upon the happening of either of the following events: (i) the sale of the Property, or (ii) Lessor determines to change the use of the Property. In either event, Lessor must provide Lessee with no less than ninety (90) days written notice of Lessor's decision to terminate the Lease ("**Termination Notice**"). Upon receipt of the Termination Notice, Lessee must vacate and surrender the Property within the time specified in the Termination Notice. If the

Termination Notice provides for surrender of the Property on or before December 31, 2029, Lessor will pay Lessee, within thirty (30) days of the date Lessee vacates the Property as specified in the Termination Notice, $3,500 per planted acre, or fraction thereof, of new trees planted within the 1975 Block. If the Termination Notice provides for surrender of the Property on or after January 1, 2030, Lessor will pay Lessee, within thirty (30) days of the date Lessee vacates the Property as specified in the Termination Notice, $1,500 per planted acre, or fraction thereof, of new trees planted within the 1975 Block.

SECTION V. RENTAL AND PROPERTY TAXES

Section 5.1 Rent. Rent for use and occupancy of the Property shall be the Percentage Rent (as defined in Section 5.3). This is a "net, net, net" Lease as that term is generally understood, and Lessee shall pay and hold Lessor harmless from any and all of the expenses, costs and expenditures of every nature relating to the Property. All Percentage Rent payments shall be made by the purchaser/processor of the almond and other crop grown on the Property directly to Lessor at Lessor's current address for purposes of this Lease, on or before the due date thereof, and without any offset or any right of offset for any reason whatsoever and without any billing or any other written notice or demand by Lessor. Lessee shall notify the purchaser/processor of this payment provision and Lessor may also notify the purchaser/processor of this payment provision.

Section 5.2 No Rent Until Almonds Come Into Production. There shall be no rent payable by Lessee to Lessor pertaining to the almond crop for the new almond trees to be planted in the 1975 Block until those new trees come into production, but under no event shall this waiver of rent exceed beyond January 1 of the fifth (5th) crop year following the year in which the new almond trees are planted. This rent waiver does not apply to other crops grown on the Property.

Section 5.3 Percentage Rent. Except as provided in Section 5.2 above, the percentage rent for each year during the Lease Term shall be twenty-five percent (25%) of the gross proceeds ("**Proceeds**") from the sale of the almonds grown (or any other crop grown on the Property while the almonds come into production) and harvested upon the Property and twenty-five percent (25%) of the proceeds received by Lessee from Crop Insurance under Section 5.19 below (collectively the "**Percentage Rent**"). The Proceeds of the crop shall be determined by the prices paid Lessee for the almonds or other crop grown by Lessee upon the Property without any reduction for any agricultural, packing, sales, harvesting, transportation, or other cost of any nature except for government mandated assessments such as for marketing orders and inspection fees which are payable directly from the gross proceeds.

Section 5.4 Payment of Rent. During the term of this Lease or any extension thereof, the Percentage Rent shall be paid in accordance with Section 5.1, and if the Base Rent shall exceed the Percentage Rent, that amount by which the Base Rent exceeds the Percentage Rent, shall be paid by Lessee to Lessor on or before December 31 of each year. The Lessee's obligation to pay the Base Rent is absolute irrespective of whether

Lessee actually receives any of the gross revenues from the sale of the almond and other crop grown on the Property.

Section 5.5 Records. Lessee shall at all times during the term of this Lease and any extensions thereof, keep or cause to be kept, full, complete and accurate records and books of account showing the total annual almond tonnage produced on the Property and the price for any other crop(s) produced on the Property. Such records and books of account shall be kept in accordance with ordinarily accepted accounting procedures and shall include, without limitation, all harvest and picking records, weight tags, test reports, all documentation from any processor reasonably necessary or convenient to verify calculation of the amount of the Percentage Rent, and all contracts for the sale of the almond crops (and all other crops) and all memoranda of agreements and correspondence relating to each sale of same ("**Crop Records**"). Lessee shall keep and maintain full and accurate books and records of the Crop Records on a cash basis in sufficient detail to allow Lessor or their representatives to audit them. Lessor shall have the right, at all reasonable times upon five (5) days' notice, to audit the Crop Records for purposes of verification under this Lease. In the event Lessee underpaid or underreported rental due for any year by three percent (3%) or more, Lessee, in addition to being in breach of this Lease, with all attendant remedies hereunder available to Lessor, shall pay Lessor all costs and expenses incurred in determining the deviation (including accountant and lawyer fees). Lessee shall provide to Lessor, on December 31 of each year during the Lease Term, or upon reasonable notice by Lessor, a copy of the books and records of account to verify the computation of that year's Percentage Rent.

Section 5.6 Sale of Crops to Processor(s). Lessee shall have the sole and exclusive right to contract with one or more third parties for the processing of the almonds and other crops grown upon the Property, including, but not limited to, such entity or entities affiliated with Lessee; provided however those entities shall pay the greater of (i) the price paid by the affiliated entities to other sellers of almonds of the same variety and comparable quality (in terms of grade); or (ii) the average of the top three highest amounts that were paid by other third party independent Buyers who purchased almonds in the Hughson area for the same variety and comparable (in terms of grade) quality.

Section 5.7 Taxes. Lessor and Lessee acknowledge the Property is owned by the City of Hughson, a municipal California corporation, which is not subject to state and local taxes. To the extent any taxes, charges, fees, or assessments arise out of or relate to Lessee's use, rental, or occupancy of the Property, including, without limitation, development of an almond orchard on the Property, Lessee must pay before delinquent all such taxes, charges, fees or assessments. Additionally, Lessee must pay before delinquent all personal property taxes and assessments levied on Lessee's personal property situated in or about the Property. On demand, Lessee must provide to Lessor satisfactory evidence of payment of all taxes, charges, fees, and assessments relating to the Property or the Improvements, or both.

Section 5.8 Crop Insurance. Lessee must maintain multi-peril crop insurance on the almond crop grown or produced on the Property.

SECTION VI. STANDARDS OF OPERATION; LIMITATION ON USE

Section 6.1 Limitations on Use. Lessee's use of the Property as provided in this Lease shall be in accordance with the following:

Section 6.1.1 Cancellation of Insurance: Increase Insurance Rate. Lessee shall maintain insurance coverage with Lessor as a named insured, as provided in Section XII below. Lessor may in its discretion and at its own expense carry additional insurance with respect to the Property. Lessee shall not do, bring, or keep anything in or about the Property that will cause either cancellation of or increased cost of Lessor's separate insurance coverage relating to the Property. If the rate of any insurance carried by Lessor relating to the Property is increased as a result of Lessee's use, Lessee will pay to Lessor within ten (10) days after Lessor delivers to Lessee a certified statement from Lessor's insurance carrier stating that the rate increase was caused by activity of Lessee on the Property as permitted in this Lease, a sum equal to the difference between the original premium and the increased premium, retroactive to the date of the increase.

Section 6.1.2 Compliance with Laws. Lessee shall, at Lessee's costs and expense, comply with all laws, rules, regulations, requirements, ordinances and orders, present or future, of any federal, state, county, or city, including the City of Hughson, concerning the Property or Lessee's use of the Property.

Section 6.1.3 Waste; Nuisance. Lessee shall not use, or permit the use of, the Property in any manner that will constitute waste, nuisance, or unreasonable annoyance. Lessee shall not use the Property for the preparation, manufacture, or processing of anything that might emit noxious odors or objectionable noises or lights onto adjacent properties. This provision shall not be construed to prohibit customary orchard operations reasonably done by Lessee in full compliance with then-existing laws.

Section 6.2 Standards of Operation. Lessee shall be entirely responsible for the management and operation of the Property in accordance with horticultural standards and practices which optimize returns from the almond orchard to be developed on the Property. Lessee shall be responsible for all pruning, frost protection, irrigating, and other proper care of the trees and harvesting of the crop, including but not limited to lawful application in accordance with high professional standards of pesticides, insecticides, fungicides, miticides, and other chemicals when and as appropriate. Lessee shall operate the almond orchard developed on the Property in a manner which complies with applicable environmental laws and regulations and will not permit the orchard or any part of the lands or facilities thereof to become contaminated with toxic or hazardous materials or with toxic waste. Lessee shall take all actions reasonably necessary to maintain and preserve the orchard, including without limitation, the planting, growing and harvesting of almonds, the proper cultivation of the land, and the maintenance and servicing of all machinery, equipment, tools and fixtures. In the event any tree declines

in productivity for any reason or become infested or infected or in any other way impaired so as to make the decline of physical productivity foreseeable, Lessee agrees to replant such tree at Lessee's sole expense promptly in order to cause the orchard on the Property to be fully productive.

Section 6.3 Hazardous Waste. Lessee covenants, warrants and represents to Lessor that except as provided below, at no time will Lessee, its employees, agents, contractors, licensees, invitees, authorized assigns or sublessees, store or use or permit the storage or use on the Property of waste materials, by-products or toxic chemicals, any substance or materials or any combination of same identified or defined as a "hazardous substance" or which is prohibited, prescribed or regulated by federal, state, county, municipal or any governmental agency under any applicable statute, regulations, rule or ordinance (hereinafter "**Toxics**"), unless written consent is attained from Lessor.

A. Lessor hereby gives consent to Lessee for the prudent use of customary agricultural chemicals and substances in connection with sound agricultural production practices. Lessor acknowledges that Lessee will be conducting agricultural and related operations on the Property and, in the course of those operations, may be storing or using hazardous materials such as, but not limited to, pesticides, insecticides, motor fuels, and motor oils. Lessor is hereby deemed to have received written notice of Lessee's storage or use of such hazardous substances for purposes of Section 25359.7 of the Health & Safety Code or any similar law, and Lessor waives his right under subparagraph (b)(1) of that Section to void this Lease due to such storage or use. However, Lessee agrees to use, store, handle and dispose of such substances in a prudent and lawful manner so as not to cause the substances to be retained in the soil of the Property or otherwise pollute the Property. Lessee is responsible to abide by federal, state, county and municipal regulations regarding the use and handling of agricultural chemicals and substances on the Property. Lessee will be responsible for proper off-site disposal of excess chemicals, substances and containers. Upon the final termination of this Lease, Lessee will remove any remaining chemicals, substances and containers from the Property.

B. Lessee will provide Lessor with a copy of its county agricultural pesticide permit.

C. In addition to the indemnification provisions contained in Sectin 12.2 of this Lease, Lessee hereby agrees to indemnify and hold Lessor harmless from and against:

1. All costs, including attorney's fees and court costs, incurred in the cleanup and restoration of the Property to the condition which existed at the time of Lessee's first occupancy of the Property, including, but not limited to, the costs incurred in removing any Toxics which are found on or about the Property other than Toxics present at commencement of the Lease or caused by Lessor.

2. Any and all claims for liability, loss, damage, injury, expense or costs (including attorney's fees) incurred or suffered by Lessor and affecting Lessor in conjunction with, or now or hereafter arising out of, the existence on the Property (including the soil or ground water underlying or adjacent to the Property, and the water, sewage and drainage systems connection to and within the Property) of Toxics to the extent such Toxics were deposited, discharged or stored on or about the Property by or for the benefit of Lessee. Notwithstanding anything to the contrary contained in this Lease or provided by law, the indemnification obligation contained in this Section 6.3.C. shall survive the expiration or sooner termination of this Lease.

SECTION VII. ALMOND ORCHARD DEVELOPMENT

Section 7.1 Orchard Development. Lessee shall pay and be fully liable for all costs and expenses which may be incurred to establish and develop an almond orchard on the 1975 Block and bring such orchard into production, including but not limited to the following:

A. The cost of the almond trees to be planted within the 1975 Block;

B. The cost of deep ripping the 1975 Block;

C. The cost of fumigation the 1975 Block with Telone II or Methyl Bromide;

D. The cost of discing and preparing the ground for planting;

E. The cost of any constructing, repairing, replacing, installing or modifying an irrigation system on or about the Property for the uses contemplated in this Lease, including, without limitation, one or more wells, one or more pumps, filters, pipes, valves, and sprinklers, or drip systems;

F. The cost of leveling the 1975 Block in preparation of planting the orchard thereon;

G. The cost of planting the almond trees;

H. The costs of staking, training and pruning the new almond trees;

I. The cost of any and all labor, including but not limited to Lessee's labor costs, for providing the services and materials listed in this Section 7.1.

