In-person participation by the public will be permitted. In addition, remote public participation is available in the following ways:

1. *Livestream online at www.atwater.org (Please be advised that there is a broadcasting delay. If you would like to participate in public comment, please use the option below).*
2. *Submit a written public comment prior to the meeting: Public comments submitted to planning@atwater.org by 4:00 p.m. on the day of the meeting will be distributed to the Planning Commission and made part of the official minutes but will not be read out loud during the meeting.*

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation should contact the City in advance of the meeting, and as soon as possible, at (209) 812-1031.

CITY OF ATWATER

PLANNING COMMISSION

AGENDA

Council Chambers
750 Bellevue Road
Atwater, CA 95301

June 18, 2025

CALL TO ORDER: **6:00 PM**

INVOCATION:

Invocation by Police Chaplain

PLEDGE OF ALLEGIANCE TO THE FLAG:

ROLL CALL:

Conour____, Kadach____, Mokha____, Sanchez-Garcia ____, Borgwardt____

SUBSEQUENT NEED ITEMS: (The Planning Secretary shall announce any requests for items requiring immediate action subsequent to the posting of the agenda. Subsequent need items require a two-thirds vote of the members of the Commission present at the meeting.)

APPROVAL OF AGENDA AS POSTED OR AS AMENDED: (This is the time for the Commission to remove items from the agenda or to change the order of the agenda.)

Staff's Recommendation: Motion to approve agenda as posted or as amended.

MINUTES:

1. May 21, 2025 – Regular Meeting

Staff's Recommendation: Approval of minutes as listed.

PETITIONS AND COMMUNICATIONS:

None

PUBLIC HEARINGS:

2. **Public Hearing to make an environmental finding that the project is exempt under California Environmental Quality Act (CEQA), because there are no changes to the project and the previous environmental impact report suffices, and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNs: 005-120-045 & 5-120-046.**

   Staff's Recommendation: Open the public hearing and receive any testimony given;

   Close the public hearing;

   Make a finding that the project is exempt under California Environmental Quality Act (CEQA), because there are no changes to the project and the previous environmental impact report suffices, and adopt Resolution No. 0269-25 recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNs: 005-120-045 & 005-120-046.

REPORTS AND PRESENTATION FROM STAFF:

3. **City Manager Verbal Updates.**
4. **Community Development Director Verbal Updates.**

COMMENTS FROM THE PUBLIC:

NOTICE TO THE PUBLIC

At this time any person may comment on any item which is not on the agenda. You may state your name and address for the record; however, it is not required. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. Please limit comments to a maximum of three (3) minutes.

COMMISSIONER MATTERS:

ADJOURNMENT:

CERTIFICATION:

I, Kayla Rashad, Planning Commission Recording Secretary, do hereby certify that a copy of the foregoing Agenda was posted at City Hall a minimum of 72 hours prior to the meeting.

Kayla Rashad

_____

Kayla Rashad,
Planning Commission Recording Secretary

SB 343 NOTICE
In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the Community Development Department at City Hall during normal business hours at 750 Bellevue Road.

If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda at 750 Bellevue Road.

In compliance with the Federal Americans with Disabilities Act of 1990, upon request, the agenda can be provided in an alternative format to accommodate special needs. If you require special accommodations to participate in a Planning Commission meeting due to a disability, please contact the Planning Commission Secretary a minimum of three (3) business days in advance of the meeting at planning@atwater.org or (209) 812-1031. You may also send the request by email to

CITY OF ATWATER

PLANNING COMMISSION

ACTION MINUTES

May 21, 2025

REGULAR SESSION: (Council Chambers)

The Planning Commission of the City of Atwater met in Regular Session this date at 6:00 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California;

INVOCATION:

None

PLEDGE OF ALLEGIANCE TO THE FLAG:

The Pledge of Allegiance was led by Planning Commission Member Sanchez-Garcia

ROLL CALL:

Present:	***Planning Commission Members Borgwardt, Kadach, Sanchez-Garcia, and Conour***
Absent:	***Planning Commission Member Mokha***
Staff Present:	***City Manager Hoem (Virtual), Recording Secretary Rashad***

SUBSEQUENT NEED ITEMS:

None

APPROVAL OF AGENDA AS POSTED OR AS AMENDED:

MOTION: ***Planning Commission Member Kadach moved to approve the agenda. The motion was seconded by Planning Commission Member Conour and the vote was: Ayes: Planning Commission Members Conour, Kadach, Sanchez-Garcia, and Borgwardt; Noes: None; Absent: Planning Commission Member Mokha. The motion passed.***

APPROVAL OF MINUTES:

a) February 19, 2025 – Regular Meeting

MOTION: ***Planning Commission Member Sanchez-Garcia moved to approve the minutes. The motion was seconded by Planning Commission Member Kadach and the vote was: Ayes: Planning Commission Members Conour, Sanchez-Garcia, Kadach, and Borgwardt; Noes: None; Absent: Planning Commission Member Mokha. The motion passed.***

PETITIONS AND COMMUNICATIONS:

None

PUBLIC HEARINGS:

Public Hearing to make a consistency determination that the proposed Five-Year Capital Improvement Program for fiscal years of 2025/26 through 2029/30 conforms to the goals and policies of the City's General Plan, as required by California Government Code Section 65103 (c).

City Manager Hoem provided background on this program.

Chair Borgwardt opened the public hearing.

No one came forward to speak.

Chair Borgwardt closed the public hearing.

MOTION: ***Planning Commission Member Conour moved to make the determination that the proposed Five-Year Capital Improvements Program conforms to the goals and policies of the City's General Plan, as required by California Government Code sections 65103 (c). The motion was seconded by Planning Commission Member Sanchez-Garcia and the vote was: Ayes: Planning Commission Members Sanchez-Garcia, Conour, Kadach, and Borgwardt; Noes: None; Absent: Planning Commission Member Mokha. The motion passed.***

Public Hearing to make an environmental finding that the project is categorically exempt under California Environmental Quality Act (CEQA) and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and

between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNs: 005-120-045 & 005-120-046.

City Manager Hoem requested a continuation on this item until the next planning commission hearing in June.

Chair Borgwardt opened the public hearing.

No one came forward to speak.

Chair Borgwardt closed the public hearing.

MOTION: Planning Commission Member Sanchez-Garcia moved to make a motion to continue this item to the June 18th planning commission meeting. The motion was seconded by Planning Commission Member Kadach and the vote was: Ayes: Planning Commission Members Kadach, Conour, Sanchez-Garcia, and Borgwardt; Noes: None; Absent: Planning Commission Member Mokha. The motion passed.

Public Hearing to consider adopting a resolution recommending City Council adopt a Zoning Ordinance Text Amendment amending Chapter 17.63 “Parking Requirements” of the Atwater Municipal Code to modernize the parking ordinance and to make it similar to the parking ordinance of the City of Merced.

City Manager Hoem provided background on this project.

Chair Borgwardt opened the public hearing.

No one came forward to speak.

Chair Borgwardt closed the public hearing.

MOTION: Planning Commission Member Conour moved to make a finding that the Zoning Ordinance Text Amendment is categorically exempt under California Environmental Quality Act (CEQA) guideline section 15061, (b)(3), “Review for Exemption” and adopt Resolution No. 0270-25 recommending City Council to adopt a Zoning Ordinance Text Amendment amending Chapter 17.63 “Parking Requirements” of the Atwater Municipal Code. The motion was seconded by Planning Commission Member Kadach and the vote was: Ayes: Planning Commission Members Sanchez-Garcia, Kadach, Conour, and Borgwardt; Noes: None; Absent: Planning Commission Member Mokha. The motion passed.

Public Hearing to consider adopting a resolution recommending City Council adopt a Zoning Ordinance Text Amendment amending Section 17.71.085 “Expiration of a Permit” of Chapter 17.71 “Conditional Use Permit” of the Atwater Municipal Code to change the expiration limits for conditional use permits.

City Manager Hoem provided background on this project and clarification that the project would amend all of Chapter 17.71 not just Section 17.71.085.

Chair Borgwardt opened the public hearing.

No one came forward to speak.

Chair Borgwardt closed the public hearing.

MOTION: ***Planning Commission Member Conour moved to make a finding that the Zoning Ordinance Text Amendment is categorically exempt under California Environmental Quality Act (CEQA) guideline section 15061, (b)(3) and adopt Resolution No. 0271-25 recommending City Council to adopt a Zoning Ordinance Text Amendment amending Chapter 17.71 "Conditional Use Permit" of the Atwater Municipal Code; and retroactively extending this to any Conditional Use Permit that has been approved within the last five years. The motion was seconded by Planning Commission Member Kadach and the vote was: Ayes: Planning Commission Members Sanchez-Garcia, Conour, Kadach, and Borgwardt; Noes: None; Absent: Planning Commission Member Mokha. The motion passed.***

REPORTS AND PRESENTATIONS FROM STAFF:

City Manager Verbal Updates.

City Manager Hoem provided an update on filling the Community Development Department Director position.

COMMENTS FROM THE PUBLIC:

Chair Borgwardt opened the Public Comment.

Notice to the public was read.

No one came forward to speak.

Chair Borgwardt closed the public comment.

COMMISSIONER MATTERS:

Planning Commission Member Conour expressed his excitement for the new progress with development.

Planning Commission Member Kadach expressed his excitement for potential development in the Ferrari Ranch properties.

Chair Borgwardt expressed his excitement for updates to the city's municipal code to improve the city and development.

ADJOURNMENT:

Chair Borgwardt adjourned the meeting at 6:41 PM.

_____

Don Borgwardt, Chair

By: Kayla Rashad
Recording Secretary

PLANNING COMMISSION AGENDA REPORT

PLANNING COMMISSION

Donald Borgwardt Jagandeep Mokha

Harold Kadach Shawn Conour

Mayra Sanchez-Garcia

MEETING DATE: **June 18, 2025**

TO: **Chair and Commissioners**

FROM: **Scott Ruffalo, Planning Technician**

SUBJECT: **Public Hearing to consider adopting a resolution making an environmental finding that the project is exempt under California Environmental Quality Act (CEQA) because there are no changes to the project and the previous Environmental Impact Report (EIR) suffices, and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNS: 005-120-045 & 005-120-046.**

RECOMMENDED COMMISSION ACTION:

It is recommended that Planning Commission:

1. Open the public hearing and receive any testimony from the public;

2. Close the public hearing;

3. Make an environmental finding that the project is exempt under California Environmental Quality Act (CEQA)) because there are no changes to the project and the previous Environmental Impact Report (EIR) suffices, and recommending the City Council adopt an Ordinance approving an Amendment to the Development Agreement by and between the City of Atwater and The Ferrari Ranch Owners, to clarify the responsible parties for the construction of water, sewer, and storm water infrastructure for the development located at APNS: 005-120-045 & 005-120-046.

I. BACKGROUND:

In 2017, the City Council approved a Development Agreement (DA) by and between the City of Atwater and the Ferrari Ranch Owners. The DA enabled the owners to move forward with applying for development applications and required certain infrastructure to be installed.

In 2022, the City was designated $3 million in federal funds to improve access to clean drinking water, sanitation services, and water management. The specific area designated was for water, sewer, and storm water infrastructure from Buhach Road to Gurr Road, along Green Sands Avenue. As this area is adjacent to Ferrari Ranch, an amendment to the DA is necessary to clarify the responsible parties of developing such infrastructure.

II. ANALYSIS:

Ferrari Ranch is poised for future development, having already been annexed and planned out. Infrastructure is a major component of this future development. The proposed amended DA clarifies that once the federal funding is used for infrastructure, the developer is responsible for their portion.

The proposed amended DA removes certain language related to terms that applied prior to annexation. Since the area has been annexed, that language has become obsolete. There were also minor clerical corrections in the proposed amended DA.

III. FISCAL IMPACTS:

No negative fiscal impacts are anticipated with the approval of this project.

IV. LEGAL REVIEW:

This item has been reviewed by the City Attorney.

V. INTERDEPARTMENTAL COORDINATION:

This project has been reviewed by all relevant departments.

VI. PUBLIC PARTICIPATION:

The public notice was adequately noticed and advertised. The public will have an opportunity to provide comments on this item prior to Commission action.

VII. ENVIRONMENTAL REVIEW:

The City reviewed the proposed amended and restated development agreement and conducted a Section 15162 consistency evaluation with the previously certified EIR (SCH# 2014011045). The evaluation substantiates the conclusion that supports a determination that no subsequent document is required as it is not anticipated that the

implementation of the proposed restated and amended development agreement would result in any significant direct, indirect or cumulative impacts over and above those disclosed in the previously certified EIR (SCH# 2014011045). The project would not result in new impacts or changed circumstances that would require a new environmental document.

VIII. STEPS FOLLOWING APPROVAL:

Upon recommendation to move forward, staff will prepare an ordinance to be reviewed by City Council.

Prepared by: Scott Ruffalo, Planning Technician

Submitted by: Chris Hoem, City Manager

Attachments:

1. Resolution No. 0269-25
2. Draft Ordinance
3. Resolution No. 034-17
4. Current Development Agreement
5. Amended Development Agreement

PLANNING COMMISSION

OF THE CITY OF ATWATER

RESOLUTION NO. 0269-25

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ATWATER MAKING AN ENVIRONMENTAL FINDING THAT THE PROJECT IS EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) BECAUSE THE PREVIOUS ENVIRONMENTAL IMPACT REPORT (EIR) SUFFICES, AND RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ATWATER AND THE FERRARI RANCH OWNERS, TO CLARIFY THE RESPONSIBLE PARTIES FOR THE CONSTRUCTION OF WATER, SEWER, AND STORM WATER INFRASTRUCTURE FOR THE DEVELOPMENT LOCATED AT APNS: 005-120-045 & 005-120-046.

WHEREAS, at a duly noticed public hearing held on June 18, 2025, the Planning Commission of the City of Atwater reviewed an amendment to the Development Agreement No. 034-17; and,

WHEREAS, the proposed amendment to the Development Agreement No. 05-07-0100 would not have a detrimental effect on the health, safety, and welfare of the neighborhood nor have any adverse effect on the community; and,

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred; and,

WHEREAS, the Planning Commission finds that the following findings can be made for Resolution No. 0269-25 amendment to the Development Agreement No. 034-17, in accordance with Atwater Municipal Code Section 17.44:

1. The proposed Development Agreement Amendment No. 25-07-0100 is consistent with the Atwater General Plan.

2. Pursuant to the California Environmental Quality Act, the City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final

Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.

3. The City and the Owner previously entered into a development agreement (the "**Original Development Agreement"**) for the Ferrari Ranch Project on May 22, 2017, pursuant to Ordinance No. CS 981.

4. The City has since been awarded federal funds to install water and sewer infrastructure, eliminating portions of the developer's obligation to construct these facilities at its own expense.

5. The City and the Owner now agree to wholly replace the Original Development Agreement dated May 22, 2017, with this Agreement, to reflect these changes and remove certain obligations that are now obsolete.

6. The project will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.

7. The public hearing for this project has been adequately noticed and advertised.

NOW THEREFORE BE IT RESOLVED, that the recitals above are true and correct and hereby incorporated by reference. The Planning Commission of the City of Atwater does hereby recommend that the City Council adopt the Development Agreement Amendment No. 25-07-0100.

The foregoing resolution is hereby adopted this 18th day of June, 2025.

AYES:
NOES:
ABSENT:

APPROVED:

_____
DON BORGWARDT
CHAIR

ATTEST:

_____
CHRIS HOEM,
CITY MANAGER

CITY COUNCIL
OF THE
CITY OF ATWATER

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ATWATER AND THE FERRARI RANCH OWNERS, TO CLARIFY THE RESPONIBLE PARTIES FOR THE CONSTRUCTION OF WATER, SEWER, AND STORM WATER INFRASTRUCTURE FOR THE DEVELOPMENT LOCATED AT APNS: 005-120-045 & 005-120-046.

WHEREAS, the City of Atwater wishes to amend Development Agreement No. 034-17.; and,

WHEREAS, the City and the Owner previously entered into a development agreement (the "Original Development Agreement") for the Ferrari Ranch Project on May 22, 2017, pursuant to Ordinance No. CS 981; and,

WHEREAS, on June 18, 2025, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning this proposed Ordinance. Following the public hearing, the Planning Commission voted to forward the Ordinance to the City Council with a recommendation in favor of its adoption; and

WHEREAS, this project is exempt pursuant to the California Environmental Quality Act. The City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.; and,

WHEREAS, the proposed amendment to the Development Agreement No. 034-17 would not have a detrimental effect on the health, safety, and welfare of the neighborhood nor have any adverse effect on the community; and,

WHEREAS, the City Council finds that the following findings can be made for the amendment to Development Agreement No. 034-17, in accordance with Atwater Municipal Code Section 17.44:

1. The proposed Development Agreement Amendment No. 25-07-0100 is consistent with the Atwater General Plan.

2. Pursuant to the California Environmental Quality Act, the City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.

3. The City and the Owner previously entered into a development agreement (the "Original Development Agreement") for the Ferrari Ranch Project on May 22, 2017, pursuant to Ordinance No. CS 981.

4. The City has since been awarded federal funds to install water and sewer infrastructure, eliminating portions of the developer's obligation to construct these facilities at its own expense.

5. The City and the Owner now agree to wholly replace the Original Development Agreement dated May 22, 2017, with this Agreement, to reflect these changes and remove certain obligations that are now obsolete.

6. The project will not have a detrimental effect on the health, safety, and welfare of the neighborhood or any adverse effects on the community.

The public hearing for this project has been adequately noticed and advertised.

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of Atwater as follows:

SECTION 1. Incorporation. The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. CEQA. This project is exempt pursuant to the California Environmental Quality Act. The City Council adopted Resolution No. 2943-17 on May 8, 2017, which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 2014011045, Incorporated herein by reference.

SECTION 3. General Plan. The City Council hereby finds that the adoption of the Ordinance is consistent with the General Plan.

SECTION 4. Effective Date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in a newspaper of general circulation printed and published in Merced County and circulated in Atwater, in accordance with California

Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

.

SECTION 5. Publication. The City Clerk is directed to certify to the adoption of this Ordinance and post or publish this Ordinance as required by law.

SECTION 6. Custodian of Records. The custodian of records for this Ordinance is the City Clerk and the records comprising the administrative record are located at 1160 Fifth St, Atwater, CA 95301.

SECTION 7. Severability. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

INTRODUCED:
ADOPTED:
AYES:
NOES:
ABSENT:

APPROVED:

_____
MIKE NELSON,
MAYOR

ATTEST:

_____
KORY J. BILLINGS,
CITY CLERK

COMMUNITY DEVELOPMENT AND RESOURCES COMMISSION OF THE CITY OF ATWATER

RESOLUTION NO. 034-17

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AND RESOURCES COMMISSION OF THE CITY OF ATWATER RECOMMENDING ADOPTION OF ORDINANCE CS 981 FOR THE FERRARI RANCH DEVELOPMENT AGREEMENT

WHEREAS, Government Code Section 65864 et seq. permits the City of Atwater to contract with private interests for their mutual benefits in a manner not otherwise available to the contracting parties, and such agreements assure property developers that they may proceed with their projects with the assurance that approvals granted by the City of Atwater will not change during the period of development, and the City of Atwater is equally assured that costly infrastructure such as roads, sewers, fire protection facilities, etc., will be available at the time development projects are proposed are constructed; and,

WHEREAS, the applicant proposes to enter into a Development Agreement for development of a retail/commercial/medical/recreational project within the 159.5-acre Ferrari Ranch property (Assessor Parcel Numbers 005-120-045 and 005-120-046), consistent with the General Plan, as amended, the Housing Element as it has been adopted by the City Council on July 18, 2016, and prezoning; and,

WHEREAS, pursuant to the California Environmental Quality Act, the Community Development and Resources Commission adopted Resolution No. 027-17 on _____ which found that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 20141011045, incorporated herein by reference; and,

WHEREAS, through adoption of Resolution No. 028-17 on____ the Community Development and Resources Commission recommended approval of a General Plan Amendment (GPA 17-01), amending the land use designation for Ferrari Ranch to Business Park; and,

WHEREAS, through adoption of Resolution No. 029-17 on _____the Community Development and Resources Commission recommended adoption of Ordinance CS 980 prezoning Ferrari Ranch as Planned Development (PD) with a Business Park Overlay (Z 17-01); and,

WHEREAS, through adoption of Resolution No. 030-17 on _____the Community Development and Resources Commission recommended approval of the initiation of annexation proceedings for a 358.79-acre "Annexation Area" which includes the 159.50-acre Ferrari Ranch Site (ANX 17-01); and,

WHEREAS, through adoption of Resolution No. 031-17 on _____the Community Development and Resources Commission recommended approval of the disestablishment of Ferrari Ranch from Merced County Agricultural Preserve; and,

WHEREAS, through adoption of Resolution No. 032-17 on ____the Community Development and Resources Commission of the City of Atwater recommended approval of a Planned Development Master Plan (PD 17-01) as submitted by the applicant, for Ferrari Ranch; and,

WHEREAS, subject to the mitigation measures and conditions of approval in the Planned Development Master Plan and the Vesting Tentative Map, the use is in conformance with the codes and standards of the City of Atwater;

NOW THEREFORE BE IT RESOLVED, that the Community Development and Resources Commission recommends that the City Council find the Development Agreement conforms to the California Government Code section 65864 et seq. (the "Development Agreement Statute").

NOW THEREFORE BE IT FURTHER RESOLVED, that the Community Development and Resources Commission of the City of Atwater hereby recommends that the City Council approve the Ordinance Adopting the Development Agreement, attached hereto as Attachment A, to which the Ferrari Ranch Development Agreement is incorporated by reference;

The foregoing resolution was introduced at a regular meeting of the Community Development and Resources Commission of the City of Atwater held on the ___day of___ _____, by City Commissioner _____, who moved its adoption, which motion was duly seconded by City Commissioner _____, and Resolution No. 034-17 was adopted by the following vote:

AYES:	XXXX
NOES:	XXXX
ABSENT:	XXXX

APPROVED:

ATTEST:

_____

Attachment:

Attachment A	Ordinance CS 981 Adopting the Ferrari Ranch Development Agreement (including the Ferrari Ranch Development Agreement)

FERRARI RANCH DEVELOPMENT AGREEMENT RESOLUTION ATTACHMENT A

DEVELOPMENT AGREEMENT ORDINANCE

ORDINANCE CS 981

AN ORDINANCE OF THE CITY OF ATWATER AUTHORIZING THE CITY OF ATWATER TO EXECUTE A DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY RELATIVE TO THE DEVELOPMENT KNOWN AS FERRARI RANCH

IT IS HEREBY ORDAINED by the City Council of the City of Atwater as follows:

Section 1.

A. The City Council has considered and certified the Ferrari Project Final Program Environmental Impact Report for the development project, and finds that there is no evidence which would require the preparation of a new or updated environmental document pursuant to the California Environmental Quality Act.

B. The Ferrari Ranch project is in compliance with the General Plan, as amended, including its Housing Element as it has been adopted by the City Council on July 18, 2016.

Section 2. The City Council finds that the draft Development Agreement, attached hereto as Exhibit A and incorporated by reference herein, is consistent with the City of Atwater General Plan, as amended, including its Housing Element as it has been adopted by the City Council on July 18, 2016.

Section 3. The City Manager hereby certifies that the developer/applicant has deposited with the City a sum equal to the estimated costs associated with the processing of the Development Agreement.

Section 4. Upon the passage of this Ordinance, the City is authorized to execute the Development Agreement on behalf of the City. Within ten (10) days of the execution, but no earlier than 30 days after passage of this Ordinance, the City Clerk shall cause the Development Agreement to be recorded in the Office of the County Recorder as provided for by Government Code §65868.5. The Development Agreement shall not take effect for thirty (30) days following passage and adoption of this Ordinance and shall not become operative until the completion of annexation proceedings.

Introduced by Council Member _____ seconded by Council Member _____ on the___day of ____, 2017.

Passed on the __ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____
Mayor-City of Atwater

ATTEST:

_____
City Clerk-City of Atwater

RECORDING REQUESTED BY:
CITY OF ATWATER

When Recorded Mail To:
City Clerk
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Fee Waived per Govt. Code section 27383

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF ATWATER

AND

THE FERRARI RANCH OWNERS

RELATING TO THE

FERRARI RANCH PROJECT

_____, 2017

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ATWATER
AND FERRARI RANCH LLC
RELATING TO THE FERRARI RANCH PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Development Agreement**" or this "**Agreement**") is made and entered into as of _____ , 2017, by and between the City of Atwater, a municipal corporation ("**City**"), and (a) John P. Ferrari and Jeani Ferrari as Co-Trustees of the Second Restatement dated April 8, 1994 of the John P. Ferrari and Jeani Ferrari Family Trust Dated June 24, 1982, as first restated July 25, 1990 and (b) Maggie Hooks as Trustee of the Justin Ferrari Family Trust dated May 24, 2012 ((a) and (b) together, "**Owner**") pursuant to the authority of California Government Code Section 65864 et seq. (City and Owner each are also referred to individually as a "**Party**" and together as the "**Parties**.")

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted California Government Code section 65864 et seq. (the "**Development Agreement Statute**"), which authorizes City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. City has not adopted local regulations or procedures for consideration of development agreements, but instead relies on and follows the Development Agreement Statute and the Atwater Municipal Code as applicable.

B. Owner is the legal owner of that certain approximately 171-5-acre real property located in unincorporated Merced County, California commonly known as Ferrari Ranch and identified as Assessor Parcel Nos. 005-120-045 and 005-120-046, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

C. Owner proposes that City authorize use and development of the Property consisting of up to 1,574,990 square feet of commercial uses on 102.5 acres, a medical complex with up to 666,100 square feet of hospital and medical office space on 30.1 acres, a storm water detention area on 6.5 acres, and associated infrastructure to serve the Property and the immediate vicinity, with 20.4 acres set aside for a potential regional sports center, all as further described in the Ferrari Ranch Planned Development Master Plan described below (the "**Project**").

D. The Property is part of a larger area of unincorporated land adjacent to the City of Atwater, as shown on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Annexation Area**"). The Annexation Area consists of the Property plus an additional approximately 199.3 acres also designated for development but not subject to this Development Agreement.

E. City and Owner's representative entered into a reimbursement agreement dated March 11, 2013, which set forth terms and conditions upon which City would be reimbursed for

processing Owner's applications for various discretionary approvals, but without committing City to approve any such applications (the "**Processing Agreement**").

F. On _____, 2017, the Atwater City Council held a duly noticed public hearing and took the following actions requested by Owner (collectively, the "**Initial Approvals**", and together with approval of this Agreement, the "**Project Approvals**"):

(1) **Environmental Impact Report.** Adopted Resolution No. _____ (a) certifying the Ferrari Project Final Program Environmental Impact Report (SCH No. 2014101045) (the "**EIR**") as adequate under the California Environmental Quality Act (Public Resources Code section 21000 et seq., hereinafter "**CEQA**") to consider approval of the other Initial Approvals and this Agreement, (b) adopting mitigation measures and a mitigation monitoring and reporting program ("**Mitigation Program**") in connection therewith to be applied to development of the Property and the overall Annexation Area, and (c) adopting findings as required by CEQA supporting certification of the EIR and approval of the Initial Approvals and this Agreement;

(2) **General Plan Amendment.** Adopted Resolution No. _____ amending the City of Atwater General Plan (the "**General Plan**") to allow the uses proposed by Owner on the Property and the overall Annexation Area (the "**General Plan Amendment**");

(3) **Prezoning.** Adopted Ordinance No. _____ prezoning the Property and the overall Annexation Area to allow the uses proposed by Owner, conditioned and effective upon annexation of the Annexation Area to the City (the "**Prezoning**");

(4) **Agricultural Designation Removal.** Adopted Resolution No. _____ removing the "Agricultural Preserve" designation applied by Merced County from the Annexation Area, conditioned and effective upon annexation of the Annexation Area to the City;

(5) **Master Plan.** Adopted Resolution No. _____ approving The Ferrari Ranch Planned Development Master Plan designating specified uses and criteria to be applied to the Property to allow development of the Project (the "**Ferrari Ranch Planned Development Master Plan**" or "**Master Plan**");

(6) **Vesting Tentative Map.** Adopted Resolution No. _____ approving Vesting Tentative Map No. _____ subdividing the Property into parcels for development of the Project (the "**Ferrari Ranch Vesting Tentative Map**" or "**Tentative Map**"); and

(7) **Annexation.** Adopted Resolution No. _____ authorizing submission of an application to the Merced County Local Agency Formation Commission ("**LAFCO**") requesting approval to annex the Annexation Area to the City of Atwater (the "**Annexation**").

G. On _____, 2017 (the "**Approval Date**"), the Atwater City Council held a duly noticed public hearing, considered the certified EIR as it applied to this Agreement, and adopted Ordinance No. _____ approving this Agreement and authorizing its execution (the "**Approving Ordinance**"). As part of the Approving Ordinance, the City Council has made the findings required by the Atwater Municipal Code and the Development Agreement Statute with respect to this Agreement. As required by Government Code section 65867.5, the City Council has found that, among other attributes, this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, and it has been reviewed and evaluated in accordance with the Development Agreement Statute. As required by Government Code section 65865.5, the City Council has adopted findings and imposed conditions on this Agreement that will provide the required flood protection for the Property.

H. The Parties acknowledge that pursuant to Government Code section 65865(b), this Agreement shall not become operative unless the Property is annexed to the City on or before December 31, 2017 (the **"Annexation Deadline"**), and that this Agreement shall be null and void if annexation proceedings annexing the Property to the City are not completed by that date unless City in its discretion agrees to extend the Annexation Deadline. To avoid uncertainty, the Parties acknowledge that the action which must occur to complete annexation by the Annexation Deadline is issuance of the Certificate of Completion by LAFCO, and the date of such issuance shall be the "**Operative Date**".

I. City has determined that the Project implements the goals and policies of the General Plan applicable to the Project and the Property and imposes appropriate standards and requirements with respect to development of the Property as to maintain and improve the overall quality of life and of the environment within and around City. As part of the process of approving the Project and the Project Approvals, the City has in accordance with CEQA undertaken the required analyses of potential environmental effects that could be caused by the Project, and City as part of the Project Approvals has imposed mitigation measures to address anticipated adverse effects.

J. Development of the Property is subject to other future discretionary and non-discretionary City approvals and permits (collectively, the "**Subsequent Approvals**") including but not limited to additional subdivision maps and site development review approvals, which if granted by City in accordance with this Agreement shall automatically become part of the Project Approvals for purposes of this Agreement.

K. By entering into this Agreement, in exchange for the benefits it will provide Owner as described herein, City will recognize substantial benefits, including but not limited to the following:

(1) Ensure the productive use of property and foster orderly growth and quality development in City;

(2) Ensure that development will proceed in accordance with the goals and policies set forth in the General Plan and will implement City's stated General Plan policies;

(3) Receive substantially increased property tax revenues;

(4) Benefit from increased employment opportunities for residents that are created by the Project and from continued diversification of City's economic base;

(5) Benefit from availability of high-quality medical services and sports recreation facilities to be developed in the Project for City's residents;

(6) Enhance the image, appearance and identity of City and its primary gateway;

(7) Ensure coordination and consistency in subsequent construction on the Property, in terms of land use, architecture, landscaping, site engineering and design, infrastructure and other elements of development;

(8) Ensure construction of required public facilities, improvements and services as and when expected; and

(9) Induce Owner to incur substantial financial and other commitments to provide public infrastructure and amenities by giving Owner the certainty and predictability in the development process provided by this Agreement.

L. By entering into this Agreement, in exchange for providing the benefits to City described herein, Owner will obtain sufficient certainty and predictability in the development process to justify the substantial investments required to plan and develop a Project that will take many years to fully construct, and will be able to proceed with development of the Project in accordance with the Applicable Law (as defined herein) and the Project Approvals, subject to the terms, conditions and exceptions contained herein. This Agreement will promote and encourage development of the Project by providing Owner and any future owners and lenders a greater degree of certainty of the ability to expeditiously and economically complete the development effort.

M. City and Owner have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project subject to conditions set forth herein. This Agreement is intended to be and should be construed as a development agreement within the meaning of the Development Agreement Statute. City and Owner have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute. The consideration to be received by City and the rights secured to Owner pursuant to this Agreement constitute sufficient consideration to support the covenants and agreements of City and Owner herein.

N. City, by electing to enter into this Agreement, acknowledges that the obligations of City herein shall survive beyond the term or terms of the present City Council members and that such action will serve to bind City and future City Councils to the obligations undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental

powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both City and its City Council and have been found to be fair, just and reasonable, and City has concluded that the pursuit of the Project will serve the best interests of its citizens and the public health, safety and welfare will be best served by entering into this obligation.

AGREEMENT

NOW, THEREFORE, with reference to the Recitals above, and in consideration of the mutual promises, obligations and covenants herein contained and other considerations, the value and adequacy of which are hereby acknowledged, City and Owner agree as follows:

1. Definition of Terms. The following capitalized terms are defined where indicated below, which shall apply when the capitalized terms are used in this Agreement:

Administrative Agreement Amendment: See Section 9.1.4.

Administrative Project Amendment: See Section 9.2.1.

Agreement: See Introductory paragraph.

Annexation Deadline: see Recital H.

Annexation: See Recital F.

Annexation Area: See Recital D.

Applicable Law: See Section 5.1.

Approval Date: See Recital G.

Approving Ordinance: See Recital G.

Benefitted Properties: See Section 7.2.1.

Benefitting Approvals: See Section 7.2.2.

Benefitting Improvements: See Section 7.2.2 and **Exhibit C**.

Benefitting Labor Costs: See Section 7.2.2.

CEQA: See Recital F.

City: See Introductory paragraph.

Construction Codes: See Section 5.4.1.

Cure Period: See Section 11.1.

Development Agreement: See Introductory Paragraph.

Development Agreement Statute: See Recital A.

Development Fees: See Section 5.3.1.

Development Restrictions: See Section 5.7.

Director: See Section 9.1.4.

Effective Date: See Section 4.1.

EIR: See Recital F.

Enforced Delay: See Section 15.9.

Enhanced Infrastructure Financing District or EIF: See Section 7.1.1.

Event of Default: See Section 11.1.

Ferrari Ranch Planned Development Master Plan: See Recital F.

Ferrari Ranch Vesting Tentative Map: See Recital F.

Financing Mechanism: See Section 7.1.1.

General Plan: See Recital F.

General Plan Amendment: See Recital F.

Initial Approvals: See Recital F.

LAFCO: See Recital F.

Local Traffic Improvements: See Section 7.2.5.

Master Plan: See Recital F.

Mitigation Program: See Recital F.

Mortgage: See Section 13.1.

Mortgagee: See Section 13.1.

New Rules: See Section 5.5.1.

Notice of Default: See Section 11.1.

Notice of Intent to Terminate: See Section 12.2.

Notice of Non-Compliance: See Section 10.4.

Notice of Termination: See Section 12.2.

Offsite Land: See Section 5.12.

Operative Date: See Recital H.

Owner: See Introductory paragraph.

Party and Parties: See Introductory paragraph.

PDMP: See Recital F.

Portion: See Section 9.1.3.

Prezoning: See Recital F.

Processing Agreement: See Recital E.

Processing Fees: See Section 5.3.2.

Project: See Recital C.

Project Approvals: See Recital F.

Project-Related Infrastructure: See Section 8.1.

Property: See Recital B.

Regional Traffic Improvements: See Section 7.2.5.

Regional Transportation Impact Fee or RTIF: See Section 5.3.1.

Reimbursable Expenses: See Section 7.2.2.

Release from Obligations: See Section 12.3.

Sewer Facilities: See Section 8.1.

Storm Drainage Facilities: See Section 8.1.

Subsequent Approvals: See Recital J.