Section 7.2 Orchard Costs. Lessee shall pay and be fully liable for all costs and expenses which may be incurred to farm the Property, including but not limited to the following:

A. The cost of replacement trees or misses needed anywhere on the Property during the term of the Lease and the cost of planting those trees;

B. The cost of any constructing, repairing, replacing, installing or modifying an irrigation system on or about the Property for the uses contemplated in this Lease, including, without limitation, one or more wells, one or more pumps, filters, pipes, valves, and sprinklers, or drip systems;

C. The costs of training and pruning the almond trees;

D. The cost of insect and disease management;

E. The cost of any and all fertilizer;

F. The cost of any and all weed and rodent management;

G. The cost of complying with Global Gap and all county, state and federal food safety laws regarding agricultural production of crops;

H. All harvest costs, including without limitation, the costs of hauling and delivery of the almond crop; and

I. The cost of any and all labor, including but not limited to Lessee's labor costs, for providing the services and materials listed in this Section 7.2.

Section 7.3 Operation Standards/Use. Lessee, at its sole cost, will develop, operate and maintain on the Property, as fully as soils and other physical characteristics of the Property will allow, a premium almond orchard. No other uses shall be permitted without first obtaining the written consent of the Lessor. Other than: (i) the variety which shall be _____, (ii) the plant-back restrictions contained in Section 7.4; (iii) the requirement that the Property be deep ripped and laser leveled, and (iii) the requirement of the fumigation of the Property with Telone II or Methyl Bromide prior to the planting of the new orchard within the 1975 Block, all other determinations regarding the type of rootstock to be utilized, the spacing of the planting, the design of the irrigation systems, the specific cultural practices to be applied to the orchard and the month-by-month timing of each development step, shall be at Lessee's sole discretion and cost. Lessee shall have the right to expense, amortize and depreciate all such development expenses and assets during the term of this Lease. Lessee agrees to develop and operate an orchard on the Property which produces optimum revenues from the sales produced from the Property. Lessor shall not be obligated to pay nor shall it be liable for any costs and expenses save and except as may be otherwise specifically agreed to elsewhere within this Lease.

Section 7.4 Plant Back Restriction. Notwithstanding any other provision contained herein, Lessee further agrees that it will not plant the new almond orchard within the 1975 Block any earlier than one (1) years after the removal of the existing

almond orchard, without the prior consent of Lessor. During this minimum one (1) year "fallow" period, Lessee may plant wheat. The planting, growing, and harvesting of such wheat crop shall be at Lessee's sole cost.

SECTION VIII. MAINTENANCE OF ALMOND ORCHARD

Section 8.1 Lessor's Operation and Maintenance. Lessor shall have no obligation to alter or maintain the Property during the Lease Term.

Section 8.2 Lessee's Maintenance. Lessee shall operate and maintain the orchard as a premium almond orchard as provided in this Agreement.

Section 8.3 Weeds and Pests. Lessee shall use its best efforts to keep the orchard free and clear of rubbish, or other growth generally considered by the Agricultural Extension Service of the University of California to be foul, noxious or objectionable to good farming. Lessee shall use reasonable efforts to keep the orchard free and clear of rats, gophers, squirrels and other pests. Lessee shall also maintain the Property, including crop areas and roadways, such that they are clear of noxious weeds, including but not limited to Puncture Vine, Yellow Star Thistle, Johnson Grass, and vermin.

Section 8.4 Cultural Practices and Replacement of Trees. Lessee's obligations hereunder include the responsibility to apply the highest standards of cultural practices in the Hughson area and to maintain the trees now planted or to be planted in the orchard in a healthy and vigorous condition and, if necessary, to replace existing trees, at Lessee's cost, in a manner planned to minimize loss of production.

Section 8.5 Food Safety –Ag Producer Laws and Regulations. Lessee, at its sole cost, shall obtain the Global G.A.P. Certification for the Property on or before the almond orchard comes into production. In the event that the Global Gap Certification is no longer offered, the Lessee will qualify the Property for that formal audit program governing Good Agricultural and Handling Practices, authorized by the United States Department of Agriculture and administered by government or third party inspections in California.

SECTION IX. WATER AND WATER SYSTEMS/REPAIRS AND MAINTENANCE

Section 9.1 Maintenance and Repairs. Water necessary for the irrigation of the crops to be grown on the Property may be used by Lessee during the term of the Lease to the extent available from time to time during the Lease Term from wells, pumps, and pipelines presently existing or later developed on the Property. Water shall be used only on the Property and in performance of Lessee's obligations under this Lease. Lessor does not warrant and shall not be liable for the quantity or quality or continuous availability of water to the Property, and Lessor shall not be responsible for any damage whatsoever caused by irrigation or drainage or lack thereof. Lessee shall, at Lessee's sole cost and expense, maintain and keep free and clear of all weeds and growth, all irrigation

and drainage ditches and culverts on the Property, and maintain and repair all pumps, pipelines, siphons and appurtenances located on the Property or connected with and belonging to its irrigation and drainage systems. Lessee shall not use the water, pumps and appurtenances of the Property in order to water property other than the Property, nor shall it sell or export water from the Property. Title to water not used by Lessee in the production of crops on the Property or for other agricultural uses connected therewith, is and shall remain the sole property of Lessor. Lessee shall not use or permit to be used any water for the purpose of irrigating the Property, if the salinity of such water is or will be injurious to the Property. All power charges, including electrical energy and standby charges for the operation of pumps and siphons of the Property shall be at Lessee's expense. Lessee at its sole cost shall install all pipelines and irrigations systems necessary for the development of the almond orchards. Lessee is familiar with the present condition of the Property, including, but not limited to the structural improvements as well as the irrigation and drainage ditches and other water facilities located thereon or used in connection therewith. Lessee accepts all improvements in their present condition (i.e., "as is") on the entire Property, and all of said irrigation and drainage ditches and other water facilities thereon. Landlord does not guarantee or warrant the present or future condition of the irrigation or drainage system and shall not be liable or responsible in any way for the failure of either or both to operate in any manner.

SECTION X. ALTERATIONS

Section 10.1 Alterations and Liens. Except as specifically provided in this Lease, Lessee shall not make or permit any other person to make any alterations to the Property or to any improvement of facilities thereon, whether or not appurtenant thereto, without the prior written consent of the Lessor. Lessee shall keep Lessor's interest in the Property and in the almond crops produced on the Property free and clear from any and all liens, claims and demands, including without limitation, those for work performed, materials furnished, or operations conducted on the Property at the instance or request of Lessee.

Section 10.2 Mechanics' Liens. Lessee shall pay all costs for construction done by it on the Property as permitted by this Lease. Lessee shall keep the Property free and clean of all mechanics' liens resulting from construction done by or for Lessee. Lessee shall have the right to contest the correctness or the validity of any such lien if, immediately on demand by Lessor, Lessee shall procure and record a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half times the amount of the claim of the lien. The bond shall meet the requirements of Civil Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if it recovers in the action).

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SECTION XI. UTILITIES AND SERVICES

Section 11.1 Utilities and Services. Lessee shall make all arrangement for and pay for any and all utilities and services, including but not limited to regular and standby fees, installation and hook-up fees furnished to or used by it, including, without limitation, gas, electricity, telephone service and for all connection charges. If practical, Lessee shall be billed directly for the above-mentioned utilities and services and shall pay the bills direct. If Lessor pays such charges, at its election (but without any obligation to do so), Lessor shall provide written notice of such payment to Lessee and Lessee shall reimburse Lessor for such payment within twenty (20) days of receipt of said notice.

SECTION XII. INDEMNITY AND INSURANCE

Section 12.1 Exculpation of Lessor. Except as provided herein, Lessor shall not be liable to Lessee for any damage to Lessee property from any cause. To the maximum extent allowed by law, Lessee waives all claims against Lessor for damage to person or property arising for any reason, except that Lessor shall be liable to Lessee for damage to Lessee caused by the gross negligence or intentional acts or omissions of Lessor or its authorized representatives.

Section 12.2 Indemnification of Lessor. Lessee hereby agrees to indemnify, defend and hold Lessor, and its employees and agents, harmless from any and all known or unknown claims, demands, causes of action, liabilities, losses, damages (including consequential and punitive damages), costs and expenses (including reasonable legal fees and costs) (collectively or individually referred to as "**Claims**" or "**Claim**") arising out of, whether directly or indirectly, or in any way connected with the use or occupation of Property by Lessee under this Lease, specifically including without limitations, any Claim arising:

(a) By reason of any injury to person or property, unless caused by the negligence or intentional acts of Lessor or any of Lessor's employees, agents, independent contractors or invitees, while in or on the Property or in any way connected with the property or with the improvements or personal property in or on the Property, including without limitation, any liability for injury to the person, any personal property or any real property of the Lessee, its agents, officers, or employees. Upon request by Lessor, Lessee shall provide reasonable proof of Lessee's insurance coverage to fund Lessee's indemnity obligations under this Section 12.2;

(b) By reason of any work performed on the Property or materials furnished to the Property at the insistence or request of the Lessee, its agents or employees;

(c) By reason of the Lessee's failure to perform any provision of this Lease or to comply with any requirement imposed on it or on the Property by any duly authorized governmental agency or political subdivision.

(d) By reason of the Lessee's failure or inability to pay as they become due any obligations incurred by Lessee in the agricultural or other operations to be conducted by it on the Property.

(e) By reason of Lessee's violation or breach of any representation warranty or covenant of Lessee hereunder.

(f) By reason of, or directly or indirectly arising out of, or in any way connected with, the use, release, generation, storage or disposal of hazardous materials, on, in, under or above the Property, including without limitations, on, in or under the ground water under the Property or the surface water on the Property, or any crop on the Property, or any crop on the Property by any person during the occupation of the Property by Lessee.

Section 12.3 Notice of Claim. In the event Lessor receives notice of any Claim or demand against which Lessor is entitled to indemnification pursuant to this Section 12, Lessor shall promptly give written notice thereof to Lessee. Lessee shall immediately take such measures as may be reasonably required to properly and effectively defend any such Claim, and may defend with counsel of its own choosing, subject to reasonable approval of Lessor, which approval shall not be unreasonably withheld or delayed. In the event Lessee fails to properly and effectively defend any such Claim, then Lessor may defend such Claim with counsel of its own choosing at the expense of Lessee.

Section 12.4 Property Insurance on Lessee's Property. Lessee, at its expense, shall carry fire and casualty insurance on Lessee's own property as Lessee deems necessary, and Landlord shall have no obligation to Lessee with respect to any loss or damages suffered by Lessee with regard to Lessee's own property.

Section 12.5 Commercial General Liability; Auto. Lessee at its cost must maintain commercial general liability with a single combined liability limit of $2,000,000.00, insuring against all liability of Lessee, its employees, and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the Property. The Commercial General Liability coverage should include, but not be limited to, the following: Property/Operations, Products/Completed Operations, Owners Contractors Protective, Independent Contractors, Blanket Contractual Liability, Broad Form Property Damage, Personal Injury, Chemical Drift and Contingent Crop Dusting Liability. Lessee at its cost must maintain automobile liability insurance in an amount no less than $1,000,000. All insurance shall cover not only the liability of Lessee for bodily injury to or death of persons and property damage occurring in upon or about the Property, but also all liabilities which have been assumed by Lessee under the provisions of this Lease. Lessor must be named as an additional insured on said policies, and Lessor must receive for each such policy a currently effective certificate attesting to such insurance coverage. Notwithstanding the provisions of this Section 12.5, Lessee, in its sole discretion, may provide or obtain the required insurance under one or more blanket policies insuring Lessee in regard to all properties that Lessee may farm.

Section 12.6 Increase in the Amount of Commercial General Liability Insurance. Not more frequently than every three (3) years, if, in the judgment of the Lessor's lender or the insurance broker retained by Lessor, the amount of commercial general liability insurance coverage at the time is not adequate, Lessee shall increase the insurance coverage as requested by either Lessor's lender or Lessor.

Section 12.7 Workers' Compensation Insurance. Lessee shall procure and maintain at its own cost and expense, during the term and any extensions of this Lease, Workers' Compensation coverage required by the State of California, and Employer's Liability Insurance in an amount no less than $1,000,000. Lessee shall require any harvester, sprayer or other person hired by it as an independent contractor to perform services to the Property to procure similar workers' compensation insurance. Lessee shall require any independent contractor to procure this insurance before commencing any services on the Property and to maintain the insurance during the performance of any such services. Lessee shall provide to Lessor a currently effective certificate attesting to such insurance coverage.

Section 12.8 Waiver of Subrogation. To the extent allowed by their respective insurance carriers, the parties release each other, and their respective authorized representatives, from any claims for damage to any person, the orchard, or the fixtures, personal property, crops, Improvements, and alterations of either Lessor or Lessee in the Property or in any of the parcels in which the Property is located, to the extent covered by any insurance policies carried by the parties and in force at the time of the damage. Whenever possible without additional cost, each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither party shall be liable to the other for injury or damage to the extent covered by any insurance policy carried by or for the protection or other benefit of the other party. If any insurance policy cannot be obtained with a waiver of subrogation, or is obtainable only by the payment of an additional premium charge above that charged by insurance companies issuing policies without waiver of subrogation, the party in whose favor a waiver of subrogation is desired shall have a period of ten (10) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation, or to agree to pay the additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party is relieved of the obligation to obtain a waiver of subrogation rights with respect to the particular insurance coverage involved.

SECTION XIII. DESTRUCTION

Section 13.1 Lessee's Obligation to Restore. If, during the Lease Term, all of the Property is totally destroyed by fire, flood, earthquake or other casualty (whether or not covered by insurance) rendering the Property totally inaccessible or unusable, Lessee shall within ninety (90) days of such destruction either (a) terminate the Lease or (b) commence immediately to restore the Property to substantially the same condition as it

was immediately before the destruction. If Lessee terminates the Lease it shall assign to Lessor all rights it may have to insurance proceeds attributable to the destruction and shall pay to Lessor all proceeds already received less those funds necessary and paid by Lessee to restore property to original farmable condition.

Section 13.2 Abatement or Reduction of Rent. In case of partial destruction, there shall be no abatement or reduction of rent.

Section 13.3 Waiver of Civil Code Sections. Lessee waives the provision of Civil Code Section 1932(2A) and Civil Code Section 1933(4) with respect to any destruction of the Property.

SECTION XIV. CONDEMNATION

Section 14.1 Definitions.

1. "Award" means all compensation, sums, or anything of value awarded, paid, or received on a total or partial condemnation.

2. "Condemnation" means (a) the exercise of any governmental power, whether by legal proceeding or otherwise, by a Condemnor, and (b) a voluntary sale or transfer by Lessor to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

3. "Condemnor" means any public or quasi-public authority or private corporation or individual, having the power of condemnation.

4. "Date of Taking" means the date the Condemnor has the right to possession of the property being condemned.

Section 14.2 Parties' Rights and Obligations to Be Governed By Lease. If, during the term or during the period of time between the execution of this Lease and the date the term commences, there is any taking of all or any part of the Property or any interest in this Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to this Section.

Section 14.3 Total Taking. If the Property is totally taken by condemnation, this Lease shall terminate on the date of taking, and Lessee shall be entitled to that portion of the Award as set forth below in Section 14.5.

Section 14.4 Partial Taking.

Section 14.4.1 Effect on Lease. If any portion of the Property is taken by condemnation, this Lease shall remain in effect, except that Lessee can elect to terminate this Lease if fifty percent (50%) or more of the total planted acreage of the orchard is taken or rendered unsuitable for Lessee's continued use. If Lessee elects to terminate this Lease, Lessee must exercise its right to terminate pursuant to this subsection by giving

notice to Lessor within thirty (30) days after the nature and the extent of the taking have been finally determined. If Lessee elects to terminate this Lease as provided in this subsection, Lessee also shall notify Lessor of the effective date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Lessee has notified Lessor of its election to terminate. However, as to the portion taken this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Lessee. If Lessee does not terminate this Lease within the thirty (30) day period, this Lease shall continue in full force and effect, except that the base rent shall be reduced pursuant to this section.

Section 14.4.2 Waiver of CCP Section 1265.130. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the orchard.

Section 14.5 Award - Distribution. The Award shall belong to and be paid to Lessor, except that Lessee shall receive from the Award the following (which shall be paid directly to Lessee):

1. A sum representing that portion of the replacement cost of Lessee's initial investment in developing the almond orchard on the taken portion of the Property, up to the whole thereof if the entire Property is taken.

2. A sum attributable to the taking of Lessee's improvements or alterations made to the Property by Lessee in accordance with this Lease, which Lessee's improvements or alterations Lessee would have the right to remove from the Property pursuant to the provisions of this Lease but elects not to remove; or if Lessee shall elect to remove any such Lessee's improvements or alterations, a sum for reasonable removal and relocation costs not to exceed the market value of such improvements or alterations.

3. Any portion of the Award which is specified to represent the loss incurred by Lessee (other than the development costs and improvements referred to above) in the present market value of Lessee's interest in the Property and all compensation, damages and award for Lessee's trade fixtures, equipment, machinery, and growing crops, and any business interruption and relocation expenses.

Section 14.6 Temporary Taking. The taking of the Property or any part of the Property by military or other public authority shall constitute a taking thereof by condemnation only when the use and occupancy by the taking authority has continued for longer than one hundred eighty (180) consecutive days. During the one hundred eighty (180) days period, all the provisions of this Lease shall remain in full force and effect, except that the Base Rent shall be reduced during such period of taking based on the extent to which the taking interferes with Lessee's use of the Property.

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SECTION XV. ASSIGNMENT

Section 15.1 Assignment and Subletting. Lessee shall not assign, transfer or encumber this Lease or any interest herein, nor sublet any portion of the Property, without the prior written consent of Lessor, which such consent by Lessor shall not be unreasonably withheld or delayed. Reasonable grounds for denying or withholding consent include the following:

(a) The proposed transferee's financial condition is inadequate to support the obligations of the Lessee under this Lease, after taking into account Lessee's continued financial liability under the Lease. For purposes of this provision, if the proposed transferee's net worth is equal or exceeds that of Lessee as of the date of the requested assignment, the proposed transferee's financial condition will automatically be deemed sufficient for purposes of this subsection (a).

(b) The proposed assignment would cause Lessor to violate another lease or agreement to which Lessor is a party.

(c) The proposed transferee's reputation in the Hughson farming community as having farming practices not meeting or exceeding the current farming practices of Lessee.

Section 15.2 Permitted Transfers. Notwithstanding the provisions of Section 15.1 above, Lessee may assign this Lease or sublease any portion of the Property to a corporation, partnership or other entity which controls, is controlled by, or is under common control with Lessee, or any entity resulting from any merger or consolidation with Lessee (a "**Permitted Transferee**") without any consent of Lessor so long as the terms and provisions of this Lease are otherwise complied with.

Section 15.3 Lessor's Written Response. Lessee shall provide in writing to Lessor a notice at least thirty (30) days before the proposed effective date of the proposed transfer to an assignee or subtenant ("**Transfer Notice**"). The Transfer Notice shall include the following: (i) information regarding the proposed transferee (name, address and ownership information, current financial statements); and (ii) all material terms of the proposed transfer. Within twenty (20) days after receiving the Transfer Notice of the anticipated assignment or subletting of the Property, Lessor should approve or disapprove the proposed transfer pursuant to Section 15.1. If Lessor disapproves the proposed transfer pursuant to Section 15.1, Lessor shall provide a reasonable explanation. Any assignment or subleasing without the prior written consent of Lessor will be void. Any assignment or sublease with the written consent of Lessor pursuant to the terms of this Agreement does not release Lessee from its obligations and liabilities under this Agreement unless otherwise stated in the written consent given by Lessor. Lessee shall pay Lessor's, as additional rent, reasonable attorney's fees that Lessor incurs in reviewing and processing the transfer request.

Section 15.4 Lessor Right to Assign. Lessor shall have the right to assign or transfer all or any part of this Lease, or any right to it, at any time without Lessee's consent.

SECTION XVI. DEFAULT

Section 16.1 Lessee's Default. The occurrence of any of the following shall constitute a default by Lessee:

1. Failure to pay rent, taxes, insurance, or any other specific money obligation when due pursuant to the terms of this Lease, if the failure continues for five (5) days after notice has been given to Lessee.

2. Abandonment and vacation of the Property which includes but is not limited to failing to occupy and operate the Property for thirty (30) consecutive days shall be deemed an abandonment and vacation.

3. Failure to (a) perform any other provision of this Lease (b) fully comply with any obligation of Lessee under this Lease including the timely and complete adherence to the Development Plan, or (c) correct any inaccurate warranty or failed assumption caused or permitted by Lessee (including the representations and assumptions contained in or implied by the information set forth in Section II to this Lease), if such failure is not cured within twenty (20) days after notice has been given to Lessee. If the default cannot reasonably be cured within twenty (20) days, Lessee shall not be in default of this Lease if Lessee shall commence to cure the default within the twenty (20) day period and continue diligently and in good faith to cure the default. Notices given under this section shall specify the alleged default and the applicable Lease provisions. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor expressly so elects in the notice, and Lessee shall remain obligated hereunder as set forth below.

4. The dissolution of Lessee.

5. Any other event of default specified herein.

6. Any default of the Lease by any assignee or any sublessee.

Section 16.2 Lessor Remedies. Lessor shall have the remedies listed below if Lessee shall commit a default. These remedies are not exclusive. The remedies are cumulative in addition to any remedies now or later allowed by law:

Section 16.2.1 If Lessee's Right to Possession Is Not Terminated. Lessor can continue this Lease in full force and effect, and the Lease will continue in effect as long as Lessor does not terminate Lessee's right to possession, and Lessor shall have the right to collect rent when due. During the period Lessee is in full default, Lessor can enter the Property and relet them, or any part of them, to third parties for Lessee's

account. Lessee shall be liable immediately to Lessor for all costs Lessor shall incur in reletting the Property, including, without limitation, broker's commission, expenses of rehabilitating the orchard required for reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Lessee shall pay to Lessor the rent due under this Lease on the dates the rent is due, less any rent Lessor actually receives from any reletting. No act by Lessor by this section shall terminate this Lease unless Lessor notifies Lessee that Lessor elects to terminate this Lease. After Lessee's default and for as long as Lessor does not terminate Lessee's right to possession of the Property, if Lessee obtains Lessor's consent as provided in Section XV of this Lease, Lessee shall have the right to assign or sublet its interest in this Lease, but Lessee shall not be released from liability for rents hereunder or from performance of any other obligation hereunder.

Section 16.2.2 <u>If Lessee's Right to Possession is Terminated</u>. Lessor can terminate Lessee's right to possession of the Property at any time. No act by Lessor other than giving express notice of termination to Lessee shall terminate this Lease. Acts of maintenance, efforts to relet the Property, or the appointment of a receiver on Lessor's initiative to protect Lessor's interest under this Lease shall not constitute a termination of Lessee's right to possession. On termination, Lessor has the right to recover from Lessee:

1. The worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease, plus

2. The worth, at the time of the award of the amount, by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award (including reasonably estimated future Percentage Rent) exceeds the amount of the loss of rent that Lessee proves by clear and convincing evidence could have been reasonably avoided by Lessor, plus

3. The worth, at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award (including reasonably estimated future Percentage Rent) exceeds the amount of the loss of rent that Lessee proves by clear and convincing evidence could have been reasonably avoided by Lessor, plus

4. Any other amount, including attorneys' fees, expert witness fees, and costs, necessary to compensate Lessor for all detriment proximately caused by Lessee's default.

"The worth, at the time of award", as used in 1 and 2 of this subsection is to be computed by allowing interest at the rate of ten percent (10%) per annum. "The worth, at the time of award," as referred to in 3 of this subsection, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of termination, plus one percent (1%).

Section 16.2.3 Appointment of Receiver. If Lessee is in Default of this Lease, Lessor shall have the right to have a receiver appointed to conduct Lessee's business on the Property and to pay all rents accruing to Lessor for the account of Lessee. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Lessor to terminate this Lease.

Section 16.2.4 Lessor's Right to Cure Lessee's Default. Lessor, at any time after Lessee commits a default, can cure the default at Lessee's cost. If Lessor at any time, by reason of Lessee's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Lessor shall be due immediately from Lessee to Lessor at the time the sum is paid, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by Lessor until Lessor is reimbursed by Lessee. The sum, together with interest on it, shall be deemed additional rent.

SECTION XVII. ENCUMBRANCE-TERMINATION OF LEASE

Any encumbrance prohibited by the provision of this Lease, including without limitation, the crop produced on the Property, or the leasehold interest of the Lessee in the Property, made, done or suffered by Lessee without Lessor's written approval, whether voluntary or involuntary, during the Term of this Lease or any extension thereof, shall terminate this Lease and shall entitle the Lessor to re-enter and regain possession of the Property. Under no circumstances shall Lessee be entitled to encumber the Property, or cause or permit any lien, judgment, trust deed or mortgage to be recorded against the title to the Property.