Tentative Map: See Recital F.

Term: See Section 5.2.1.

Transportation Facilities: See Section 8.1.

Transportation Improvement Plan or TIP: See Section 7.2.5 and **Exhibit D**.

Water Facilities: See Section 8.1.

2. Property and Owner.

2.1. Property. The Property which is the subject of this Development Agreement is described in Recital B.

2.2. Interest of Owner. Owner has a legal or equitable interest in the Property in that it owns the Property in fee simple. Accordingly, this Agreement once executed and effective shall be fully binding and enforceable by the Parties.

3. Relationship of City and Owner.

This Agreement has been negotiated and voluntarily entered into by City and Owner. Owner is not an agent of City, and City is not an agent of Owner. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owner joint venturers or partners.

4. Effective Date and Term.

4.1 Effective Date. The effective date of this Agreement **("Effective Date")** shall be _____, 2017, which is thirty (30) days after the Approval Date as defined in Recital G. Said date shall function as the Effective Date for purposes of this Agreement even if annexation making this Agreement operative as described in Recital H occurs later.

4.2 Term of Agreement.

The following provisions were established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property, and obtain the public benefits of

the Project. City finds that such time and provisions are reasonably necessary to assure City of realization of the public benefits of the Project.

4.2.1 Term. The term of this Development Agreement (the **"Term"**) shall commence on the Effective Date and shall continue for twenty (20) years from the Effective Date, unless otherwise modified, extended or terminated as provided in this Agreement.

4.2.2 Tolling of Term. The Term shall not begin or continue to run during any time that there is litigation or other action challenging this Agreement or any other Project Approval, or challenging or preventing Owner's efforts to implement the Project, or challenging or preventing City or any service provider from taking the actions necessary to develop or occupy the Project, including associated environmental analyses and determinations. The Term shall be extended for the period of time from the date such litigation or other action is commenced until its final conclusion so as to eliminate the challenge or remove the obstacle. By way of illustration but not limitation, in the case of litigation the tolling and extension period shall start upon filing of such litigation and continue until its dismissal or final entry of judgment. Filing of litigation shall not delay or stop the development, construction or occupancy of the Project or processing and approval of any Subsequent Approval unless enjoined by a court of competent jurisdiction, and City shall not stipulate to the issuance of any such order.

4.3 Term of Project Approvals. Pursuant to the Subdivision Map Act (Government Code section 66410 *et seq.),* and in particular, Government Code section 66452.6(a), the term of any tentative or vesting tentative map, parcel map or vesting parcel map, and subdivision improvement agreement for the Property or any Portion thereof, shall be the longer of (i) the Term of this Agreement (as it may be extended) or (ii) the term of such map otherwise allowed under the Subdivision Map Act and the Municipal Code (as may be extended by changes to such laws during the life of the map). Pursuant to Government Code section 65863.9, the term of any use permit or other entitlement for development for the Property or any Portion thereof shall be the longer of (i) the Term of this Agreement (as it may be extended), (ii) the term of such permit or entitlement, or (iii) the term of the subdivision or parcel map relating to that portion of the Property that is the subject of the permit or entitlement.

5. Vested Rights/Use of the Property/Applicable Law/Processing.

5.1 Right to Develop. Owner shall have the vested right to develop the Project on the Property in accordance with, and subject only to, the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. For the Term of this Agreement, the City's ordinances, codes, resolutions, rules, regulations and official policies governing the development, construction, subdivision, occupancy and use of the Project and the Property including without limitation the General Plan, the Atwater Municipal Code, and the Master Plan, shall be those that are in force and effect on the Approval Date (collectively, the **"Applicable Law")**. In exercising its discretion when acting upon Subsequent Approvals,

City shall apply the Applicable Law as the controlling body of law. Notwithstanding the foregoing, Owner in its sole discretion may elect to comply with or receive the benefits of changes in Applicable Law by providing written notice to City of said election. Notwithstanding anything to the contrary contained herein, this Agreement shall not supersede any other rights Owner may obtain pursuant to City's approval of the Vesting Map or any other vesting tentative tract map or vesting tentative parcel map for the Project.

5.2 Permitted Uses. The permitted uses of the Property, density and intensity of use of the Property, the maximum height, bulk and size of proposed buildings, the general provisions for reservation or dedication of land for public purposes and for the location and maintenance of on-site and off-site improvements and public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in the Project Approvals and this Agreement.

5.3 Applicable Fees, Exactions and Dedications.

5.3.1 Development Impact Fees. City may levy those fees, charges, exactions and dedication requirements relative to development of the Property which are in force and effect as of the Approval Date (collectively, the "**Development Fees**"). Unless otherwise set forth in this Agreement, no increase in the amount of Development Fees and no new Development Fees shall be imposed. Notwithstanding the above:

(a) Adjustments to the Regional Transportation Impact Fee (**"RTIF"**) may be allowed if and when adopted by the City Council or if already specified or authorized in applicable City codes and regulations, so long as the fee as adjusted is applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance. If City elects to withdraw from the RTIF program and adopt a new local transportation impact fee, the amount of such fee equal to the "return to source" funds the City then was receiving from the RTIF may be levied on future applications for the Project from the time the new fee takes effect, and the entirety of such new City fee may be imposed starting in year eleven (11) of the Term.

(b) No increase to any other Development Fee shall be allowed during the first ten (10) years of the Term, even if already specified or authorized in applicable City codes and regulations; provided, City may adjust the amount of its different Development Fees from time to time so long as the total of all City Development Fees does not exceed the total in effect as of the Approval Date (e.g., reducing one fee and increasing another fee by the same amount). Beginning in year eleven (11) of the Term, new increases to Development Fees and any new Development Fees adopted since the Approval Date may be applied from time to time during the remainder of the Term so long as the fees as adjusted are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

(c) This Agreement does not limit City's discretion to impose or require payment of fees, dedication of land, or construction of public improvements or facilities in connection with development of the Property that are identified as required to mitigate specific environmental and other impacts of a Subsequent Approval, so long as not inconsistent with the terms and conditions of this Agreement.

(d) Nothing shall restrict the ability of City to impose conditions or fees on the issuance of building permits that lawfully could have been imposed as conditions of approval of an approved tentative map based on a finding that the condition or fee is necessary because (i) it is required in order to comply with state or federal law, or (ii) failing to impose the condition or fee would place occupants of the Project or the community in a condition dangerous to their health or safety.

5.3.2 Processing Fees. City may levy those fees and charges adopted for the purpose of defraying City's actual costs incurred for the processing and administration of the Subsequent Approvals and any form of regulatory permit, license, land use entitlement, financing district or mechanism, or other approval related to development, use or occupancy of the Property, or to defray the costs of periodically updating City's plans, policies and procedures, including without limitation the fees and charges referred to in Government Code section 66014 (collectively, the "**Processing Fees**") which are in force and effect as of the Approval Date, so long as and to the extent that such fees are applied uniformly to all similar development on a City-wide basis. City may levy new or increased Processing Fees adopted after the Approval Date so long as (a) such fees are applied uniformly to all similar development on a City-wide basis, (b) the application of such fees is prospective, and (c) the application of such fees would not prevent, impose a substantial financial burden on, or materially delay development of the Project in accordance with this Agreement. By so agreeing, Owner does not waive its rights to challenge the legality or amount of any such new or increased Processing Fee. To avoid uncertainty, the Parties agree that if not terminated earlier the Reimbursement Agreement shall expire as of the Operative Date, and thereafter the Processing Fees shall apply as to any applications and permits for the Project.

5.4 Construction Codes.

5.4.1 Uniform Codes Applicable. Notwithstanding the provisions of Section 5.1 above, to the extent Applicable Law includes requirements under the state or locally adopted building, plumbing, mechanical, electrical and fire codes (collectively the **"Construction Codes"),** the Construction Codes included shall be those in force and effect at the time Owner submits its application for the relevant building, grading, or other construction permits to City; provided, in the event of a conflict between such Construction Codes and the Project Approvals, the Project Approvals shall, to the maximum extent allowed by law, prevail.

5.4.2 Rules for Public Improvements. For construction of public infrastructure, the Construction Codes along with any ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to such construction shall be those in force and effect at the time of

execution of the applicable improvement agreement between City and Owner, or at the time of permit approval if there is no improvement agreement.

5.5 New Rules and Regulations.

5.5.1 During the term of this Agreement, City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City to the Property which were not in force and effect on the Approval Date (**"New Rules"**), so long as the New Rules are applied uniformly to similar development on a City-wide basis; provided, however, such New Rules shall be applicable to the Project or the Property only to the extent that such application will not modify, prevent or impede development of the Project or conflict with any of the vested rights granted by this Agreement, the Applicable Law, or the Project Approvals. In addition to any other conflicts that may occur, each of the following New Rules shall be deemed to conflict and may not be applied if it would:

(a) Cause or impose a substantial financial burden on, or materially delay development of the Property as otherwise contemplated by this Agreement or the Project Approvals;

(b) Frustrate in a more than insignificant way the intent or purpose of the Project Approvals or preclude compliance therewith including, without limitation, by preventing or imposing limits or controls in the rate, timing, phasing or sequencing of development of the Project;

(c) Prevent or limit the processing or procuring of Subsequent Approvals;

(d) Reduce the density or intensity of use of the Property as a whole, or otherwise require any reduction in the square footage of, or total number of, proposed improvements;

(e) Restrict the types of uses permitted, in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement and the Master Plan; and/or

(f) If any of such ordinances, resolutions, rules, regulations or official policies do not have general (City-wide) applicability.

5.5.2 Notwithstanding Section 5.5.1, City shall not be precluded from applying any New Rules to the Project or the Property under the following circumstances, where the New Rules are:

(a) Specifically mandated by changes in state or federal laws or regulations adopted after the Approval Date pursuant to Government Code section 65869.5;

(b) Specifically mandated by a court of competent jurisdiction taking into consideration the vested rights protection provided by this Agreement and the Development Agreement Statute;

(c) Changes to the Uniform Building Code or similar uniform construction codes, or to City's local construction standards for public improvements so long as such code or standard has been adopted by City and is in effect on a City-wide basis; or

(d) Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health and safety of the surrounding community.

5.6 Flood Protection. In conjunction with filing the initial application for a detailed development plan approval pursuant to Section 17.44.110 of the Atwater Municipal Code, Owner shall prepare and submit a detailed flood study confirming that areas subject to flooding within the Project outside of the Canal Creek channel itself will meet federal, state and local flood control protection standards as of the Approval Date.

5.7 Moratorium Not Applicable. Notwithstanding anything to the contrary contained herein, if an ordinance, resolution, policy, directive or other measure is enacted or becomes effective, whether by action of City, by initiative, referendum, or otherwise, and if it imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which affects all or any part of the Property or Owner's ability to develop the Project (collectively, "**Development Restrictions**"), City agrees that such Development Restriction shall not apply to the Project, the Property, this Agreement or the Project Approvals unless it is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code section 8558, provided that to the extent it applies to all or any part of the Project then the Term shall automatically be extended for a period of time equal to the period during which the Development Restriction applies.

5.8 New Taxes and Assessments. No new taxes, assessments or other charges not in force and effect as of the Approval Date shall be levied against the Property, the Project or Owner except as specified in this Agreement. No increase in an existing tax, assessment or other charge shall be levied during the first ten (10) years of the Term, even if an increase already is specified or authorized in applicable City codes and regulations. Thereafter, new increases to those taxes, assessments and other charges in force and effect as of the Approval Date may be applied during the remainder of the Term so long as the adjustments are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

5.9 Development of the Project; Phasing; Timing.

5.9.1 No Requirement to Develop. Notwithstanding any provision of this Agreement, City and Owner expressly agree that there is no requirement that Owner must initiate or complete any action, including without limitation development of the Project or any

phase of the Project, within any period of time set by City, and City shall not impose such a requirement on any Project Approval or Subsequent Approval except as needed to ensure that necessary infrastructure is completed in an orderly fashion. Nothing in this Agreement is intended to create nor shall it be construed to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Owner under this Agreement if the development fails to occur. It is the intention of this provision that Owner be able to develop the Property in accordance with its own time schedules and the Project Approvals. City acknowledges that Owner at this time cannot predict when or the rate at which or the order in which phases of the Project will be developed, and City recognizes that many factors affect such actions that may not be within Owner's control, including but not limited to market orientation and demand, interest rates and funding availability, and competition. Nothing in this Agreement shall exempt Owner from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof, nor shall this Section 5.9 affect the term of this Agreement or of any related Project Approvals or Subsequent Approvals.

5.9.2 No Restriction on Timing. City agrees that Owner shall be able to develop in accordance with Owner's own time schedule as such schedule may exist from time to time, and Owner shall determine which part of the Property to develop first, and in what sequence, and at Owner's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to avoid that result by acknowledging that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, and that the timing, rate or sequence of development and occupancy of the Project shall not be restricted or dictated by any means other than as specifically may be recognized in this Agreement.

5.10 Processing and City Discretion.

(a) Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those Subsequent Approvals that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the vested rights granted by this Agreement, the Applicable Law and the Project Approvals.

(b) Owner acknowledges that implementation of the Project will require City's consideration and approval of applications for Subsequent Approvals and that City will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. City's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the EIR to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of City to conduct any environmental review required under CEQA or other applicable laws and regulations.

5.11 Regulation by Other Public Agencies. The Parties acknowledge that other public agencies not within City's control may possess authority to regulate aspects of development of the Property, and this Agreement does not limit such authority of other public agencies.

5.12 Eminent Domain. The Parties acknowledge and agree that development of the Project-Related Infrastructure (as defined in Section 8.1) is a critical component of the Project and also will result in key benefits to the community generally. The Parties further acknowledge that fulfilling said obligations may require acquisition of additional land outside the Property. If such acquisition is necessary to develop any aspect of the Project Infrastructure, Owner shall use its best efforts to acquire any and all such land (**"Offsite Land"**), which shall include: a) paying for and obtaining an appraisal prepared by a qualified Member of the Appraisal Institute (MAI), in connection with acquisition of the Offsite Land; and b) offering to acquire the Offsite Land based on such appraisal. In the event Owner is not successful in acquiring the Offsite Land, City and Owner shall meet and confer to determine: (a) whether the need for the Offsite Land is such that City should consider informally intervening to facilitate said acquisition; (b) whether there may be other feasible means of accomplishing the public objectives at issue such that acquisition of the Offsite Land is no longer needed; and (c) whether it would be appropriate for City to consider using its statutory powers of eminent domain to acquire the Offsite Land. In the event that City determines to use its statutory powers of eminent domain to pursue acquisition of the Offsite Land, Owner shall be responsible for all costs associated therewith. Notwithstanding the foregoing, neither this Section 5.12 nor any other provision of this Agreement is intended to abrogate City's responsibilities, in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law (California Code of Civil Procedure Part 3, Title 7, Sections 1230.010-1273.050), as amended from time to time. In the event the Offsite Land is not ultimately acquired, either through private acquisition or eminent domain, or in the event that City determines not to pursue eminent domain of the Offsite Land, Owner's obligations in connection with that aspect of the Project Infrastructure that necessitated acquisition of the Offsite Land shall terminate and be of no further force or effect in accordance with Government Code section 66462.5 of the Subdivision Map Act.

6. Obligations of City.

The Parties acknowledge and agree that Owner's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Owner's decision to annex the Property to the City and process siting of the Project in the City, is material consideration for City's agreement to perform and abide by the covenants and obligations of City, as set forth in this Agreement.

6.1 Processing of Annexation. City shall promptly, in cooperation with Owner, process all documents necessary to achieve annexation of the Annexation Area, and at a minimum annexation of the Property, to the City.

6.2 Cooperation in Subsequent Approvals.

6.2.1 Owner's Application for Subsequent Approvals. Owner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. Owner's obligations under this Section 6.2.1 apply to those approvals that are under City's jurisdiction and also to those approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Project (including, without limitation, the Department of Transportation; agencies having jurisdiction over boundary changes or district formation, flood control, sewer service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes and hazardous wastes and materials). City shall cooperate with Owner in its efforts to obtain such approvals from other agencies and shall at the request of Owner use its best efforts to ensure the timely availability of such approvals.

6.2.2 City's Processing of Subsequent Approvals. City shall cooperate and diligently work to promptly process and consider all applications for Subsequent Approvals, provided they are in a proper form and include payment of any applicable fees and provided that Owner is in compliance with this Agreement. In the event that City and Owner mutually determine that additional personnel or outside consultants need to be retained to assist City to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owner but shall be under the direction of City. City shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a manner consistent with the Master Plan and this Agreement.

6.3 Availability of Public Services.

6.3.1 Sewage Capacity. To the extent permitted by law, City shall reserve or provide such capacity for sewage transmission and treatment as may be necessary to serve the Project. Owner will consult and cooperate with City from time to time in determining the anticipated timing, sequence and amount of development in the Project so as to give City sufficient advance notice to ensure that adequate capacity is available when needed, so as to avoid delaying development or occupancy of any portion of the Project.

6.3.2 Water System. To the extent required to ensure adequate domestic and firefighting water capacity and redundancy for the Project, City shall cooperate in connecting the Project's water supply system with the City's. City acknowledges that such connection also benefits City by providing similar redundancy from the Project's water well.

6.3.3 Construction Water. Until the Project's own water supply infrastructure is installed and operating, City agrees to make construction water available to the Project by permitting the Project to connect with the existing City water supply infrastructure at one or more locations Owner may from time to time request, subject to City approval in its reasonable discretion, at Owner's cost and on those terms and conditions and charges customarily applied by City to similar requests consistent with City standards. City also shall permit Owner to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to various portions of the Property for Owner's use in any and all Project grading and construction operations.

6.4 Right to Rebuild. City agrees that Owner, in Owner's sole discretion, may renovate or rebuild the Project or portions thereof during the Term should it become necessary due to natural disaster, changes in seismic, flood or other requirements, or other causes. Any such renovation or rebuilding shall comply with the terms of this Agreement and shall be subject to CEQA as may be required under applicable law.

7. Financing Mechanisms and Owner Funding.

7.1. Assessment Districts or Other Funding Mechanisms. The Parties acknowledge that each of them requires financial assistance to build the infrastructure and improvements required to support the Project and serve the Annexation Area, and that City's assurances to cooperate in arranging such assistance is a material consideration for Owner agreeing to proceed with development of the Project. City also acknowledges that development of the Project will provide material benefits, including but limited to employment opportunities for City's residents and tax revenues to support City operations, constituting consideration for City to enter into this Agreement and to provide the assurances in this Section 7.

(a) City shall cooperate in the formation of, or annexation to, one or more assessment districts, geologic hazard abatement districts, landscaping and lighting districts, community facilities districts, utility authority, lease leasebacks, project-specific tax reimbursement tax-exempt financing mechanisms, or other funding mechanisms related to public safety, traffic, sewer, water, fire, storm water, recreation or other infrastructure or public service needs (collectively, "**Funding Mechanisms**") that include the Property and to the extent permitted by law include other properties within or outside the City, to the extent such Funding Mechanism and its provisions are permitted under applicable law, that Owner requests to help fund infrastructure improvements and to ensure the orderly development of the Project.

(b) City shall diligently and expeditiously process applications by Owner necessary to establish such Funding Mechanisms, as long as (i) the application complies with law, (ii) is consistent with City standards, and (iii) will result in no commitment of City general funds. Notwithstanding the foregoing, while City agrees to cooperate in the process of formation of Funding Mechanisms, the final determination as to City's participation in any Funding Mechanism, including an EIFD as defined below (either by pledging property tax increment or otherwise) or any other financing district shall be made by the City Council in its sole and absolute discretion.. City shall cooperate in good faith with Owner's efforts to obtain the participation of Merced County or other public agencies as needed to establish and implement such Funding Mechanisms. Without limiting the foregoing, among the Financing Mechanisms Owner may request, City acknowledges that Owner initially proposes utilizing one or more Enhanced Infrastructure Financing Districts (**"EIFD"**) pursuant to Government Code section 53398.50 et seq. with participation by Merced County to fund infrastructure of regional significance within and outside the City.

(c) City shall diligently seek to sell any bonds to be issued and secured by such Funding Mechanisms upon the best terms reasonably available in the marketplace.

(d) Notwithstanding the foregoing, Owner retains all its rights to oppose the formation or proposed assessments of new Funding Mechanisms, or any new or increased assessment under a Funding Mechanism, or to request or pursue assessment credits or reductions, unless otherwise provided for herein. Notwithstanding any terms to the contrary, nothing contained in this Agreement shall be construed as waiving City's discretion to the extent required under applicable law in deciding whether and in what form to establish a Funding Mechanism, impose and collect assessments, issue and sell bonds, or undertake any other discretionary action related thereto. Any and all costs associated with forming or joining and then implementing Funding Mechanisms under this Section 7.1 shall be shared equally by City (50%) and Owner and other benefitting property owners (50%).

7.2. Owner Reimbursement by Benefitting Properties.

7.2.1 Reimbursement Obligation. City acknowledges that Owner has expended and will expend considerable funds for approvals and improvements which may benefit properties within the Annexation Area but outside the Property (collectively, the **"Benefitted Properties"**) by facilitating their development and use. To the extent that the owner of a Benefitted Property either (i) applies for and is approved to develop the Benefitted Property relying on the Benefitting Approvals (as defined below), or (ii) makes use of a Benefitting Improvement (as defined below) to support either the current use on the Benefitted Property or some new development or use on the Benefitted Property, Owner shall be entitled to reimbursement based on a pro rata, fair share apportionment of the Reimbursable Expenses (as defined below), such reimbursement to come directly from the owner of the Benefitted Property unless Owner agrees to reimbursement via a Financing Mechanism. Notwithstanding the foregoing, Owner agrees that residential development will not be required to provide any payment, and the Reimbursable Expenses will be shared by development on the Property and non-residential development on the Benefitted Properties.

7.2.2 Reimbursable Expenses. City agrees that expenditures by Owner for the following items will qualify for fair share reimbursement by the Benefitted Properties pursuant to the terms of this Section 7.2 (collectively, the "**Reimbursable Expenses**");:

(a) Preparation, processing and approval of the EIR, General Plan Amendment, Prezoning, Master Plan, Agricultural Designation Removal, Annexation, and General Plan Housing Element update, including related consultant studies and work (collectively, the "(**Benefitting Approvals**");

(b) Those portions of Project-Related Infrastructure (as defined in Section 8.1) to be built or funded by Owner as part of developing the Project, that either are (i) oversized to accommodate use by the Benefitted Properties or (ii) extend services that as of the Effective Date are not available to the Benefitted Properties, including related consultant studies and work (collectively, the **"Benefitting Improvements"**);

(c) Consultant and legal fees to manage and implement the planning, design, approval and implementation effort, payments to subsidize or reimburse City

approval processing and other expenses, and expenses to determine the appropriate water service entity and other utility service providers (collectively, the "**Benefitting Labor Costs**")

7.2.3 Reimbursement Procedure.

(a) If Owner seeks reimbursement from time to time under this Section 7.2, City shall negotiate in good faith with Owner to enter into one or more reimbursement agreements with Owner, in which among other things City will (i) identify the improvements qualifying as Benefitting Improvements, (ii) identify the properties qualifying as Benefitted Properties as to each Benefitting Approval or Benefitting Improvement, (iii) determine the Owner costs qualifying as Reimbursable Expenses, (iv) establish the allocation of Reimbursable Expenses to each Benefitted Property, and (v) establish the timing and method of reimbursement to Owner.

(b) City thereafter shall use its best efforts, to the extent permitted under applicable law, (i) to require as a condition to approval of development or use on the Benefitted Property that Owner be reimbursed by the owner of the Benefitted Property at the earliest opportunity, and (ii) to form, consistent with all applicable federal, state, and local laws and regulations (including without limitation Proposition 218), a local benefit district for the purpose of facilitating the reimbursement of Owner, to the extent such reimbursement is not otherwise provided. Owner shall pay all of City's costs associated therewith and shall indemnify and hold City harmless from and against all claims in connection therewith. Notwithstanding the foregoing, Owner agrees that City's obligations hereunder are limited to facilitating reimbursement from other private property owners as set forth above, and City shall have no obligation to reimburse Owner.

7.2.4 Reimbursement by Financing Mechanisms. To the extent not reimbursed by the Benefitted Properties, Owner shall be entitled to reimbursement from the Financing Mechanisms for Owner's actual costs to install improvements that are included in the Financing Mechanisms beyond Owner's fair share for such improvements, including but not limited to a share of the costs to plan and design such improvements. The details of such reimbursement shall be included as part of establishing each Financing Mechanism.

7.2.5 Credit Against Traffic Fees.

(a) In return for Owner's obligation to install any of the "City Fee Program" facilities listed in Table 9 of the Transportation Improvement Plan ("**TIP**"), such Table 9 attached hereto as **Exhibit C** (the "**Local Traffic Improvements**"), Owner shall be entitled to credit its costs against City's Traffic Circulation Fee that otherwise would be payable for development of the Project.

(b) In return for Owner's obligation to install any of the "Regional Fee Program" facilities (or portions thereof) listed in Table 9 of the TIP, as shown in **Exhibit C** (the "**Regional Traffic Improvements**"), Owner shall be entitled to credit its costs against the RTIF that otherwise would be payable for development of the Project.

(c) City agrees that credit against City's Traffic Circulation Fee and against the RTIF is justified by the many traffic improvements beyond CEQA-required mitigation measures that Owner will provide, in addition to the substantial employment, tax and other benefits that the Project will provide City, the County and their residents.

8. Owner Obligations.

8.1 Project-Related Infrastructure. As part of developing the Project, Owner shall build or cause to be built the following public improvements (collectively, the "**Project-Related Infrastructure**"):

(a) The water storage, transmission and distribution facilities shown in Figure 20 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Water Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(b) The sanitary sewer facilities shown in Figure 23 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Sewer Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(c) The storm drainage facilities shown in Figure 26 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Storm Drainage Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them; and

(d) The traffic, roadway and transportation facilities shown in Figures 14 and 15(a) of the Master Plan, in Sheet 2 of the Vesting Map, and in the TIP attached hereto as **Exhibit D** (collectively, the "**Transportation Facilities**"); provided, the TIP shall govern if there is any inconsistency between them.

The precise phasing of each aspect of the Project-Related Infrastructure will be determined at the time of Subsequent Approvals. Notwithstanding the above, Owner may be eligible for reimbursement by the Benefitted Properties, funding or reimbursement by the Financing Mechanisms, and/or credit against Development Fees, to the extent authorized by this Agreement as to qualifying portions of the Project-Related Infrastructure.

9. Amendment or Cancellation.

9.1 Amendment of Agreement.

9.1.1 Modification Because of Conflict with State or Federal Laws. If state or federal laws or regulations enacted after the Approval Date or an action of any state or federal agency prevents or precludes compliance with one or more provisions of this Agreement or the Project Approvals or require changes in plans, maps or permits approved by City, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state laws or regulations or with the actions of state or federal

agencies in a manner that protects, to the greatest extent feasible, the vested rights of Owner under this Agreement. Any such amendment of this Agreement shall be consented to by Owner and considered by the City Council. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans. During the interim until this Agreement is so amended, or for the remainder of the Term if this Agreement is not so amended, the provisions at issue shall be deemed suspended but the remainder of this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce; provided, Owner retains the right in Owner's sole discretion to terminate this Agreement and Owner's obligations hereunder in response to suspension of such provisions.

9.1.2 Amendment or Cancellation by Mutual Consent. This Agreement may be amended (in whole or part) in writing from time to time by mutual consent of the Parties and in accordance with the procedures of Government Code section 65868. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by an action which complies with Government Code section 65868.

9.1.3 Amendment as to Portion of Property. When a Party that is successor to Owner as to a portion of the Property (**"Portion"**) seeks such an amendment, then such Party may only seek amendment of this Agreement as directly relates to the Portion, and the Party or Parties owning the remainder of the Property shall not be required or entitled to be a signatory or to consent to an amendment that affects only the other Party's Portion so long as such amendment does not directly or indirectly affect the rights or obligations of the Parties owning the remainder of the Property. If any Portion of the Property is subject to a document which creates an association which oversees common areas and any construction or reconstruction on or of the same, then the association shall be deemed to be the "owner" of that Portion of the Property for the purpose of amending this Agreement.

9.1.4 Administrative Agreement Amendments. Notwithstanding the provisions of Section 9.1.2, City's Community Development Director or designee (**"Director"**) may, except to the extent otherwise required by law, enter into certain amendments to this Agreement on behalf of City so long as such amendment does not substantially affect (a) the Term; (b) the permitted uses of the Property; (c) provisions for significant reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property; (f) the maximum height or size of proposed buildings; or (g) monetary contributions by Owner as provided in this Agreement ("**Administrative Agreement Amendment**"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto. The Director shall determine whether a reservation or dedication is "significant", and shall evaluate and apply the term "substantially affect" in the context of the Project as a whole.

9.1.5 Amendment Exemptions. No amendment of an Initial Approval or Subsequent Approval, whether done as an administrative amendment or otherwise, shall require an amendment to this Agreement. Instead, any such matter automatically shall be

deemed to be incorporated into the Project and vested under this Agreement when written and executed by the Parties.

9.1.6 Amendment Limitations. In consideration of the scope of benefits to City provided by this Agreement and the Project, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to impacts on City directly attributable to such amendment.

9.2 Amendment of Project Approvals. To the extent permitted by law, any Initial Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner.

9.2.1 Administrative Project Amendments. Upon written request by Owner for an amendment or modification to an Initial Approval or Subsequent Approval, the Director shall determine (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole, and (b) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable Construction Codes, and State and Federal law. If the Director finds that the proposed amendment or modification satisfies the terms of this Section 9.2.1, and will result in no new significant environmental impacts not addressed and mitigated in the EIR or mitigated by conditions to any Project Approval, it shall be determined to be an "**Administrative Project Amendment**" and the Director may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice or public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or access points, changes in pedestrian path alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure that do not substantially alter the design concepts of the Project, and minor adjustments to the Project site diagram or Property legal description shall be treated as Administrative Project Amendments.

9.2.2. Non-Administrative Project Amendments. Any request of Owner for an amendment or modification to an Initial Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment pursuant to Section 9.2.1 shall be subject to review, consideration and action pursuant to Applicable Law and this Agreement.

10. Annual Review.

10.1 Initiation of Review. The annual review date for this Agreement shall be during the thirty (30) days following each anniversary of the Effective Date during the Term. The Director shall initiate the annual review, as required under Government Code section 65865.1, by giving Owner at least thirty (30) days' written notice that the City intends to undertake such review. At least ten (10) days prior to any annual review, City shall deposit in

the mail and transmit by electronic mail to Owner a copy of all staff reports and related exhibits concerning contract performance that City will rely on in its annual review.

10.2 Good Faith Compliance. Owner shall provide evidence to the Director demonstrating Owner's good faith efforts to comply with the provisions of this Agreement. Owner shall be permitted an opportunity to respond to City's documentation and City's evaluation of Owner's performance.

10.3 Procedure. Director shall review Owner's good faith compliance with the terms of this Agreement, after considering any evidence and responses provided by Owner, and shall make written findings and determinations on the basis of substantial evidence as to whether or not Owner has complied in good faith with this Agreement. Director's decision may be appealed to the City Council, which shall hold a duly noticed hearing on the appeal and thereafter uphold or reverse the Director's decision.

10.4 Notice of Non-Compliance. If on the basis of the annual review, the Director, or on appeal the City Council, finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, or if the City determines that Owner has failed to cure a default in accordance with Section 11.2, City may commence proceedings to enforce, modify or terminate this Agreement as follows. City shall give Owner a written "**Notice of Non-Compliance**" and thereafter Owner shall have forty-five (45) days, or such longer period as City and Owner may agree in writing, to respond in writing to such finding by specifying either how Owner's non-compliance has been cured (or is diligently being cured) or the grounds upon which it believes that it is complying with this Agreement. If Owner's response to the Notice of Non-Compliance has not been received by City within the prescribed forty-five (45) days, or such additional period of time as mutually agreed, the Notice of Non-Compliance shall be conclusively presumed to be valid, and the City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5. If Owner responds within the time period provided, the Parties agree to meet in good faith at reasonable times and from time to time for a period of at least sixty (60) days to arrive at a mutually acceptable resolution of the matters asserted in the Notice of Non-Compliance and disputed in the response. If after sixty (60) days, or any extension of time as mutually agreed to by the Parties, the Parties have failed to arrive at a mutually acceptable resolution of such matter(s), City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5.

10.5 Modification or Termination. If City determines to proceed with modification or termination of this Agreement after following the procedure under Section 10.4, City shall give notice to Owner or successor in interest thereto of its intention to do so in accordance with the procedures for such notice set forth in Government Code section 65868. Nothing in this Section 10 shall prevent or restrict Owner from providing additional evidence as to Owner's compliance with the terms of this Agreement.

10.6 Costs. Costs reasonably incurred by City in connection with the annual review shall be paid by Owner in accordance with the City's schedule of fees in effect at the time

of review; provided, Owner shall not be liable for City's costs incurred to terminate this Agreement.

10.7 Written Notice of Compliance. Within thirty (30) days of a written request by Owner, City shall provide Owner with written notice of compliance, in recordable form, duly executed and acknowledged by City. Owner shall have the right in its sole discretion to record such notice of compliance.

10.8 Failure to Conduct Annual Review. If City fails to initiate or complete its annual review in any year, then after thirty (30) days of Owner's notice regarding such failure Owner shall be deemed in compliance with the terms of this Agreement for the year in question.

11. Default.

11.1 Notice and Cure. Failure or unreasonable delay by a Party to perform any material provision herein shall constitute a default of this Agreement. The Party alleging a default shall serve written notice ("**Notice of Default**") upon the defaulting Party, specifying the nature of the alleged default and the manner and period of time in which the default may be satisfactorily cured. If the default is not cured by the defaulting Party within thirty (30) days after actual receipt of the Notice of Default by the defaulting Party or such longer period of time that may be specified in the Notice of Default (the "**Cure Period**"), such uncured default shall be treated as an "**Event of Default**"; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within the Cure Period, no Event of Default shall be deemed to have occurred if the defaulting Party (a) begins to cure the default within the Cure Period, (b) gives the nondefaulting Party notice before the end of the Cure Period that the cure cannot practicably be completed in the Cure Period, together with an explanation and estimated cure time needed, and (c) diligently pursues such cure to completion. Failure to give notice of an alleged default shall not constitute a waiver of any default.

11.2 Right to Challenge Notice. After receiving a Notice of Default, during the Cure Period a defaulting Party may provide evidence establishing it was never in fact in breach of this Agreement, and may initiate mediation proceedings. Unless curing the alleged default in the interim is reasonably necessary to protect the public health and safety, the defaulting Party need not initiate cure efforts specified in the Notice of Default during mediation and the Cure Period shall not begin to run until mediation either concludes or is terminated by a Party.

11.3 Remedies and Damages. Following expiration of any applicable Cure Period resulting in an uncured Event of Default, the nondefaulting Party may institute legal proceedings to enforce the terms of this Agreement, or in the event of a material Event of Default (as defined in Section 12.2) may terminate this Agreement pursuant to the provisions of Section 12.2, subject to the defaulting Party's ability to require mediation. In no event shall either Party be liable in damages for any default or upon termination of this Agreement, it being expressly understood and agreed that the sole legal or equitable remedy available to either Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude

actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to obligations to pay reasonable attorneys' fees and obligations to advance monies or reimburse monies.

11.4 Default as to a Portion of the Property. When an Event of Default applies only to a Portion of the Property owned by a successor to Owner, and does not affect or involve the rights or obligations under this Agreement regarding the remainder of the Property or the separate Owner(s) of such remainder, the proceedings under this Section 11 and the remedies available to City shall be applied to and enforced against only said Portion and the Owner thereof, and this Agreement shall remain in full force and effect as to such remainder and separate Owner(s).

12. Termination of Agreement.

12.1 Termination Generally. This Agreement shall terminate (a) upon the expiration of the Term (plus any extensions mutually agreed), or (b) when the Project has been fully developed and (i) all of Owner's obligations in connection therewith and with this Agreement have been satisfied as reasonably determined by City and (ii) the Project and Property have no further need for the rights and protections provided by this Agreement as reasonably determined by Owner. This Agreement may be terminated by mutual consent of the Parties.

12.2 Termination Due to Default.

12.2.1 Default by Owner.

(a) After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by Owner or it is not being diligently cured in the manner set forth above, then in the case of an Event of Default that is alleged to be material, City may, at its option, give notice of its intent to terminate this Agreement pursuant to the Development Agreement Statute ("**Notice of Intent to Terminate**"). As used herein, City's finding of materiality allowing termination shall be based on the effect of the default in relation to the size and scope of the Project.

(b) The City Council shall hold a duly noticed and conducted public hearing within thirty (30) days after sending Owner the Notice of Intent to Terminate, in compliance with the requirements of the Development Agreement Statute. Owner shall have the right to offer written and oral evidence prior to or at the public hearing.

(c) Following consideration of the evidence presented in said hearing, if the City Council determines that a material Event of Default has occurred and is continuing, and elects to terminate this Agreement, City shall give Owner written notice of termination of this Agreement by certified mail ("**Notice of Termination**"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by Owner; provided, if Owner files an action to challenge City's termination of this Agreement

within such sixty- (60-) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

12.2.2 Default by City. After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by City or it is not being diligently cured in the manner set forth above, then in the case of a material Event of Default, Owner may, at its option, give City a Notice of Termination terminating this Agreement"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by City; provided, if City files an action to challenge Owner's termination of this Agreement within such sixty (60) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired). As used herein, Owner's treatment of an Event of Default as material allowing termination shall be based on the effect of the default on Owner's rights and obligations under this Agreement, Owner's ability to develop the Project, or financial commitments and requirements to develop the Project.

12.2.3 Remaining Rights and Obligations. Notwithstanding the foregoing, a Notice of Termination given under this Section 12.2 is effective to terminate the obligations of the nondefaulting Party under this Agreement only if an Event of Default has occurred and such Event of Default, as a matter of law, authorizes the nondefaulting Party to terminate its obligations under this Agreement. In the event the nondefaulting Party is not so authorized to terminate, the nondefaulting Party shall have all rights and remedies provided herein or under applicable law, including, without limitation, the right to specific performance of this Agreement. Once a Party alleging an Event of Default has given a Notice of Termination, mediation proceedings may be instituted to attempt to resolve the dispute and determine the respective termination rights and obligations of the Parties under this Agreement. Where an Event of Default only involves a Portion pursuant to Section 11.4, termination of this Agreement shall only apply as to that Portion.

12.3 Release from Obligations with Respect to Individual Parcels. The Owner of a Portion may request that City provide certification in recordable form that said Owner and Portion have no further obligations under this Agreement (the "**Release from Obligations**"), which City in its reasonable discretion shall provide and the Owner may record. Thereafter the assignment provisions of Section 14 shall not apply, and the obligations of this Agreement shall terminate with respect to the Portion and the Owner of such Portion.Notwithstanding the above, the rights provided and protected by this Agreement shall remain in effect as to such Portion and its Owner (and successors) for the remainder of the Term, including without limitation the uses permitted and type and intensity of development.

12.4 Recordation of Termination. Upon termination of this Agreement as to all or part of the Property, City upon request by Owner shall cause a notice of termination to be duly recorded in the official records of Merced County.

13. Mortgagee Protection; Certain Rights of Cure.

13.1 Mortgagee Protection. This Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property **("Mortgage").** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee (**"Mortgagee"**) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

13.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 13.1, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement or as may be otherwise authorized by City.

13.3 Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by City that Owner has defaulted or committed an Event of Default. Each Mortgagee shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed set forth in the City's notice. City, through the Director, may extend the cure periods provided in Section 11 for not more than an additional sixty (60) days upon request of Owner or a Mortgagee.

14. Transfers and Assignments.

14.1 Agreement Runs with the Land. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including but not limited to Civil Code section 1468. Each covenant to do, or refrain from doing, some act on all or any part of the Property, (a) is a burden upon such property, (b) is for the benefit of each other portion of the Property, (c) runs with such

properties, and (d) is binding upon each Party and each successive Owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties. The provisions of this Section 15.1 are subject and subordinate to the provisions of Section 9.1 which permit amendment of this Agreement.

14.2 Owner's Right to Assign. All of Owner's rights, interests and obligations hereunder (or any portion of such rights which Owner wishes to transfer) may be transferred, sold or assigned in conjunction with the transfer, sale, or assignment of the Property, or any Portion thereof, at any time during the Term, provided that no transfer, sale or assignment of Owner's rights, interests and obligations hereunder shall occur without prior written notice to City and approval by the Director, which approval shall not be unreasonably withheld or delayed and shall not be conditioned. The Director shall consider and decide the matter within twenty (20) business days after Owner's notice provided and receipt by the Director of all necessary documents, certifications and other information required by the Director to decide the matter. In considering the request, the Director shall base the decision upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out development of the Property to completion. The Director's approval shall be for the purposes of: a) providing notice to City; b) assuring that all obligations of Owner are allocated as between Owner and the proposed purchaser, transferee or assignee as provided by this Agreement; and c) assuring City that the proposed purchaser, transferee or assignee is financially capable of performing the Owner's obligations hereunder not withheld by Owner.

14.3 Release Upon Transfer. Upon the transfer, sale, or assignment of Owner's rights, interests and obligations hereunder, Owner shall be released from the obligations under this Agreement with respect to the Property transferred, sold, or assigned pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee to the extent that such obligations are expressly assumed by the transferee, purchaser, or assignee. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee, and shall provide all necessary documents, certifications and other necessary information prior to Director approval if required by the provisions of this Agreement. The allocation of rights and responsibilities between the transferor and transferee shall be set forth in the assignment agreement executed by such parties.

14.4 Owner's Right to Retain Specified Rights or Obligations. Owner may withhold from a sale, transfer or assignment of this Agreement or any Portion of the Property transferred, certain rights, interests and/or obligations which Owner wishes to retain, provided that Owner specifies such rights, interests and/or obligations in a written document to be appended to this Agreement and recorded with the Merced County Recorder prior to the sale, transfer or assignment of the Property. Owner's purchaser, transferee or assignee shall then have no interest or obligations for such rights, interests and obligations and this Agreement shall remain applicable to Owner with respect to such retained rights, interests and/or obligations.

15. Miscellaneous.

15.1. Estoppel Certificate. Any Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying Party the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, or such longer period as may reasonably be agreed to in writing by the Parties. The Director shall be authorized to execute any certificate requested by Owner. The certificate shall be addressed to and may be relied upon by the requesting Party.

15.2. Severability; Conflict. The unenforceability, invalidity or illegality (collectively, "illegality" or "illegal") of any provision, covenant, condition or term of this Agreement (collectively, "provision(s)") shall not render the other provisions of this Agreement illegal, and shall be considered "severed" from this Agreement. In the event of a conflict between this Agreement or any provision hereof and the Project Approvals or any provision thereof, this Agreement shall control.

15.3. Attorneys' Fees and Costs.

15.3.1 Prevailing Party. If City or Owner initiates any action at law or in equity to enforce or to interpret the terms and conditions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled.

15.3.2 Third Party Challenge. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action, including but not limited to City’s costs for outside counsel.

15.4. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

15.5. Indemnification. Owner agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by Owner, or any actions or inactions of Owner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Owner shall have no obligation under this Section 15.5 with respect to negligence or wrongful conduct of City, its contractors,

subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been delivered or dedicated to and accepted by City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action for which Owner has a duty to defend or indemnify City then City will cooperate with Owner, will appear in such action and will not unreasonably withhold approval of a settlement otherwise acceptable to Owner. Notwithstanding anything to the contrary set forth in this Section 15.5 or elsewhere in this Agreement, it is understood that each Party or successor or transferee of Owner is providing the indemnities described in this Section 15.5 as to its respective development on its respective Portion only.

15.6. Insurance.

15.6.1 Public Liability and Property Damage Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain in effect a policy of commercial general liability insurance with a per-occurrence combined single limit of not less than one million dollars ($1,000,000.00) and a deductible of not more than ten thousand dollars ($10,000.00) per claim. The policy so maintained by Owner shall name City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

15.6.2 Workers' Compensation Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain Workers' Compensation insurance for all persons employed by Owner for work at the Project site. Owner shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Owner agrees to indemnify City for any damage resulting from Owner's failure to maintain any such insurance.

15.6.3 Evidence of Insurance. Prior to commencement of construction of any improvements which will become public improvements, Owner shall furnish City satisfactory evidence of the insurance required in this Section 15.6 and evidence that the carrier is required to give City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy.

15.7 Notices. All notices required or provided for under this Agreement shall be in writing. A Party may change address by giving notice in writing to the other Party and thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following business day. Notices may also be given by facsimile transmission which shall be deemed given upon verification of receipt if received during normal business hours, otherwise on the next business day.

Notices required to be given to City shall be addressed as follows:

City Manager
City of Atwater
750 Bellevue Road
Atwater, CA 95301
Fax: _____

With copies to:

Thomas H. Terpstra
The Law Office of Thomas H. Terpstra
City of Atwater City Attorney
578 N. Wilma Avenue, Suite A
Ripon, CA 95366
Fax: (209) 599-5008

Notices required to be given to Owner shall be addressed as follows:

Ferrari Ranch Owners
c/o John P. Ferrari
By Mail: P.O. Box 55
Ballico, CA 95303
By Delivery: 11016 North Ballico Avenue
Ballico, CA 95303
Fax: (209) 667-1013

With copies to:

David Dolter
3068 Oakraider Drive
Alamo, CA 94507
Fax: (925) 718-8532

15.8 Agreement is Entire Understanding. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject of this Agreement.

15.9 Enforced Delay; Extension of Time of Performance. No Party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, terrorism, inability or delay in obtaining funding through Financing Mechanisms, inability or delay in obtaining use of Offsite Land, unforeseen adverse economic circumstances, or by any other severe and unforeseeable occurrence that is beyond the control of that

Party (collectively, "**Enforced Delay**"). Performance by a Party of its obligations shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

15.10 Dispute Resolution.

15.10.1 Mediation. If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement**,** City and Owner shall first attempt to resolve it through informal discussions. In the event a dispute cannot be resolved in this manner within twenty-one (21) days, City and Owner shall endeavor to settle the dispute by non-binding mediation using the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") or other mutually acceptable mediator. Either City or Owner may commence mediation by providing the other Party a written request for mediation setting forth the subject of the dispute and the relief requested. City and Owner shall cooperate in selecting a mediator (either from JAMS' panel of neutrals or otherwise) and in scheduling the mediation proceedings. If the Parties cannot agree on the appointment of the mediator or the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion and/or set the mediation date. City and Owner agree to participate in any such mediation in good faith, and shall share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by either of the Parties, their agents, employees, experts and attorneys, and by the mediator and any mediator employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending completion of the mediation process. Each Party shall bear its own expenses of mediation, and shall share the mediator fees and other costs of mediation.

15.10.2 Litigation. By agreeing to the mediation process in Section 15.10.1, neither City nor Owner hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Except for an action for equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after completion of the initial mediation session or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after commencement of a civil action, if the Parties agree in writing. Nothing in this Agreement shall prevent the Parties from submitting a dispute to binding or non-binding arbitration if mutually acceptable.

15.11 Further Documents. Each Party shall execute and deliver to the other Party all other instruments and documents as may be reasonably necessary to carry out the purpose of this Agreement in order to provide or secure to the other Party the rights and privileges granted by this Agreement.

15.12 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

15.13 Recordation of Agreement. Within ten (10) days of the Effective Date, City shall cause this Agreement to be duly recorded in the official records of Merced County.

15.14. Recitals; Exhibits. The foregoing Recitals are true and correct and are made a part hereof. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A	Legal Description of the Property
Exhibit B	Map of Annexation Area and Property
Exhibit C:	Local and Regional Traffic Improvements
Exhibit D:	Transportation Improvement Plan ("TIP")

15.15. Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed to be an original.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF ATWATER

OWNER

Attest:

_____, City Clerk

Approved as to form

_____, City Attorney

CITY COUNCIL OF THE CITY OF ATWATER

ORDINANCE NO. CS 981

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER ADOPTING THE FERRARI RANCH DEVELOPMENT AGREEMENT

WHEREAS, Government Code Section 65864 et seq. permits the City of Atwater to contract with private interests for their mutual benefits in a manner not otherwise available to the contracting parties, and such agreements assure property developers that they may proceed with their projects with the assurance that approvals granted by the City of Atwater will not change during the period of development, and the City of Atwater is equally assured that costly infrastructure such as roads, sewers, fire protection facilities, etc., will be available at the time development projects are proposed are constructed; and

WHEREAS, the applicant proposes to enter into a Development Agreement for development of a retail/commercial/medical/recreational project within the 159.5-acre Ferrari Ranch property (Assessor Parcel Numbers 005-120-045 and 005-120-046), consistent with the General Plan, as amended, the Housing Element as it has been adopted by the City Council on July 18, 2016, and prezoning; and

WHEREAS, pursuant to the California Environmental Quality Act, the City Council adopted Resolution No. 2943-17 on May 8, 2017 which certified that project environmental impacts were adequately evaluated in the Ferrari Project Final Program Environmental Impact Report (EIR) State Clearinghouse No. 20141011045, incorporated herein by reference; and

WHEREAS, through adoption of Resolution No. 2944-17 on May 8, 2017 the City Council approved a General Plan Amendment (GPA 17-01), amending the land use designation for Ferrari Ranch to Business Park; and

WHEREAS, on May 22, 2017 the City Council adopted Ordinance CS 980 prezoning Ferrari Ranch as Planned Development (PD) with a Business Park Overlay (Z 17-01); and

WHEREAS, through adoption of Resolution No. 2945-17 on May 8, 2017 the City Council approved the initiation of annexation proceedings for a 358.79-acre "Annexation Area" which includes the 159.50-acre Ferrari Ranch Site (ANX 17-01); and

WHEREAS, through adoption of Resolution No. 2946-17 on May 8, 2017 the City Council disestablished Ferrari Ranch from the Merced County Agricultural Preserve; and

WHEREAS, through adoption of Resolution No. 2947-17 on May 8, 2017 the City Council approved a Planned Development Master Plan (PD 17-01) as submitted by the applicant, for Ferrari Ranch; and

WHEREAS, subject to the mitigation measures and conditions of approval in the Planned Development Master Plan and the Vesting Tentative Map, the use is in conformance with the codes and standards of the City of Atwater;

THEREFORE BE IT RESOLVED, that the City Council finds that the Development Agreement conforms to the California Government Code section 65864 et seq. (the "Development Agreement Statute").

THEREFORE BE IT FURTHER RESOLVED that the City Council approves the Ordinance Adopting the Development Agreement to which the Ferrari Ranch Development Agreement is incorporated by reference.

THEREFORE, THE CITY COUNCIL OF THE CITY OF ATWATER DOES ORDAIN AS FOLLOWS:

Section 1.

A. The City Council has considered and certified the Ferrari Project Final Program Environmental Impact Report for the development project, and finds that there is no evidence which would require the preparation of a new or updated environmental document pursuant to the California Environmental Quality Act.

B. The Ferrari Ranch project is in compliance with the General Plan, as amended, including its Housing Element as it has been adopted by the City Council on July 18, 2016.

Section 2. The City Council finds that the draft Development Agreement, attached hereto as Exhibit A and incorporated by reference herein, is consistent with the City of Atwater General Plan, as amended, including its Housing Element as it has been adopted by the City Council on July 18, 2016.

Section 3. The City Manager hereby certifies that the developer/applicant has deposited with the City a sum equal to the estimated costs associated with the processing of the Development Agreement.

Section 4. Upon the passage of this Ordinance, the City is authorized to execute the Development Agreement on behalf of the City. Within ten (10) days of the execution, but no earlier than 30 days after passage of this Ordinance, the City Clerk shall cause the Development Agreement to be recorded in the Office of the County Recorder as provided for by Government Code §65868.5. The Development Agreement shall not

take effect for thirty (30) days following passage and adoption of this Ordinance and shall not become operative until the completion of annexation proceedings.

Introduced by Council Member Creighton seconded by Mayor Price on the 8th day of May, 2017.

Passed on the 22nd day of May, 2017, by the following vote:

INTRODUCED:	**May 8, 2017**
ADOPTED:	**May 22, 2017**
AYES:	**Vineyard, Creighton, Raymond, Vierra, Price**
NOES:	**None**
ABSENT:	**None**

APPROVED:

JAMES E. PRICE, MAYOR

ATTEST:

DON HYLER III
CITY CLERK

Attachment:

Attachment A Ferrari Ranch Development Agreement (with associated exhibits)

STATE OF CALIFORNIA)
COUNTY OF MERCED)
CITY OF ATWATER)

I, Don Hyler III, hereby certify that I am the duly appointed City Clerk of the City of Atwater and that the foregoing resolution was duly adopted at a regular meeting of the City Council held on the 8th day of May 2017.

Don Hyler III
City Clerk

RECORDING REQUESTED BY:
CITY OF ATWATER

When Recorded Mail To:
City Clerk
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Fee Waived per Govt. Code section 27383

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF ATWATER

AND

THE FERRARI RANCH OWNERS

RELATING TO THE

FERRARI RANCH PROJECT

May 22, 2017

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ATWATER
AND THE FERRARI RANCH OWNERS
RELATING TO THE FERRARI RANCH PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Development Agreement**" or this "**Agreement**") is made and entered into as of May 22, 2017, by and between the City of Atwater, a municipal corporation ("**City**"), and the parties owning Ferrari Ranch as indicated by their signatures below (such parties cumulatively, "**Owner**") pursuant to the authority of California Government Code Section 65864 et seq. (City and Owner each are also referred to individually as a "**Party**" and together as the "**Parties.**")

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted California Government Code section 65864 et seq. (the "**Development Agreement Statute**"), which authorizes City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. City has not adopted local regulations or procedures for consideration of development agreements, but instead relies on and follows the Development Agreement Statute and the Atwater Municipal Code as applicable.

B. Owner is the legal owner of that certain approximately 171-5-acre real property located in unincorporated Merced County, California commonly known as Ferrari Ranch and identified as Assessor Parcel Nos. 005-120-045 and 005-120-046, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

C. Owner proposes that City authorize use and development of the Property consisting of up to 1,574,990 square feet of commercial uses on 102.5 acres, a medical complex with up to 666,100 square feet of hospital and medical office space on 30.1 acres, a storm water detention area on 6.5 acres, and associated infrastructure to serve the Property and the immediate vicinity, with 20.4 acres set aside for a potential regional sports center, all as further described in the Ferrari Ranch Planned Development Master Plan described below (the "**Project**").

D. The Property is part of a larger area of unincorporated land adjacent to the City of Atwater, as shown on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Annexation Area**"). The Annexation Area consists of the Property plus an additional approximately 199.3 acres also designated for development but not subject to this Development Agreement.

E. City and Owner's representative entered into a reimbursement agreement dated March 11, 2013, which set forth terms and conditions upon which City would be reimbursed for processing Owner's applications for various discretionary approvals, but without committing City to approve any such applications (the "**Processing Agreement**").

F. On May 8, 2017, the Atwater City Council held a duly noticed public hearing and took the following actions requested by Owner (collectively, the "**Initial Approvals**", and together with approval of this Agreement, the "**Project Approvals**"):

(1) **Environmental Impact Report.**

(a) Adopted Resolution No. 2943-17 certifying the Ferrari Project Final Program Environmental Impact Report (SCH No. 2014101045) (the "**EIR**") as adequate under the California Environmental Quality Act (Public Resources Code section 21000 et seq., hereinafter "**CEQA**") to consider approval of the other Initial Approvals and this Agreement, and

(b) Adopted Resolution No. 2949-17 (i) adopting findings as required by CEQA supporting certification of the EIR and approval of the Initial Approvals and this Agreement, including a Statement of Overriding Considerations, and (ii) adopting mitigation measures and a mitigation monitoring and reporting program ("**Mitigation Program**") to be applied to development of the Property and the overall Annexation Area;

(2) **General Plan Amendment.** Adopted Resolution No. 2944-17 amending the City of Atwater General Plan (the "**General Plan**") to allow the uses proposed by Owner on the Property and the overall Annexation Area (the "**General Plan Amendment**");

(3) **Prezoning.** Introduced Ordinance No. CS 980 prezoning the Property and the overall Annexation Area to allow the uses proposed by Owner, conditioned and effective upon annexation of the Annexation Area to the City (the "**Prezoning**"), which Ordinance No. CS 980 at its second reading was adopted by the City Council at a duly noticed public hearing on May 22, 2017 approving the Prezoning;

(4) **Agricultural Designation Removal.** Adopted Resolution No. 2946-17 removing the "Agricultural Preserve" designation applied by Merced County from the Annexation Area, conditioned and effective upon annexation of the Annexation Area to the City;

(5) **Master Plan.** Adopted Resolution No. 2947-17 approving The Ferrari Ranch Planned Development Master Plan designating specified uses and criteria to be applied to the Property to allow development of the Project (the "**Ferrari Ranch Planned Development Master Plan**" or "**Master Plan**");

(6) **Vesting Tentative Map.** Adopted Resolution No. 2948-17 approving Vesting Tentative Map No. VTM 1701 subdividing the Property into parcels for development of the Project (the "**Ferrari Ranch Vesting Tentative Map**" or "**Tentative Map**"); and

(7) **Annexation.** Adopted Resolution No. 2945-17 authorizing submission of an application to the Merced County Local Agency Formation Commission ("**LAFCO**") requesting approval to annex the Annexation Area to the City of Atwater (the "**Annexation**").

G. On May 8, 2017, as part of the public hearing cited in Recital F above, the Atwater City Council introduced Ordinance No. CS 981 to approve this Agreement. On May 22, 2017 (the "**Approval Date**"), the Atwater City Council held a duly noticed public hearing for a second reading of Ordinance No. CS 981, considered the certified EIR as it applied to this Agreement, and adopted Ordinance No. CS 981 approving this Agreement and authorizing its execution (the "**Approving Ordinance**"). As part of the Approving Ordinance, the City Council has made the findings required by the Atwater Municipal Code and the Development Agreement Statute with respect to this Agreement. As required by Government Code section 65867.5, the City Council has found that, among other attributes, this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, and it has been reviewed and evaluated in accordance with the Development Agreement Statute. As required by Government Code section 65865.5, the City Council has adopted findings and imposed conditions on this Agreement that will provide the required flood protection for the Property.

H. The Parties acknowledge that pursuant to Government Code section 65865(b), this Agreement shall not become operative unless the Property is annexed to the City on or before one year from the Approval Date, which shall be May 22, 2018 (the **"Annexation Deadline"**), and that this Agreement shall be null and void if annexation proceedings annexing the Property to the City are not completed by that date unless City in its discretion agrees to extend the Annexation Deadline. To avoid uncertainty, the Parties acknowledge that the action which must occur to complete annexation by the Annexation Deadline is issuance of the Certificate of Completion by LAFCO, and the date of such issuance shall be the "**Operative Date**".

I. City has determined that the Project implements the goals and policies of the General Plan applicable to the Project and the Property and imposes appropriate standards and requirements with respect to development of the Property as to maintain and improve the overall quality of life and of the environment within and around City. As part of the process of approving the Project and the Project Approvals, the City has in accordance with CEQA undertaken the required analyses of potential environmental effects that could be caused by the Project, and City as part of the Project Approvals has imposed mitigation measures to address anticipated adverse effects.

J. Development of the Property is subject to other future discretionary and non-discretionary City approvals and permits (collectively, the "**Subsequent Approvals**") including but not limited to additional subdivision maps and site development review approvals, which if granted by City in accordance with this Agreement shall automatically become part of the Project Approvals for purposes of this Agreement.

K. By entering into this Agreement, in exchange for the benefits it will provide Owner as described herein, City will recognize substantial benefits, including but not limited to the following:

(1) Ensure the productive use of property and foster orderly growth and quality development in City;

(2) Ensure that development will proceed in accordance with the goals and policies set forth in the General Plan and will implement City's stated General Plan policies;

(3) Receive substantially increased property tax revenues;

(4) Benefit from increased employment opportunities for residents that are created by the Project and from continued diversification of City's economic base;

(5) Benefit from availability of high-quality medical services and sports recreation facilities to be developed in the Project for City's residents;

(6) Enhance the image, appearance and identity of City and its primary gateway;

(7) Ensure coordination and consistency in subsequent construction on the Property, in terms of land use, architecture, landscaping, site engineering and design, infrastructure and other elements of development;

(8) Ensure construction of required public facilities, improvements and services as and when expected; and

(9) Induce Owner to incur substantial financial and other commitments to provide public infrastructure and amenities by giving Owner the certainty and predictability in the development process provided by this Agreement.

L. By entering into this Agreement, in exchange for providing the benefits to City described herein, Owner will obtain sufficient certainty and predictability in the development process to justify the substantial investments required to plan and develop a Project that will take many years to fully construct, and will be able to proceed with development of the Project in accordance with the Applicable Law (as defined herein) and the Project Approvals, subject to the terms, conditions and exceptions contained herein. This Agreement will promote and encourage development of the Project by providing Owner and any future owners and lenders a greater degree of certainty of the ability to expeditiously and economically complete the development effort.

M. City and Owner have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project subject to conditions set forth herein. This Agreement is intended to be and should be construed as a development

agreement within the meaning of the Development Agreement Statute. City and Owner have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute. The consideration to be received by City and the rights secured to Owner pursuant to this Agreement constitute sufficient consideration to support the covenants and agreements of City and Owner herein.

N. City, by electing to enter into this Agreement, acknowledges that the obligations of City herein shall survive beyond the term or terms of the present City Council members and that such action will serve to bind City and future City Councils to the obligations undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both City and its City Council and have been found to be fair, just and reasonable, and City has concluded that the pursuit of the Project will serve the best interests of its citizens and the public health, safety and welfare will be best served by entering into this obligation.

AGREEMENT

NOW, THEREFORE, with reference to the Recitals above, and in consideration of the mutual promises, obligations and covenants herein contained and other considerations, the value and adequacy of which are hereby acknowledged, City and Owner agree as follows:

1. Definition of Terms. The following capitalized terms are defined where indicated below, which shall apply when the capitalized terms are used in this Agreement:

Administrative Agreement Amendment: See Section 9.1.4.

Administrative Project Amendment: See Section 9.2.1.

Agreement: See Introductory paragraph.

Annexation Deadline: see Recital H.

Annexation: See Recital F.

Annexation Area: See Recital D.

Applicable Law: See Section 5.1.

Approval Date: See Recital G.

Approving Ordinance: See Recital G.

Benefitted Properties: See Section 7.2.1.

Benefitting Approvals: See Section 7.2.2.

Benefitting Improvements: See Section 7.2.2 and **Exhibit C**.

Benefitting Labor Costs: See Section 7.2.2.

CEQA: See Recital F.

City: See Introductory paragraph.

Construction Codes: See Section 5.4.1.

Cure Period: See Section 11.1.

Development Agreement: See Introductory Paragraph.

Development Agreement Statute: See Recital A.

Development Fees: See Section 5.3.1.

Development Restrictions: See Section 5.7.

Director: See Section 9.1.4.

Effective Date: See Section 4.1.

EIR: See Recital F.

Enforced Delay: See Section 15.9.

Enhanced Infrastructure Financing District or EIF: See Section 7.1.1.

Event of Default: See Section 11.1.

Ferrari Ranch Planned Development Master Plan: See Recital F.

Ferrari Ranch Vesting Tentative Map: See Recital F.

Financing Mechanism: See Section 7.1.1.

General Plan: See Recital F.

General Plan Amendment: See Recital F.

Initial Approvals: See Recital F.

LAFCO: See Recital F.

Local Traffic Improvements: See Section 7.2.5.

Master Plan: See Recital F.

Mitigation Program: See Recital F.

Mortgage: See Section 13.1.

Mortgagee: See Section 13.1.

New Rules: See Section 5.5.1.

Notice of Default: See Section 11.1.

Notice of Intent to Terminate: See Section 12.2.

Notice of Non-Compliance: See Section 10.4.

Notice of Termination: See Section 12.2.

Offsite Land: See Section 5.12.

Operative Date: See Recital H.

Owner: See Introductory paragraph and signature pages.

Party and Parties: See Introductory paragraph.

PDMP: See Recital F.

Portion: See Section 9.1.3.

Prezoning: See Recital F.

Processing Agreement: See Recital E.

Processing Fees: See Section 5.3.2.

Project: See Recital C.

Project Approvals: See Recital F.

Project-Related Infrastructure: See Section 8.1.

Property: See Recital B.

Regional Traffic Improvements: See Section 7.2.5.

Regional Transportation Impact Fee or RTIF: See Section 5.3.1.

Reimbursable Expenses: See Section 7.2.2.

Release from Obligations: See Section 12.3.

Sewer Facilities: See Section 8.1.

Storm Drainage Facilities: See Section 8.1.

Subsequent Approvals: See Recital J.

Tentative Map: See Recital F.

Term: See Section 5.2.1.

Transportation Facilities: See Section 8.1.

Transportation Improvement Plan or TIP: See Section 7.2.5 and **Exhibit D**.

Water Facilities: See Section 8.1.

2. Property and Owner.

2.1. Property. The Property which is the subject of this Development Agreement is described in Recital B.

2.2. Interest of Owner. Owner has a legal or equitable interest in the Property in that it owns the Property in fee simple. Accordingly, this Agreement once executed and effective shall be fully binding and enforceable by the Parties.

3. Relationship of City and Owner.

This Agreement has been negotiated and voluntarily entered into by City and Owner. Owner is not an agent of City, and City is not an agent of Owner. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owner joint venturers or partners.

4. Effective Date and Term.

4.1 Effective Date. The effective date of this Agreement **("Effective Date")** shall be June 21, 2017, which is thirty (30) days after the Approval Date as defined in Recital G. Said date shall function as the Effective Date for purposes of this Agreement even if annexation making this Agreement operative as described in Recital H occurs later.

4.2 Term of Agreement.

The following provisions were established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property, and obtain the public benefits of the Project. City finds that such time and provisions are reasonably necessary to assure City of realization of the public benefits of the Project.

4.2.1 Term. The term of this Development Agreement (the **"Term"**) shall commence on the Effective Date and shall continue for twenty (20) years from the Effective Date, unless otherwise modified, extended or terminated as provided in this Agreement.

4.2.2 Tolling of Term. The Term shall not begin or continue to run during any time that there is litigation or other action challenging this Agreement or any other Project Approval, or challenging or preventing Owner's efforts to implement the Project, or challenging or preventing City or any service provider from taking the actions necessary to develop or occupy the Project, including associated environmental analyses and determinations. The Term shall be extended for the period of time from the date such litigation or other action is commenced until its final conclusion so as to eliminate the challenge or remove the obstacle. By way of illustration but not limitation, in the case of litigation the tolling and extension period shall start upon filing of such litigation and continue until its dismissal or final entry of judgment. Filing of litigation shall not delay or stop the development, construction or occupancy of the Project or processing and approval of any Subsequent Approval unless enjoined by a court of competent jurisdiction, and City shall not stipulate to the issuance of any such order.

4.3 Term of Project Approvals. Pursuant to the Subdivision Map Act (Government Code section 66410 *et seq.),* and in particular, Government Code section 66452.6(a), the term of any tentative or vesting tentative map, parcel map or vesting parcel map, and subdivision improvement agreement for the Property or any Portion thereof, shall be the longer of (i) the Term of this Agreement (as it may be extended) or (ii) the term of such map otherwise allowed under the Subdivision Map Act and the Municipal Code (as may be extended by changes to such laws during the life of the map). Pursuant to Government Code section 65863.9, the term of any use permit or other entitlement for development for the Property or any Portion thereof shall be the longer of (i) the Term of this Agreement (as it may be extended), (ii) the term of such permit or entitlement, or (iii) the term of the subdivision or parcel map relating to that portion of the Property that is the subject of the permit or entitlement.

5. Vested Rights/Use of the Property/Applicable Law/Processing.

5.1 Right to Develop. Owner shall have the vested right to develop the Project on the Property in accordance with, and subject only to, the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. For the Term of this Agreement, the City's ordinances, codes, resolutions, rules, regulations and official policies governing the development, construction, subdivision, occupancy and use of the Project and the Property including without limitation the General Plan, the Atwater Municipal Code, and the Master Plan, shall be those that are in force and effect on the Approval Date (collectively, the **"Applicable Law"**). In exercising its discretion when acting upon Subsequent Approvals, City shall apply the Applicable Law as the controlling body of law. Notwithstanding the foregoing, Owner in its sole discretion may elect to comply with or receive the benefits of changes in Applicable Law by providing written notice to City of said election. Notwithstanding anything to the contrary contained herein, this Agreement shall not supersede any other rights Owner may obtain pursuant to City's approval of the Vesting Map or any other vesting tentative tract map or vesting tentative parcel map for the Project.

5.2 Permitted Uses. The permitted uses of the Property, density and intensity of use of the Property, the maximum height, bulk and size of proposed buildings, the general provisions for reservation or dedication of land for public purposes and for the location and maintenance of on-site and off-site improvements and public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in the Project Approvals and this Agreement.

5.3 Applicable Fees, Exactions and Dedications.

5.3.1 Development Impact Fees. City may levy those fees, charges, exactions and dedication requirements relative to development of the Property which are in force and effect as of the Approval Date (collectively, the "**Development Fees**"). Unless otherwise set forth in this Agreement, no increase in the amount of Development Fees and no new Development Fees shall be imposed. Notwithstanding the above:

(a) Adjustments to the Regional Transportation Impact Fee (**"RTIF"**) may be allowed if and when adopted by the City Council or if already specified or authorized in applicable City codes and regulations, so long as the fee as adjusted is applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance. If City elects to withdraw from the RTIF program and adopt a new local transportation impact fee, the amount of such fee equal to the "return to source" funds the City then was receiving from the RTIF may be levied on future applications for the Project from the time the new fee takes effect, and the entirety of such new City fee may be imposed starting in year eleven (11) of the Term.

(b) No increase to any other Development Fee shall be allowed during the first ten (10) years of the Term, even if already specified or authorized in applicable City codes and regulations; provided, City may adjust the amount of its different Development Fees from time to time so long as the total of all City Development Fees does not exceed the

total in effect as of the Approval Date (e.g., reducing one fee and increasing another fee by the same amount). Beginning in year eleven (11) of the Term, new increases to Development Fees and any new Development Fees adopted since the Approval Date may be applied from time to time during the remainder of the Term so long as the fees as adjusted are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

(c) This Agreement does not limit City's discretion to impose or require payment of fees, dedication of land, or construction of public improvements or facilities in connection with development of the Property that are identified as required to mitigate specific environmental and other impacts of a Subsequent Approval, so long as not inconsistent with the terms and conditions of this Agreement.

(d) Nothing shall restrict the ability of City to impose conditions or fees on the issuance of building permits that lawfully could have been imposed as conditions of approval of an approved tentative map based on a finding that the condition or fee is necessary because (i) it is required in order to comply with state or federal law, or (ii) failing to impose the condition or fee would place occupants of the Project or the community in a condition dangerous to their health or safety.