SECTION XVIII. LESSOR'S ENTRY ON PROPERTY

Lessor and its authorized representatives shall have full access to the Property at all reasonable times for any of the following purposes (in addition to those other purposes established or implied by other provisions of this Lease); Lessee shall supply to Lessor his agents and assigns, such keys and other implements necessary to allow entry on the Property:

1. To determine whether the Property is in good condition and whether Lessee is complying with its obligations under this Lease;

2. To do any necessary repairs and to make any restoration to the Property that Lessor has the right or obligation to perform hereunder;

3. To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

4. To show the Property to prospective lenders, appraisers, insurance professionals, brokers, agents, buyers, Lessees, or persons interested in an exchange at any time during the term; and

5. To use any facilities and personal property reserved to Lessor hereunder.

SECTION XIX. SUBORDINATION; ESTOPPEL

Section 19.1 Lease to Be Subject to Subordination. This Lease shall be prior to any encumbrance recorded after the date of this Lease affecting the Property. If, however, a lender requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate to that encumbrance. Upon the written request of Lessor, Lessee agrees to subordinate its rights under this Lease to any mortgage or deed of trust or similar indenture ("lien") covering the Property upon the conditions set for hereafter, and Lessor agrees to obtain a non-disturbance agreement from any mortgage holder, trust deed beneficiary or similar indenture holder ("lien holder"). Such non disturbance agreement shall provide that the lien holder agrees in writing, in recordable form, that so long as Lessee shall not be in default under this Lease, or, if Lessee is in such default, as long as Lessee's time to cure such default shall not have expired: (i) the term of this Lease shall not be terminated or modified in any material respect whatsoever, nor the rights of Lessee under this Lease or its occupancy of the Property be affected in any way should such lien be foreclosed or any other action be instituted in connection with such lien; and (ii) that in the event of default under the lien and upon enforcement by the lien holder of its remedies, said lien holder agrees to perform all of the duties and responsibilities of the Lessor under this Lease so long as Lessee is not in default beyond any applicable cure period of this Lease. In the event that any such lien is foreclosed or a conveyance in lieu of foreclosure is made, at the election of Lessor's successor in interest, Lessee agrees to attorn to and become the tenant of such successor and Lessee's right to possession of the Property shall not then be disturbed as long as Lessee is not in default under this Lease. Lessee shall attorn to any purchaser at any foreclosure sale, or to any grantee or transferee designated in any deed given in lieu of foreclosure. Lessee shall execute the written agreement and any other documents required by the lender to accomplish the purposes of this section.

Section 19.2 Right to Estoppel Certificates. Each of Lessor and Lessee, within ten (10) days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of the Base Rent, the amount or basis for determining the Percentage Rent, the dates to which the rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the said estoppel certificate within the ten (10) days shall constitute a material default hereunder, and such failure shall be conclusive upon the party failing to deliver the certificate for the benefit of the party requesting the certificate and any successor to the party requesting the certificate, that this Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate.

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SECTION XX. NOTICE

Section 20.1 Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, certified mail with return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed and mailed or hand-delivered or delivered by facsimile transmission to the other party at the address set forth in Section 26.10 of this Lease. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed communicated and received when actually delivered or by facsimile transmission or within seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

SECTION XXI. WAIVER

Section 21.1 Waiver. No delay or omission in the exercise of any right or remedy of Lessor on any default by Lessee shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Lessor of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment of the particular rent payment involved and shall not constitute a waiver of interest for the delay in payment. No act or conduct of Lessor, including without limitation, the acceptance or use or continuing use of Lessor, of any keys or other entrance controls to the Property shall constitute an acceptance of the surrender of the Property by Lessee before the expiration of the term. Only express written notice from Lessor to Lessee shall constitute acceptance of the surrender of the Property and accomplish a termination of the Lease. Lessor's consent to or approval of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent act by Lessee. Any waiver by Lessor of any default must be in writing and shall not be deemed a waiver of any other default concerning the same or any other provision of the Lease.

SECTION XXII. SURRENDER AND DEED ON TERMINATION

Section 22.1 Surrender and Deed on Termination. Lessee shall execute and deliver to Lessor, on the expiration or termination of this Lease, within five business days of Lessor's request, a surrender of lease and a quitclaim deed to all lands (including related rights) within the Property, in recordable form, to Lessor or to Lessor's designee as grantee. Lessee shall also cooperate with Lessor in executing any document or performing any other act reasonably requested by any title insurance company to clear record title to any land involved in or affected by this Lease.

SECTION XXIII. ATTORNEYS' FEES

If either Lessor or Lessee becomes a party to any third party litigation concerning this Lease, the Property, or any of the Improvements , by reason of any act or omission of the other party or its authorized representatives, the party that causes the other party to

become involved in the litigation shall hold harmless and indemnify that party for reasonable attorneys' fees, expert witness fees, other litigation expenses and court costs incurred by it in the litigation. If either Lessor or Lessee commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit. The phrase "prevailing party" shall also mean the party who obtains substantially the result sought, whether by dismissal, default, summary judgment, settlement or otherwise.

SECTION XXIV. SURRENDER OF PROPERTY; HOLDING OVER

Section 24.1 Surrender of Property. On expiration of thirty (30) days after termination of the term, Lessee shall surrender to Lessor the Property and all Lessee's improvements and alterations in good condition, except for ordinary wear and tear occurring after the last necessary maintenance made by Lessee and except for alternations that Lessee has the right to remove or is obligated to remove under the provisions of the Section dealing with alterations. Except for the almond trees and associated irrigation systems (which shall remain with the Property, including permanent set sprinklers, drip irrigation lines, pumps), Lessee shall remove all its personal property within the above-stated time. Lessee shall perform all restoration made necessary by the removal of any of Lessee's alterations or Lessee's personal property within the time periods stated in this section. Lessor can elect to retain or dispose of in any manner any alterations or any of Lessee's personal property that Lessee does not remove from the Property on expiration or termination of the term as allowed or required by this Lease by giving ten (10) days' notice to Lessee. Title to any such alterations or Lessee's personal property that Lessor elects to retain or dispose of on expiration of such ten (10) day period shall vest in Lessor. Lessee waives all claims against Lessor for any damage to Lessee resulting from Lessor's retention or disposition of any such alterations or Lessee's personal property. Except as otherwise provided in Section 3.5, if Lessee fails to surrender the Property to Lessor on expiration or ten (10) days after termination of the term as required by this section, Lessee shall hold Lessor harmless from all damages resulting from Lessee's failure to surrender the Property (including, without limitation, claims made by a successor to Lessee) resulting from failure by Lessee or a successor to Lessee to surrender the Property.

Section 24.2 Holding Over. If Lessee, with Lessor's consent, remains in possession of the Property after expiration or termination of the term, or after the date in any notice given by Lessor to Lessee terminating this Lease, such possession by Lessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' written notice given at any time by either party. During any such month-to-month tenancy, Lessee shall pay promptly all rent required by this Lease.

SECTION XXV. LESSOR'S REPRESENTATIONS

Section 25.1 AS-IS Condition. The Property and Improvements are leased in an "AS-IS" condition, with all faults, and Lessor makes no representation or warranty whatsoever regarding the Property or the Improvements, including, without limitation,

any representation or warranty as to the condition of the Property, or any Improvement, or whether the Property or the Improvements (or both) are suitable for Lessee's intended use.

Section 25.2 Prior Representations/Warranties. Neither Lessor nor any of Lessor's agents have made any representations, warranties, or promises with respect to the Property, or any improvements, structures, and facilities thereon, except as herein expressly set forth. Without limiting the generality of the foregoing, Lessee expressly acknowledges that Lessor and Lessor's agents have made no warranties or representations, express or implied, regarding the weather at or around the Property, the suitability of the Property for farming, or the quantity or quality of almonds to be grown on the Property.

SECTION XXVI. MISCELLANEOUS PROVISIONS

Section 26.1 Time of Essence. Time is of the essence of each provision of this Lease.

Section 26.2 Consent of Parties. Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

Section 26.3 Successors and Assigns. This Lease shall be binding on and inure to the benefit of the parties and their respective permitted successors and assigns.

Section 26.4 Exhibits - Incorporation in Lease. All exhibits referred to are attached to this Lease and incorporated by reference.

Section 26.5 California Law. This Lease shall be construed and interpreted in accordance with the laws of the State of California. The venue of any action or proceeding arising out of this Lease shall be Stanislaus County, California.

Section 26.6 Integrated Agreement; Modification. This Lease contains all the agreements of the parties and cannot be amended or modified except by a written agreement.

Section 26.7 Captions; Table of Contents. The captions and the Table of Contents of this Lease shall have no effect on its interpretation.

Section 26.8 Singular and Plural. When required by the context of this Lease, the singular shall include the plural.

Section 26.9 Severability. The unenforceability, invalidity, or illegality of any provisions shall not render the other provisions unenforceable, invalid, or illegal.

Section 26.10 Address of Parties for Notice Purposes. Until and unless changed

by written notice to the other party, the respective addresses of the parties are:

LESSOR :	LESSEE:
CITY OF HUGHSON _____ _____ _____ _____ _____	

Section 26.11 Payments Are Rent. All sums of money or charges required to be paid by Lessee under this Lease shall be deemed rental for the Property and may be designated as such in any statutory notice to pay rent or quit the Property.

Section 26.12 Arbitration. Any question, dispute, controversy, or misunderstanding arising under or in connection with this Lease, other than disputes with respect to the payment of rent, taxes, or to keep the Property insured, shall be submitted to judicial arbitration in accordance with the provisions of Code of Civil Procedure Sections 1141.10 - 1141.31 and California Rules of Court 810-3.830.

Section 26.13 No Joint Venture. The relationship between Lessor and Lessee is that of Lessor and Lessee under a lease and it is not a partnership or joint venture. Hence, neither party may enter into a contract or otherwise, by act or omission, create liabilities which bind the other party. Lessee is an independent contractor and has no authority to contract or enter into any other agreement in the name of Lessor. Lessee shall be fully responsible for all matters relating to payment of its employees including compliance with taxes.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease to be effective as of the date first set forth above.

"**LESSOR**":	"**LESSEE**":
CITY OF HUGHSON, a municipal California corporation By: _____ Its: City Manager	

CITY OF HUGHSON AGENDA ITEM NO. 5.1
SECTION 5: PUBLIC HEARING

Meeting Date: **August 10, 2015**
Subject: **Consideration to Adopt Ordinance No. 2015-10 Amending the Feathers Glen Development Agreement**
Enclosures: **Ordinance No. 2015-10**
Feathers Glen Development Agreement
Presented By: **Jaylen French, Community Development Director**

Approved By: _____

Staff Recommendation:

Introduce and waive the first reading of Ordinance No. 2015-10, an Ordinance of the City Council of the City of Hughson amending the Development Agreement relating to the development known as Feathers Glen.

Background and Overview:

On June 12, 2006, the Hughson City Council adopted Ordinance No. 06-05 approving a Development Agreement between the City and Feathers Glen, LLC, EF Communities, Inc., and Adeline Feathers relating to development known as Feathers Glen.

Subsequently, on October 27, 2008, the Hughson City Council adopted Ordinance 08-07 amending the Development Agreement as requested by Pacific Union Homes, Inc., acting on behalf of Feathers Glen, LLC. The amendment was specific to Part II, Section 3.G., pertaining to when Inclusionary Housing In-Lieu fees are paid. The amendment allows said fees to be paid at building permit issuance as opposed to four (4) years from the effect date of the Development Agreement.

Discussion:

On May 26, 2015, City staff presented a proposed second amendment to the Feathers Glen Development Agreement to the City Council based on coordination with Pacific Union Land Company, formerly Pacific Union Homes, which requested the amendment to to Part II, Section 1.D., pertaining to the term of the Development Agreement. The language stated that the Development Agreement shall extend until the tenth (10th) anniversary of the effective date, i.e. July 26, 2016, or until one (1) year after the project buildout, whichever is earlier.

Due to the housing bust and economic downturn, Pacific Union Land Company did not believe that completing the project was feasible in the current timeframe, when the market has not supported development of residential units in recent years.

Previously, Pacific Union Land Company reached agreement with a home builder, Florsheim Homes, to develop the remainder of the project and sought a 12-month extension to the term of the Development Agreement until July 26, 2017. The proposed amendment also again adjusted the timeframe in which Inclusionary Housing In-Lieu fees were to be paid, from July 5, 2015—as outlined in the first amendment to the Development Agreement—to concurrent with issuance of building permit for the remaining 39 undeveloped lots, which will expire with the expiration of the Development Agreement.

The City Council made it clear that the amendment as drafted was not in the best interest of the City and provided staff with direction to renegotiate with Pacific Union on the amendment. Subsequently, after discussions with staff, Pacific Union agreed to pay the City's current development impact fees as opposed to those within the original development agreement. The City's current fees do not include an inclusionary housing fee, which would eliminate the payment due date issue.

This item is to seek council approval to adopt Ordinance 2015-10, which amends the Feathers Glen Development Agreement as follows:

1. Development Impact Fees revised from those in Exhibit E-1 to the City's current development impact fee structure.
2. Extends Development Agreement term 12-months to July 26, 2017.

Fiscal Impact:

This action would result in a positive fiscal impact compared to the original development agreement, amendment #1 or the prior proposed amendment #2. The developer would pay the City's current development impact fees, which are slightly higher than the fees that would be collected per the development agreement. First, the City's current fee structure does not include the inclusionary housing fee and staff escalated the impact fees by 3% each year; therefore, the overall difference in the two fee amounts is less than it otherwise would have been. Depending on when the units would have been developed, the difference is between $1,000 and $2,000 per unit or $39,000 to $78,000 total.

CITY OF HUGHSON
CITY COUNCIL
ORDINANCE NO. 2015-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUGHSON AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HUGHSON AND FEATHERS GLEN, LLC, EF COMMUNITIES, INC., AND ADELINE FEATHERS RELATING TO THE DEVELOPMENT KNOWN AS FEATHERS GLEN

WHEREAS, pursuant to Hughson Ordinance No. 90-59, the City of Hughson ("City") may enter into, or amend a Development Agreement with the owner and/or developer of real property within the City; and

WHEREAS, on June 12, 2006 the Hughson City Council adopted Ordinance No. 06-05 approving a Development Agreement (hereinafter called "Development Agreement") between the City and Feathers Glen, LLC, EF Communities, Inc., and Adeline Feathers for the development of certain real property within the City; and

WHEREAS, on October 27, 2008, the Hughson City Council adopted Ordinance No. 08-07 amending the Development Agreement as requested by Pacific Union Homes, Inc., acting on behalf of Feather Glen, LLC. The amendment was specific to Part II, Section 3.G. pertaining to when Inclusionary Housing In-Lieu fees are paid; and

WHEREAS, Pacific Union Land Company has requested another amendment to the Development Agreement due to changes in market conditions which have not supported development of residential units for sale; and

WHEREAS, Pacific Union Land Company has reached agreement with a home builder to develop the remainder of the project; and

WHEREAS, the City and Developer are entering into this Second Amendment to the Development Agreement to memorialize the terms affecting the remainder of the Project.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF HUGHSON DOES ORDAIN AS FOLLOWS:

Section 1. Part II, Section 1.D. is hereby amended to read as follows:

"D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend until July 26, 2017 or until one (1) year after the "Project Buildout" as hereinafter defined, whichever is earlier, unless said term is otherwise modified by

circumstances set forth in this Agreement or by the mutual consent of the parties hereto. For purposes of this Agreement, "Project Buildout" shall mean the date on which a Certificate of Occupancy (or comparable instrument) is issued for the last project improvement or residential home or other structure to be constructed in the Project. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, except as may be specified otherwise herein."

Section 2. Part II, Section 3.E. is hereby amended to read in full as follows:

"E. Fees. Fees to be paid by Developer shall be as specified below. Developer shall also pay fees expressly specified in this Agreement or the Project Approval, such as, but not limited to, those specified in Section 5.C.iii, or 3.F., of this Agreement. No reimbursements or credits other than those specified herein, if any, are or shall be due to Developer. Notwithstanding the preceding sentence, any fee credit resulting from additional sewer fees to fund the waste water treatment plant expansion established by the City after adoption of that certain "Advance Funding Agreement for the Hughson Waste Water Treatment Plant Agreement", entered into by and between Developer and the City, shall be applied to the Sewer Fee for the benefit of Developer if such a credit is applicable. All fees specified below shall be collected at the time of building permit issuance.

Fee Schedule	Per Unit
Public Facility Fee	$3,050
Storm Drain Fee	$2,814
Sewer Fee	$13,755
Water Fee	$3,803
Construction Water Fee	$155
Street Fee	$1,505
Park Development Fee	$2,667
Park In-Lieu Fee	$1,991
Community Enhancement Fee	$1,008
Miscellaneous Fee	$42

Notwithstanding the preceding portion of this Section II.3.E., the parties agree as follows:

(i) The fees shown in the table above may be increased at three (3%) percent per year, or by the percentage increase in the Engineering News Record Construction Cost Index, at the discretion of the City Manager of City, for the period of time from recordation of this Amendment, to the time of payment of such fees; and

(ii) Community Enhancement. Developer shall pay, at the time of issuance of building permits per lot for each lot for which a building permit is issued, a community enhancement fee as identified in the table above. Such funds shall be used by City for any project which will, in City's sole discretion, enhance the quality of life for residents of the City, and/or ameliorate the negative effect on older areas of the City caused by the economic pressure generated by new

development, including but not limited to, public art, maintenance, repair or upgrading of public facilities, recreation, parks, or historical preservation. City and Developer, its successors and assigns, agree that notwithstanding any other provision of law, the imposition and accounting for these funds shall not be subject to the requirements of the Mitigation Fee Act (Government Code Sections 66000-66025)."

Section 3. Part II, Section 3.G. and subsections i. and ii. are deleted in their entirety.

Section 4. Part II, Section 17 is amended to delete the following exhibit:

"Exhibit "E" Fees and Credits (Note: Exhibit E consists of E-1 and E-2)"

Section 5. All other terms and conditions of the Development Agreement, as amended, are unmodified and remain in full force and effect.

Section 6. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the city or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 7. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The city council hereby declares that it would have adopted this ordinance irrespective of the validity of any particular portion thereof.

Section 8. This ordinance shall become effective thirty (30) days after its final passage.

Section 9. Within fifteen (15) days after its final passage, the City Clerk shall cause this ordinance to be posted in full accordance with Section 36933 of the Government Code.

The foregoing ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on August 10, 2015 , and by a unanimous vote of the council members present, further reading was waived.

On motion of councilperson_____, seconded by councilperson _____, the second reading of the foregoing ordinance was waived and this ordinance was duly passed by the City Council of the Hughson City Council at a regular meeting thereof held on _August 24, 2015_, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

_____

MATT BEEKMAN, Mayor

ATTEST:

_____

DOMINIQUE SPINALE ROMO, City Clerk

RECORDING REQUESTED BY:

CITY MANAGER
CITY OF HUGHSON

AND WHEN RECORDED MAIL TO:

CITY MANAGER
CITY OF HUGHSON
P. O. BOX 9
HUGHSON, CA 95326

DEVELOPMENT AGREEMENT BY AND BETWEEN THE

CITY OF HUGHSON AND FEATHERS GLEN, LLC, E F COMMUNITIES, INC., AND ADELINE FEATHERS RELATING TO THE DEVELOPMENT KNOWN AS FEATHERS GLEN

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DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HUGHSON AND FEATHERS GLEN, LLC, E F COMMUNITIES, INC., AND ADELINE FEATHERS RELATING TO THE DEVELOPMENT KNOWN AS FEATHERS GLEN

THIS DEVELOPMENT AGREEMENT (hereinafter this "Agreement") is entered into this ___ day of _____, 2006, by and between the CITY OF HUGHSON, a municipal corporation organized and existing under the laws of the State of California (hereinafter the "City"), FEATHERS GLEN, LLC, a California Limited Liability Company, E F COMMUNITIES, INC., a California corporation, and ADELINE FEATHERS, an individual, who are hereinafter collectively called the "Developer". This Agreement is made pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California. Developer and City are, from time to time, hereinafter referred to individually as a "party" and collectively as the "parties."

I.
RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Pursuant to Government Code Section 65865(c), the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements and this Development Agreement has been processed, considered and executed in accordance with those City rules and regulations.

C. Adeline Feathers is an individual, and holds fee title to the Project Site.

D. Feathers Glen, LLC holds an option to purchase that certain parcel of land, consisting of approximately 11.55 acres located in the City as diagrammed in Exhibit "A" attached hereto, and more particularly described in Exhibit "B" attached hereto and incorporated herein (the "Project Site"). Developer represents that it has an equitable or a legal interest in the Project Site and that all other persons holding legal or equitable interests in the Project Site are to be bound by the Agreement.

E. It is the intent of Developer to develop the Project Site, in accordance with a Final Subdivision Map ("Final Map"), prepared in substantial conformance with that certain Vesting Tentative Subdivision Map ("Vesting Tentative Map") approved by the City on October 24, 2005, attached hereto as Exhibit "C-1"; and with the Conditions of Approval for the Vesting Tentative Map, attached hereto as Exhibit "C-2", and the terms

and conditions of this Agreement. Such development of the Project Site is hereinafter called the “Project”.

F. The Project Site is designated in the City's General Plan as Medium Density Residential and is zoned R-1 (Single Family Residential).

G. The Developer has applied for, and the City has approved, various land use approvals, entitlements and allocations relating to the development of the Project and Project Site that will allow Developer to build the Project without need to obtain further discretionary approvals, except for the design review process pursuant to Hughson Municipal Code Chapter 17.104. These actions are collectively referred to as "Project Approvals" and include, without limitation, the following: Approval of the Vesting Tentative Map, and the Conditions of Approval thereto, and current zoning of the Project Site, and the current General Plan designation of the Project Site.

H. The Project Approvals and this Agreement have all been properly reviewed and assessed by the City pursuant to the California Environmental Quality Act, California Public Resources Code section 21000 et seq. ("CEQA"), and the "CEQA Guidelines," 14 California Administrative Code section 15000 et seq., promulgated thereunder.

I. Development of the Project Site in accordance with the Project Approvals will provide for orderly growth consistent with the goals, policies, and other provisions of the City's General Plan.

J. On _____, 2006, following a duly noticed public hearing and following appropriate environmental review and compliance with CEQA , the Planning Commission recommended that the City Council approve this Agreement.

K. On _____, 2006, following a duly noticed public hearing and following appropriate environmental review and compliance with CEQA, the City Council introduced Ordinance No. 06-__, approving this Agreement. On _____, 2006, the City Council adopted Ordinance No. 06-__, approving this Agreement, made appropriate findings that the provisions of this Agreement are consistent with the City's General Plan as well as all other applicable plans, policies and regulations of the City and authorized execution of this Agreement. In adopting Ordinance No. 06-_, the City Council also determined that the environmental documentation for the Project adequately addressed the environmental review of each of the Project Approvals and of this Agreement. A copy of the City Council's Ordinance No. 06-__ is attached hereto as Exhibit "D".

L. For the reasons recited herein, Developer and the City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project Site; ensure funding for, and progressive installation of, necessary public improvements; provide funding for traffic improvements, and community facilities, and efforts to combat homelessness; provide for public services appropriate to the development of the Project; ensure attainment of the maximum effective utilization of

resources within the City at the least economic cost to its citizens; and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

M. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project and Project Site pursuant to this Agreement and the Project Approvals, Developer desires to receive the assurance that it may proceed with the Project in accordance with the Project Approvals, this Agreement and the ordinances, resolutions, policies and regulations of the City in effect on the Effective Date of this Agreement, pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the parties hereto agree as follows:

II.
AGREEMENT

Section 1. General Provisions.

A. Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

B. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project and Project Site, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto, as further set forth in Section 16 of this Agreement.

C. Effective Date. This Agreement shall become effective upon the thirtieth (30th) day following the adoption by the City Council of Ordinance No. 06-__ approving this Agreement, or the date upon which this Agreement is executed by Developer and by the City, whichever is later (the "Effective Date").

D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend until the tenth (10th) anniversary of the Effective Date or until one (1) year after the "Project Buildout" as hereinafter defined, whichever is earlier, unless said term is otherwise modified by circumstances set forth in this Agreement or by the mutual consent of the parties hereto. For purposes of this Agreement, "Project Buildout" shall mean the date on which a Certificate of Occupancy (or comparable instrument) is issued for the last Project improvement or residential home or other structure to be constructed in the Project. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, except as may be specified otherwise herein. The term of the Vesting Tentative Map shall be no less than the term of the Agreement as described in this Section.

Section 2. Definitions.

In this Agreement, unless the context otherwise requires: "City" shall have that meaning set forth in the introductory paragraph preceding the Recitals.

A. "Development Agreement Statute" shall have that meaning set forth in Recital paragraph A of this Agreement.

B. "Effective Date" shall have that meaning set forth in Section 1.C. of this Agreement.

C. "Project" shall have that meaning set forth in Recital paragraph E of this Agreement.

D. "Project Site" shall have that meaning set forth in Recital paragraph D of this Agreement.

E. "Developer" shall have that meaning set forth in the introductory paragraph preceding the Recitals and in Recital paragraph C of this Agreement and includes the Developer's successors-in-interest.

F. "Project Approvals" shall have that meaning set forth in Recital paragraph G of this Agreement.

Section 3. Obligations of Developer.