5.3.2 Processing Fees. City may levy those fees and charges adopted for the purpose of defraying City's actual costs incurred for the processing and administration of the Subsequent Approvals and any form of regulatory permit, license, land use entitlement, financing district or mechanism, or other approval related to development, use or occupancy of the Property, or to defray the costs of periodically updating City's plans, policies and procedures, including without limitation the fees and charges referred to in Government Code section 66014 (collectively, the "**Processing Fees**") which are in force and effect as of the Approval Date, so long as and to the extent that such fees are applied uniformly to all similar development on a City-wide basis. City may levy new or increased Processing Fees adopted after the Approval Date so long as (a) such fees are applied uniformly to all similar development on a City-wide basis, (b) the application of such fees is prospective, and (c) the application of such fees would not prevent, impose a substantial financial burden on, or materially delay development of the Project in accordance with this Agreement. By so agreeing, Owner does not waive its rights to challenge the legality or amount of any such new or increased Processing Fee. To avoid uncertainty, the Parties agree that if not terminated earlier the Reimbursement Agreement shall expire as of the Operative Date, and thereafter the Processing Fees shall apply as to any applications and permits for the Project.

5.4 Construction Codes.

5.4.1 Uniform Codes Applicable. Notwithstanding the provisions of Section 5.1 above, to the extent Applicable Law includes requirements under the state or locally adopted building, plumbing, mechanical, electrical and fire codes (collectively the **"Construction Codes"),** the Construction Codes included shall be those in force and effect at the time Owner submits its application for the relevant building, grading, or other construction

permits to City; provided, in the event of a conflict between such Construction Codes and the Project Approvals, the Project Approvals shall, to the maximum extent allowed by law, prevail.

5.4.2 Rules for Public Improvements. For construction of public infrastructure, the Construction Codes along with any ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to such construction shall be those in force and effect at the time of execution of the applicable improvement agreement between City and Owner, or at the time of permit approval if there is no improvement agreement.

5.5 New Rules and Regulations.

5.5.1 During the term of this Agreement, City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City to the Property which were not in force and effect on the Approval Date (**"New Rules"**), so long as the New Rules are applied uniformly to similar development on a City-wide basis; provided, however, such New Rules shall be applicable to the Project or the Property only to the extent that such application will not modify, prevent or impede development of the Project or conflict with any of the vested rights granted by this Agreement, the Applicable Law, or the Project Approvals. In addition to any other conflicts that may occur, each of the following New Rules shall be deemed to conflict and may not be applied if it would:

(a) Cause or impose a substantial financial burden on, or materially delay development of the Property as otherwise contemplated by this Agreement or the Project Approvals;

(b) Frustrate in a more than insignificant way the intent or purpose of the Project Approvals or preclude compliance therewith including, without limitation, by preventing or imposing limits or controls in the rate, timing, phasing or sequencing of development of the Project;

(c) Prevent or limit the processing or procuring of Subsequent Approvals;

(d) Reduce the density or intensity of use of the Property as a whole, or otherwise require any reduction in the square footage of, or total number of, proposed improvements;

(e) Restrict the types of uses permitted, in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement and the Master Plan; and/or

(f) If any of such ordinances, resolutions, rules, regulations or official policies do not have general (City-wide) applicability.

5.5.2 Notwithstanding Section 5.5.1, City shall not be precluded from applying any New Rules to the Project or the Property under the following circumstances, where the New Rules are:

(a) Specifically mandated by changes in state or federal laws or regulations adopted after the Approval Date pursuant to Government Code section 65869.5;

(b) Specifically mandated by a court of competent jurisdiction taking into consideration the vested rights protection provided by this Agreement and the Development Agreement Statute;

(c) Changes to the Uniform Building Code or similar uniform construction codes, or to City's local construction standards for public improvements so long as such code or standard has been adopted by City and is in effect on a City-wide basis; or

(d) Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health and safety of the surrounding community.

5.6 Flood Protection. In conjunction with filing the initial application for a detailed development plan approval pursuant to Section 17.44.110 of the Atwater Municipal Code, Owner shall prepare and submit a detailed flood study confirming that areas subject to flooding within the Project outside of the Canal Creek channel itself will meet federal, state and local flood control protection standards as of the Approval Date.

5.7 Moratorium Not Applicable. Notwithstanding anything to the contrary contained herein, if an ordinance, resolution, policy, directive or other measure is enacted or becomes effective, whether by action of City, by initiative, referendum, or otherwise, and if it imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which affects all or any part of the Property or Owner's ability to develop the Project (collectively, "**Development Restrictions**"), City agrees that such Development Restriction shall not apply to the Project, the Property, this Agreement or the Project Approvals unless it is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code section 8558, provided that to the extent it applies to all or any part of the Project then the Term shall automatically be extended for a period of time equal to the period during which the Development Restriction applies.

5.8 New Taxes and Assessments. No new taxes, assessments or other charges not in force and effect as of the Approval Date shall be levied against the Property, the Project or Owner except as specified in this Agreement. No increase in an existing tax, assessment or other charge shall be levied during the first ten (10) years of the Term, even if an increase already is specified or authorized in applicable City codes and regulations. Thereafter, new increases to those taxes, assessments and other charges in force and effect as of the Approval Date may be applied during the remainder of the Term so long as the adjustments are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such

adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

5.9 Development of the Project; Phasing; Timing.

5.9.1 No Requirement to Develop. Notwithstanding any provision of this Agreement, City and Owner expressly agree that there is no requirement that Owner must initiate or complete any action, including without limitation development of the Project or any phase of the Project, within any period of time set by City, and City shall not impose such a requirement on any Project Approval or Subsequent Approval except as needed to ensure that necessary infrastructure is completed in an orderly fashion. Nothing in this Agreement is intended to create nor shall it be construed to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Owner under this Agreement if the development fails to occur. It is the intention of this provision that Owner be able to develop the Property in accordance with its own time schedules and the Project Approvals. City acknowledges that Owner at this time cannot predict when or the rate at which or the order in which phases of the Project will be developed, and City recognizes that many factors affect such actions that may not be within Owner's control, including but not limited to market orientation and demand, interest rates and funding availability, and competition. Nothing in this Agreement shall exempt Owner from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof, nor shall this Section 5.9 affect the term of this Agreement or of any related Project Approvals or Subsequent Approvals.

5.9.2 No Restriction on Timing. City agrees that Owner shall be able to develop in accordance with Owner's own time schedule as such schedule may exist from time to time, and Owner shall determine which part of the Property to develop first, and in what sequence, and at Owner's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to avoid that result by acknowledging that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, and that the timing, rate or sequence of development and occupancy of the Project shall not be restricted or dictated by any means other than as specifically may be recognized in this Agreement.

5.10 Processing and City Discretion.

(a) Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those Subsequent Approvals that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the vested rights granted by this Agreement, the Applicable Law and the Project Approvals.

(b) Owner acknowledges that implementation of the Project will require City's consideration and approval of applications for Subsequent Approvals and that City will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. City's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the EIR to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of City to conduct any environmental review required under CEQA or other applicable laws and regulations.

5.11 Regulation by Other Public Agencies. The Parties acknowledge that other public agencies not within City's control may possess authority to regulate aspects of development of the Property, and this Agreement does not limit such authority of other public agencies.

5.12 Eminent Domain. The Parties acknowledge and agree that development of the Project-Related Infrastructure (as defined in Section 8.1) is a critical component of the Project and also will result in key benefits to the community generally. The Parties further acknowledge that fulfilling said obligations may require acquisition of additional land outside the Property. If such acquisition is necessary to develop any aspect of the Project Infrastructure, Owner shall use its best efforts to acquire any and all such land (**"Offsite Land"**), which shall include: a) paying for and obtaining an appraisal prepared by a qualified Member of the Appraisal Institute (MAI), in connection with acquisition of the Offsite Land; and b) offering to acquire the Offsite Land based on such appraisal. In the event Owner is not successful in acquiring the Offsite Land, City and Owner shall meet and confer to determine: (a) whether the need for the Offsite Land is such that City should consider informally intervening to facilitate said acquisition; (b) whether there may be other feasible means of accomplishing the public objectives at issue such that acquisition of the Offsite Land is no longer needed; and (c) whether it would be appropriate for City to consider using its statutory powers of eminent domain to acquire the Offsite Land. In the event that City determines to use its statutory powers of eminent domain to pursue acquisition of the Offsite Land, Owner shall be responsible for all costs associated therewith. Notwithstanding the foregoing, neither this Section 5.12 nor any other provision of this Agreement is intended to abrogate City's responsibilities, in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law (California Code of Civil Procedure Part 3, Title 7, Sections 1230.010-1273.050), as amended from time to time. In the event the Offsite Land is not ultimately acquired, either through private acquisition or eminent domain, or in the event that City determines not to pursue eminent domain of the Offsite Land, Owner's obligations in connection with that aspect of the Project Infrastructure that necessitated acquisition of the Offsite Land shall terminate and be of no further force or effect in accordance with Government Code section 66462.5 of the Subdivision Map Act.

6. Obligations of City.

The Parties acknowledge and agree that Owner's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Owner's decision to annex the

Property to the City and process siting of the Project in the City, is material consideration for City's agreement to perform and abide by the covenants and obligations of City, as set forth in this Agreement.

6.1 Processing of Annexation. City shall promptly, in cooperation with Owner, process all documents necessary to achieve annexation of the Annexation Area, and at a minimum annexation of the Property, to the City.

6.2 Cooperation in Subsequent Approvals.

6.2.1 Owner's Application for Subsequent Approvals. Owner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. Owner's obligations under this Section 6.2.1 apply to those approvals that are under City's jurisdiction and also to those approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Project (including, without limitation, the Department of Transportation; agencies having jurisdiction over boundary changes or district formation, flood control, sewer service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes and hazardous wastes and materials). City shall cooperate with Owner in its efforts to obtain such approvals from other agencies and shall at the request of Owner use its best efforts to ensure the timely availability of such approvals.

6.2.2 City's Processing of Subsequent Approvals. City shall cooperate and diligently work to promptly process and consider all applications for Subsequent Approvals, provided they are in a proper form and include payment of any applicable fees and provided that Owner is in compliance with this Agreement. In the event that City and Owner mutually determine that additional personnel or outside consultants need to be retained to assist City to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owner but shall be under the direction of City. City shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a manner consistent with the Master Plan and this Agreement.

6.3 Availability of Public Services.

6.3.1 Sewage Capacity. To the extent permitted by law, City shall reserve or provide such capacity for sewage transmission and treatment as may be necessary to serve the Project. Owner will consult and cooperate with City from time to time in determining the anticipated timing, sequence and amount of development in the Project so as to give City sufficient advance notice to ensure that adequate capacity is available when needed, so as to avoid delaying development or occupancy of any portion of the Project.

6.3.2 Water System. To the extent required to ensure adequate domestic and firefighting water capacity and redundancy for the Project, City shall cooperate in connecting the Project's water supply system with the City's. City acknowledges that such connection also benefits City by providing similar redundancy from the Project's water well.

6.3.3 Construction Water. Until the Project's own water supply infrastructure is installed and operating, City agrees to make construction water available to the Project by permitting the Project to connect with the existing City water supply infrastructure at one or more locations Owner may from time to time request, subject to City approval in its reasonable discretion, at Owner's cost and on those terms and conditions and charges customarily applied by City to similar requests consistent with City standards. City also shall permit Owner to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to various portions of the Property for Owner's use in any and all Project grading and construction operations.

6.4 Right to Rebuild. City agrees that Owner, in Owner's sole discretion, may renovate or rebuild the Project or portions thereof during the Term should it become necessary due to natural disaster, changes in seismic, flood or other requirements, or other causes. Any such renovation or rebuilding shall comply with the terms of this Agreement and shall be subject to CEQA as may be required under applicable law.

7. Financing Mechanisms and Owner Funding.

7.1. Assessment Districts or Other Funding Mechanisms. The Parties acknowledge that each of them requires financial assistance to build the infrastructure and improvements required to support the Project and serve the Annexation Area, and that City's assurances to cooperate in arranging such assistance is a material consideration for Owner agreeing to proceed with development of the Project. City also acknowledges that development of the Project will provide material benefits, including but limited to employment opportunities for City's residents and tax revenues to support City operations, constituting consideration for City to enter into this Agreement and to provide the assurances in this Section 7.

(a) City shall cooperate in the formation of, or annexation to, one or more assessment districts, geologic hazard abatement districts, landscaping and lighting districts, community facilities districts, utility authority, lease leasebacks, project-specific tax reimbursement tax-exempt financing mechanisms, or other funding mechanisms related to public safety, traffic, sewer, water, fire, storm water, recreation or other infrastructure or public service needs (collectively, "**Funding Mechanisms**") that include the Property and to the extent permitted by law include other properties within or outside the City, to the extent such Funding Mechanism and its provisions are permitted under applicable law, that Owner requests to help fund infrastructure improvements and to ensure the orderly development of the Project.

(b) City shall diligently and expeditiously process applications by Owner necessary to establish such Funding Mechanisms, as long as (i) the application complies with law, (ii) is consistent with City standards, and (iii) will result in no commitment of City general funds. Notwithstanding the foregoing, while City agrees to cooperate in the process of formation of Funding Mechanisms, the final determination as to City's participation in any Funding Mechanism, including an EIFD as defined below (either by pledging property tax increment or otherwise) or any other financing district shall be made by the City Council in its sole and absolute discretion.. City shall cooperate in good faith with Owner's efforts to obtain the participation of Merced County or other public agencies as needed to establish and implement such Funding Mechanisms. Without limiting the foregoing, among the Financing

Mechanisms Owner may request, City acknowledges that Owner initially proposes utilizing one or more Enhanced Infrastructure Financing Districts (**"EIFD"**) pursuant to Government Code section 53398.50 et seq. with participation by Merced County to fund infrastructure of regional significance within and outside the City.

(c) City shall diligently seek to sell any bonds to be issued and secured by such Funding Mechanisms upon the best terms reasonably available in the marketplace.

(d) Notwithstanding the foregoing, Owner retains all its rights to oppose the formation or proposed assessments of new Funding Mechanisms, or any new or increased assessment under a Funding Mechanism, or to request or pursue assessment credits or reductions, unless otherwise provided for herein. Notwithstanding any terms to the contrary, nothing contained in this Agreement shall be construed as waiving City's discretion to the extent required under applicable law in deciding whether and in what form to establish a Funding Mechanism, impose and collect assessments, issue and sell bonds, or undertake any other discretionary action related thereto. Any and all costs associated with forming or joining and then implementing Funding Mechanisms under this Section 7.1 shall be shared equally by City (50%) and Owner and other benefitting property owners (50%).

7.2. Owner Reimbursement by Benefitting Properties.

7.2.1 Reimbursement Obligation. City acknowledges that Owner has expended and will expend considerable funds for approvals and improvements which may benefit properties within the Annexation Area but outside the Property (collectively, the **"Benefitted Properties"**) by facilitating their development and use. To the extent that the owner of a Benefitted Property either (i) applies for and is approved to develop the Benefitted Property relying on the Benefitting Approvals (as defined below), or (ii) makes use of a Benefitting Improvement (as defined below) to support either the current use on the Benefitted Property or some new development or use on the Benefitted Property, Owner shall be entitled to reimbursement based on a pro rata, fair share apportionment of the Reimbursable Expenses (as defined below), such reimbursement to come directly from the owner of the Benefitted Property unless Owner agrees to reimbursement via a Financing Mechanism. Notwithstanding the foregoing, Owner agrees that residential development will not be required to provide any payment, and the Reimbursable Expenses will be shared by development on the Property and non-residential development on the Benefitted Properties.

7.2.2 Reimbursable Expenses. City agrees that expenditures by Owner for the following items will qualify for fair share reimbursement by the Benefitted Properties pursuant to the terms of this Section 7.2 (collectively, the "**Reimbursable Expenses**");:

(a) Preparation, processing and approval of the EIR, General Plan Amendment, Prezoning, Master Plan, Agricultural Designation Removal, Annexation, and General Plan Housing Element update, including related consultant studies and work (collectively, the "(**Benefitting Approvals**");

(b) Those portions of Project-Related Infrastructure (as defined in Section 8.1) to be built or funded by Owner as part of developing the Project, that either are (i) oversized to accommodate use by the Benefitted Properties or (ii) extend services that as of the Effective Date are not available to the Benefitted Properties, including related consultant studies and work (collectively, the **"Benefitting Improvements"**);

(c) Consultant and legal fees to manage and implement the planning, design, approval and implementation effort, payments to subsidize or reimburse City approval processing and other expenses, and expenses to determine the appropriate water service entity and other utility service providers (collectively, the "**Benefitting Labor Costs**")

7.2.3 Reimbursement Procedure.

(a) If Owner seeks reimbursement from time to time under this Section 7.2, City shall negotiate in good faith with Owner to enter into one or more reimbursement agreements with Owner, in which among other things City will (i) identify the improvements qualifying as Benefitting Improvements, (ii) identify the properties qualifying as Benefitted Properties as to each Benefitting Approval or Benefitting Improvement, (iii) determine the Owner costs qualifying as Reimbursable Expenses, (iv) establish the allocation of Reimbursable Expenses to each Benefitted Property, and (v) establish the timing and method of reimbursement to Owner.

(b) City thereafter shall use its best efforts, to the extent permitted under applicable law, (i) to require as a condition to approval of development or use on the Benefitted Property that Owner be reimbursed by the owner of the Benefitted Property at the earliest opportunity, and (ii) to form, consistent with all applicable federal, state, and local laws and regulations (including without limitation Proposition 218), a local benefit district for the purpose of facilitating the reimbursement of Owner, to the extent such reimbursement is not otherwise provided. Owner shall pay all of City's costs associated therewith and shall indemnify and hold City harmless from and against all claims in connection therewith. Notwithstanding the foregoing, Owner agrees that City's obligations hereunder are limited to facilitating reimbursement from other private property owners as set forth above, and City shall have no obligation to reimburse Owner.

7.2.4 Reimbursement by Financing Mechanisms. To the extent not reimbursed by the Benefitted Properties, Owner shall be entitled to reimbursement from the Financing Mechanisms for Owner's actual costs to install improvements that are included in the Financing Mechanisms beyond Owner's fair share for such improvements, including but not limited to a share of the costs to plan and design such improvements. The details of such reimbursement shall be included as part of establishing each Financing Mechanism.

7.2.5 Credit Against Traffic Fees.

(a) In return for Owner's obligation to install any of the "City Fee Program" facilities listed in Table 9 of the Transportation Improvement Plan ("**TIP**"), such Table 9 attached hereto as **Exhibit C** (the "**Local Traffic Improvements**"), Owner shall be

entitled to credit its costs against City's Traffic Circulation Fee that otherwise would be payable for development of the Project.

(b) In return for Owner's obligation to install any of the "Regional Fee Program" facilities (or portions thereof) listed in Table 9 of the TIP, as shown in **Exhibit C** (the "**Regional Traffic Improvements**"), Owner shall be entitled to credit its costs against the RTIF that otherwise would be payable for development of the Project.

(c) City agrees that credit against City's Traffic Circulation Fee and against the RTIF is justified by the many traffic improvements beyond CEQA-required mitigation measures that Owner will provide, in addition to the substantial employment, tax and other benefits that the Project will provide City, the County and their residents.

8. Owner Obligations.

8.1 Project-Related Infrastructure. As part of developing the Project, Owner shall build or cause to be built the following public improvements (collectively, the "**Project-Related Infrastructure**"):

(a) The water storage, transmission and distribution facilities shown in Figure 20 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Water Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(b) The sanitary sewer facilities shown in Figure 23 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Sewer Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(c) The storm drainage facilities shown in Figure 26 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Storm Drainage Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them; and

(d) The traffic, roadway and transportation facilities shown in Figures 14 and 15(a) of the Master Plan, in Sheet 2 of the Vesting Map, and in the TIP attached hereto as **Exhibit D** (collectively, the "**Transportation Facilities**"); provided, the TIP shall govern if there is any inconsistency between them.

The precise phasing of each aspect of the Project-Related Infrastructure will be determined at the time of Subsequent Approvals. Notwithstanding the above, Owner may be eligible for reimbursement by the Benefitted Properties, funding or reimbursement by the Financing Mechanisms, and/or credit against Development Fees, to the extent authorized by this Agreement as to qualifying portions of the Project-Related Infrastructure.

9. Amendment or Cancellation.

9.1 Amendment of Agreement.

9.1.1 Modification Because of Conflict with State or Federal Laws. If state or federal laws or regulations enacted after the Approval Date or an action of any state or federal agency prevents or precludes compliance with one or more provisions of this Agreement or the Project Approvals or require changes in plans, maps or permits approved by City, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state laws or regulations or with the actions of state or federal agencies in a manner that protects, to the greatest extent feasible, the vested rights of Owner under this Agreement. Any such amendment of this Agreement shall be consented to by Owner and considered by the City Council. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans. During the interim until this Agreement is so amended, or for the remainder of the Term if this Agreement is not so amended, the provisions at issue shall be deemed suspended but the remainder of this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce; provided, Owner retains the right in Owner's sole discretion to terminate this Agreement and Owner's obligations hereunder in response to suspension of such provisions.

9.1.2 Amendment or Cancellation by Mutual Consent. This Agreement may be amended (in whole or part) in writing from time to time by mutual consent of the Parties and in accordance with the procedures of Government Code section 65868. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by an action which complies with Government Code section 65868.

9.1.3 Amendment as to Portion of Property. When a Party that is successor to Owner as to a portion of the Property (**"Portion"**) seeks such an amendment, then such Party may only seek amendment of this Agreement as directly relates to the Portion, and the Party or Parties owning the remainder of the Property shall not be required or entitled to be a signatory or to consent to an amendment that affects only the other Party's Portion so long as such amendment does not directly or indirectly affect the rights or obligations of the Parties owning the remainder of the Property. If any Portion of the Property is subject to a document which creates an association which oversees common areas and any construction or reconstruction on or of the same, then the association shall be deemed to be the "owner" of that Portion of the Property for the purpose of amending this Agreement.

9.1.4 Administrative Agreement Amendments. Notwithstanding the provisions of Section 9.1.2, City's Community Development Director or designee (**"Director"**) may, except to the extent otherwise required by law, enter into certain amendments to this Agreement on behalf of City so long as such amendment does not substantially affect (a) the Term; (b) the permitted uses of the Property; (c) provisions for significant reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property; (f) the maximum height

or size of proposed buildings; or (g) monetary contributions by Owner as provided in this Agreement ("**Administrative Agreement Amendment**"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto. The Director shall determine whether a reservation or dedication is "significant", and shall evaluate and apply the term "substantially affect" in the context of the Project as a whole.

9.1.5 Amendment Exemptions. No amendment of an Initial Approval or Subsequent Approval, whether done as an administrative amendment or otherwise, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by the Parties.

9.1.6 Amendment Limitations. In consideration of the scope of benefits to City provided by this Agreement and the Project, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to impacts on City directly attributable to such amendment.

9.2 Amendment of Project Approvals. To the extent permitted by law, any Initial Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner.

9.2.1 Administrative Project Amendments. Upon written request by Owner for an amendment or modification to an Initial Approval or Subsequent Approval, the Director shall determine (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole, and (b) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable Construction Codes, and State and Federal law. If the Director finds that the proposed amendment or modification satisfies the terms of this Section 9.2.1, and will result in no new significant environmental impacts not addressed and mitigated in the EIR or mitigated by conditions to any Project Approval, it shall be determined to be an "**Administrative Project Amendment**" and the Director may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice or public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or access points, changes in pedestrian path alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure that do not substantially alter the design concepts of the Project, and minor adjustments to the Project site diagram or Property legal description shall be treated as Administrative Project Amendments.

9.2.2. Non-Administrative Project Amendments. Any request of Owner for an amendment or modification to an Initial Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment pursuant to Section 9.2.1 shall be subject to review, consideration and action pursuant to Applicable Law and this Agreement.

10. Annual Review.

10.1 Initiation of Review. The annual review date for this Agreement shall be during the thirty (30) days following each anniversary of the Effective Date during the Term. The Director shall initiate the annual review, as required under Government Code section 65865.1, by giving Owner at least thirty (30) days' written notice that the City intends to undertake such review. At least ten (10) days prior to any annual review, City shall deposit in the mail and transmit by electronic mail to Owner a copy of all staff reports and related exhibits concerning contract performance that City will rely on in its annual review.

10.2 Good Faith Compliance. Owner shall provide evidence to the Director demonstrating Owner's good faith efforts to comply with the provisions of this Agreement. Owner shall be permitted an opportunity to respond to City's documentation and City's evaluation of Owner's performance.

10.3 Procedure. Director shall review Owner's good faith compliance with the terms of this Agreement, after considering any evidence and responses provided by Owner, and shall make written findings and determinations on the basis of substantial evidence as to whether or not Owner has complied in good faith with this Agreement. Director's decision may be appealed to the City Council, which shall hold a duly noticed hearing on the appeal and thereafter uphold or reverse the Director's decision.

10.4 Notice of Non-Compliance. If on the basis of the annual review, the Director, or on appeal the City Council, finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, or if the City determines that Owner has failed to cure a default in accordance with Section 11.2, City may commence proceedings to enforce, modify or terminate this Agreement as follows. City shall give Owner a written "**Notice of Non-Compliance**" and thereafter Owner shall have forty-five (45) days, or such longer period as City and Owner may agree in writing, to respond in writing to such finding by specifying either how Owner's non-compliance has been cured (or is diligently being cured) or the grounds upon which it believes that it is complying with this Agreement. If Owner's response to the Notice of Non-Compliance has not been received by City within the prescribed forty-five (45) days, or such additional period of time as mutually agreed, the Notice of Non-Compliance shall be conclusively presumed to be valid, and the City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5. If Owner responds within the time period provided, the Parties agree to meet in good faith at reasonable times and from time to time for a period of at least sixty (60) days to arrive at a mutually acceptable resolution of the matters asserted in the Notice of Non-Compliance and disputed in the response. If after sixty (60) days, or any extension of time as mutually agreed to by the Parties, the Parties have failed to arrive at a mutually acceptable resolution of such matter(s), City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5.

10.5 Modification or Termination. If City determines to proceed with modification or termination of this Agreement after following the procedure under Section 10.4, City shall give notice to Owner or successor in interest thereto of its intention to do so in accordance with the procedures for such notice set forth in Government Code section 65868. Nothing in this Section 10 shall prevent or restrict Owner from providing additional evidence as to Owner's compliance with the terms of this Agreement.

10.6 Costs. Costs reasonably incurred by City in connection with the annual review shall be paid by Owner in accordance with the City's schedule of fees in effect at the time of review; provided, Owner shall not be liable for City's costs incurred to terminate this Agreement.

10.7 Written Notice of Compliance. Within thirty (30) days of a written request by Owner, City shall provide Owner with written notice of compliance, in recordable form, duly executed and acknowledged by City. Owner shall have the right in its sole discretion to record such notice of compliance.

10.8 Failure to Conduct Annual Review. If City fails to initiate or complete its annual review in any year, then after thirty (30) days of Owner's notice regarding such failure Owner shall be deemed in compliance with the terms of this Agreement for the year in question.

11. Default.

11.1 Notice and Cure. Failure or unreasonable delay by a Party to perform any material provision herein shall constitute a default of this Agreement. The Party alleging a default shall serve written notice ("**Notice of Default**") upon the defaulting Party, specifying the nature of the alleged default and the manner and period of time in which the default may be satisfactorily cured. If the default is not cured by the defaulting Party within thirty (30) days after actual receipt of the Notice of Default by the defaulting Party or such longer period of time that may be specified in the Notice of Default (the "**Cure Period**"), such uncured default shall be treated as an "**Event of Default**"; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within the Cure Period, no Event of Default shall be deemed to have occurred if the defaulting Party (a) begins to cure the default within the Cure Period, (b) gives the nondefaulting Party notice before the end of the Cure Period that the cure cannot practicably be completed in the Cure Period, together with an explanation and estimated cure time needed, and (c) diligently pursues such cure to completion. Failure to give notice of an alleged default shall not constitute a waiver of any default.

11.2 Right to Challenge Notice. After receiving a Notice of Default, during the Cure Period a defaulting Party may provide evidence establishing it was never in fact in breach of this Agreement, and may initiate mediation proceedings. Unless curing the alleged default in the interim is reasonably necessary to protect the public health and safety, the defaulting Party need not initiate cure efforts specified in the Notice of Default during mediation and the Cure Period shall not begin to run until mediation either concludes or is terminated by a Party.

11.3 Remedies and Damages. Following expiration of any applicable Cure Period resulting in an uncured Event of Default, the nondefaulting Party may institute legal proceedings to enforce the terms of this Agreement, or in the event of a material Event of Default (as defined in Section 12.2) may terminate this Agreement pursuant to the provisions of Section 12.2, subject to the defaulting Party's ability to require mediation. In no event shall either Party be liable in damages for any default or upon termination of this Agreement, it being expressly understood and agreed that the sole legal or equitable remedy available to either Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to obligations to pay reasonable attorneys' fees and obligations to advance monies or reimburse monies.

11.4 Default as to a Portion of the Property. When an Event of Default applies only to a Portion of the Property owned by a successor to Owner, and does not affect or involve the rights or obligations under this Agreement regarding the remainder of the Property or the separate Owner(s) of such remainder, the proceedings under this Section 11 and the remedies available to City shall be applied to and enforced against only said Portion and the Owner thereof, and this Agreement shall remain in full force and effect as to such remainder and separate Owner(s).

12. Termination of Agreement.

12.1 Termination Generally. This Agreement shall terminate (a) upon the expiration of the Term (plus any extensions mutually agreed), or (b) when the Project has been fully developed and (i) all of Owner's obligations in connection therewith and with this Agreement have been satisfied as reasonably determined by City and (ii) the Project and Property have no further need for the rights and protections provided by this Agreement as reasonably determined by Owner. This Agreement may be terminated by mutual consent of the Parties.

12.2 Termination Due to Default.

12.2.1 Default by Owner.

(a) After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by Owner or it is not being diligently cured in the manner set forth above, then in the case of an Event of Default that is alleged to be material, City may, at its option, give notice of its intent to terminate this Agreement pursuant to the Development Agreement Statute ("**Notice of Intent to Terminate**"). As used herein, City's finding of materiality allowing termination shall be based on the effect of the default in relation to the size and scope of the Project.

(b) The City Council shall hold a duly noticed and conducted public hearing within thirty (30) days after sending Owner the Notice of Intent to Terminate, in compliance with the requirements of the Development Agreement Statute. Owner shall have the right to offer written and oral evidence prior to or at the public hearing.

(c) Following consideration of the evidence presented in said hearing, if the City Council determines that a material Event of Default has occurred and is continuing, and elects to terminate this Agreement, City shall give Owner written notice of termination of this Agreement by certified mail ("**Notice of Termination**"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by Owner; provided, if Owner files an action to challenge City's termination of this Agreement within such sixty- (60-) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

12.2.2 Default by City. After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by City or it is not being diligently cured in the manner set forth above, then in the case of a material Event of Default, Owner may, at its option, give City a Notice of Termination terminating this Agreement"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by City; provided, if City files an action to challenge Owner's termination of this Agreement within such sixty (60) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired). As used herein, Owner's treatment of an Event of Default as material allowing termination shall be based on the effect of the default on Owner's rights and obligations under this Agreement, Owner's ability to develop the Project, or financial commitments and requirements to develop the Project.

12.2.3 Remaining Rights and Obligations. Notwithstanding the foregoing, a Notice of Termination given under this Section 12.2 is effective to terminate the obligations of the nondefaulting Party under this Agreement only if an Event of Default has occurred and such Event of Default, as a matter of law, authorizes the nondefaulting Party to terminate its obligations under this Agreement. In the event the nondefaulting Party is not so authorized to terminate, the nondefaulting Party shall have all rights and remedies provided herein or under applicable law, including, without limitation, the right to specific performance of this Agreement. Once a Party alleging an Event of Default has given a Notice of Termination, mediation proceedings may be instituted to attempt to resolve the dispute and determine the respective termination rights and obligations of the Parties under this Agreement. Where an Event of Default only involves a Portion pursuant to Section 11.4, termination of this Agreement shall only apply as to that Portion.

12.3 Release from Obligations with Respect to Individual Parcels. The Owner of a Portion may request that City provide certification in recordable form that said Owner and Portion have no further obligations under this Agreement (the "**Release from Obligations**"), which City in its reasonable discretion shall provide and the Owner may record. Thereafter the

assignment provisions of Section 14 shall not apply, and the obligations of this Agreement shall terminate with respect to the Portion and the Owner of such Portion.Notwithstanding the above, the rights provided and protected by this Agreement shall remain in effect as to such Portion and its Owner (and successors) for the remainder of the Term, including without limitation the uses permitted and type and intensity of development.

12.4 Recordation of Termination. Upon termination of this Agreement as to all or part of the Property, City upon request by Owner shall cause a notice of termination to be duly recorded in the official records of Merced County.

13. Mortgagee Protection; Certain Rights of Cure.

13.1 Mortgagee Protection. This Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property **("Mortgage").** This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee (**"Mortgagee"**) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

13.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 13.1, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement or as may be otherwise authorized by City.

13.3 Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by City that Owner has defaulted or committed an Event of Default. Each Mortgagee shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed set forth in the City's notice. City, through the Director, may extend the cure periods provided in Section 11 for not more than an additional sixty (60) days upon request of Owner or a Mortgagee.

14. Transfers and Assignments.

14.1 Agreement Runs with the Land. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including but not limited to Civil Code section 1468. Each covenant to do, or refrain from doing, some act on all or any part of the Property, (a) is a burden upon such property, (b) is for the benefit of each other portion of the Property, (c) runs with such properties, and (d) is binding upon each Party and each successive Owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties. The provisions of this Section 15.1 are subject and subordinate to the provisions of Section 9.1 which permit amendment of this Agreement.

14.2 Owner's Right to Assign. All of Owner's rights, interests and obligations hereunder (or any portion of such rights which Owner wishes to transfer) may be transferred, sold or assigned in conjunction with the transfer, sale, or assignment of the Property, or any Portion thereof, at any time during the Term, provided that no transfer, sale or assignment of Owner's rights, interests and obligations hereunder shall occur without prior written notice to City and approval by the Director, which approval shall not be unreasonably withheld or delayed and shall not be conditioned. The Director shall consider and decide the matter within twenty (20) business days after Owner's notice provided and receipt by the Director of all necessary documents, certifications and other information required by the Director to decide the matter. In considering the request, the Director shall base the decision upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out development of the Property to completion. The Director's approval shall be for the purposes of: a) providing notice to City; b) assuring that all obligations of Owner are allocated as between Owner and the proposed purchaser, transferee or assignee as provided by this Agreement; and c) assuring City that the proposed purchaser, transferee or assignee is financially capable of performing the Owner's obligations hereunder not withheld by Owner.

14.3 Release Upon Transfer. Upon the transfer, sale, or assignment of Owner's rights, interests and obligations hereunder, Owner shall be released from the obligations under this Agreement with respect to the Property transferred, sold, or assigned pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee to the extent that such obligations are expressly assumed by the transferee, purchaser, or assignee. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee, and shall provide all necessary documents, certifications and other necessary information prior to Director approval if required by the provisions of this Agreement. The allocation of rights and responsibilities between the transferor and transferee shall be set forth in the assignment agreement executed by such parties.

14.4 Owner's Right to Retain Specified Rights or Obligations. Owner may withhold from a sale, transfer or assignment of this Agreement or any Portion of the Property transferred, certain rights, interests and/or obligations which Owner wishes to retain, provided that Owner specifies such rights, interests and/or obligations in a written document to be appended to this Agreement and recorded with the Merced County Recorder prior to the sale, transfer or assignment of the Property. Owner's purchaser, transferee or assignee shall then have no interest or obligations for such rights, interests and obligations and this Agreement shall remain applicable to Owner with respect to such retained rights, interests and/or obligations.

15. Miscellaneous.

15.1. Estoppel Certificate. Any Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying Party the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, or such longer period as may reasonably be agreed to in writing by the Parties. The Director shall be authorized to execute any certificate requested by Owner. The certificate shall be addressed to and may be relied upon by the requesting Party.

15.2. Severability; Conflict. The unenforceability, invalidity or illegality (collectively, "illegality" or "illegal") of any provision, covenant, condition or term of this Agreement (collectively, "provision(s)") shall not render the other provisions of this Agreement illegal, and shall be considered "severed" from this Agreement. In the event of a conflict between this Agreement or any provision hereof and the Project Approvals or any provision thereof, this Agreement shall control.

15.3. Attorneys' Fees and Costs.

15.3.1 Prevailing Party. If City or Owner initiates any action at law or in equity to enforce or to interpret the terms and conditions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled.

15.3.2 Third Party Challenge. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action, including but not limited to City's costs for outside counsel.

15.4. Bankruptcy. The obligations of this Agreement shall not be dischargeable in bankruptcy.

15.5. Indemnification. Owner agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by Owner, or any actions or inactions of Owner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Owner shall have no obligation under this Section 15.5 with respect to negligence or wrongful conduct of City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been delivered or dedicated to and accepted by City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action for which Owner has a duty to defend or indemnify City then City will cooperate with Owner, will appear in such action and will not unreasonably withhold approval of a settlement otherwise acceptable to Owner. Notwithstanding anything to the contrary set forth in this Section 15.5 or elsewhere in this Agreement, it is understood that each Party or successor or transferee of Owner is providing the indemnities described in this Section 15.5 as to its respective development on its respective Portion only.

15.6. Insurance.

15.6.1 Public Liability and Property Damage Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain in effect a policy of commercial general liability insurance with a per-occurrence combined single limit of not less than one million dollars ($1,000,000.00) and a deductible of not more than ten thousand dollars ($10,000.00) per claim. The policy so maintained by Owner shall name City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

15.6.2 Workers' Compensation Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain Workers' Compensation insurance for all persons employed by Owner for work at the Project site. Owner shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Owner agrees to indemnify City for any damage resulting from Owner's failure to maintain any such insurance.

15.6.3 Evidence of Insurance. Prior to commencement of construction of any improvements which will become public improvements, Owner shall furnish City satisfactory evidence of the insurance required in this Section 15.6 and evidence that the carrier is required to give City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy.

15.7 Notices. All notices required or provided for under this Agreement shall be in writing. A Party may change address by giving notice in writing to the other Party and

thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following business day. Notices may also be given by facsimile transmission which shall be deemed given upon verification of receipt if received during normal business hours, otherwise on the next business day.

Notices required to be given to City shall be addressed as follows:

City Manager
City of Atwater
750 Bellevue Road
Atwater, CA 95301
Fax: (209) 357-6364

With copies to:

Thomas H. Terpstra
The Law Office of Thomas H. Terpstra
City of Atwater City Attorney
578 N. Wilma Avenue, Suite A
Ripon, CA 95366
Fax: (209) 599-5008

Notices required to be given to Owner shall be addressed as follows:

Ferrari Ranch Owners
c/o John P. Ferrari
By Mail: P.O. Box 55
Ballico, CA 95303
By Delivery: 11016 North Ballico Avenue
Ballico, CA 95303
Fax: (209) 667-1013

With copies to:

David Dolter
3068 Oakraider Drive
Alamo, CA 94507
Fax: (925) 718-8532

15.8 Agreement is Entire Understanding. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject of this Agreement.

15.9 Enforced Delay; Extension of Time of Performance. No Party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God,

natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, terrorism, inability or delay in obtaining funding through Financing Mechanisms, inability or delay in obtaining use of Offsite Land, unforeseen adverse economic circumstances, or by any other severe and unforeseeable occurrence that is beyond the control of that Party (collectively, "**Enforced Delay**"). Performance by a Party of its obligations shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

15.10 Dispute Resolution.

15.10.1 Mediation. If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement, City and Owner shall first attempt to resolve it through informal discussions. In the event a dispute cannot be resolved in this manner within twenty-one (21) days, City and Owner shall endeavor to settle the dispute by non-binding mediation using the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") or other mutually acceptable mediator. Either City or Owner may commence mediation by providing the other Party a written request for mediation setting forth the subject of the dispute and the relief requested. City and Owner shall cooperate in selecting a mediator (either from JAMS' panel of neutrals or otherwise) and in scheduling the mediation proceedings. If the Parties cannot agree on the appointment of the mediator or the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion and/or set the mediation date. City and Owner agree to participate in any such mediation in good faith, and shall share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by either of the Parties, their agents, employees, experts and attorneys, and by the mediator and any mediator employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending completion of the mediation process. Each Party shall bear its own expenses of mediation, and shall share the mediator fees and other costs of mediation.

15.10.2 Litigation. By agreeing to the mediation process in Section 15.10.1, neither City nor Owner hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Except for an action for equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after completion of the initial mediation session or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after commencement of a civil action, if the Parties agree in writing. Nothing in this Agreement shall prevent the Parties from submitting a dispute to binding or non-binding arbitration if mutually acceptable.

15.11 Further Documents. Each Party shall execute and deliver to the other Party all other instruments and documents as may be reasonably necessary to carry out the purpose of this Agreement in order to provide or secure to the other Party the rights and privileges granted by this Agreement.

15.12 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

15.13 Recordation of Agreement. Within ten (10) days of the Effective Date, City shall cause this Agreement to be duly recorded in the official records of Merced County.

15.14. Recitals; Exhibits. The foregoing Recitals are true and correct and are made a part hereof. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A	Legal Description of the Property
Exhibit B	Map of Annexation Area and Property
Exhibit C:	Local and Regional Traffic Improvements
Exhibit D:	Transportation Improvement Plan ("TIP")

15.15. Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed to be an original.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF ATWATER:

_____
James E. Price
Mayor

Attest:

_____
Donald Hyler III
City Clerk

Approved as to form:

_____
Tom Terpstra
City Attorney

OWNER:

THE GAIL FERRARI-MARTIN SEPARATE PROPERTY TRUST
DATED JANUARY 27, 1989, AS RESTATED MAY 13, 2005

_____ Dated:_____
Gail Ferrari Martin, Trustee
By John P. Ferrari, attorney-in-fact

THE CAL FERRARI MARTIN SEPARATE PROPERTY TRUST
DATED JUNE 30, 2008

_____ Dated:_____
Cal Ferrari Martin, Trustee
By John P. Ferrari, attorney-in-fact

THE LUIGI FERRARI MARTIN SEPARATE PROPERTY TRUST
DATED SEPTEMBER 11, 2008

_____ Dated:_____
Luigi Ferrari Martin, Trustee
By John P. Ferrari, attorney-in-fact

THE DARRELL DIGIOVANNI SEPARATE PROPERTY TRUST
DATED MAY 8, 2008

_____ Dated:_____
Darrell Digiovanni, Trustee
By John P. Ferrari, attorney-in-fact

THE VICTOR DIGIOVANNI AND JOANN DIGIOVANNI IRREVOCABLE
FAMILY TRUST DATED OCTOBER 30, 2012

_____ Dated:_____
Darrell Digiovanni, Trustee
By John P. Ferrari, attorney-in-fact

THE DAMON A. FERRARI SEPARATE PROPERTY TRUST
DATED JANUARY 23, 2002

_____ Dated:_____
Damon A. Ferrari, Trustee
By John P. Ferrari, attorney-in-fact

THE PAIGE FERRARI SEPARATE PROPERTY TRUST
DATED DECEMBER 27, 2004

_____ Dated:_____
Paige Ferrari, Trustee
By John P. Ferrari, attorney-in-fact

THE FAMILY TRUST CREATED UNDER THE LIVING TRUST OF
JUSTIN FERRARI AND MARGARET HOOKS DATED OCTOBER 9, 2008

_____ Dated:_____
Margaret Hooks, Trustee
By John P. Ferrari, attorney-in-fact

EXHIBIT A: LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Merced, State of California, described as follows:

PARCEL ONE:

LOTS 4A, 5, 6, 6A, 7, 8, 9, 15, 16, 17, 18, 24, 25, 26, 27 AND 28, AS SHOWN ON THE MAP ENTITLED, "MAP OF THE BUHACH COLONY SUBDIVISION NO. TWO" FILED DECEMBER 16, 1915 IN THE OFFICE OF THE COUNTY RECORDER OF MERCED COUNTY IN VOL. 7 OF OFFICIAL PLATS, AT PAGE 6.

ALSO ALL THAT PORTION OF LOTS 3A, 4, 19, 20, 21 AND 21A OF SAID SUBDIVISION, LYING SOUTHWESTERLY OF THE CENTERLINE OF A DITCH, SAID CENTER LINE BEING DESCRIBED AS:

BEGINNING AT A POINT IN THE NORTH LINE OF LOT 4 THAT IS SOUTH 89° 29' WEST 1651.05 FEET FROM THE ONE-QUARTER CORNER ON THE EAST LINE OF SECTION 8, TOWNSHIP 7 SOUTH, RANGE 13 EAST, M.D.B. & M., THENCE ALONG THE CENTER LINE OF SAID DITCH THE FOLLOWING COURSES AND DISTANCES, SOUTH 28° 15' EAST 212.40 FEET; SOUTH 24° 36' EAST 158.20 FEET; SOUTH 20° 20' EAST 216.87 FEET; SOUTH 10° 15' EAST 211.88 FEET; SOUTH 32° 15' EAST 263.37 FEET; SOUTH 45° 39' EAST 284.96 FEET AND SOUTH 17° 25' EAST 1629.60 FEET TO THE NORTHWEST CORNER OF LOT 22 OF SAID BUHACH COLONY SUBDIVISION NO. 2.

EXCEPTING THEREFROM THAT PORTION OF LOTS 24, 25, 26, 27 AND 28 AS GRANTED BY GENERAL AMERICAN LIFE INSURANCE COMPANY TO STATE OF CALIFORNIA BY DEED RECORDED MARCH 19, 1945 IN VOL. 798 OF OFFICIAL RECORDS, PAGE 409.

ALSO EXCEPTING THAT PORTION OF SAID LOTS 24, 25, 26, 27 AND 28, AS CONVEYED IN THE DEEDS FROM MARJORIE TREADWELL MCGOWAN AND BEATRICE TREADWELL WHITE TO THE STATE OF CALIFORNIA DATED APRIL 26, 1960 AND RECORDED JUNE 15, 1960 IN VOL. 1482 OF OFFICIAL RECORDS AT PAGE 353, FILE NO. 10592 (AS TO AN UNDIVIDED ½ INTEREST) AND IN THE DEED FROM SAMUEL HAMBURGER, INC., A CORPORATION TO THE STATE OF CALIFORNIA DATED APRIL 26, 1960 AND RECORDED JUNE 15, 1960, IN VOL. 1482 OF OFFICIAL RECORDS, AT PAGE 349, FILE NO. 10591 (AS TO AN UNDIVIDED ½ INTEREST).

ALSO EXCEPTING THEREFROM THAT PORTION DEEDED TO THE COUNTY OF MERCED BY GRANT DEED DATED SEPTEMBER 27, 2012, RECORDED JUNE 14, 2013 AS DOCUMENT NUMBER 2013-022215 IN THE OFFICIAL RECORDS OF MERCED COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THAT PORTION DEEDED TO THE COUNTY OF MERCED BY GRANT DEED RECORDED JUNE 14, 2013 AS DOCUMENT NO'S. 2013-022215; 2013-022217; 2013-022218; ALL OFFICIAL RECORDS OF MERCED COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THAT PORTION DEEDED TO THE COUNTY OF MERCED BY GRANT DEED RECORDED JUNE 14, 2013 AS DOCUMENT NO. 2013-022216 AND ALSO RE-RECORDED ON AUGUST 29, 2013 AS DOCUMENT NO. 2013-031670, BOTH OF OFFICIAL RECORDS OF MERCED COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THAT PORTION DEEDED TO THE COUNTY OF MERCED BY GRANT DEED RECORDED JUNE 14, 2013 AS DOCUMENT NO. 2013-022218 AND ALSO RE-RECORDED ON AUGUST 29, 2013 AS DOCUMENT NO. 2013-031671, BOTH OF OFFICIAL

RECORDS OF MERCED COUNTY, CALIFORNIA.

PARCEL TWO:

ALL THAT PORTION OF BUHACH COLONY SUBDIVISION NUMBER TWO, LYING IN SECTION 8 AND SECTION 17, TOWNSHIP 7 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE AND MERIDIAN, BUHACH COLONY SUBDIVISION NUMBER TWO, IN THE COUNTY OF MERCED, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGES 6 AND 6A, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS SOUTH 89° 29' WEST 50 FEET FROM THE ONE-QUARTER CORNER ON THE EAST LINE OF SAID SECTION 8, THE SAID POINT OF BEGINNING BEING THE NORTHEAST CORNER OF LOT 1 OF SAID BUHACH COLONY SUBDIVISION NUMBER TWO; THENCE SOUTH 89° 29' WEST 1601.05 FEET ALONG THE NORTH LINE OF LOTS 1 AND 4 OF SAID SUBDIVISION; THENCE LEAVING SAID LOT LINE AND RUNNING ALONG THE CENTER LINE OF A DITCH THE FOLLOWING COURSES AND DISTANCES: SOUTH 10° 15' EAST 212.40 FEET; THENCE SOUTH 24° 36' EAST 158.20 FEET; SOUTH 20° 20' EAST 216.87 FEET; SOUTH 10° 15' EAST 211.88 FEET; SOUTH 32° 15' EAST 263.37 FEET; SOUTH 45° 39' EAST 284.96 FEET AND SOUTH 17° 25' EAST 1629.60 FEET TO THE NORTHWEST CORNER OF LOT 22 OF SAID BUHACH COLONY SUBDIVISION NO. 2; THENCE SOUTH 89° 04' EAST 451.58 FEET ALONG THE NORTH LINE OF SAID LOT 22 TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 0° 37' EAST 103.16 FEET ALONG THE EAST LINE OF LOT 21 AND THE WEST LINE OF THE 50 FOOT CANAL RESERVE OF SAID BUHACH COLONY SUBDIVISION NO. 2; THENCE NORTH 0° 48' EAST 2638.51 FEET ALONG THE EAST LINE OF LOTS 21, 20, 19A, 3, 2 AND 1 AND THE WEST LINE OF THE 50 FOOT CANAL RESERVE OF SAID BUHACH COLONY SUBDIVISION NO. 2 TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS SOUTH 89° 29' WEST 50 FEET AND SOUTH 0° 37' WEST 103.16 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 8, SAID POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF THE 61.06 ACRE PARCEL OF LAND CONVEYED TO HUBERT J. TRINIDADE, ET UX, BY J.W. TREADWELL, A WIDOWER, IN DEED RECORDED NOVEMBER 5, 1947, IN BOOK 866, PAGE 235, OFFICIAL RECORDS; THENCE NORTH 0° 37' EAST 103.16 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 8; THENCE NORTH 0° 48' EAST 367.84 FEET; THENCE NORTH 89° 04' WEST 605 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF SAID 61.06 ACRE PARCEL; THENCE SOUTH 17° 25' EAST ALONG SAID WEST LINE, 495 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID 61.06 ACRE PARCEL; THENCE SOUTH 89° 04' EAST 451.58 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION DEEDED TO THE COUNTY OF MERCED BY GRANT DEED RECORDED JUNE 14, 2013 AS DOCUMENT NO. 2013-022211 OF OFFICIAL RECORDS OF MERCED COUNTY, CALIFORNIA.

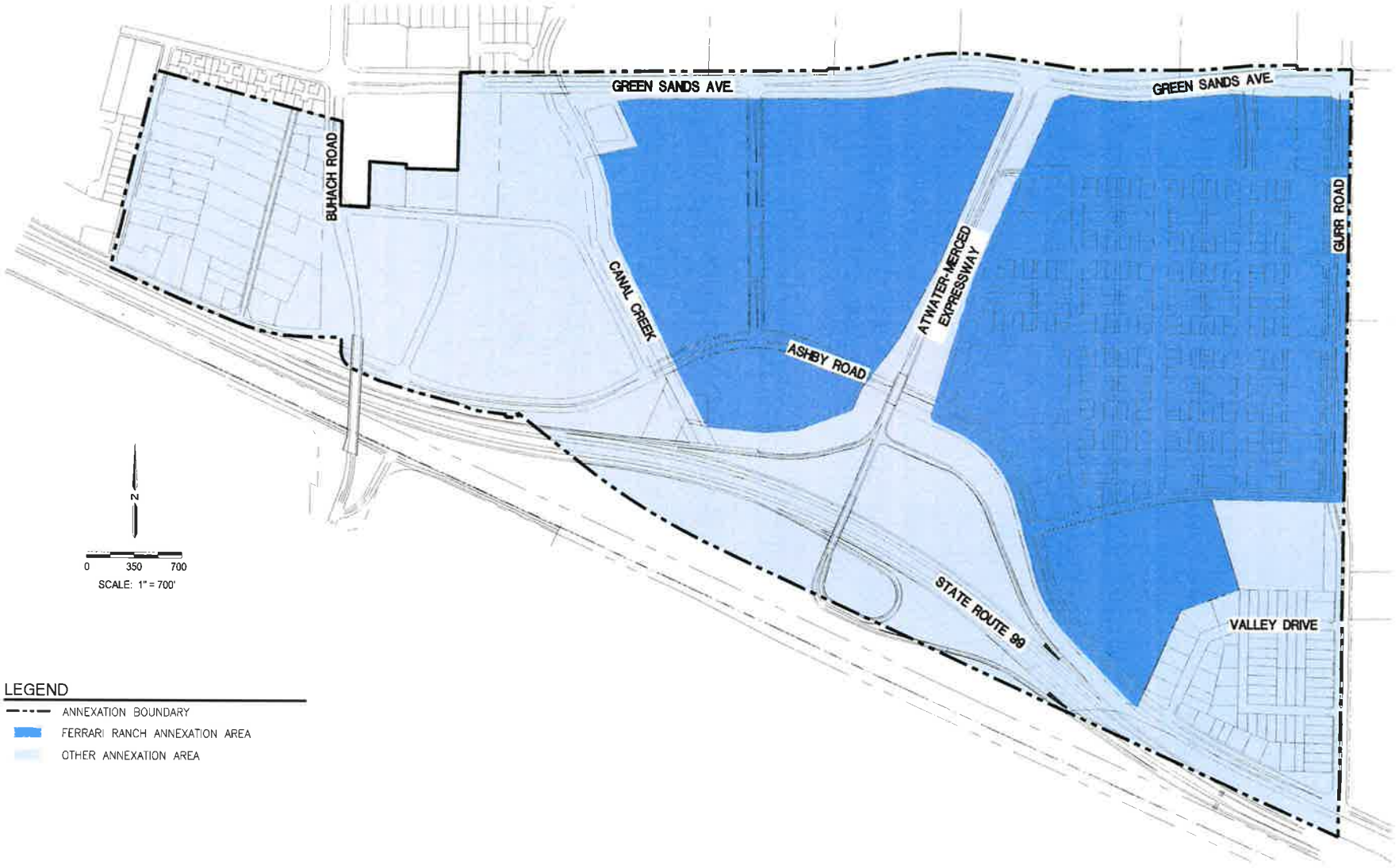
PARCEL THREE:

ALL THAT PORTION OF THE "50 FOOT CANAL RESERVE" LYING EAST OF LOTS 1, 2, 3, 19A AND A PORTION OF LOT 20, MAP OF BUHACH COLONY SUBDIVISION NUMBER TWO, IN THE COUNTY OF MERCED, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGES 6 AND 6A, RECORDS OF SAID COUNTY. THE SOUTHERLY LINE OF THAT PORTION OF SAID 50 FOOT CANAL RESERVE HEREIN BEING A LINE THAT BEGINS AT A POINT IN THE WESTERLY LINE OF SAID CANAL RESERVE THAT BEARS NORTHERLY THEREON 367.84 FEET FROM THE SOUTHERLY LINE OF SECTION 8, TOWNSHIP 7 SOUTH, RANGE 13 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND BEARS SOUTH 89° 04' EAST TO A POINT IN THE EASTERLY LINE OF SAID CANAL RESERVE.

EXCEPTING THEREFROM THAT PORTION DEEDED TO THE COUNTY OF MERCED BY GRANT DEED RECORDED JUNE 14, 2013 AS DOCUMENT NO. 2013-022211 OF OFFICIAL RECORDS OF MERCED COUNTY, CALIFORNIA.

APN: 005-120-045-000 (Affects: Parcel One)
005-120-046-000 (Affects: Parcels Two and Three)

EXHIBIT B: MAP OF ANNEXATION AREA AND PROPERTY



O'DELL ENGINEERING
Modesto Palo Alto Pleasanton
1165 Scenic Drive, Suite B
Modesto, CA 95350
Ph 209.571.1765/Fax 209.571.2466
odellengineering.com

FERRARI RANCH

ATWATER, CALIFORNIA

ANNEXATION EXHIBIT

DATE: 4/19/2017	DRAWN: EV
JOB NO: 21250	CHECKED: MP
SCALE	
FILE NAME: 21250-EXH-ANNEX AND FERRARI AREA.dwg	

H:\21250-Atwater Ferrari Annexation\Civil\Exhibits\21250-EXH-ANNEX AND FERRARI AREA.dwg 10:50:20 04/20/2017

LEGAL DESCRIPTION

All that portion of the south half of Sections 7 and 8, the southwest quarter of Section 9, the northwest quarter of Section 16, and the north half of Section 17, Township 7 South, Range 13 East, Mount Diablo Base and Meridian, County of Merced, State of California, said portion described as follows:

Beginning at the southeast corner of the "Atwater South Annexation to the City of Atwater" filed for record May 9, 2005 as Document No. 2005034368, Merced County Records, thence along the east-west quarter section line of said Section 8, North 89° 29' 04" East, 625.56 feet to the southwest corner of that parcel of land as described in Grant Deed to the County of Merced filed for record as Document No. 2013023038, Merced County Records;

thence along the west and northerly boundary of said parcel the following four (4) courses:

1.) North 01° 15' 01" East, 11.12 feet;
2.) North 89° 29' 28" East, 74.38 feet to the beginning of a tangent curve to the left;
3.) along said curve having a radius of 1124.06 feet, through a central angle of 14° 45' 15", an arc length of 289.46 feet to the beginning of a reverse curve;
4.) along said curve having a radius of 1276.06 feet, through a central angle of 13° 43' 30", an arc length of 305.68 feet to the northeast corner of said parcel, being also the northwest corner of that parcel of land as described in Grant Deed to the County of Merced filed for record as Document No. 2013010505, Merced County Records ;

thence along the northerly line of last said parcel the following two (2) courses;

1.) continuing along last mentioned curve, through a central angle of 09° 46' 08", an arc length of 217.57 feet;
2.) South 81° 46' 09" East, 495.40 feet to aforesaid east-west quarter section line;

thence along said quarter section line, North 89° 29' 04" East, 603.65 feet to the most westerly corner of that parcel of land as described in Grant Deed to the County of Merced filed for record as Document No. 2013000907, Merced County Records; thence along the northerly and east boundary of said parcel the following three (3) courses:

1.) North 84° 35' 52" East, 245.04 feet;
2.) North 89° 20' 43" East, 245.61 feet;
3.) South 00° 45' 12" West, 21.47 feet to aforesaid east-west quarter section line;

thence along said quarter section line, North 89° 29' 04" East, 250.40 feet to east quarter corner of said Section 8; thence along the east-west quarter section line of said Section 9, North 89° 32' 18" East, 40.01 feet to a line that is parallel with and 40 feet east of the north-south section line common to said Sections 8 and 9, said line also being the east right of way line of Gurr Road; thence along said east right of way line, South 00° 52' 02" West, 2640.75 feet to south line of

said Section 9; thence continuing along said east right of way line, said line being parallel with and 40 feet east of the north-south section line common to said Sections 16 and 17, South 00° 43' 39" West, 1349.95 feet to the intersection with the northerly line "Canal" parcel as shown on map of "Valley Homes Sites Addition No. 1" filed in Volume 12 of Official Plats at Page 19, Merced County Records;

thence along the northerly and westerly lines of said "Canal" parcel the following two (2) courses:

1.) North 65° 21' 05" West, 98.51 feet;
2.) South 00° 43' 39" West, 28.44 feet to the north line of State Highway Route 99 right of way;

thence along said north line, North 65° 21' 05" West, 3305.84 feet;

thence leaving said north line and along the south line of Ashby Road right of way the following three (3) courses:

1.) North 64° 54' 38" West, 254.50 feet to the beginning of a tangent curve to the right;
2.) along said curve having a radius of 3530.00 feet, through a central angle of 13° 19' 08", an arc length of 820.59 feet;
3.) North 51° 35' 29" West, 399.34 feet to the beginning of a non-tangent curve to the right, to which point a radial line bears North 55° 12' 39" East;

thence leaving said south line southeasterly along said curve having a radius of 108.00 feet, through a central angle of 21° 52' 19", an arc length of 41.23 feet to the northeast corner of that parcel of land as described in Grant Deed to the County of Merced filed for record as Document No. 2013012904, Merced County Records;

thence along the north line of said parcel, North 86° 28' 29" West, 70.19 feet to the east line of that parcel of land as described in Grant Deed to the County of Merced filed for record as Document No. 2013012654, Merced County Records;

thence along the east and north line of said parcel the following two (2) courses:

1.) North 24° 14' 54" East, 15.05 feet;
2.) North 83° 02' 20" West, 166.01 feet to the south line of that parcel of land as described in Grant Deed to Noah Williams and Lorna Williams filed for record as Document No. 2006048630, Merced County Records;

thence along said south line the following two (2) courses:

1.) North 68° 38' 09" West, 104.54 feet;
2.) North 75° 03' 51" West, 220.83 feet;

thence leaving said south line and across Buhach Road, North 73° 22' 20" West, 196.31 feet to the southwesterly line of Parcel 1 as shown on that map filed in Volume 10 of Parcel Maps at Page 44, Merced County Records;

thence along the southwesterly and west boundary of said Parcel 1 the following three (3) courses:

1.) North 66° 33' 39" West, 158.22 feet, to the beginning of a tangent curve to the right;
2.) along said curve having a radius of 100.00 feet, through a central angle of 67° 43' 00", an arc length of 118.19 feet;
3.) North 01° 09' 21" East, 66.82 feet;

thence leaving said west line and along the south line of Broadway Avenue right of way the following five (5) courses:

1.) North 88° 56' 39" West, 190.66 feet to the beginning of a tangent curve to the right;
2.) along said curve having a radius of 1013.00 feet, through a central angle of 20° 44' 00", an arc length of 366.57 feet;
3.) North 68° 12' 39" West, 203.94 feet to the beginning of a tangent curve to the right;
4.) along said curve having a radius of 6013.00 feet, through a central angle of 02° 33' 00", an arc length of 267.61 feet;
5.) North 65° 39' 39" West, 255.70 feet to the intersection with the southerly projection of the west right of way line of Station Avenue (40 feet wide), being also the southeast corner of the existing city limit boundary;

thence along said existing city limit boundary the following six (6) courses:

1.) along said west line of Station Avenue and its southerly projection, North 14° 10' 21" East, 316.27 feet to the intersection with the easterly projection of the south line of "The Cottages at Ventana Del Rey, Unit No. 2" as shown on that map filed in Volume 55 of Official Plats at Page 31, Merced County Records;
2.) along said easterly projection, North 75° 22' 08" West, 20.00 feet to the southeast corner of said map of "The Cottages at Ventana Del Rey, Unit No. 2", also being the west right of way line of Station Avenue (60 feet wide);
3.) along said west right of way line, North 14° 10' 21" East, 747.35 feet to the intersection with the westerly projection of the south line "Villa Italia" as shown on that map filed in Volume 63 of Official Plats at Page 11, Merced County Records;
4.) along said westerly projection, the southerly line and easterly projection of the south line of said map of "Villa Italia", South 75° 02' 39" East, 1012.70 feet to a line that is parallel with and 60 feet east of the north-south section line common to said Sections 7 and 8;
5.) along said parallel line, North 01° 09' 21" East, 252.59 feet to the southwest corner of aforesaid "Atwater South Annexation to the City of Atwater", also being the east-

west quarter section line of said Section 8;

6.) along the south line of said "Atwater South Annexation to the City of Atwater", North 89° 29' 04" East, 1919.97 feet to the **Point Of Beginning** all as shown on the attached exhibit "Ferrari Ranch Area Annexation to the City of Atwater" and made a part hereof and containing 358.79 acres, more or less.

END DESCRIPTION

EXHIBIT C: LOCAL AND REGIONAL TRAFFIC IMPROVEMENTS

TABLE 9
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
1. Buhach Road & Avenue Two/Juniper Ave	Add overlap phasing on eastbound right-turn; New 150-ft long northbound LTL	$32,300		**$30,976**	$1,324	
2. Buhach Road & Avenue One/Lake Ridge Street	New 200-ft long eastbound LTL; adjust signal phasing to a protected eight-phase signal; change east-west phasing from split to permissive phasing	$110,000		**$106,810**	$3,190	
3. Buhach Road & Green Sands Avenue	Change eastbound and westbound approaches to protected phasing, resulting in an eight phase signal; Widen Green Sands Ave east of Buhach Rd to 4 lanes, and designate second westbound approach lane to be free right-turn lane	$2,019,000		**$1,992,753**	$26,247*	
6. Buhach Road Overcrossing & Ashby Road	Add a second southeastbound through lane, and overlap phasing to the southeastbound movement	$165,000		**$161,205**	$3,795*	
8. Ashby Road & Gurr Road	Add a second eastbound approach lane to the roundabout, and extend lane to exit at eastbound departure with a lane drop	$90,000		**$77,310**	$12,690*	
9. Ashby Road & Franklin Rd./NB SR 99 Ramps	New traffic signal, new 300-ft long LTLs for eastbound, westbound, and southbound approaches, new dual 300-ft LTL on northbound approach, new 200-ft southbound RTL, and new second westbound departure lane	$718,500		**$260,097**	$458,403**	
10. Gurr Road & Avenue Two	New traffic signal and new 300-ft long northbound LTL	$254,000		**$122,428**	$131,572	
11. Gurr Road & Avenue One	New traffic signal, new 200 ft long LTL on all approaches, and new 200 ft long northbound RTL	$480,000		**$467,520**	$12,480	
12. Avenue Two & Santa Fe Drive	New traffic signal, widening of Avenue Two approach with new LTL and RTL, new northbound LTL, and add overlap phasing for eastbound right-turn movement	$568,000		**$479,392**	$88,608	

KDA

TABLE 9 (cont'd)
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
13. AME & Green Sands Avenue	Improvements include: on northbound approach, three 400-ft LTLs, two through lanes, and one 300-ft RTL; on southbound approach, two 300-ft LTLs, three through lanes (one of which is only 400-ft long), and one 400-ft LTL; on eastbound approach, two 400-ft LTLs, two through lanes, and one free RTL; on westbound approach, three 600-ft LTLs, three through lanes (one of which is added about midway between AME and Ferrari project access), and one 300-ft RTL; on eastbound departure, three departure lanes; on southbound departure, four departure lanes, which merges to three lanes and then merges to two lanes.	$1,156,500		**$1,134,527**	**$21,974***	
14. AME & SR 99 Northbound Ramps	New traffic signal, modify westbound approach to include free-right turn from off-ramp, and add third northbound lane on AME that would be an auxiliary lane to off-ramp into the Ferrari Ranch project site	$539,000		**$522,291**	**$16,709***	
15. AME & SR 99 Southbound Ramps	Modify southbound right-turn movement to the loop on-ramp to be a free right-turn	$36,000		**$34,884**	**$1,116***	
16. Gurr Road & Green Sands Avenue	Improvements include: on northbound approach, include two 450-ft LTLs, one exclusive through lane, and one 200-ft combined through/RTL; on southbound approach, include one 100-ft LTL, one exclusive through lane, and one 300-ft combined through/RTL; on eastbound approach, include two 150-ft LTLs, two through lanes, and one "free" RTL; on westbound approach, include one LTL, one exclusive through lane, and one combined through/RTL; on northbound departure, include two departure lanes, which merge to one lane 300-ft north of intersection.	$486,000		**$473,850**	**$12,150***	

KDA

TABLE 9 (cont'd)
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
Freeway Ramp Junctions						
21. Northbound SR 99 off-ramp to Atwater Blvd.	Extend length of northbound off-ramp deceleration lane to 925 ft	$166,500		**$166,500**	**$0**	
27. Southbound SR 99 on-ramp from Atwater Blvd.	Add a third southbound mainline lane on SR99 at the Atwater Blvd SB on-ramp	$0		**$0**	**$0**	
Site Access Intersection Improvements						
41. Gurr Road & Project Site Access Driveway #1	New Traffic Signal and new 200-ft northbound LTL	$261,000	**$261,000**			
42. Gurr Road & Project Site Access Driveway #2	New traffic signal, new 200-ft northbound LTF, new 150-ft southbound RTL, and widen Gurr Rd to 2 through lanes in each direction through intersections 42 and 43.	$633,800	**$633,800**			
44. Gurr Road & Project Site Access Driveway #4	New traffic signal, add second 300-ft eastbound LTL, new 200-ft northbound LTL, new 200-ft southbound RTL, and widen Gurr Rd to 2 through lanes in each direction through intersections 44 and 45.	$727,400	**$727,400**			
46. Green Sands Avenue & Project Site Access Driveway #6	New traffic signal, add second eastbound and westbound through lanes, new eastbound RTL extending from intersection 13, add second 300-ft northbound LTL, and two new 200-ft westbound LTLs.	$570,000	**$570,000**			
47. Ashby Road & Project Site Access Driveway #7	New 100-ft eastbound LTL and new TWLTL for departures from project site driveway.	$54,000	**$54,000**			

TABLE 9 (cont'd)
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
48. Ashby Road & Project Site Access Driveway #8	New traffic signal with protected eastbound left-turn phasing, new 200-ft southeastbound LTL, new 200-ft southwestbound LTL, and new TWLTL for departures from the driveway.	$333,000	**$333,000**			
49. Ashby Road & Project Site Access Driveway #9	New 150-ft southbound LTL.	$27,000	**$27,000**			
50. Ashby Road & Project Site Access Driveway #10	New 100-ft eastbound LTL, new 150-ft southbound LTL, and new TWLTL for receiving departures from the project site driveway.	$81,000	**$81,000**			
51. Ashby Road & Regional Medical Center Collector Road	New traffic signal, new 300-ft eastbound LTL, and new 300-ft westbound RTL.	$308,000	**$308,000**			
52. Green Sands Avenue Regional Medical Center Collector Road	New traffic signal, two 300-ft westbound LTLs, two westbound through lanes, two eastbound through lanes, eastbound RTL, northbound LTL, and "free" northbound LTL that would extend to intersection 13.	$750,000	**$750,000**			
Roadway Segments						
Avenue One - Gurr Road to Trindade Road	Widen Avenue One from 2 to 4 lanes	$1,125,000		**$859,500**	**$265,500**	
Gurr Road - North of Green Sands Ave	Widen Gurr Road from 2 to 4 lanes	$1,452,000		**$1,430,220**	**$21,780**	
Green Sands Ave. - Buhach Road to AME	Add six through lanes on Green Sands Ave between Ferrari project access and AME	$2,694,000		**$2,675,142**	**$18,858***	