A. In General. In consideration of City entering into this Agreement, Developer agrees that it will comply with this Agreement and with all Project Approvals, and with the Improvement Plans submitted as required herein, or in the Conditions of Approval. The parties acknowledge that the execution of this Agreement by City is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and the Project Approvals, and with the Improvement Plans submitted as required herein, or in the Conditions of Approval as specifically set forth herein, and Developer's waiver of any legal or equitable rights or remedies it might allege to have in a lawsuit challenging the terms and conditions of this Agreement and/or the Project Approvals. Developer shall pay those fees, make those dedications and otherwise be subject to those conditions/exactions expressly prescribed in this Agreement and in the Project Approvals; and in the Improvement Plans submitted as required herein, or in the Conditions of Approval.

B. Conditions of Approval. Developer hereby agrees to complete and comply with the Conditions of Approval, attached here to as Exhibit “C-2” which are a part of the Project Approvals.

C. City Approval. It is understood and agreed that whenever approval of the City Engineer is required in the Project Approvals, Improvement Plans, Conditions of Approval, or this Agreement, the approval of the City Public Works Director shall also be required. Such approvals shall not be unreasonably withheld.

D. Maintenance District. Developer agrees, at Developer’s expense, and at City’s discretion, to form, or cooperate with the City in forming, a lighting and landscaping

assessment district, or any similar district, or to annex to an existing district, for the purpose of providing for the maintenance of landscaping and lighting, irrigation systems, and other authorized facilities required to be installed for the Project. Such district is to be formed prior to the first issuance of a building permit for construction in the Project. In City's sole discretion, annexation to an existing such district may occur in lieu of formation of a new district. All costs associated with the formation of such District shall be borne by Developer.

E. Fees. Fees to be paid by Developer, and credit for partial duplication of fees, and credit for Public Improvements constructed by Developer and land dedicated by Developer which would otherwise entitle Developer to reimbursement are, and shall be, as specified in Exhibit E attached hereto and incorporated herein. Exhibit E comprises Exhibits E-1 and E-2. Developer shall also pay fees expressly specified in this Agreement or the Project Approval, such as, but not limited to, those specified in Section 5.C.iii, or 3.F., of this Agreement. No reimbursements other than those specified in Exhibit E, if any, are or shall be due Developer. Such fees shall be collected at the time of building permit issuance. Notwithstanding the preceding portion of this Section II.3.E., the parties agree as follows:

(i) That fees shown on Exhibit E as Plans Fees shall be paid within ten (10) days of the recordation of this Agreement; and

(ii) The fees shown on Exhibit E may be increased at three (3%) percent per year, or by the percentage increase in the Engineering News Record Construction Cost Index, at the discretion of the City Manager of City, for the period of time from recordation of this Agreement, to the time of payment of such fees; and

(iii) City is in the process of preparing an update to its Developer Impact Fees; to the extent the Developer Impact Fees shown on Exhibit E (all fees except Water Connection Fee, Sewer Connection Fee, Plans Fees and Park Fee) are increased or decreased in the document finally adopted by the City Council of City updating the Developer Impact Fees, from those listed in Exhibit E, Developer shall pay the difference (in the event of an increase), and City shall reimburse Developer the difference (in the event of a decrease); provided that this subsection 3.E.(iii) shall be effective only for the period commencing on the Effective Date and extending for eighteen calendar months thereafter; and

(iv) In the event City shall adopt a Plans Fee resolution superseding the extant Resolution 06-23 prior to payment by Developer of the Plans Fees, Developer shall pay the Fee established by such Plans Fee resolution, in lieu of the fees established by Resolution 06-23, within ten (10) days of the recordation of this Agreement.

(v) Community Enhancement. Developer shall pay, at the time of issuance of building permits per lot for each lot for which a building permit is issued, $ 1000.00 for community enhancement.

Such funds shall be used by City for any project which will, in City's sole discretion, enhance the quality of life for residents of the City, and/or ameliorate the negative effect on older areas of the City caused by the economic pressure generated by new development, including but not limited to, public art, maintenance, repair or upgrading of public facilities, recreation, parks, or historical preservation. City and Developer, its successors and assigns, agree that notwithstanding any other provision of law, the imposition and accounting for these funds shall not be subject to the requirements of the Mitigation Fee Act (Government Code Sections 66000-66025).

F. Staff and Attorney Reimbursement. Developer shall pay to City, within thirty (30) days of submission of an invoice, detailing all the work done and costs charged to the City, costs incurred by City for services performed by City Attorney in drafting, negotiating and administering this Agreement, and by the City Engineer and the City's building inspector and public works inspector for any services performed in connection with this Agreement, all at the rates actually charged by them to City, or, if the City Engineer, building inspector and/or public works inspector are employees of City, a pro rata share of the total cost to the City of such employee(s). Developer agrees that, if Developer shall desire more, or more frequent, inspections than the City can provide with the staff and contractors it has as of the date of recordation of this Agreement, City may either hire additional contract inspectors, in which case Develop shall reimburse City, on a monthly basis in arrears, for the cost of such hire, plus ten percent (10%) for administrative costs, or City may hire a full or part time employee, in which case Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the term of this Agreement.

G. Inclusionary Housing In-Lieu. In accordance with California Development Law requiring 15% of all housing built within a Redevelopment Project Area to be eligible for Low-Income Households, Developer agrees to pay In-Lieu Fees in accordance with "In-Lieu Fees" identified on Fee Attachment Exhibit "E-2", provided that:

i. The total fee, calculated by the fee shown on Exhibit E-2 as a fee per house times 42 homes, shall be paid upon close of escrow of the last 21 houses, pro rata. For example, the close of escrow for the 22nd house sold will cause a payment of twice the per house fee shown on Exhibit E-2; the close of escrow for the 23rd house sold shall cause another payment of twice the per hour fee shown on Exhibit E-2, and so forth.

(ii) There shall be no administrative burden on City in accomplishing such payments from escrow as specified in Section 3.G.(i) above; to that end, Developer shall prepare escrow instructions to accomplish such payment, in a form to be approved by the City Attorney.

(iii) Notwithstanding Section 3.G.(i) and 3.G(ii) above, the City may, upon ten (10) days written notice to Developer, revoke Sections 3.G.(i) and 3.G.(ii.) above, and Developer shall, within ten (10) days after receipt of such notice, pay the in-lieu fee for each house for which a building permit has then been already issued, and pay the fee at the time of issuance of a building permit for all subsequently building permits.

(iv) Notwithstanding Sections 3G(i), (ii) and, (iii) above, any amount of the total sum due on Exhibit E-2 which has not been paid within four (4) years from the effective date of this Agreement shall then be immediately due and payable and the entire amount shall be paid to City by Developer within ten (10) days of that four (4) year period, whether or not building permits have been issued.

H. Privacy Wall. Developer agrees to erect a Block or Masonry Wall at the Terminus of Mulberry Way separating Mulberry Way from the South of Project Site. Dimensions and location for said wall to be approved by the Director of Planning and Building, Director of Public Works, City Engineer and City Manager, with Plans and Engineering Specifications to be approved via City of Hughson Permit Approval Process.

I.. Fences. Developer shall, before allowing occupancy of any lot, install a fence, of at least six feet in height, and constructed to City Standard Specifications, along the property line of any lot adjoining an existing occupied property outside the Project.

Section 4. Performance of Work.

A. Performance of Work. To the extent that the Conditions of Approval or this Agreement require the construction of public improvements for the Project ("Public Improvements") the Developer shall construct all of the Public Improvements in the Project in accordance with City of Hughson Standard Drawings and Standard Specifications on file in the office of the City Public Works Director of said City as of the Effective Date of this Agreement, and as shown on the improvement plans submitted by Developer, and reviewed and signed by the City Engineer.

B. Improvements. Time Limit. Developer agrees to cause all Public Improvements to be made and to fully comply with the requirements of the Hughson Municipal Code, and pay for any materials, provisions, provender or other supplies used in, upon, for or about the performance of said work, or for any work or labor done thereon of any kind, or for any amounts due under the Unemployment Insurance Act with respect to such work or labor. Developer agrees to complete the Public Improvements associated with the Project as follows: Public Improvements associated with and necessary for, each phase of the Project, as determined by the City Engineer, shall be completed prior to acceptance of a Final Map for such phase, or shall be secured pursuant to the provisions of this Agreement. All Public Improvements are to be completed by Project Buildout, or ten (10) years from the Effective Date of this Agreement, whichever is earlier. In the event that Developer shall fail to complete such Public Improvements within said time, City may complete the same and recover the full cost and

expense thereof from Developer, and Developer agrees to reimburse City for such full cost and expense. Nothing in this Agreement shall prevent Developer from making said Public Improvements prior to posting improvement securities as herein provided, and posting of improvement securities shall be required only if a final map is requested prior to completion of such Public Improvements, and such improvement securities shall be required only for the uncompleted Public Improvements.

C. Inspections. The City Engineer shall inspect all of the Public Improvements made to see that they comply with City subdivision regulations. The Developer hereby grants access to the Project and Project Site for inspection purposes and agrees to provide timely notice to the City Engineer in advance of required inspection, pursuant to City Improvement Standards and applicable City ordinances. Developer shall pay to City the cost to City for all inspection, and other services furnished by City in connection with the Project by paying Plan Check and Inspection fees, and shall also reimburse City for the actual cost charged to City by City Engineer for all services performed in accordance with this Agreement, such charges to be at the normal rate charged the City by the City Engineer. However, all costs in soil testing, concrete testing and compaction testing will be the responsibility of the developer. Plan check and inspection fees will be based on the approved engineer's estimate.

D. Improvement Security. The Developer agrees to post a security with the City which shall be in an amount deemed sufficient by the City Engineer to cover one hundred percent (100%) of the cost of uncompleted Public Improvements, engineering, and incidental expenses, guaranteeing faithful performance of the agreement. The cost of the uncompleted Public Improvements, engineering, and incidentals will be established by the City Engineer based upon approval of the improvement plans. In addition to the above, a second security in the sum of one hundred percent (100%) of the aforementioned costs guaranteeing payment to the contractor, his subcontractor and to persons renting equipment or furnishing labor or materials to them, is required to be posted by the Developer. Securities required in this paragraph may be in the amount required for each phase of the Project. Securities required in this paragraph are collectively called “Improvement Securities”.

The required improvement securities shall be approved by the City Attorney and shall be posted and in effect prior to the approval of the Final Map of the Project, or each Phase of the Project, by the City. The improvement securities shall be:

i. A cash deposit or deposits made with the City; or

ii. A bond or bonds by one or more duly authorized corporation sureties; or

iii. An instrument or instruments of credit from one or more financial institutions subject to regulation by the state or federal government pledging that the funds necessary to meet the performance are on deposit and guaranteed by the instrument shall become trust funds for the purposes set forth in the instrument.

(a). If the improvement security is other than a cash bond or deposit, the improvement security amounts specified in this Section 4.D. shall be increased two (2%) for the purposed

of covering the cost and reasonable expenses and fees, including reasonable attorneys' fees, which may be incurred by the City and successfully enforcing the obligation secured.

(b). Upon final acceptance by the City of the Public Improvement, and after the lapse of thirty-five (35) days from the filing of a Notice of Completion, and except as may be required to handle any claims made against the Developer, the City, and/or the contractor which are secured by the Improvement Securities, the Improvement Securities may be released upon the filing of a warranty bond and monumentation security (if necessary) in accordance with sections 4.F and 4.G of this Agreement.

E. Changes or Alterations. Developer shall perform any changes or alterations in the construction and installation of such Public Improvements required by City, provided that all such changes or alterations do not exceed 10 percent of the original total estimated cost of such Public Improvements.

F. Warranty. The Developer shall furnish City with a warranty bond in the amount of 10% of the improvement costs to guarantee such Public Improvements for a period of one year following the completion by Developer and filing of Notice of Completion by City against any defective work or labor done, or defective materials furnished, or adverse effect to any portion of adjacent properties in the construction of the Public Improvements. Developer agrees to remedy any defects in the improvements arising from faulty or defective construction of said improvements within one (1) year of acceptance thereof.

G. Monumentation and Monumentation Security. Developer shall replace, or have replaced, or repair or have repaired, as the case may be, all pipes and monuments shown on the Final Map which have been destroyed or damaged, and Developer shall replace or have replaced, repair, or have repaired, as the case may be, or pay to the owner, the entire cost of replacement by reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair of replacement shall be to the satisfaction and subject to the approval of the City Engineer. Developer shall provide such monumentation as may be required by City Engineer, in accordance with accepted standards.

The Developer shall post security guaranteeing the payment of the cost of setting the monuments. The cost of setting the monuments will be determined by the City Engineer upon approval of the improvement plans. The Developer shall pay the engineer or surveyor for the cost of setting the monuments within three (3) months from date of notification by the engineer or surveyor that the monuments have been set. If the Developer does not pay the engineer or surveyor within the three (3) months from date of notification, the City shall pay the engineer or surveyor for the security and refund the difference, if any, to the Developer.