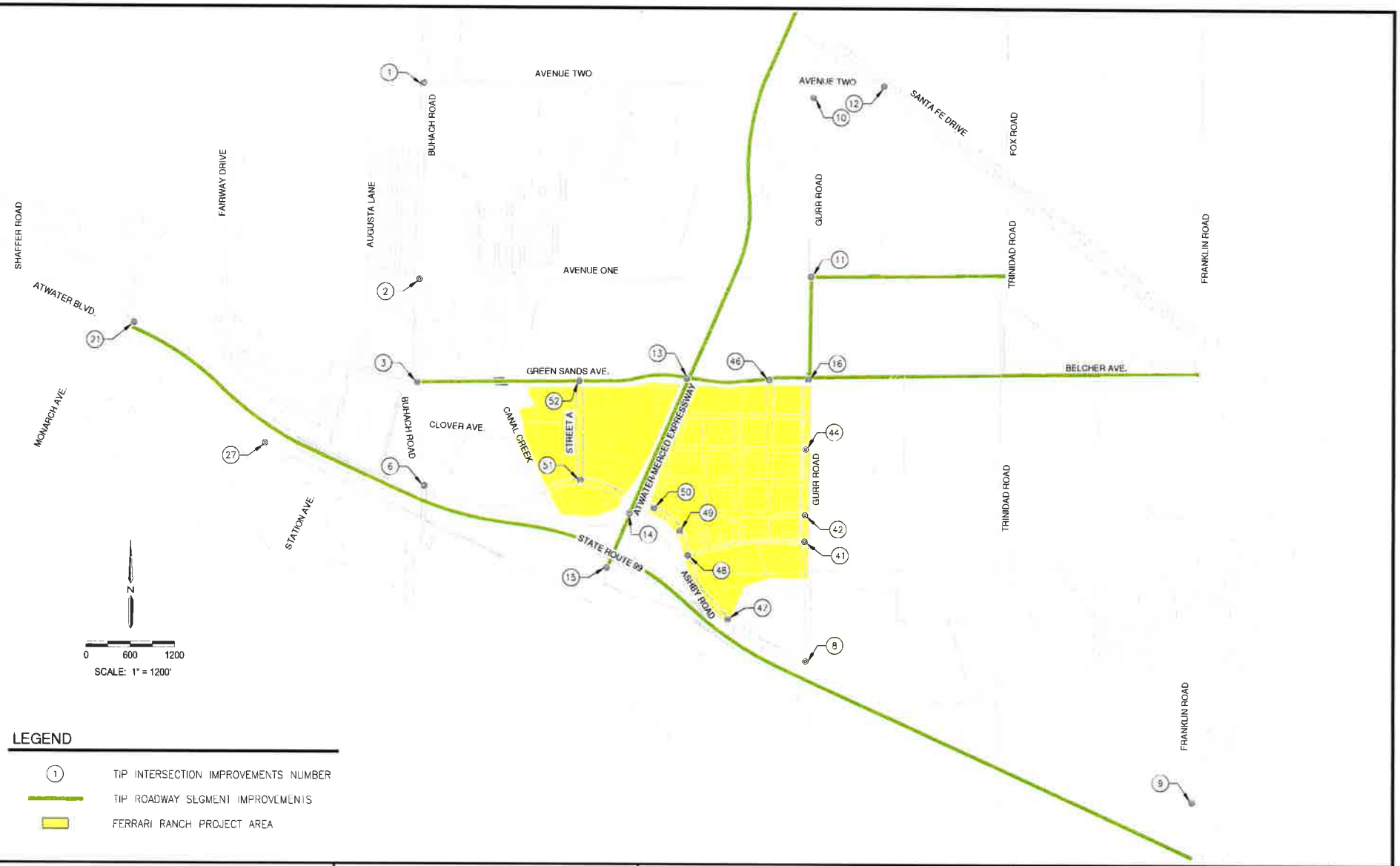
TABLE 9 (cont'd)
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
Green Sands Ave. - AME to Gurr Road	Widen Green Sands Ave from 2 to 4 lanes	$1,164,000		**$1,119,768**	**$44,232***	
Green Sands Ave. (Belcher Ave.) - Gurr Road to Franklin Road	Extend Green Sands Ave (4 lanes)	$2,808,000				**$2,808,000**
Atwater-Merced Expressway Santa Fe Dr. to Green Sands Ave	AME project (6 lanes)	$66,200,000				**$66,200,000**
Atwater-Merced Expressway Northeast of Santa Fe Drive	AME project from Santa Fe Dr to Bellevue Rd, 6 lanes	$83,900,000				**$83,900,000**
Atwater-Merced Expressway Green Sands Ave. to SR 99	Widen Atwater-Merced Expressway from 2 to 6 lanes	$2,928,000				**$2,928,000**
State Route 99 - Atwater Blvd. to AME	Widen SR99 from 4 to 6 lanes	$5,100,000		**$1,116,900**	**$178,500**	(***)
State Route 99 - AME to Franklin Road	Widen SR99 from 4 to 6 lanes	$5,400,000		**$1,652,400**	**$102,600**	(***)
	TOTAL	**$183,337,000**	**$3,745,200**	**$14,884,472**	**$1,421,728**	**$155,836,000**

(*) may be attributed to RTIF. Total for Merced County share of items 3, 6, 8, 13, 14, 15, 16 and Green Sands Avenue segments is $157,771
(**) may be covered by Franklin Beachwood Community Bridge & Thoroughfare Fee Total for Merced county share of item 9 is $458,403
(***) balance of improvements cost borne by others and totals $7,431,600

COST ESTIMATES AND FEE PROGRAM CONTRIBUTION
Ancillary Locations

Buhach Road / SP Avenue	Interim Signal	$354,900		$330,767	$24,133	
Ashby Rd / Trindade Rd	Roundabout or turn lanes	$322,283		$236,233	$86,050	
Ashby Rd / Franklin Road	Roundabout or turn lanes	$298,422		$218,743	$79,679	
	TOTAL	**$975,605**		**$785,744**	**$189,861**	



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FERRARI RANCH

ATWATER, CALIFORNIA

TRANSPORTATION IMPROVEMENT PLAN (TIP) MITIGATION MEASURES

DATE: 04/19/2017 DRAWN: EV
JOB NO: 21250 CHECKED: MP
SCALE: 1"=1200'
FILE NAME: 21250 EXH-FEE PROGRAM.DWG

1 of 1

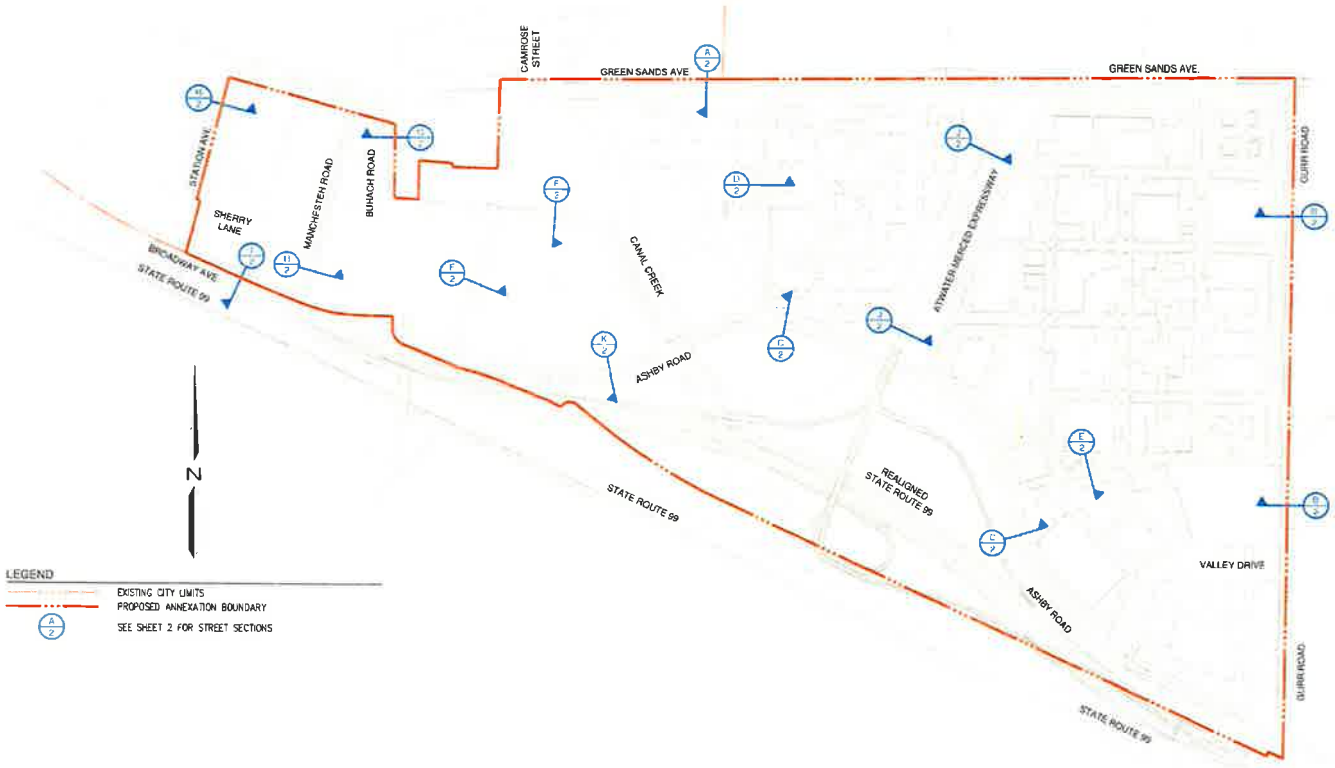
H:\21250-Atwater Ferrari Annexation\Civil\Exhibits\21250-EXH-FEE PROGRAM.dwg 12/28/19 04/19/2017

EXHIBIT D: TRANSPORTATION IMPROVEMENT PLAN

FERRARI RANCH™

Atwater, Merced County, California

Planned Development Master Plan - Commercial, Retail, Medical, Office



All plans are schematic and final calculations and designs are to be confirmed as detailed development plans are reviewed and approved.

Not To Scale

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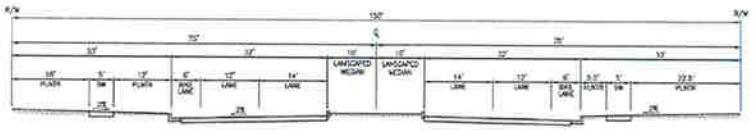
Street Section Key Map

Figure 14
Updated August, 2016

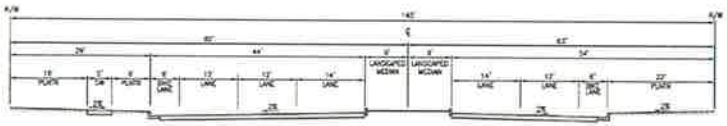
FERRARI RANCH

Atwater, Merced County, California

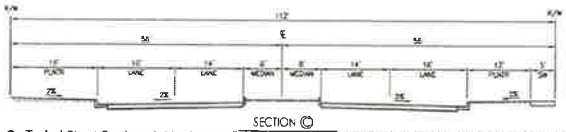
Planned Development Master Plan - Commercial, Retail, Medical, Office



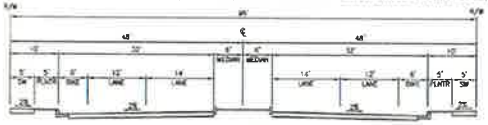
A - Typical Street Section - Green Sands Avenue



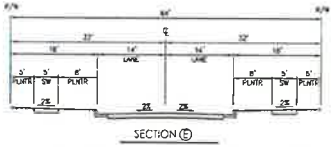
B - Typical Street Section - Gurr Road



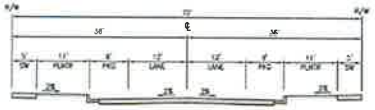
C - Typical Street Section - Ashby Avenue (Initial Construction 2 Lanes with 2 Additional Lanes when Needed)



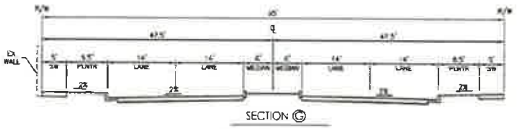
D - Typical Street Section - @ Regional Medical and Sports Park



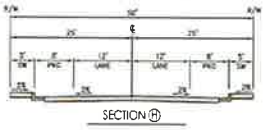
E - Typical Street Section - Internal Street @ Regional Retail

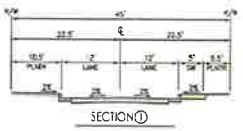


F - Typical Street Section - Commercial East Side of Buhach Road



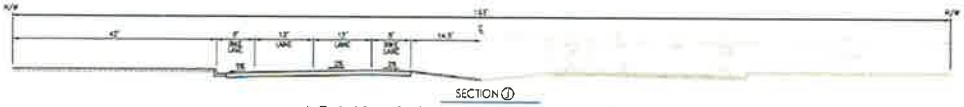
G - Typical Street Section - Buhach Road



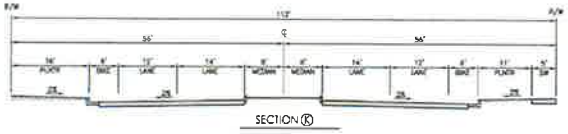


H - Typical Street Section - @ Station Ave. and Manchester Road

I- Typical Street Section - Broadway West of Buhach Road



J - Typical Street Section - Atwater-Merced Expressway (Phase I)



K - Ashby Avenue - West of North/South Street at Regional Medical

All plans are schematic and final calculations and designs are to continue as detailed development plans are reviewed and approved.

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Project Manager
David Dolter

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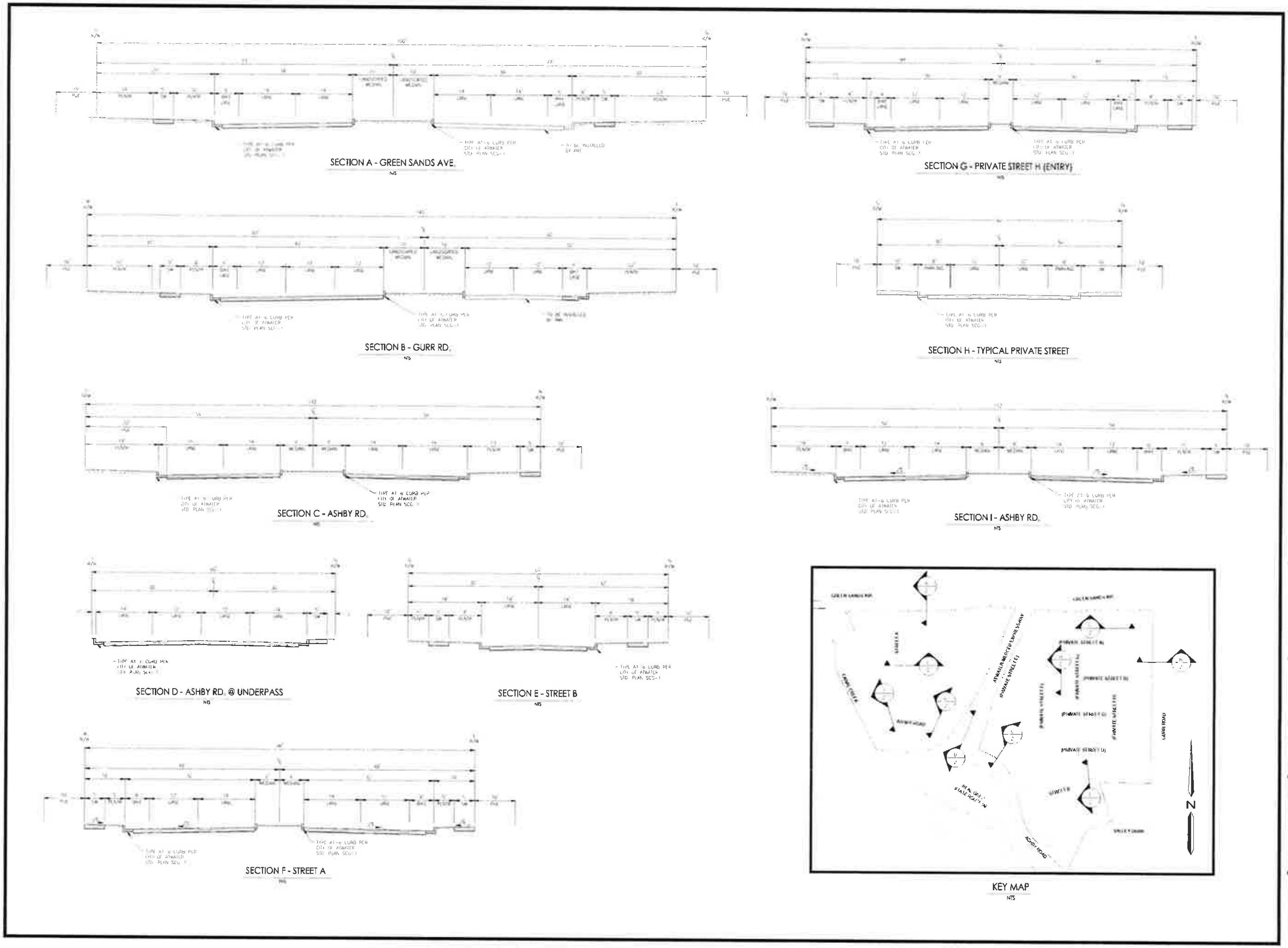
Civil Engineering
O'Dell Engineering, Inc.

Typical Street Sections

Figure 15a
Updated August, 2016



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VESTING TENTATIVE MAP
FERRARI RANCH
ATWATER, CALIFORNIA

STREET SECTIONS

Sheet No.
2
of
7

ANALYSIS TO SUPPORT IMPLEMENTATION OF

FERRARI PROJECT EIR
MITIGATION TRANS–2 TRANSPORTATION IMPROVEMENT PLAN (TIP)

FINAL REPORT

Prepared By:

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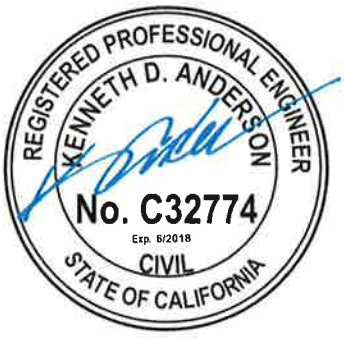


November 3, 2016

Job No. 3241-03

TABLE OF CONTENTS

KDA

INTRODUCTION

The Ferrari Project Draft Program Environmental Impact Report (DEIR) includes a mitigation, **TRANS-2,** that requires preparation of a Transportation Improvement Plan (TIP) that would be included in the Project Development Agreement. The need for mitigation measure TRANS-2 is based on analysis contained in the DEIR, which in turn was based on information in the Ferrari Annexation, General Plan Amendment, and Planned Development Master Plan Traffic Impact Analysis prepared by KDA, dated February 27, 2015. The traffic impact analysis was included in Appendix N of the DEIR. The TIP expands upon the DEIR's mitigation discussion to identify the roadway and intersection improvements that will ultimately be installed and notes the improvements required to mitigate the impacts of individual elements of the overall development plan. The information in this document has been developed to support implementation of mitigation measure TRANS-2. This document also includes information to address Merced County's comments on the DEIR requesting collaboration to address effects on the County's circulation network. As part of the collaboration process, County staff was consulted regarding the TIP study methodology and scope. Preparation of the TIP represents an effort to advance the implementation of mitigation measure TRANS-2, and to coordinate with the County regarding mitigation for facilities under its jurisdiction.

The methodology employed to allocate the costs for improvements is based on current traffic volumes and the traffic contribution of development that is anticipated within the area that will contribute to the costs of improvements. The report has five sections:

1. Summary Of Current Traffic Conditions
2. Land Use / Trip Generation from Future Development in Annexation Area and adjoining Merced County
3. Fair Share Traffic Contribution of Identified Development
4. Cost Estimates for Improvements
5. Phasing Analysis for Initial Ferrari Ranch Development

Study Area. This analysis is intended to evaluate the need to implement mitigation measures at key locations noted in the DEIR. Other locations of interest to Merced County are discussed to assist with refining traffic improvement needs for County facilities.

Intersections. The following **off-site** intersections were investigated in the DEIR and found to be impacted under short term conditions (i.e., Year 2015 with AME and Annexation Area).

1. Buhach Road / Avenue Two
2. Buhach Road / Avenue One
3. Buhach Road / Green Sands Avenue
4. Buhach Road Overcrossing / Ashby Road
5. Ashby Road / Gurr Road

6. Ashby Road / Franklin Road
7. Gurr Road / Avenue Two
8. Gurr Road / Avenue One
9. Avenue Two / Santa Fe Drive
10. AME Expressway / Green Sands Avenue
11. AME Expressway / NB SR 99 ramps
12. Gurr Road / Green Sands Avenue

One additional intersection has been addressed based on consultation with Merced County.

13. Buhach Road / SP Avenue (2016)

Roadway Segments. The following roadway segments were investigated in the DEIR and found to be impacted under short term conditions (i.e., Year 2015 with AME, Ferrari Ranch and Balance of Annexation). One additional location has been evaluated.

1. Ashby Road from Gurr Road to Franklin Road
2. Avenue Two from Gurr Road to Santa Fe Drive
3. Avenue One from Gurr Road to Trindade Road
4. Gurr Road from Avenue Two to Green Sands Avenue
5. Gurr Road from Green Sands Avenue to Ashby Road
6. Green Sands Avenue from Buhach Road to AME
7. Green Sands Avenue from AME to Gurr Road
8. AME Expressway from Green Sands Avenue to SR 99
9. SR 99 from Atwater Blvd to AME
10. SR 99 from AME to Franklin Road

One additional location has been evaluated.

11. Buhach Road from SP Avenue to Mulberry Road

BACKGROUND YEAR 2016 TRAFFIC CONDITIONS

For this analysis traffic counts were conducted at key locations to determine how completion of the AME Phase 1A Reduced improvements affected the background traffic conditions originally presented in the DEIR traffic study, and volumes were adjusted accordingly or replaced to support the cost allocation methodology.

Daily roadway segment and intersection peak hour traffic counts were conducted on May 3, 2016, May 24, 2016 and August 23, 2016 when area schools were in session.

Daily Traffic Volumes and LOS

Overall, the traffic data indicated that AME and Green Sands Avenue west of AME carried roughly 8,000 vehicles per day in the area north of the State Route 99 northbound ramps. Traffic volumes are shown in Table 1. All study area roads carried volumes that indicate LOS C or D conditions and meet current City of Atwater or Merced County minimum LOS standards. A daily volume is shown, and recent traffic volume data was collected for SR 99 from Caltrans PeMS system. The current peak hour volume was used for Level of Service analysis.

TABLE 1 YEAR 2016 TRAFFIC VOLUMES				
Road	**Location**	**Classification**	**Daily Volume (2016)**	**LOS**
Ashby Road	Gurr Road to Franklin Road	(1)	2,357	A
Avenue Two	Gurr Road to Santa Fe Drive	(2)	5,830	C
Avenue One	Gurr Road to Trindade Road	(2)	1,100	C
Buhach Road	SP Avenue to Mulberry Road	(2)	5,634	C
Gurr Road	Avenue Two to Green Sands Avenue	(2)	2,858	C
	Green Sands Avenue to Ashby Road	(2)	2,025	C
Green Sands Avenue	Buhach Road to AME	(3)	8,000	D
	AME to Gurr Road	(3)	3,300	C
AME	Green Sands Avenue to NB SR 99 ramps	(4)	8,073	C
State Route 99	Franklin Road to AME	(5)	51,727 (6)	C
	AME to Atwater Blvd	(5)	45,483	C

(1) Rural 1-lane road Uninterrupted (LOS C is 8,600 ADT, LOS D is 13,800

(2) Rural 2 lane road with Isolated Stops (LOS C is 8,000 ADT, LOS D is 10,700 ADT)

(3) Urban Arterial (LOS C is 7,000 ADT, LOS D is 13,600)

(4) Urban Highway (LOS C is 13,100 and LOS D is 15,500)

(5) Four lane freeway (HCM)

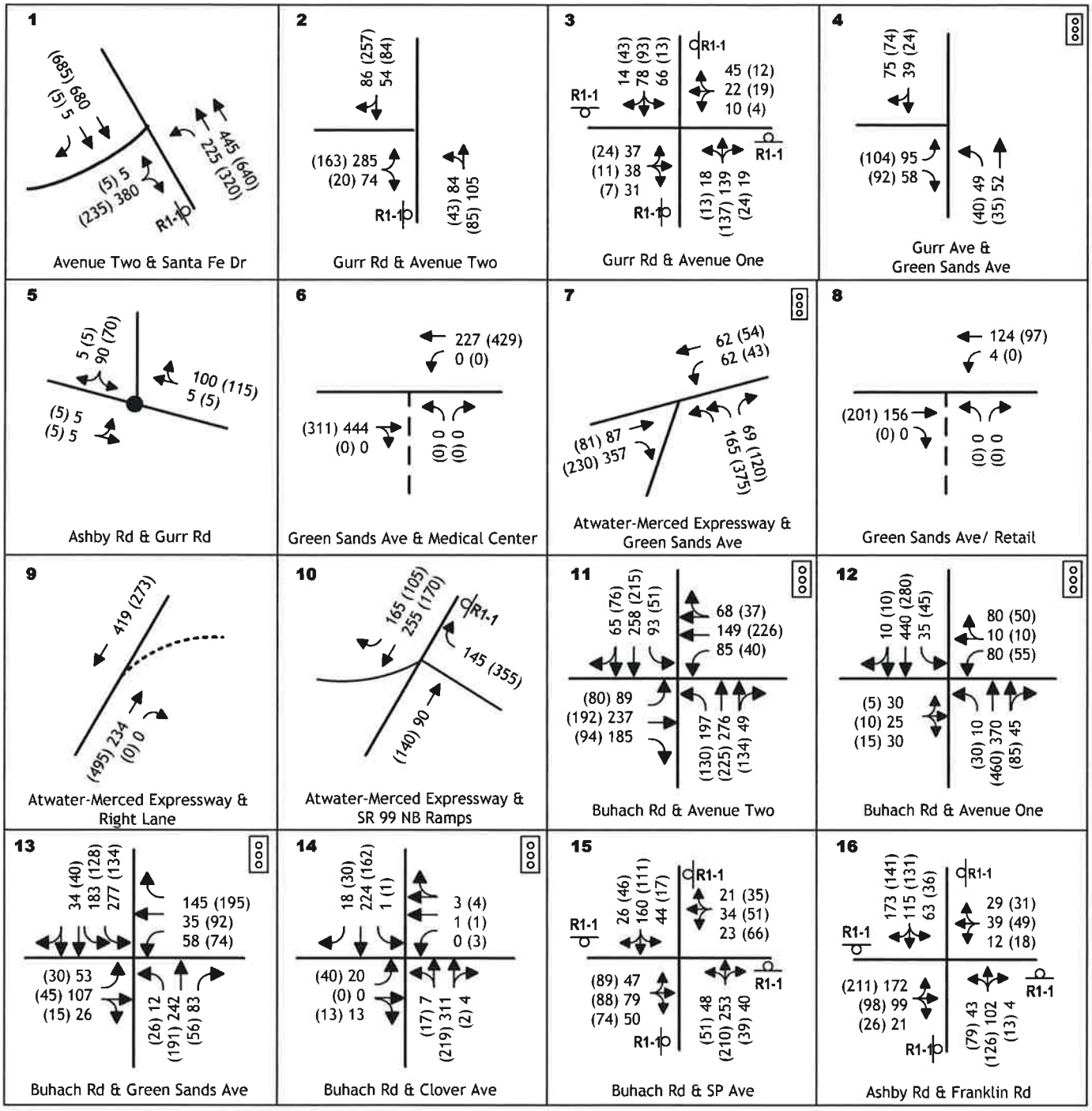
(6) PeMS (6/29/2016)

Source of Classification / Thresholds: Merced County GPU EIR

Peak Hour Levels of Service

Figure 1 presents Year 2016 intersection volumes. The Levels of Service occurring at study area intersections were evaluated using the methodology employed for the DEIR traffic study, and the results are presented in Table 2. As shown, most intersections operate within the minimum LOS C or LOS D standard established by the City of Atwater or Merced County. However, in the morning peak hour the **Avenue Two / Gurr Road intersection** operates with LOS F on the eastbound approach. This is primarily the result of peak traffic accompanying Buhach Colony HS, and conditions in the p.m. peak hour are much better. One intersection operates with delays that approach but do not yet reach LOS E. **The Santa Fe Drive / Avenue Two intersection** operates at LOS D with average delay on the Avenue Two approach that is within one second of LOS E.

KDA



KD Anderson & Associates, Inc.
Transportation Engineers

2016 TRAFFIC VOLUMES AND LANE CONFIGURATIONS

3241-01 RA 11/3/2016

figure 1

TABLE 2 YEAR 2016 INTERSECTION LEVELS OF SERVICE							
Intersection	**Control**	**AM Peak Hour**			**PM Peak Hour**		
		Average Delay (sec/veh)	**LOS**	**Signal Warrants Met?**	**Average Delay (sec/veh)**	**LOS**	**Signal Warrants Met?**
Santa Fe Drive / Avenue Two (overall) Westbound left turn Northbound approach	NB Stop	 (9) 11 34	 (A) B D	Yes	 (5) 12 21	 (A) B C	Yes
Gurr Road / Avenue Two (overall) Northbound left turn EB Approach	EB Stop	 (44) 8 83	 (E) A F	No	 (5) 8 15	 (A) A B	No
Gurr Road / Avenue One	AWS	10	A	No	8	A	No
Green Sands Ave / Gurr Road	Signal	8	A	n.a.	8	A	n.a.
Ashby Road / Gurr Road	Roundabout	4	A	n.a.	4	A	n.a.
Green Sands Ave / AME	Signal	9	A	n.a.	8	A	n.a.
AME/ NB SR 99 ramps (overall) Off ramp approach	NB Stop	 (3) 10	 A A	No	 (6) 12	 (A) B	No
Buhach Road / Avenue Two	Signal	31	C	n.a	25	C	n.a
Buhach Road / Avenue One	Signal	31	C	n.a	17	B	n.a
Buhach Road / Green Sands Ave	Signal	22	C	n.a	23	C	n.a
Buhach Road / Clover Ave	Signal	14	B	n.a	14	B	n.a
Buhach Road / SP Avenue	AWS	18	C	No	12	B	No
Ashby Road / Franklin Road	AWS	15	B	No	17	C	No

Traffic Signal Warrants

The peak hour traffic volumes at un-signaled intersections were compared to MUTCD warrant No. 3 (Peak Hour volume: Urban conditions) to determine whether traffic signals or alternative traffic control may already be justified. The results of this investigation are also shown in Table 2. As indicated, the **Santa Fe Drive / Avenue Two** intersection carries volumes that satisfy warrant requirements. However, as nearly all of the traffic on the Avenue Two approach turns right, a traffic signal has not been needed.

KDA

LAND USE & TRIP GENERATION

To provide basis for implementing TRANS–2 the TIP analysis identifies the land uses within the area that are tributary to the streets and intersections to be addressed by the TIP and identifies the use of those facilities based on the trip generation associated with these uses. The identified land uses within the Ferrari Project annexation area were identified in the DEIR, while anticipated development in the adjoining areas of Merced County north of SR 99 were identified in the County's recent Franklin-Beachwood Transportation Study and Impact Fee Update[1]. Future development in the County south of SR 99 was identified from the MCAG traffic model's land use data base.

Additional areas beyond the study area limits were not included. While undeveloped areas exist within the City's sphere north of Green Sands Avenue, development would be speculative at this time. No mechanism exists to collect additional fees from approved development in other areas of Atwater. Subsequent environmental review of future annexations may require participation in study area improvements as mitigation. These areas were excluded to avoid allocating costs to development that may not occur.

Land Use Summary

Table 3 summarizes the land uses to be developed in the study area bounded by and including the annexation area on the west, the Franklin-Beachwood area on the east, Santa Fe Drive on the north and SR 99 on the south. Information for the Merced County area was taken from the Franklin-Beachwood Transportation Study in the form of residential dwelling units and employees. The number of employees was converted to building square footage based on the typical conversion factors noted.

Trip Generation

Table 4 summarizes the trip generation associated with the land uses to be developed in the study area. Information for the annexation area was taken from the DEIR.

[1] Franklin-Beachwood Transportation Study and Impact Fee Update, Omni-Means, 2016

TABLE 3 FUTURE GROWTH					
Location	**Land Use**				
	Residential (Du's)	**Retail (ksf)**	**Medical (ksf)**	**BP / Office (ksf)**	**Industrial (ksf)**
Annexation Area					
Sub Area 1 Station / Manchester	128	60	0	0	0
Sub Area 2 Canal Creek	0	0	0	777	0
Sub Area 3 Ferrari Ranch*	0	1,495	666	0	0
Sub Area 4 – 6.3-Acre Parcel	0	0	0	83	0
Sub Area 5 - Valley	63	0	0	0	0
Merced County					
East of Gurr Road to Franklin-Beachwood limit	8	0	0	0	0
Franklin-Beachwood Area	464	93**	0	0	1,260**
McSwain area south of SR 99	60	0	0	0	0

Note:
(*) Ferrari Ranch also includes 180 room hotel and 6 field sports complex
(**) Merced County non-residential land use employee data converted to ksf @ 2 retail employees per 1,000 sf, 4 office employees per 1,000 sf and 2.2 industrial employees per 1,000 sf.

TABLE 4
TRIP GENERATION ASSOCIATED WITH FUTURE GROWTH

Location	Land Use					Trip Generation		
	Residential (Du's)	Retail (Ksf)	Medical (ksf)	BP / Office (ksf)	Industrial (ksf)	Daily	AM Peak Hour	PM Peak Hour
Annexation Area								
Sub Area 1 Station / Manchester	128	60	0	0	0	3,890	158	361
Sub Area 2 Canal Creek	0	0	0	777	0	9,666	1,088	979
Sub Area 3 Ferrari Ranch	0	1,495	666	0	0	64,481	2,578	5,871
Sub Area 4 – 6.3-Acre Parcel	0	0	0	83	0	1,037	117	105
Sub Area 5 - Valley	63	0	0	0	0	600	47	63
Subtotal						79,674	3,988	7,379
Merced County								
East of Gurr Road to Franklin Beachwood limit	8	0	0	0	0	76	6	8
Franklin Beachwood Area	464	93	0	0	1,260	15,806	1,573	1,905
McSwain Area	60	0	0	0	0	571	45	60
Subtotal						16,453	1,624	1,973
Total						96,127	5,612	9,352

Note: ITE rates applied to Merced County non-residential land use
Retail trips are "new" less pass-by

KDA

Trip Assignment

For the purpose of implementing the TIP, the new trips associated with identified development were manually assigned to the study area circulation system under Year 2016 plus Project conditions. The manual assignment process differs from the regional model based approach taken for both the DEIR and Merced County's Franklin-Beachwood Transportation Study and Impact Fee Update, but is useful for the purpose of identifying relative facility utilization.

The trip distribution assumptions identified in the DEIR were employed to assign trips associated with this portion of the study area. No similar distribution assumptions were presented in Franklin-Beachwood Transportation Study for growth in the County. To identify trip assignment assumptions for locations in the County a "select-link" analysis was performed using the short term traffic model created for the DEIR traffic study. Buildout assumptions for Franklin-Beachwood were added, and the trips associated with specific residential and non-residential zones in the Franklin-Beachwood and McSwain areas were tracked. Table 5 presents the general assumptions made for those areas.

TABLE 5
MERCED COUNTY LAND USE TRIP DISTRIBUTION ASSUMPTIONS

Direction- Route	Share of Total External Trips		
	Franklin Beachwood		McSwain
	Residential	Non-Residential	Residential
West on State Route 99	6%	14%	0%*
Santa Fe Drive west of Buhach Road	6%	8%	3%
Atwater north of SR 99 and west of Buhach Road	9%	8%	9%
Atwater between Buhach Road and Gurr Road	19%	6%	18%
Atwater south of SR 99 and west of Franklin Road	1%	2%	30%
Santa Fe Drive east of Avenue Two	0%	0%	1%
Merced east of Franklin Beachwood	26%	44%	4%
SR 99 east of Franklin Beachwood	23%	8%	3%
Buhach Road south of State Route 99	1%	1%	32%
Franklin Road south of State Route 99	7%	9%	0%
Total	98.00%	100.00%	100.00%

(*) Access to SR 99 occurs outside of study area

KDA

FAIR SHARE PERCENTAGES

Approach

Traffic Volumes / Calculations. Tables 6, 7 and 8 summarize the resulting traffic volumes at subject intersections and on roadway segments created by superimposing the trips associated with identified development onto current volumes. The tables identify the contribution of specific development areas and calculate each area's share of the total traffic under two scenarios. The first scenario includes current traffic in the allocation, while the second scenario excludes the current traffic volume. Under Merced County policy, fair share calculations omit the contribution of "existing traffic" for those facilities where current conditions satisfy minimum standards.

Typically fair share calculation is based on p.m. peak hour volumes as this is the hourly period with the greatest traffic volume. This is the approach taken by Merced County. However, a.m. peak hour calculation has been employed when the traffic impact occurs during that time period, and because daily traffic volume is the DEIR evaluation criteria it has been employed to allocate fair share on roadway segments.

TABLE 6
AM PEAK HOUR INTERSECTION TRAFFIC VOLUMES
PERCENT OF TOTAL TRAFFIC

Location	Existing	Annexation Area					Franklin Beachwood		McSwain	TOTAL
		Sub Area 3 Ferrari Ranch	Sub Area 1	Sub Area 2	Sub Area 4	Sub Area 5	Residential	Non-Residential		
Santa Fe Drive / Avenue Two	1,740	468	29	163	16	7	40	159	0	2,619
	66%	18%	1%	6%	1%	<1%	2%	6%	0%	100%
	0%	53%	3%	18%	2%	1%	5%	18%	0%	100%
Gurr Road / Avenue Two	788	536	29	163	18	7	7	12	2	1,561
	50%	34%	2%	10%	1%	<1%	<1%	1%	<1%	100%
	0%	69%	4%	21%	2%	1%	1%	2%	<1%	100%
Gurr Road / Avenue One	517	635	16	163	20	8	21	12	0	1,391
	37%	46%	1%	12%	1%	1%	2%	1%	0%	100%
	0%	73%	2%	19%	2%	1%	2%	1%	0%	100%
Green Sands Ave / Gurr Road	368	1,106	16	163	54	23	23	150	0	1,903
	19%	58%	1%	9%	3%	1%	1%	8%	0%	100%
	0%	72%	1%	11%	4%	2%	2%	10%	0%	100%
Ashby Road / Gurr Road	210	497	17	87	50	22	55	283	1	1,224
	17%	41%	1%	7%	4%	2%	4%	23%	0%	100%
	0%	49%	2%	9%	5%	2%	5%	28%	0%	100%
Green Sands Ave / AME	802	1,539	99	577	35	15	13	153	0	3,232
	25%	48%	3%	18%	1%	<1%	<1%	5%	0%	100%
	0%	63%	4%	24%	1%	1%	1%	6%	0%	100%
AME / NB SR 99 ramps	655	1,219	75	391	32	13	5	158	0	2,553
	26%	48%	3%	15%	1%	1%	<1%	6%	0%	100%
	0%	64%	4%	21%	2%	1%	<1%	8%	0%	100%

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TABLE 6 (cont'd)
AM PEAK HOUR INTERSECTION TRAFFIC VOLUMES
PERCENT OF TOTAL TRAFFIC

Location	Existing	Annexation Area					Franklin Beachwood		McSwain	TOTAL
		Sub Area 3 -Ferrari Ranch	Sub Area 1	Sub Area 2	Sub Area 4	Sub Area 5	Residential	Non-Residential		
Buhach Road / Avenue Two	1,798	531	50	175	18	8	14	39	2	2,632
	68%	20%	2%	7%	1%	<1%	1%	1%	<1%	100%
	0%	64%	6%	21%	2%	1%	2%	5%	>1%	100%
Buhach Road / Avenue One	1,165	528	53	196	18	8	7	27	3	2,005
	58%	26%	3%	10%	1%	<1%	<1%	1%	<1%	100%
	0%	63%	6%	23%	2%	1%	1%	3%	<1%	100%
Buhach Road / Green Sands Ave	1,234	674	183	358	19	8	7	15	3	2,493
	50%	27%	7%	14%	1%	<1%	<1%	1%	<1%	100%
	0%	54%	15%	28%	2%	1%	1%	1%	<1%	100%
Buhach Rd / Clover Ave	602	388	76	423	15	6	10	16	3	1,540
	39%	25%	5%	27%	1%	<1%	1%	1%	<1%	100%
	0%	41%	8%	45%	2%	1%	1%	2%	<1%	100%
Buhach Road / SP Avenue	825	376	23	120	12	5	1	50	12	1,424
	58%	26%	2%	8%	1%	<1%	<1%	4%	1%	100%
	0%	63%	4%	20%	2%	1%	<1%	8%	2%	100%
Ashby Road / Franklin Road	872	177	11	55	10	4	113	620	2	1,865
	47%	9%	1%	3%	1%	<1%	6%	33%	<1%	100%
		18%	1%	6%	1%	<1%	11%	62%	<1%	100%

TABLE 7
PM PEAK HOUR INTERSECTION TRAFFIC VOLUMES
PERCENT OF TOTAL TRAFFIC

Location	Existing	Annexation Area					Franklin Beachwood		McSwain	TOTAL
		SubArea 3 - Ferrari Ranch	Sub Area 1	Sub Area 2	Sub Area 4	Sub Area 5	Residential	Non-Residential		
Santa Fe Drive / Avenue Two	1,890	1,051	74	146	15	9	52	186	0	3,425
	55%	31%	2%	4%	<1%	<1%	2%	5%	0%	100%
	0%	68%	5%	10%	1%	1%	3%	12%	0%	100%
Gurr Road / Avenue Two	652	1,250	74	146	16	10	8	14	0	2,172
	30%	58%	3%	7%	1%	<1%	<1%	1%	0%	100%
	0%	82%	5%	10%	1%	1%	1%	1%	0%	100%
Gurr Road / Avenue One	400	1,498	41	146	17	11	32	14	0	2,159
	19%	69%	2%	7%	1%	1%	1%	1%	0%	100%
	0%	85%	2%	8%	1%	1%	2%	1%	0%	100%
Green Sands Ave / Gurr Road	369	2,769	41	146	47	29	40	37	0	3,480
	11%	80%	1%	4%	1%	1%	1%	1%	0%	100%
	0%	89%	1%	5%	2%	1%	1%	1%	0%	100%
Ashby Road / Gurr Road	205	1,183	45	78	45	27	78	150	3	1,809
	11%	65%	2%	4%	2%	1%	4%	8%	<1%	100%
	0%	74%	3%	5%	3%	2%	5%	9%	<1%	100%
Green Sands Ave / AME	903	3,238	264	519	30	18	26	55	0	5,052
	18%	64%	5%	10%	1%	<1%	1%	1%	0%	100%
	0%	78%	6%	13%	1%	<1%	1%	1%	0%	100%
AME/ NB SR 99 ramps	770	2,740	200	352	27	17	16	91	0	4,212
	18%	65%	5%	8%	1%	<1%	<1%	2%	0%	100%
	0%	80%	6%	10%	1%	<1%	<1%	3%	0%	100%

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TABLE 7 (cont'd)
PM PEAK HOUR INTERSECTION TRAFFIC VOLUMES
PERCENT OF TOTAL TRAFFIC

Location	Existing	Annexation Area					Franklin Beachwood		McSwain	TOTAL
		Sub Area 3 -Ferrari Ranch	Sub Area 1	Sub Area 2	Sub Area 4	Sub Area 5	Residential	Non-Residential		
Buhach Road / Avenue Two	1,412	1,199	129	157	16	10	11	46	3	2,988
	47%	40%	4%	5%	1%	<1%	1%	2%	<1%	100%
	0%	76%	8%	10%	1%	1%	1%	3%	<1%	100%
Buhach Road / Avenue One	1,055	1,150	141	176	17	10	8	32	3	2,594
	41%	44%	5%	7%	1%	<1%	<1%	1%	<1%	100%
	0%	75%	9%	11%	1%	1%	1%	2%	<1%	100%
Buhach Road / Green Sands Ave	1,029	1,443	482	320	17	11	8	18	3	3,333
	31%	43%	14%	10%	1%	<1%	<1%	1%	<1%	100%
	0%	63%	21%	14%	1%	<1%	<1%	1%	<1%	100%
Buhach Road / Clover Ave	491	930	201	381	14	8	12	19	3	2,061
	24%	45%	10%	18%	1%	<1%	1%	1%	<1%	100%
	0%	59%	13%	24%	1%	1%	1%	4%	1%	100%
Buhach Road / SP Avenue	877	843	61	108	12	6	1	59	17	1,982
	44%	43%	3%	5%	1%	<1%	<1%	3%	1%	100%
	0%	76%	6%	10%	1%	1%	<1%	5%	2%	100%
Ashby Road / Franklin Road	959	399	28	49	8	5	156	707	6	2,311
	42%	17%	1%	2%	<1%	<1%	7%	31%	<1%	100%
	0%	30%	2%	4%	1%	<1%	12%	52%	<1%	100%

TABLE 8
DAILY TRAFFIC VOLUMES
PERCENTAGE OF TOTAL TRAFFIC

Road	Location	Daily Volume								
		Existing	Sub Area 3 - Ferrari Ranch	Sub Area 1	Sub Area 2	Sub Area 4 and 5	Franklin Beachwood		McSwain	Total
							Residential	Non-Residential		
Ashby Road	Gurr Road to Franklin Road	2,357	6,960	490	775	180	720	2,310	25	13,820
		17%	50%	4%	6%	1%	5%	17%	<1%	100%
		0%	61%	4%	7%	1%	6%	20%	<1%	100%
Avenue Two	Gurr Road to Santa Fe Drive	5,830	11,700	825	1,450	230	75	140	5	20,250
		29%	58%	4%	7%	1%	<1%	1%	<1%	100%
		0%	81%	6%	10%	2%	1%	1%	<1%	100%
Avenue One	Gurr Road to Trindade Road	1,100	1,280	90	0	20	290	135	5	2,920
		38%	44%	3%	0%	1%	10%	5%	<1%	100%
		0%	70%	5%	0%	1&	16%	8%	<1%	100%
Buhach Road	SP Avenue to Mulberry Road	5,634	3,010	670	1,065	80	10	0	160	13,640
		41%	22%	5%	8%	1%	<1%	0%	1%	100%
		0%	38%	8%	13%	1%	<1%	0%	2%	8,000
Gurr Road	Avenue Two to Green Sands Ave	2,858	16,740	460	1,450	270	290	0	10	22,070
		13%	76%	2%	7%	1%	1%	0%	<1%	100%
		0%	87%	2%	8%	1%	2%	0%	<1%	18,950
	Green Sands Ave to Ashby Road	2,025	24,640	0	0	750	190	1,005	0	28,610
		7%	86%	0%	0%	3%	1%	4%	0%	100%
		0%	93%	0	0	3%	1%	4%	0%	100%

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TABLE 8 (cont'd)
DAILY TRAFFIC VOLUMES
PERCENTAGE OF TOTAL TRAFFIC

Road	Location	Daily Volume								
		Existing	Sub Area 3 - Ferrari Ranch	Sub Area 1	Sub Area 2	Sub Area 4 and 5	Franklin Beachwood		McSwain	Total
							Residential	Non-Residential		
Green Sands Ave	Buhach Road to AME	8,000	21,460	2,895	5,125	40	95	110	5	37,730
		21%	57%	8%	14%	<1%	<1%	<1%	<1%	100%
		0%	72%	10%	17%	<1%	<1%	<1%	<1%	100%
	AME to Gurr Road	3,300	27,530	705	1,640	480	210	1,005	5	34,870
		9%	79%	2%	5%	1%	1%	3%	<1%	100%
		0%	87%	2%	5%	2%	1%	3%	<1%	100%
AME	Green Sands Ave to NB Right Turn	8,073	21,470	2,195	5,060	440	115	1,005	0	38,255
		21%	56%	6%	13%	1%	>1	3%	0%	100%
		0%	71%	7%	17%	1%	<1%	4%	0%	100%
	NB Right turn to NB SR 99 ramps	8,073	30,525	2,195	3,480	440	211	1,327	0	46,160
		18%	66%	5%	8%	1%	1%	3%	0%	100%
		0%	80%	6%	9%	1%	1%	4%	0%	100%
State Route 99	Franklin Road to AME	51,727	19,450	1,400	2,225	330	115	1,325	5	76,580
		68%	25%	2%	3%	<1%	<1%	2%	<1%	100%
		0%	78%	6%	9%	1%	<1%<	5%	<1%	100%
	AME to Atwater Blvd	45,483	11,060	790	1,260	110	230	2.010	5	60,360
		75%	18%	1%	2%	<1%	<1%	3%	>1%	100%
		0%	74%	5%	9%	1%	2%	14%	>1%	100%

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COST ESTIMATES / FEE PROGRAM ALLOCATION

Cost Estimates

Table 9 summarizes the costs of DEIR mitigations as well as the costs of ancillary improvements to be made based on consultation with Merced County staff. As indicated the total cost of DEIR improvements is $183.3 million, and ancillary costs total roughly $1 million.

Fair Share Allocation

These costs have been allocated to these funding sources.

- Fronting developer responsibility
- The Annexation Area's portion of a local area fee program
- The County portion of a local area fee program
- The existing Regional Transportation Improvement Fee (RTIF) program

It is important to note additional local funding mechanisms exist within Merced County. The Franklin-Beachwood Community Bridge and Major Thoroughfare addresses facilities within that community. In addition, some of the projects to be funded locally may also fall under the umbrella of the RTIF. Thus, while an allocation has been attributed to development in Merced County in order to calculate "fair share", these alternative mechanism may be the source of actual funds.

Assumptions. In the case of the local area fee program, the allocation to Annexation area and to County development based on traffic and described in the previous chapter has been employed. With a few exceptions, the allocation is based on p.m. peak hour (intersections) or daily traffic (segments), and the allocation assumes no contribution based on existing traffic. The following exceptions to that approach are noted.

Buhach Road / Avenue Two: Because a current deficiency exists in the a.m. peak hour, the allocation includes existing traffic and is based on conditions during the a.m. peak hour.

State Route 99: The allocation for SR 99 widening assumed contribution from existing traffic.

Results. The total allocation for DEIR improvements can be summarized as follows:

• Fronting developer responsibility	$ 3,735,200
• The Annexation Area's portion of a local area fee program	$ 14,884,472
• The Merced County portion of a local area fee program or paid through other mechanisms	$ 1,421,728
• The existing regional fee program (RTIF)	$ 155,836,000

For ancillary locations:

• The Annexation Area's portion of a local area fee program	$	785,744
• The Merced County portion of a local area fee program or paid through other mechanisms	$	189,861

TABLE 9
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
1. Buhach Road & Avenue Two/Juniper Ave	Add overlap phasing on eastbound right-turn; New 150-ft long northbound LTL	$32,300		**$30,976**	$1,324	
2. Buhach Road & Avenue One/Lake Ridge Street	New 200-ft long eastbound LTL; adjust signal phasing to a protected eight-phase signal; change east-west phasing from split to permissive phasing	$110,000		**$106,810**	$3,190	
3. Buhach Road & Green Sands Avenue	Change eastbound and westbound approaches to protected phasing, resulting in an eight phase signal; Widen Green Sands Ave east of Buhach Rd to 4 lanes, and designate second westbound approach lane to be free right-turn lane	$2,019,000		**$1,992,753**	$26,247*	
6. Buhach Road Overcrossing & Ashby Road	Add a second southeastbound through lane, and overlap phasing to the southeastbound movement	$165,000		**$161,205**	$3,795*	
8. Ashby Road & Gurr Road	Add a second eastbound approach lane to the roundabout, and extend lane to exit at eastbound departure with a lane drop	$90,000		**$77,310**	$12,690*	
9. Ashby Road & Franklin Rd./NB SR 99 Ramps	New traffic signal, new 300-ft long LTLs for eastbound, westbound, and southbound approaches, new dual 300-ft LTL on northbound approach, new 200-ft southbound RTL, and new second westbound departure lane	$718,500		**$260,097**	$458,403**	
10. Gurr Road & Avenue Two	New traffic signal and new 300-ft long northbound LTL	$254,000		**$122,428**	$131,572	
11. Gurr Road & Avenue One	New traffic signal, new 200 ft long LTL on all approaches, and new 200 ft long northbound RTL	$480,000		**$467,520**	$12,480	
12. Avenue Two & Santa Fe Drive	New traffic signal, widening of Avenue Two approach with new LTL and RTL, new northbound LTL, and add overlap phasing for eastbound right-turn movement	$568,000		**$479,392**	$88,608	

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TABLE 9 (cont'd)
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
13. AME & Green Sands Avenue	Improvements include: on northbound approach, three 400-ft LTLs, two through lanes, and one 300-ft RTL; on southbound approach, two 300-ft LTLs, three through lanes (one of which is only 400-ft long), and one 400-ft LTL; on eastbound approach, two 400-ft LTLs, two through lanes, and one free RTL; on westbound approach, three 600-ft LTLs, three through lanes (one of which is added about midway between AME and Ferrari project access), and one 300-ft RTL; on eastbound departure, three departure lanes; on southbound departure, four departure lanes, which merges to three lanes and then merges to two lanes.	$1,156,500		**$1,134,527**	**$21,974***	
14. AME & SR 99 Northbound Ramps	New traffic signal, modify westbound approach to include free-right turn from off-ramp, and add third northbound lane on AME that would be an auxiliary lane to off-ramp into the Ferrari Ranch project site	$539,000		**$522,291**	**$16,709***	
15. AME & SR 99 Southbound Ramps	Modify southbound right-turn movement to the loop on-ramp to be a free right-turn	$36,000		**$34,884**	**$1,116***	
16. Gurr Road & Green Sands Avenue	Improvements include: on northbound approach, include two 450-ft LTLs, one exclusive through lane, and one 200-ft combined through/RTL; on southbound approach, include one 100-ft LTL, one exclusive through lane, and one 300-ft combined through/RTL; on eastbound approach, include two 150-ft LTLs, two through lanes, and one "free" RTL; on westbound approach, include one LTL, one exclusive through lane, and one combined through/RTL; on northbound departure, include two departure lanes, which merge to one lane 300-ft north of intersection.	$486,000		**$473,850**	**$12,150***	

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TABLE 9 (cont'd)
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
Freeway Ramp Junctions						
21. Northbound SR 99 off-ramp to Atwater Blvd.	Extend length of northbound off-ramp deceleration lane to 925 ft	$166,500		**$166,500**	**$0**	
27. Southbound SR 99 on-ramp from Atwater Blvd.	Add a third southbound mainline lane on SR99 at the Atwater Blvd SB on-ramp	$0		**$0**	**$0**	
Site Access Intersection Improvements						
41. Gurr Road & Project Site Access Driveway #1	New Traffic Signal and new 200-ft northbound LTL	$261,000	**$261,000**			
42. Gurr Road & Project Site Access Driveway #2	New traffic signal, new 200-ft northbound LTF, new 150-ft southbound RTL, and widen Gurr Rd to 2 through lanes in each direction through intersections 42 and 43.	$633,800	**$633,800**			
44. Gurr Road & Project Site Access Driveway #4	New traffic signal, add second 300-ft eastbound LTL, new 200-ft northbound LTL, new 200-ft southbound RTL, and widen Gurr Rd to 2 through lanes in each direction through intersections 44 and 45.	$727,400	**$727,400**			
46. Green Sands Avenue & Project Site Access Driveway #6	New traffic signal, add second eastbound and westbound through lanes, new eastbound RTL extending from intersection 13, add second 300-ft northbound LTL, and two new 200-ft westbound LTLs.	$570,000	**$570,000**			
47. Ashby Road & Project Site Access Driveway #7	New 100-ft eastbound LTL and new TWLTL for departures from project site driveway.	$54,000	**$54,000**			

TABLE 9 (cont'd)
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
48. Ashby Road & Project Site Access Driveway #8	New traffic signal with protected eastbound left-turn phasing, new 200-ft southeastbound LTL, new 200-ft southwestbound LTL, and new TWLTL for departures from the driveway.	$333,000	**$333,000**			
49. Ashby Road & Project Site Access Driveway #9	New 150-ft southbound LTL.	$27,000	**$27,000**			
50. Ashby Road & Project Site Access Driveway #10	New 100-ft eastbound LTL, new 150-ft southbound LTL, and new TWLTL for receiving departures from the project site driveway.	$81,000	**$81,000**			
51. Ashby Road & Regional Medical Center Collector Road	New traffic signal, new 300-ft eastbound LTL, and new 300-ft westbound RTL.	$308,000	**$308,000**			
52. Green Sands Avenue Regional Medical Center Collector Road	New traffic signal, two 300-ft westbound LTLs, two westbound through lanes, two eastbound through lanes, eastbound RTL, northbound LTL, and "free" northbound LTL that would extend to intersection 13.	$750,000	**$750,000**			
Roadway Segments						
Avenue One - Gurr Road to Trindade Road	Widen Avenue One from 2 to 4 lanes	$1,125,000		**$859,500**	**$265,500**	
Gurr Road - North of Green Sands Ave	Widen Gurr Road from 2 to 4 lanes	$1,452,000		**$1,430,220**	**$21,780**	
Green Sands Ave. - Buhach Road to AME	Add six through lanes on Green Sands Ave between Ferrari project access and AME	$2,694,000		**$2,675,142**	**$18,858***	

TABLE 9 (cont'd)
COST ESTIMATES AND FEE PROGRAM CONTRIBUTION

Study Facility	Description of Ultimate Improvements	Total Project Cost	Fronting Developer	Annexation Area Share	County Share	Regional Fee Program
Green Sands Ave. - AME to Gurr Road	Widen Green Sands Ave from 2 to 4 lanes	$1,164,000		**$1,119,768**	**$44,232***	
Green Sands Ave. (Belcher Ave.) - Gurr Road to Franklin Road	Extend Green Sands Ave (4 lanes)	$2,808,000				**$2,808,000**
Atwater-Merced Expressway Santa Fe Dr. to Green Sands Ave	AME project (6 lanes)	$66,200,000				**$66,200,000**
Atwater-Merced Expressway Northeast of Santa Fe Drive	AME project from Santa Fe Dr to Bellevue Rd, 6 lanes	$83,900,000				**$83,900,000**
Atwater-Merced Expressway Green Sands Ave. to SR 99	Widen Atwater-Merced Expressway from 2 to 6 lanes	$2,928,000				**$2,928,000**
State Route 99 - Atwater Blvd. to AME	Widen SR99 from 4 to 6 lanes	$5,100,000		**$1,116,900**	**$178,500**	(***)
State Route 99 - AME to Franklin Road	Widen SR99 from 4 to 6 lanes	$5,400,000		**$1,652,400**	**$102,600**	(***)
	TOTAL	**$183,337,000**	**$3,745,200**	**$14,884,472**	**$1,421,728**	**$155,836,000**

(*) may be attributed to RTIF. Total for Merced County share of items 3, 6, 8, 13, 14, 15, 16 and Green Sands Avenue segments is $157,771
(**) may be covered by Franklin Beachwood Community Bridge & Thoroughfare Fee Total for Merced county share of item 9 is $458,403
(***) balance of improvements cost borne by others and totals $7,431,600

COST ESTIMATES AND FEE PROGRAM CONTRIBUTION
Ancillary Locations

Buhach Road / SP Avenue	Interim Signal	$354,900		$330,767	$24,133	
Ashby Rd / Trindade Rd	Roundabout or turn lanes	$322,283		$236,233	$86,050	
Ashby Rd / Franklin Road	Roundabout or turn lanes	$298,422		$218,743	$79,679	
	TOTAL	**$975,605**		**$785,744**	**$189,861**	

PHASING ANALYSIS

Approach

Because the annexation area is large, pieces of the area might be developed at any given time, and the entire area will take many years to be developed. As a result, evaluation of every possible combination and order of individual projects would be speculative and is beyond the scope of this analysis. Instead, this traffic analysis addresses four specific "projects" that might reasonably be assumed to proceed first. The impacts of these individual projects under Year 2016 plus Project conditions have been identified, and the improvements required to provide Levels of Service meeting adopted City of Atwater, Caltrans or Merced County standards have been identified. The TIP acknowledges that individual traffic studies will be required for each new individual development project proposed within the annexation area to identify the improvement requirements that each triggers, either to address the combined effects of assumed projects or to address alternative elements of the overall annexation project that are not evaluated as part of this analysis.

Study Area. This analysis is intended to evaluate the need to implement mitigation measures noted in the DEIR. As a result, the analysis does not necessarily address all locations originally considered in the DEIR traffic study. Study locations include those intersections impacted under the DEIR's "Year 2015 Plus Ferrari Ranch Subarea Alone" analysis, as noted below:

Intersections. The following eight intersections were found to be impacted by the Ferrari Ranch Subarea alone or were identified in comments on the DEIR, and these locations are included in this traffic analysis.

- Ashby Road / Franklin Road
- Gurr Road / Avenue Two
- Gurr Road / Avenue One
- Avenue Two / Santa Fe Drive
- AME Expressway / Green Sands Avenue
- AME Expressway / NB SR 99 ramps
- Gurr Road / Green Sands Avenue
- Buhach Road / SP Avenue

On-site intersections were investigated in the DEIR. The three intersections noted below will provide the main access to initial portions of the Ferrari Ranch Subarea and are addressed in this study.

- Green Sands Avenue / Project Driveway 46
- Green Sands Avenue / Regional Medical Center Collector Road
- AME / right turn access

Roadway Segments. The following eight segments were impacted by development anticipated within the Ferrari Ranch subarea or were noted in comments on the DEIR, and are addressed in this study.

- Ashby Road from Gurr Road to Franklin Road
- Avenue Two from Gurr Road to Santa Fe Drive
- Gurr Road from Avenue Two to Green Sands Avenue
- Green Sands Avenue from Buhach Road to AME
- Green Sands Avenue from AME to Gurr Road
- AME Expressway from Green Sands Avenue to SR 99
- SR 99 from Atwater Blvd to AME
- SR 99 from AME to Franklin Road

Land Use Assumptions / Trip Generation

Individual Ferrari Ranch Sub-Area Projects. Four individual projects are addressed by this analysis, as noted in Table 10.

TABLE 10
INITIAL SUBAREA 3 - FERRARI RANCH DEVELOPMENT SCENARIOS

Scenario	Development Project	Quantity
1	Medical Center	267 ksf Hospital and 25 ksf MOB
2	Green Sands Ave Retail	50 ksf Supermarket, 8 ksf retail, 16.9 ksf fast food restaurants
3	Big Box Store	150 ksf Superstore and 20 ksf retail
4	Lifestyle Center	500 ksf Shopping Center

These development scenarios represent portions of the overall development scenario assumed for Subarea 3 – Ferrari Ranch as assumed in the DEIR traffic study.

Trip Generation Estimates. The number of vehicle trips associated with the development assumed under each initial scenario has been identified based on published trip generation rates and pass-by trip assumptions that are relative to the types of uses anticipated and their location adjoining existing streets. The trip generation rates employed for this analysis are noted in Table 11, and the resulting trip generation forecasts are presented in Table 12.

As noted in Table 12, assumptions have been made regarding the share of retail trips than would be drawn from current traffic on streets adjoining the project. Applicable pass-by rates have been identified based on the volume of traffic using AME and Green Sands Avenue today, and because these volumes are relatively low, standard pass-by rates have been reduced for this analysis.

As noted, the total net new daily trip estimates for these scenarios ranges from 4,253 daily trips with initial development in the Medical Center area to a high of 17,397 with assumed development of the first phase of the lifestyle center. As a comparison, these values represent 5% to 22% of the 79,074 total net new trips identified in the DEIR traffic analysis for the entire annexation area, including Subarea 3 – Ferrari Ranch.

TABLE 11
TRIP GENERATION RATES

Scenario	Description	ITE Code	Unit	Trip Per Unit						
				Daily	AM Peak Hour			PM Peak Hour		
					In	Out	Total	In	Out	Total
1	Hospital	610	ksf	13.22	63%	37%	0.95	38%	62%	0.93
	Medical Office Building	720	ksf	36.13	79%	21%	2.39	28%	72%	3.57
2	Supermarket 20% pass by	850	ksf	102.24	62%	38%	3.40	51%	49%	9.48
	Retail 0% pass by	826	ksf	44.32	57%	43%	0.61	44%	56%	2.71
	Fast Food Restaurant 35% pass by	934	ksf	496.12	51%	49%	45.42	52%	48%	32.65
3	Free-Standing Discount Superstore 10% pass by	813	ksf	50.75	56%	44%	1.85	49%	51%	4.35
	Retail 0% pass by	826	ksf	44.32	57%	43%	0.61	44%	56%	2.71
4	Shopping Center 10% pass by	820	ksf	38.66	62%	38%	0.83	48%	52%	3.52

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TABLE 12
TRIP GENERATION FORECASTS

Scenario	Description	ITE Code	Quantity	Trip Per Unit						
				Daily	AM Peak Hour			PM Peak Hour		
					In	Out	Total	In	Out	Total
1	Hospital	610	267 ksf	3,530	160	94	254	94	154	248
	Medical Office Building	720	20 ksf	723	38	10	48	20	51	71
	Total			4,253	198	104	302	114	205	319
2	Supermarket	850	50 ksf	5,112	105	65	170	241	233	474
	Pass-by 20% daily and p.m.			1,022	0	0	0	48	46	94
	Net New Trips			4,090	105	65	170	193	187	380
	Retail	826	8 ksf	355	3	2	5	10	12	22
	Fast Food Restaurant	934	16.92 ksf	8,394	393	376	769	287	265	552
	Pass-by 35%			2,938	137	132	269	100	93	193
	Net New Trips			5,456	256	244	500	187	172	359
	Total Net New Trips			9,901	364	311	675	390	371	761
3	Free-Standing Discount Superstore	813	150 ksf	7,613	155	123	278	320	333	653
	Pass-by 10% daily and p.m.			761	0	0	0	32	33	65
	Net New Trips			6,852	155	123	278	288	300	588
	Retail	826	20 ksf	886	7	5	12	24	30	54
	Total Net New Trips			7,738	162	128	290	312	330	642
4	Shopping Center	820	500 ksf	19,330	257	156	415	845	915	1,760
	Pass-by 10% daily and p.m.			1,933	0	0	0	84	92	176
	Net New Trips			17,397	257	156	415	761	823	1,584

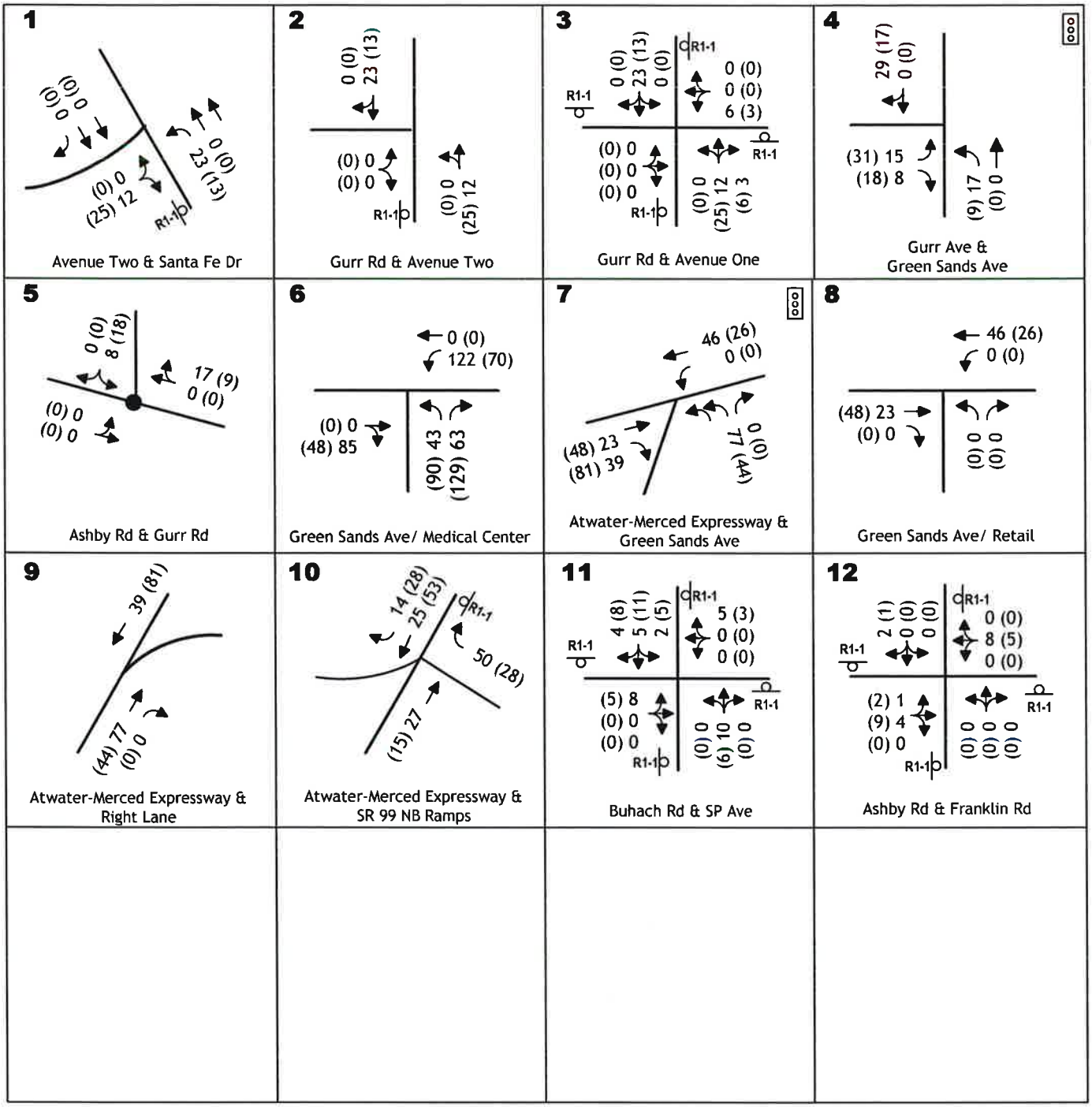
Trip Distribution and Assignment. The overall regional trip distribution assumptions made in the DEIR traffic analysis were re-used for this assessment, and these assumptions are reprinted in Table 13.

TABLE 13
TRIP DISTRIBUTION ASSUMPTIONS

Direction	Route	Percentage of Total
West	State Route 99 west of AME	13%
	Broadway west of Buhach Road	8%
	Lake Ridge Street and Juniper Avenue west of Buhach Road	9%
	Bellevue Road west of Buhach Road	5%
	Santa Fe Drive west of Buhach Road	8%
East	Santa Fe Drive east of Avenue Two	11%
	Avenue One east of Gurr Road	4%
	Ashby Road east of Franklin Road	4%
	Franklin Road north of Ashby Road	1%
	State Route 99 east of AME	24%
South	Buhach Road south of Ashby Road	10%
	Franklin Road south of Ashby Road	3%
Total		100%

The trips associated with each initial development scenario were assigned to the study area street system assuming portions of the access that is contemplated in the DEIR traffic study. The most appreciable access change with regards to existing conditions would be the construction of the direct connecting right turn lane from northbound AME into the Ferrari Ranch subarea. This improvement is assumed to accompany Scenarios 2 (Supermarket + Fast Food) and 4 (Lifestyle Center), but not Scenarios 1 or 3 (Big Box Retail). Other portions of the overall project area circulation system are not assumed to be in place in these initial phases, including the extension of Ashby Road beneath AME and the completion of the Medical Center collector from Green Sands Avenue to Ashby Road.