H. Deviation from Standards. If the Developer deviates from the approved improvement drawings, specifications or standards, or shall construct any Public Improvements in such a manner so as to, in the opinion of the City Engineer, endanger the public safety, the City may cause the necessary corrections to be made without notice. In the event such deviations do not, in the opinion of the City Engineer, endanger the public safety, the City

Engineer may give the Developer written notice of such deviations, and the Developer shall correct the deviation in the time prescribed by the City Engineer. In the event of the failure of the Developer to make corrections of deviations, whether or not the public safety is affected, the City may cause the necessary corrections to be made and shall be reimbursed by the Developer at cost plus 25%. Said amount shall be deducted from the reimbursement by the City to the Developer or shall be paid for by the Developer prior to the acceptance of the improvements, or shall be obtained from the improvement securities.

I. Nonperformance and Cost. If Developer fails to complete the Public Improvements within the time specified in this Agreement or extensions granted, City may proceed to complete them by contract, or otherwise, and Developer shall pay the cost and charges therefor immediately upon demand. If City sues to compel performance of this Agreement or recover the cost of completing the work, Developer shall pay all reasonable attorney's fees, costs of suit, and all other expenses of litigation incurred by City in connection thereof.

J. No Waiver by City. Inspection of the work and/or materials, or approval of work and/or materials inspected, or statements by any officer, agent, or employee of the City indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments there for, or any combination or all of these acts, shall not relieve the Developer of his obligation to fulfill this contract as prescribed; nor shall the City thereby be estopped from bringing any actions for damages arising from the failure to comply with any of the terms and conditions hereof.

K. Non-Release of Surety. Any extension of time hereunder shall not operate to release the surety on the bond filed pursuant to this Agreement. In this connection any instrument of security shall provide that the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

Section 5. Development of Project and Project Site.

A. General Permitted Uses and Subsequent Approvals. The permitted uses of the Project Site; the density and intensity of use; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and location of public improvements; location of public utilities; and other terms and conditions of development applicable to the Project and Project Site, shall be those set forth in this Agreement, the Project Approvals and amendments thereto.

B. Development Criteria. The following specific conditions govern the Project and use of the Project Site:

i. Permitted Uses. Permitted uses of the Project Site are limited to those uses allowed by the Project Approvals.

ii. Maximum Density or Intensity of Use. The maximum density/ intensity of use is that shown in the Project Approvals.

iii. Site Development Standards. The site development standards [for example, building setbacks, lot coverage limitations, parking standards, etc.] for the Project shall be in accordance with City and State codes now in effect and with the Project Approvals.

iv. Reservation or Dedication of Land. The Developer shall provide for the reservation or dedication of land for public purposes as set forth in the Project Approvals.

v. Vested Right to Develop. The Developer shall have the vested right to develop the Project and Project Site in accordance with this Agreement. This Agreement shall act as a subdivision improvement agreement, in that, after the Effective Date, and upon posting of required securities (and compliance with any other specific provisions of this Agreement which are applicable), Developer may request approval of the Final Map, or appropriate phases thereof.

C. Rules, Regulations and Official Policies.

i. Effective Standards. The rules, regulations, standards, official policies and conditions governing the permitted uses of the Project and/or Project Site, including those addressing the density and intensity of use, design, improvement, construction and building standards, occupancy and specifications applicable to the Project and/or Project Site and all on-site and off-site improvements and appurtenances in connection therewith, shall be those in force upon the Effective Date of this Agreement, except as otherwise provided by this Agreement.

ii. Application of Subsequently Enacted Rules, Regulations, Policies. The City may apply such later enacted or modified rules, regulations, standards, official policies and conditions which are not in conflict with those in effect on the Effective Date of this Agreement and application of which would not prevent development of the Project and/or Project Site in accordance with Sections 5.A and 5.B. of this Agreement. However, this section shall not preclude the application to the Project and/or Project Site of changes in City laws, regulations, plans or policies which are specifically allowed for in the rules, regulations, laws, plans or policies in place on the Effective Date of this Agreement, or which are specifically mandated and required by changes in State or Federal laws or regulations. In the event that such changes in State or Federal laws or regulations do occur, the provisions of Section 5.E. of this Agreement are applicable.

iii. Application of Subsequently Revised Fees. Ministerial fees, including without limitation, application, processing and inspection fees, whether or not revised during the term of this Agreement shall apply to the Project pursuant to this Agreement provided that: (1) such fees apply to all public works within the City; (2) their application to the Project Site is prospective only as to applications for building and other development permits or approvals not yet accepted for processing; and (3) their application would not prevent development in accordance with Sections 5.A. and 5.B.

Notwithstanding any Project Approvals to the contrary, and except as may be otherwise provided in this Agreement, the City may charge, and Developer shall pay all ministerial fees (for example, processing and inspection fees), collected at the building permit stage or other approval stage for subsequent site specific approvals, building permits and other similar permits

which are in force and effect on a City-wide basis at the time application is submitted for such permits. Such ministerial fees do not include impact fees or other discretionary fees collected at the building permit stage or other approval stage. Such ministerial fees and charges shall be no more than the estimated reasonable cost to the City for performing the work for which the particular fee or charge is paid pursuant to Government Code Sections 66014 et seq.

D. Police Power and Taxing Power. The City, through the exercise of either its police power or its taxing power, shall not establish, enact or impose any additional conditions, dedications, fees, general taxes, special taxes and other exactions, policies, standards, laws or regulations which directly relate to the development of the Project and/or Project Site except as provided in the Project Approvals and/or this Agreement. However, the conditions, dedications, fees, general taxes, special taxes and exactions, policies, standards, laws and regulations applicable to the Project and/or Project Site as provided in this Agreement and in the Project Approvals shall be subject to modification or re-negotiation by City as a result of any amendment to the Project Approvals or this Agreement. Subsequent discretionary Project approvals, discretionary actions or other discretionary entitlements, if needed, are not subject to the vesting protections provided by this Agreement and are subject to all applicable City rules, regulations, standards, official policies and conditions in existence at the time such subsequent approval, action or other entitlement is granted by the City.

E. Changes in State, Federal and Local Laws. As provided in Government Code Section 65869.5, and notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application to the Project and/or Project Site of changes in City laws, regulations, plans or policies, to the extent that such changes are (1) specifically mandated and required by changes in state or Federal laws or regulations; or (2) in compliance with Government Code §§ 66498.1 et seq. In the event such changes in Federal, State or local laws prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such Federal, State or local laws and City and Developer shall take such action as may be required pursuant to Section 9.D (Enforced Delay; Extension of Time of Performance) and Section 7 (Cooperation-Implementation) of this Agreement.

F. Timing of Project Construction & Completion. Developer shall make reports of the progress of construction of Public Improvements in such detail and at such time as the City Manager or his designee reasonably requests, but in no event less than monthly. Developer shall submit to the City Manager or his designee copies of Project construction contracts.

Section 6. Amendment.

A. Amendment of Agreement. This Agreement may be amended from time to time in whole or in part by mutual consent of the original parties or their successors in interest, in accordance with the provisions of Government Code Sections 65867, 65867.5 and 65868, provided that:

i. Due Process Exemptions. Any amendment to this Agreement which does not relate to the term, permitted uses, provisions for reservation and dedication of land, or conditions, terms, restrictions and requirements relating to subsequent discretionary actions,

monetary contributions by Developer or any conditions or covenants relating to the Project or use of the Project Site shall not require notice or public hearing before the parties may execute an amendment hereto; and

ii. Amendment Exemptions. Any administrative amendment of the Project Approvals, or other related approvals or entitlements pursuant to Section 5.B.1. of this Agreement by either the Developer, or the City, the City Manager or his designee, whichever is applicable, shall not require an amendment to this Agreement.

B. Amendment of Project Approvals. The Project Approvals and any other related approvals, grants, entitlements or agreements may, from time to time, be amended or modified in the following manner:

i. Administrative Amendments. Upon the written request of Developer for a minor amendment or modification to the Project Approvals or other related approvals or entitlements, the City Manager or his designee shall determine (1) whether the requested amendment or modification is minor, and (2) whether the requested amendment or modification is consistent with this Agreement and the City's General Plan, and applicable provisions of the City's zoning and subdivision regulations and other regulations, policies, and standards in effect as of the Effective Date of this Agreement. If the City Manager or his designee finds that the proposed amendment is both minor and consistent with this Agreement, the General Plan, and the applicable provisions of the City zoning and subdivision regulations and other regulations, the City Manager or his designee may approve the proposed amendment without notice and public hearing. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals subject to further CEQA review.

ii. Non-Administrative Amendments. Any request of a Developer for an amendment or modification to the Project Approvals or other related approvals or entitlements which are determined not to be minor by the City Manager or his designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved. Any such approved amendment or modification shall be reflected in an amendment to this Agreement and/or its pertinent exhibits.

Section 7. Cooperation-Implementation.

A. Processing. The City shall cooperate with Developer in securing for Developer all permits which may be required by the City or any other governmental agency. If necessary or required, upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall promptly commence and diligently proceed to complete all steps required or necessary for the implementation of this Agreement and the development by Developer of the Project and Project Site in accordance with this Agreement and the Project Approvals provided Developer submits required information and applications in accordance with City rules and regulations.

Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and cause Developer's planners, engineers, and all other consultants to submit, in a timely manner, all required materials and documents therefor. It is the express intent of Developer and City to cooperate and diligently work to implement any General Plan and Specific Plan amendments, zoning, preliminary and final development plans, tentative maps, parcel maps, final maps including phased final maps, re-subdivisions, amendments to maps, subdivision improvement agreements, lot line adjustments, encroachments, grading and building permits, and other land use approvals or entitlements which are necessary or desirable in connection with the development of the Project and Project Site in conformity with this Agreement and the Project Approvals as it may be amended from time to time pursuant to the terms of this Agreement and the Project Approvals.

No future modification of the Municipal Code or any ordinance or regulation, by initiative or otherwise, which limits or regulates the rate, timing, or sequence of development over time shall be applicable to the Project or Project Site, except as otherwise provided in this Agreement, and City agrees that the development of the Project and Project Site shall be exempt from growth control measures, development moratoria, allocation methods and/or such other measures which affect the rate, timing, or sequence of development, whether enacted by the City or by vote of the electorate of the City, which would stop or delay the development of the Project or Project Site, except as otherwise provided in this Agreement. Notwithstanding the previous sentence, any moratorium, or moratoria, which is, or are, enacted to preserve the public health, safety, or welfare, shall apply to the Project and Project Site.

B. Other Governmental Permits. In addition, Developer shall apply in a timely manner for such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project and/or Project Site in connection with the development of, or provision of services to, the Project and/or Project Site. City shall cooperate with Developer in its efforts to obtain such permits and approvals.

Section 8. Cooperation in the Event of Legal Challenge.

In the event of any legal or equitable act, action or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel, although the Developer shall be responsible for all City costs incurred in relation to defending against such an action or proceeding, as further provided for in Section 10 of this Agreement.

Section 9. Default; Remedies; Termination.

A. General Provisions. Failure or unreasonable delay by Developer to perform any term, provision or condition of this Agreement for a period of thirty (30) days after written notice thereof from the City shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. The time of notice shall be measured from the date of certified mailing. Said notice shall specify the nature of the alleged default and, where

appropriate, the manner and period of time in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

During any period of curing, the Developer shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action.

Subject to the foregoing, after notice and expiration of the 30-day period without cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868 and the City Council Resolution No. 90-59. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council in the manner set forth in Government Code Sections 65865, 65867 and 65868 and City Council Resolution No. 90-59.

Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City, at its option, may give written notice of termination of this Agreement to the Developer by certified mail. Written notice of termination of this Agreement shall be effective immediately upon certified mailing to the defaulting party.

Evidence of Developer's default may also arise in the course of the regularly scheduled annual review of this Agreement as described in Section 9.B. below.

Failure or delay by City in giving notice of default pursuant to this Section shall not constitute a waiver of any default. Except as otherwise provided in this Agreement, any failure or delay by the City in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the City 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.

B. Annual Review. The City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every 12 months from the date this Agreement is entered into, at which time the Developer, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. Such review shall be performed pursuant to Article 5 of the City's "Procedures and Requirements for Consideration of Development Agreements."

C. Default by City. In the event City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law, including, without limitation, specific performance.

D. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, terrorism, strikes, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or

mandated by other governmental entities, enactment of conflicting State or Federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project and/or Project Site pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

E. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof; to recover damages for any default; enforce by specific performance the obligations and rights of the parties hereto; or to obtain any remedies consistent with the purpose of this Agreement. Such legal actions shall be initiated in the Superior Court of the County of Stanislaus, State of California or in the appropriate Federal District Court.

F. Applicable Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary costs incurred in the litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such actions is prosecuted to a final judgment. If a legal action is brought by a third party, Sections II.7 and II.9 of this Agreement shall apply.

Section 10. Hold Harmless Agreement.

Developer hereby agrees to defend and hold the City and its elected and appointed officers, agents, employees and representatives harmless from claims, costs and liabilities for any personal injury, death or property damage which arises, directly or indirectly, as a result of the construction of the Project, Project Site or operations performed under this Agreement by Developer or by Developer's contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors, except to the extent such claims, costs or liabilities arise from the willful misconduct or grossly negligent acts of the City, its elected or appointed representatives, officers, agents, or employees.

In addition, Developer shall defend City and its elected and appointed representatives, officers, agents and employees against actions arising out of such personal injury, death, or property damage which is caused, or alleged to have been caused, by reason of Developer's activities in connection with the Project or Project Site. Developer further agrees to defend and save and hold City harmless from any and all claims, costs and liabilities arising as a result of

any legal action or proceeding brought against the City which challenges the validity of this Agreement, any of the terms and conditions herein, the Project Approvals, or the sufficiency of environmental review pursuant to CEQA.

This hold harmless agreement applies to all damages or claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this section regardless of whether or not City prepared, supplied or approved plans or specifications, or both, for the Project and/or Project Site.

Section 11. Insurance.

Before commencing work pursuant to any City-approved permit or other entitlement relating to the Project, Developer shall obtain the insurance required under this Section and receive the approval of the City Manager or his designee as to form, amount and carrier. Developer shall maintain the insurance during the term of this Agreement. The insurance shall name the City as an additional insured and extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to the Developer and each contractor and subcontractor performing work on the Project.

A. Compensation Insurance. Developer shall maintain workers' compensation insurance for all persons employed at Project Site. Developer shall require each contractor and subcontractor similarly to provide workers' compensation insurance for their respective employees. Developer agrees to indemnify the City for damage resulting from Developer's failure to take out and maintain such insurance.

B. Public Liability and Property Damage Insurance. Developer shall maintain public liability insurance in an amount not less than $1,000,000.00 for injuries (including death) to any one person and subject to the same limit of any one occurrence.

C. Evidence of Insurance. Developer shall furnish City, concurrently with the execution of this Agreement, satisfactory evidence of the insurance required. Developer shall also provide evidence that the carrier is required to give the City at least ten (10) days' prior written notice of the cancellation or reduction in coverage of a policy.

Section 12. No Agency, Joint Venture or Partnership.

It is specifically understood and agreed to by and between the parties hereto that: (1) the subject development is a private development; (2) the City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals; (3) Developer shall have full power over and exclusive control of the Project and Project Site herein described, subject only to the limitations and obligations of Developer under the Project Approvals and this Agreement; and (4) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 13. Miscellaneous Provisions.

A. Non-Conflicting Regulations. The City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable General Plan, Specific Plan, zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the City which changes, alters or amends the rules, regulations and policies governing permitted uses of the Project Site or density of design of the Project or Project Site applicable to the development of the Project and/or Project Site at the Effective Date of this Agreement. This Agreement shall not prevent the City in subsequent actions applicable to the Project and/or Project Site, from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Project and/or Project Site as set forth in this Agreement.

B. Waiver of Challenges to Project Approvals. In executing and accepting the benefits of this Agreement, Developer, its successor in interest, etc. expressly waives any legal or equitable right to challenge any project approvals, conditions of approval or other act, entitlement, approval, covered under this Agreement including acts of protest pursuant to California Government Code sections 66008 and 66009.

C. Consistency with General Plan. City hereby finds and determines that execution of this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement are consistent with the General Plan.

D. Severability. If any term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

E. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

F. Construction. Each reference in this Agreement to this Agreement, the Project Approvals, the Vesting Tentative Map shall be deemed to refer to the named document or plan as such document or plan may be amended from time to time, whether or not the particular reference refers to such possible amendment.

G. No Presumption. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

H. Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signatory of this Agreement, the signatory obligations are joint and several.

Section 14. Notices.

Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given an received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto in the manner described in this Section, designate any other address in substitution of the address to which such notice or communication shall be given. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address. Such notices or communications shall be given to the parties at their addresses set forth below:

IF TO CITY, TO:

CITY MANAGER
CITY OF HUGHSON
P.O. BOX 9
HUGHSON, CA 95326

IF TO DEVELOPER, TO:

FEATHERS GLEN LLC
2406 MERCED STREET
SAN LEANDRO, CA 94577
ATTN: PAUL STARN

WITH COPIES TO:

JOHN STOVALL, ESQ.
NEUMILLER & BEARDSLEE
P.O. BOX 20
STOCKTON, CA 95201-3020

PLANNING DIRECTOR
CITY OF HUGHSON
P.O. BOX 9
HUGHSON, CA 95326

Section 15. Assignment, Transfer and Notice.

Upon City's written consent, Developer shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement and the Project Approvals to third parties acquiring an interest or estate in the Project and/or Project Site, or any portion thereof including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or any lots, homes or facilities located within the Project Site. Developer shall give at least thirty (30) days' prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement. If all or any portion of the Project or Project Site is transferred by Developer to any person or entity, the transferee shall succeed to all of the Developer's rights and obligations under this Agreement as they affect the right to proceed with the development of that transferred portion of the Project or Project Site and the transferee shall automatically assume all obligations of Developer, past, present and future, hereunder which relates to the transferred Property. Unless Developer is released in writing by City, a transfer of all or any part of the Project Site to any other person or entity shall not release Developer from any obligation under this Agreement.

Section 16. Estoppel Certificate.

Within ten (10) days following any written request which either party may make from time to time, the other party to this Agreement shall execute and deliver to the requesting party a statement certifying that:

A. This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification;

B. There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and

C. Any other reasonable information requested. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting parties.

Section 17. Entire Agreement; Counterparts and Exhibits.

This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of _____ (_____) pages, including _____ (_____) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. Any waiver of any of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the city and the Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit "A"	Project Site
Exhibit "B"	Legal Description of the Project Site
Exhibit "C-1"	Vesting Tentative Map
Exhibit “C-2”	Original Conditions of Approval
Exhibit "D"	City Council Ordinance No. 06-___ Approving Development Agreement
Exhibit “E”	Fees and Credits (Note: Exhibit E consists of E-1 and E-2).
Exhibit “F”	Description of Land to be Dedicated (if any)

Section 18. Recordation of Development Agreement.

No later than ten (10) days after the City enters into this Agreement, the City Clerk shall at Developer's expense record an executed copy of this Agreement in the Official Records of the County of Stanislaus.

Section 19. Time of Essence.

Time is of the essence of this Agreement.

Section 20. Exercise of Discretion.

Where the terms of this Agreement require approval, consent, written consent, determinations, or the exercise of discretion by the parties (together "discretion"), such discretion shall be exercised reasonably and shall not be unreasonably withheld.

Section 21. Waiver of Claim.

For the purposes of this Section 21, "party" includes the representatives, heirs, successors, assignees, officers, agents, employees and independent contractors of the party. Each party, with respect to the other party, in consideration of the entering into of this Agreement, and the mutual promises, conditions and covenants herein, hereby completely releases and forever discharges the other party from all claims, rights, demands, actions, obligations, and causes of action of any and all kind, nature, and character, known or unknown, which the releasing party may now have or may have had against the other party prior to the Effective Date, arising from, or related to, any claims of lack of nexus, or claims of failing to comply with the requirements of California Government Code § § 66000-66025, or the negotiation of this Agreement.

Each party understands the word "claims" to include all actions, claims, and grievances whether actual or potential, known or unknown. All such claims are forever barred by this Agreement without regard to whether those claims are based on any alleged breach of a duty arising in contract or tort.

Each party has read and understands the following language of Section 1542 of the California Civil Code which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Having reviewed this provision, each party nevertheless voluntarily releases the other party from all liability, as set forth in this Section 21.

Initial: _____ CITY	Initial:_____ ADELINE FEATHERS
Initial: _____ FEATHERS GLEN, LLC	Initial: _____ E F COMMUNITIES, INC.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

CITY:

CITY OF HUGHSON

By: _____

THOMAS E. CROWDER
Title: Mayor, City of Hughson

DEVELOPER:

ADELINE FEATHERS,
as an individual

_____

FEATHERS GLEN, LLC

By: _____
Title: _____

E F COMMUNITIES, INC.

By: _____
Title: _____

ATTEST:

_____
Jane Cantrell, CMC
City Clerk, City of Hughson

APPROVED AS TO FORM:

_____
John W. Stovall, City Attorney
City of Hughson

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A"

[HERE WILL GO A MAP OF THE PARCEL ON WHICH THE PROJECT IS LOCATED]

EXHIBIT "B"

[HERE WILL GO A LEGAL DESCRIPTION OF THE LAND SHOWN ON THE MAP IN EXHIBIT “A”]

EXHIBIT "C-1"

[HERE WILL GO THE VESTING TENTATIVE MAP],

EXHIBIT “C-2”

[HERE WILL GO THE CONDITIONS OF APPROVAL]

EXHIBIT "D"

[HERE WILL GO THE CITY'S ORDINANCE ADOPTING THE DEVELOPMENT AGREEMENT]

EXHIBIT "E-I"

NAME Feathers Glen Attachment "E-1"

This is a draft of fees we are placing in current Development Agreements. They will be modified as needed with new AB 1600

FEE SCHEDULE	Per Unit	Units	Total	Fee Credits	Adjusted Total	Fee Due Per Unit at Permit Issuance	Fee Credit For Reimbursement
Public Facility Fee	$ 3,882.00	41	$ 159,162.00	$ -	$ 159,162.00	$ 3,882.00	
Storm Drain Fee	$ 1,233.00	41	$ 50,553.00	$ -	$ 50,553.00	$ 1,233.00	
Sewer Fee	$ 2,357.00	41	$ 96,637.00	$ -	$ 96,637.00	$ 2,357.00	
Water Fee	$ 1,902.00	41	$ 77,982.00		$ 77,982.00	$ 1,902.00	
Street Fee	$ 3,191.00	41	$ 130,831.00	$ -	$ 130,831.00	$ 3,191.00	
Water Connection Fee	$ 1,000.00	41	$ 41,000.00	$ -	$ 41,000.00	$ 1,000.00	
Sewer Connection Fee	$ 1,200.00	41	$ 49,200.00	$ -	$ 49,200.00	$ 1,200.00	
Park Development Fee	$ 3,000.00	41	$ 123,000.00		$ 123,000.00	$ 3,000.00	
Park Fee	$ 1,267.00	41	$ 51,947.00	$ -	$ 51,947.00	$ 1,267.00	
Community Enhancement	$ 1,000.00	41	$ 41,000.00		$ 41,000.00	$ 1,000.00	
Plans Fee per unit * See Below	$ 68.17	41	$ 2,794.97		$ 2,794.97	$ 68.17	
TOTAL PER UNIT FEE	**$ 20,100.17**					**$ 20,100.17**	**$ -**

TOTAL FEE	**$ 824,106.97**
TOTAL FEE CREDIT	**$ -**
TOTAL FEE OWED	**$ 824,106.97**

Plans Fee per acre*	$ 242.00	11.55	$ 2,795.10		$ 2,795.10	$ 68.17	

EXHIBIT "E-2"

Feathers Glen Inclusionary Housing In-lieu Fees Draft

Three Bedroom Units		43	Four Bedroom Units	Surcharge		21
* 15%	$ 6.45		* 15%		$ 3.15	
Very Low *40%	$ 2.58		Very Low *40%		$ 1.26	
Low *60%	$ 3.87		Low *60%		$ 1.89	
Very Low *82,008	$211,580.64		Very Low *82,008	$ 90,208.80	$113,663.09	
Low * 31,315	$121,189.05		Low * 31,315	$ 34,446.50	$ 65,103.89	
Total	$332,769.69		Sub Total		$178,766.97	

Three Bedroom Units	22
* 15%	$ 3.30
Very Low *40%	$ 1.32
Low *60%	$ 1.98
Very Low *82,008	$108,250.56
Low * 31,315	$ 62,003.70
Sub Total	$170,254.26
Total	$349,021.23

EXHIBIT "F"

[HERE WILL GO A DESCRIPTION OF THE LAND TO BE DEDICATED, IF ANY WHICH IS NOT SHOWN ON THE FINAL MAP]