Resulting illustrations of the trip assignments under each scenario are presented in Figures 2 through 5.

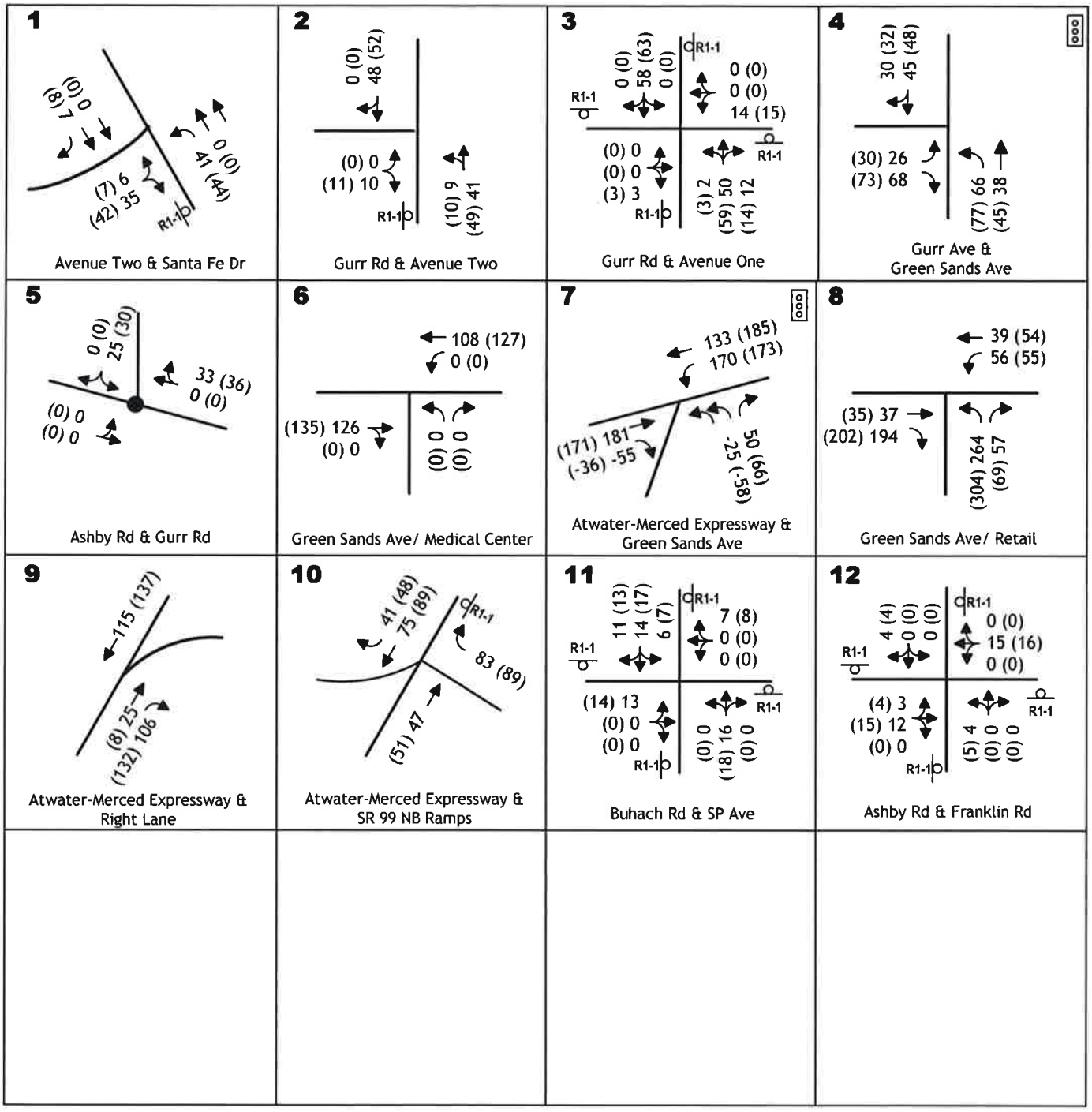


2016 PROJECT ONLY
PHASE 1 HOSPITAL AND MOB
TRAFFIC VOLUMES AND LANE CONFIGURATIONS

KD Anderson & Associates, Inc.
Transportation Engineers

3241-01 RA 11/3/2016

figure 2



Legend

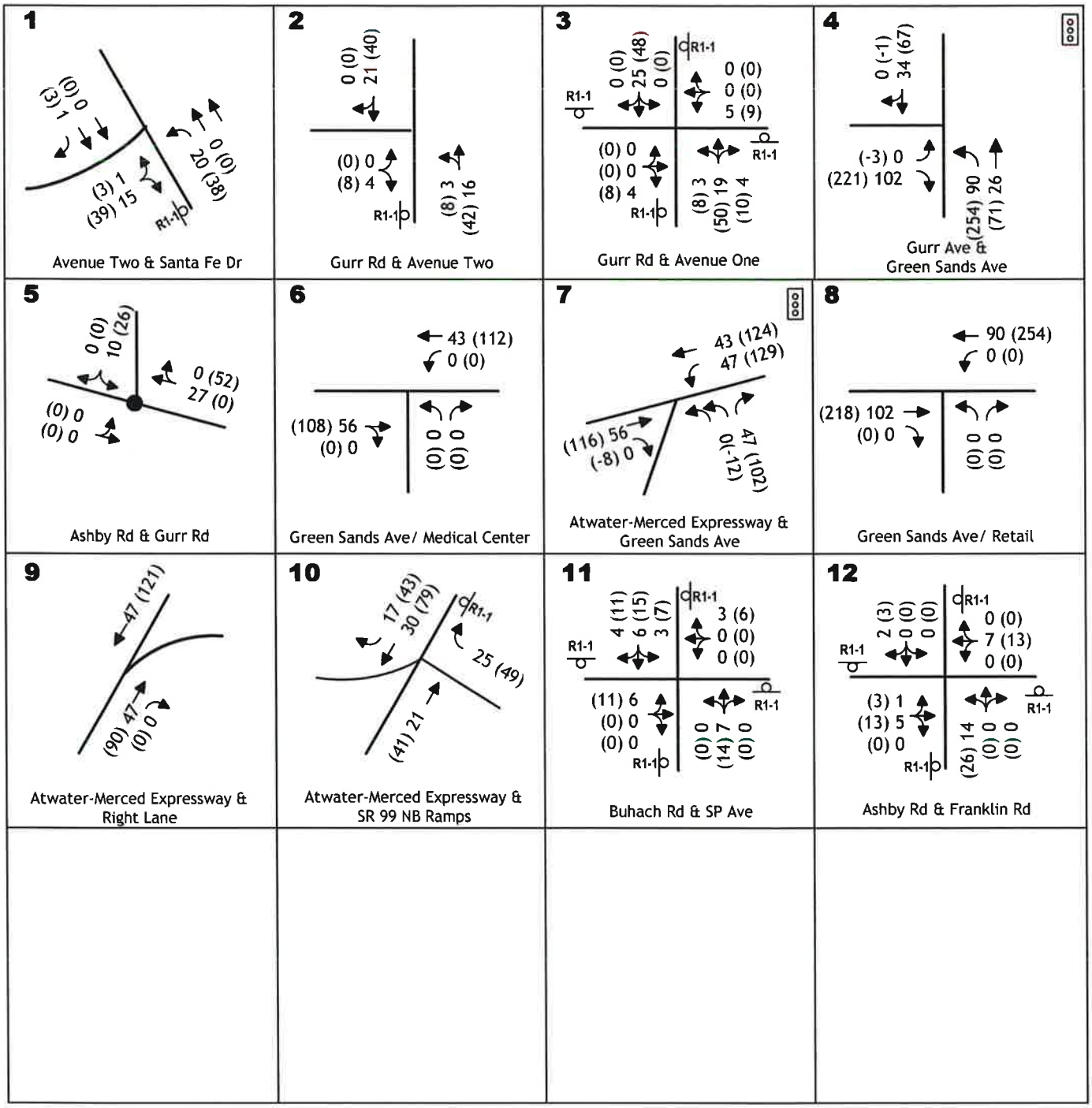
- XX — AM Peak Hour Volume
- (XX) — PM Peak Hour Volume
- Signal
- R1-1 — Stop Sign
- Future Roadway

2016 PROJECT ONLY
SUPERMARKET AND FAST FOOD
TRAFFIC VOLUMES AND LANE CONFIGURATIONS

KD Anderson & Associates, Inc.
Transportation Engineers

3241-01 RA 11/3/2016

figure 3

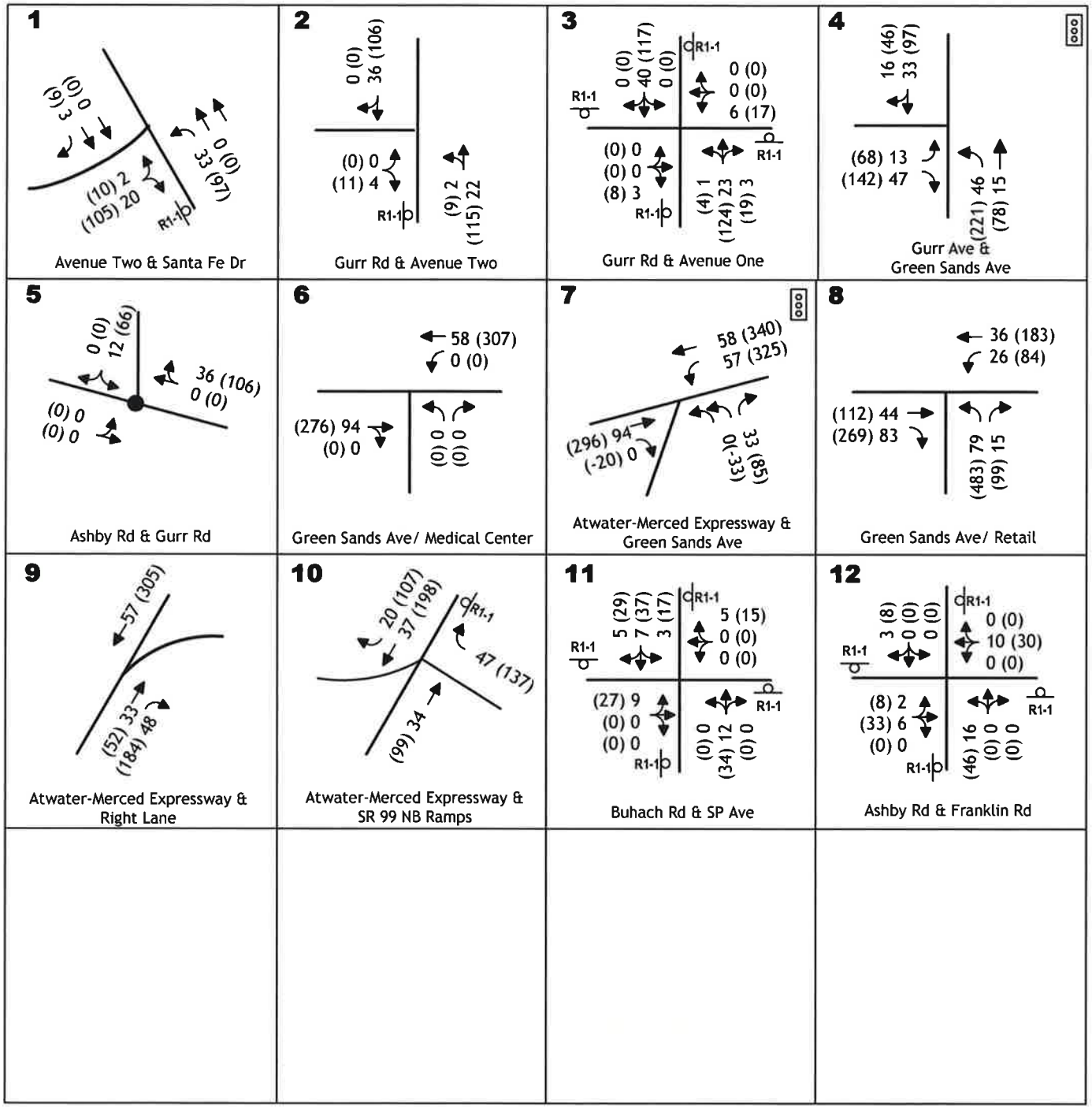


2016 PROJECT ONLY BIG BOX
TRAFFIC VOLUMES AND LANE CONFIGURATIONS

KD Anderson & Associates, Inc.
Transportation Engineers

3241-01 RA 11/3/2016

figure 4



2016 PROJECT ONLY PHASE 1 LIFESTYLE CENTER TRAFFIC VOLUMES AND LANE CONFIGURATIONS

KD Anderson & Associates, Inc.
Transportation Engineers

3241-01 RA 11/3/2016

figure 5

Traffic Conditions with Initial Projects

Roadway Improvement Assumptions. The initial development phases of the Ferrari Ranch subarea would be accompanied by some elements of the overall circulation system, but other elements would be reserved for later installation.

Ashby Road Extension to Buhach Road. While the ultimate plan is to extend Ashby Road westerly under AME to Buhach Road, this improvement is not assumed to accompany any of the four development scenarios addressed in this analysis.

Medical Center Collector Street between Green Sands Avenue and Ashby Road. The initial portion of the Medical Center area will extend the new collector street south from Green Sands Avenue, but this road will not extend to Ashby Avenue under any of the four development scenarios.

AME Right Turn Lane. The connection to AME has been assumed to be created under two of the four development scenarios. The connection would be made under Scenario 2 (supermarket and fast food) and under Scenario 4 (Lifestyle Center).

As development proceeds frontage improvements can reasonably be expected along the City streets abutting individual projects. While these improvements may be installed at locations that are commensurate with the ultimate plan for the area, this analysis does not assume uniform widening of all roads in order to identify the specific capacity improvements needed for each scenario.

Traffic Volumes. The trips associated with each of the four initial development scenarios were assigned to the study area street system, and these volumes were then used to calculate operating Levels of Service assuming no improvements were made. These volume forecasts are included in the appendix to this report.

Impacts / Improvements based on Peak Hour Levels of Service with Initial Phases. Table 14 compares current Levels of Service at each study intersection with and without the traffic associated with the four individual development scenarios. The individual LOS calculation worksheets are included in the appendix. Those locations where conditions in excess of adopted minimum LOS standards are anticipated have been highlighted.

Santa Fe Drive / Avenue Two. Because current conditions at this intersection are within one second of the LOS E threshold, any development in the Ferrari Ranch area would technically move the morning peak hour conditions to LOS E, which exceeds Merced County's LOS D minimum standard. However, the Merced County General Plan allows the County to accept LOS E conditions on side street approaches. The addition of Ferrari Ranch development in the area east of AME would result in conditions that exceed the LOS D minimum in the p.m. peak hour.

The DEIR traffic study identified this traffic impact and noted that a traffic signal would be required. Merced County has noted that the intersection improvements at this location should be coordinated with realignment of Avenue Two from the Gurr Road intersection to Santa Fe Drive.

Gurr Road / Avenue Two. Any development in Ferrari Ranch will exacerbate the LOS F conditions that already occur in the a.m. peak hour at the Gurr Road / Avenue Two intersection. However, conditions in the p.m. peak hour will continue to be LOS C or better, and the volume of traffic at the intersection will not reach the level that satisfies MUTCD warrants during either time period.

The DEIR traffic study identified this impact with Ferrari Ranch subarea buildout and noted that the intersection would need to be signalized. However, alternatives are available. If the intersection was realigned to eliminate the "northern" Gurr Road leg and instead extended Avenue Two easterly to Santa Fe Drive, then an intersection controlled by a stop sign on the Gurr Road approach would operate with an adequate Level of Service (i.e. LOS D or better) with the four development alternatives. Alternatively, a roundabout intersection would deliver good Level of Service.

The other public street intersections addressed by this analysis will operate with Levels of Service that satisfy minimum LOS standards under each of the four development scenarios.

Ferrari Ranch Sub Area Access Intersections. Development within the Ferrari Ranch subarea will result in new intersections, and traffic conditions at new major intersections on Green Sands Avenue have been investigated. Development in the Medical Center / Sports area west of AME will create a ***new Medical Center connection on Green Sands Avenue.*** This intersection will initially include a separate westbound left turn lane and the ultimate northbound approach will be available (i.e., separate left and right turn lanes). However, while a traffic signal is ultimately required, the intersection could operate adequately with a stop sign on the northbound approach if only Scenario 1 development proceeded.

Retail development under Scenarios 2 and 4 will create ***Retail Access to Greens Sands Avenue.*** This location would be provided with a separate westbound left turn lane and the exit would have separate left turn and right turn lanes under either scenario. If Scenario 2 proceeds (Supermarket and Fast Food) alone, this location would operate adequately with a side street stop control.

However, additional improvements will be needed to accommodate the greater trip generation associated with Scenario 4 (Lifestyle Center), and these improvements are consistent with the mitigation requirements of the DEIR traffic study. A traffic signal will be required. The intersection would need to be widened to provide auxiliary lanes, including an eastbound right turn lane on Green Sands Avenue and dual northbound left turn lanes from the retail center.

The retail scenarios will take ***Retail Access to Gurr Road*** at various locations in the area south of Green Sands Avenue. These locations may ultimately require a four-lane Gurr Road, and the DEIR notes that some locations will eventually need to be signalized. However, excluding City requirements for frontage improvements, initial access on Gurr Road would be adequate without signals, and at a minimum northbound left turn lanes would be needed where access is created.

TABLE 14
YEAR 2016 PLUS SUBAREA 3 – FERRARI RANCH DEVELOPMENT SCENARIOS INTERSECTION LEVELS OF SERVICE

Intersection	Scenario	LOS				Improvements	Mitigated LOS			
		AM Impact		PM Impact			AM Peak Hour		PM Peak Hour	
		LOS	Average Delay (sec)	LOS	Average Delay (sec)		LOS	Average Delay (sec)	LOS	Average Delay (sec)
Santa Fe Dr / Avenue Two	2016	D	34	C	21	Traffic signal and right turn lane on Avenue Two	-	-	-	-
	Hospital	E	38	C	23		C	28	-	-
	Supermarket / FF	F	81	F	61		D	36	B	19
	Big Box	E	42	E	36		C	29	B	18
	Lifestyle Center	E	49	F	200		C	31	C	29
Gurr Rd / Avenue Two	2016	**F**	**83**	B	15	Realign Avenue Two	-	-	-	-
	Hospital	F	163	C	20					
	Supermarket / FF	F	263	C	18					
	Big Box	F	175	C	17					
	Lifestyle Center	F	197	C	23		C	24		
Gurr Rd / Avenue One	2016	A	10	A	8	None	-	-	-	-
	Hospital	A	10	A	9					
	Supermarket / FF	0	10	A	10					
	Big Box	A	10	A	10					
	Lifestyle	A	10	B	11					
Green Sands Ave / Gurr Rd	2016	A	8	A	8	None	-	-	-	-
	Hospital	B	13	B	9					
	Supermarket / FF	B	10	B	10					
	Big Box	B	16	B	17					
	Lifestyle Center	A	9	B	15					
Ashby Rd / Gurr Rd	2016	A	4	A	4	None	-	-	-	-
	Hospital	A	4	A	4					
	Supermarket / FF	A	4	A	4					
	Big Box	A	4	A	5					
	Lifestyle Center	A	4	A	5					
Green Sands Ave / Medical Center	2016	-	-	-	-	None	-	-	-	-
	Hospital	C	25	C	17					
	Supermarket / FF	-	-	-	-					
	Big Box	-	-	-	-					
	Lifestyle Center	-	-	-	-					

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TABLE 14 (cont'd)
YEAR 2016 PLUS SUBAREA 3 – FERRARI RACNH DEVELOPMENT SCENARIOS INTERSECTION LEVELS OF SERVICE

Intersection	Scenario	LOS				Improvements	Mitigated LOS			
		AM Impact		PM Impact			AM Peak Hour		PM Peak Hour	
		LOS	Average Delay (sec)	LOS	Average Delay (sec)		LOS	Average Delay (sec)	LOS	Average Delay (sec)
Green Sands Ave / AME	2016	A	9	A	8	None	-	-	-	-
	Hospital	A	10	A	9					
	Supermarket / FF	B	11	B	11					
	Big Box	A	9	B	10					
	Lifestyle Center	A	9	D	37					
Green Sands Ave / Retail	2016	-	-	-	-	Lifestyle Center requires traffic signal and 4 lane Green Sands Ave from AME to Gurr Rd	-	-	-	-
	Hospital	-	-	-	-					
	Supermarket / FF	B	13	C	23					
	Big Box	-	-	-	-					
	Lifestyle Center	B	12	F	256				B	14
AME / NB ramps	2016	A	10	B	12	None	-	-	-	-
	Hospital	B	10	B	13					
	Supermarket / FF	B	11	B	15					
	Big Box	B	10	B	14					
	Lifestyle Center	B	10	C	19					
Buhach Rd / SP Avenue	2016	C	18	B	12	None	-	-	-	-
	Hospital	C	19	B	13					
	Supermarket / FF	C	21	B	13					
	Big Box	C	19	B	13					
	Lifestyle Center	C	20	B	15					
Ashby Rd / Franklin Rd	2016	B	15	C	17	None	-	-	-	-
	Hospital	B	13	C	15					
	Supermarket / FF	C	15	C	17					
	Big Box	C	15	C	18					
	Lifestyle Center	B	14	C	21					

Impacts / Improvements based on Roadway Segment Volumes. The daily or peak hour traffic volume associated with each development scenario was identified and added to current background volumes to create the "plus Projects" conditions noted in Table 15. As indicated, while most roads would not need to be widened to deliver Levels of Service satisfying the applicable minimum standard, under one scenario Green Sands Avenue would need to be widened to meet the minimum Level of Service.

Development of the first phase of the **Lifestyle Center** will increase the traffic volume on ***Green Sands Avenue***, and a four lane section (i.e., two travel lanes in each direction) would be needed from Buhach Road to Gurr Road.

Development under each development scenario will add traffic to the circuitous section of ***Avenue Two between Gurr Road and Santa Fe Drive***. While improvement is not needed based on Level of Service, this roadway should be realigned when adjoining intersection improvements are made.

TABLE 15
EXISTING PLUS SUBAREA 3 FERRARI RANCH DEVELOPMENT SCENARIOS ROADWAY SEGMENT LOS

Roadway	Scenario	Daily Traffic			Lanes	LOS	Mitigation
		Existing	Project	Total			
Buhach Road South of SP Ave (rural uninterrupted LOS C is <8,600, D is <13,800)	2016	5,634			2	C	None Required
	Hospital		220	5,854		C	
	Supermarket / FF		445	6,079		C	
	Big Box		335	5,969		C	
	Lifestyle Center		785	6,419		C	
Ashby Road – Gurr Road to Franklin Rd (Rural isolated stops, LOS C is <8,000, LOS D is <10,700)	2016	2,357	-		2	A	None Required
	Hospital		355	2,892		B	
	Supermarket / FF		845	3,202		B	
	Big Box		910	3,267		B	
	Lifestyle Center		1,915	4,272		B	
Avenue Two – Gurr Road to Santa Fe Drive(Rural isolated stops, LOS C is <8,000, LOS D is <10,700)	2016	5,830			2	C	Realignment needed for safety
	Hospital		500	6,330		C	
	Supermarket – FF		1,315	7,245		C	
	Big Box		950	6,780		C	
	Lifestyle Center		2,430	8,260		D	
Gurr Road – Green Sands to Avenue One (Rural Isolated stops (< 8,000 LOS C , LOS D is <10,700)	2016	2,600	-		2	C	None Required
	Hospital		620	3,220		C	
	Supermarket / FF		2,010	4,610		C	
	Big Box		1,550	4,150		C	
	Lifestyle Center		3,175	5,775		C	
Gurr Road – Avenue One to Avenue Two (Rural Isolated Stops is LOS C <8,000 and LOS D <10,700)	2016	2,858	-		2	C	None Required
	Hospital		500	3,358		C	
	Supermarket / FF		1,570	4,428		C	
	Big Box		1,140	3,998		C	
	Lifestyle		2,645	5,503		C	
Green Sands Ave – Buhach to Medical Center (Urban Arterial LOS C is <7,000, LOS D is <13,600	2016	8,000	-		2	D	None Required
	Hospital		1,820	9,820		D	
	Supermarket / FF		3,385	11,385		D	
	Big Box		2,545	10,545		D	None
	Lifestyle center		6,400	14,400		**E**	Widen to 4 lanes

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TABLE 15 (cont'd)
EXISTING PLUS SUBAREA 3 – FERRARI RACNH DEVELOPEMNT SCENARIOS ROADWAY SEGMENT LOS

Roadway	Scenario	Daily Traffic			Lanes	LOS	Mitigation
		Existing	Project	Total			
Green Sands Ave – Medical Center to AME(Urban Arterial LOS C is <7,000, LOS D is <13,600	2016	8,000	-		2	D	None Required
	Hospital		2,615	10,615		D	
	Supermarket / FF		3,385	11,385		D	
	Big Box		2,545	10,545		D	
	Lifestyle Center		6,400	14,400		E	Widen to 4 lanes
Green Sands Ave – AME to Retail access (Urban Arterial LOS C is <7,000, LOS D is <13,600	2016	3,300	-		2	C	None required
	Hospital		975	4,275		C	
	Supermarket / FF		5,775	9,075		D	
	Big Box		4,985	8,285		D	
	Lifestyle Center		10,705	14,005		E	Widen to 4 lanes
Green Sands – Retail to Gurr Road(Urban Arterial LOS C is <7,000, LOS D is <13,600	2016	3,300	-		2	C	None
	Hospital		975	4,275		C	
	Supermarket / FF		2,850	6,150		D	
	Big Box		4,985	8,285		D	
	Lifestyle Center		4,615	7,915		D*	(*) Widening required to make intersections function
AME – SR 99 NB to right turn (Urban Highway LOS C is <13,100 and LOS D is <15,500)	2016	8,073	-		2	C	None Required
	Hospital		1,640	9,723		C	
	Supermarket / FF		3,570	11,643		C	
	Big Box		2,440	10,513		C	
	Lifestyle Center		5,915	13,988		D	
AME – Right turn to Green Sands (Urban Highway LOS C is <13,100 and LOS D is <15,500)	2016	8,073	-		2	C	None Required
	Hospital		1,640	9,723		C	
	Supermarket / FF		2,390	10,463		C	
	Big Box		2,440	10,513		C	
	Lifestyle Center		4,305	12,378		C	

TABLE 15 (cont'd)
EXISTING PLUS SUBAREA 3 – FERRARI RACNH DEVELOPEMTN SCENARIOS ROADWAY SEGMENT LOS

Roadway	Scenario	Daily Traffic			Lanes	LOS	Mitigation
		Existing	Project	Total			
SR 99 – Franklin to AME - Northbound	2016	2,250	-		4	C	None
	Hospital		28	2,278		C	
	Supermarket / FF		89	2,339		C	
	Big Box		49	2,299		C	
	Lifestyle Center		137	2,387		C 21 pc/mi/ln	
SR 99 – Franklin to AME - Southbound	2016	1,650			4	B	None
	Hospital		53	1,703		B	
	Supermarket / FF		89	1,739		B	
	Big Box		79	1,729		B	
	Lifestyle Center		198	1,848		B 16 pc/mi/ln	
SR 99 – AME to Atwater Blvd - Northbound	2016	2,250			4	C	None
	Hospital		28	2,278		C	
	Supermarket / FF		48	2,298		C	
	Big Box		43	2,293		C	
	Lifestyle Center		107	2,357		C 21 pc/ln/mi	
SR 99 – AME to Atwater Blvd - Southbound	2016	1,650			4	B	None
	Hospital		15	1,665		B	
	Supermarket		89	1,739		B	
	Big Box		41	1,691		B	
	Lifestyle Center		99	1,749		B 15 pc/ln/mi	

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AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF ATWATER
AND
THE FERRARI RANCH OWNERS
RELATING TO THE
FERRARI RANCH PROJECT

JULY 14, 2025

AMENDED AND RESTATED

DEVELOPMENT AGREEMENT

BY AND BETWEEN THE CITY OF ATWATER

AND THE FERRARI RANCH OWNERS

RELATING TO THE FERRARI RANCH PROJECT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "**Amended and Restated Development Agreement**" or this "**Agreement**") is made and entered into as of July 14, 2025, by and between the City of Atwater, a municipal corporation ("**City**"), and the parties owning Ferrari Ranch as indicated by their signatures below (such parties cumulatively, "**Owner**") pursuant to the authority of California Government Code Section 65864 et (City and Owner each are also referred to individually as a "**Party**" and together as the "**Parties**.")

RECITALS

A. The City and the Owner previously entered into a development agreement (the "**Original Development Agreement**") for the Ferrari Ranch Project on May 22, 2017, pursuant to Ordinance No. CS 981 .

B. The City has since been awarded federal funds to install water and sewer infrastructure, eliminating portions of the developer's obligation to construct these facilities at its own expense.

C. The City and the Owner now agree to wholly replace the Original Development Agreement dated May 22, 2017, with this Agreement, to reflect these changes and remove certain obligations that are now obsolete.

D. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted California Government Code section 65864 et seq. (the "Development Agreement Statute"), which authorizes City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. City has not adopted local regulations or procedures for consideration of development agreements, but instead relies on and follows the Development Agreement Statute and the Atwater Municipal Code as applicable.

E. Owner is the legal owner of that certain real property, located in Atwater, California commonly known as Ferrari Ranch, identified as Assessor Parcel Nos. 005-120-045 and 005-120-046, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Property**").

F. Owner proposes that City authorize use and development of the Property consisting of up to 1,574,990 square feet of commercial uses on 102.5 acres, a medical complex with up to 666,100 square feet of hospital and medical office space on 30.l acres, a storm water detention area on 6.5 acres, and associated infrastructure to serve the Property and the immediate vicinity, with 20.4 acres set aside for a potential regional sports center, all as further described in the Ferrari Ranch Planned Development Master Plan described below (the "Project").

G. The Property is part of a larger area of land previously annexed to the City of Atwater concurrently with the Property, as shown on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Annexation Area**"). The Annexation Area consists of the Property plus an additional approximately 199.3 acres also designated for development but not subject to this Development Agreement.

H. City and Owner's representative entered into a reimbursement agreement dated March 11, 2013, which set forth terms and conditions upon which City would be reimbursed for processing Owner's applications for various discretionary approvals, but without committing City to approve any such applications (the "**Processing Agreement**"). The Processing Agreement expired upon annexation of the property.

I. On May 8, 2017, the Atwater City Council held a duly noticed public hearing and took the following actions with respect to the Project (collectively, the "**Initial Approvals**") and then approved the Original Development Agreement:

(1) **Environmental Impact Report.**

(a) Adopted Resolution No. 2943-17 certifying the Ferrari Project Final Program Environmental Impact Report (SCH No. 2014101045) (the "**Project EIR**") as adequate under the California Environmental Quality Act (Public Resources Code section 21000 et seq., hereinafter "**CEQA**") to consider approval of the other Initial Approvals and the Original Development Agreement, and

(b) Adopted Resolution No. 2949-17 (i) adopting findings as required by CEQA supporting certification of the EIR and approval of the Initial Approvals and the Original Development Agreement, including a Statement of Overriding Considerations, and (ii) adopting mitigation measures and a mitigation monitoring and reporting program ("**Mitigation Program**") to be applied to development of the Property and the overall Annexation Area;

(2) **General Plan Amendment.** Adopted Resolution No. 2944-17 amending the City of Atwater General Plan (the "**General Plan**") to allow the uses proposed by Owner on the Property and the overall Annexation Area (the "**General Plan Amendment**");

(3) **Prezoning.** Introduced Ordinance No. CS 980 prezoning the Property and the overall Annexation Area to allow the uses proposed by Owner, conditioned and effective upon annexation of the Annexation Area to the City (the "**Prezoning**"), which Ordinance No. CS 980 at its second reading was adopted by the City Council at a duly noticed public hearing on May 22, 2017 approving the Prezoning;

(4) **Agricultural Designation Removal.** Adopted Resolution No. 2946-17 removing the "Agricultural Preserve" designation applied by Merced County from the Annexation Area, conditioned and effective upon annexation of the Annexation Area to the City;

(5) **Master Plan.** Adopted Resolution No. 2947-17 approving The Ferrari Ranch

Planned Development Master Plan designating specified uses and criteria to be applied to the Property to allow development of the Project (the "**Ferrari Ranch Planned Development Master Plan**" or "**Master Plan**");

(6) **Vesting Tentative Map.** Adopted Resolution No. 2948-17 approving Vesting Tentative Map No. VTM 1701 subdividing the Property into parcels for development of the Project (the "**Ferrari Ranch Vesting Tentative Map**" or "**Tentative Map**"); and

(7) **Annexation.** Adopted Resolution No. 2945-17 authorizing submission of an application to the Merced County Local Agency Formation Commission ("**LAFCO**") requesting approval to annex the Annexation Area to the City of Atwater (the "**Annexation**").

J. The City has determined that no additional environmental impact analysis is necessary under CEQA because this Agreement does not alter the project in any way that affects the Project's environmental impacts from those impacts previously analyzed in the Project EIR.

K. On June 23, 2025, the Atwater City Council introduced Ordinance No. XXX to approve this Agreement. On July 14, 2025 (the **"Approval Date**"), the Atwater City Council held a duly noticed public hearing for a second reading of Ordinance No. XXX, found the Project EIR continues to be applicable to the Project because this Agreement does not alter the Project's environmental impacts beyond those analyzed in the Project EIR, and adopted Ordinance No. XXX approving this Agreement and authorizing its execution (the "**Approving Ordinance**"). As part of the Approving Ordinance, the City Council has made the findings required by the Atwater Municipal Code and the Development Agreement Statute with respect to this Agreement. As required by Government Code section 65867.5, the City Council has found that, among other attributes, this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, and it has been reviewed and evaluated in accordance with the Development Agreement Statute. As required by Government Code section 65865.5, the City Council has adopted findings and imposed conditions on this Agreement that will provide the required flood protection for the Property.

L. City has determined that the Project implements the goals and policies of the General Plan applicable to the Project and the Property and imposes appropriate standards and requirements with respect to development of the Property as to maintain and improve the overall quality of life and of the environment within and around City. As part of the process of approving the Project and the Project Approvals, the City has in accordance with CEQA undertaken the required analyses of potential environmental effects that could be caused by the Project, and City as part of the Project Approvals has imposed mitigation measures to address anticipated adverse effects.

M. Development of the Property is subject to other future discretionary and non-discretionary City approvals and permits (collectively, the "**Subsequent Approvals**") including but not limited to additional subdivision maps and site development review approvals, which if granted by City in accordance with this Agreement shall automatically become part of the Project Approvals for purposes of this Agreement.

N. By entering into this Agreement, in exchange for the benefits it will provide Owner as described herein, City will recognize substantial benefits, including but not limited to the following:

(1) Ensure the productive use of property and foster orderly growth and quality development in City;

(2) Ensure that development will proceed in accordance with the goals and policies set forth in the General Plan and will implement City's stated General Plan policies;

(3) Receive substantially increased property tax revenues;

(4) Benefit from increased employment opportunities for residents that are created by the Project and from continued diversification of City's economic base;

(5) Benefit from availability of high-quality medical services and sports recreation facilities to be developed in the Project for City's residents;

(6) Enhance the image, appearance and identity of City and its primary gateway;

(7) Ensure coordination and consistency in subsequent construction on the Property, in terms of land use, architecture, landscaping, site engineering and design, infrastructure and other elements of development;

(8) Ensure construction of required public facilities, improvements and services as and when expected; and

(9) Induce Owner to incur substantial financial and other commitments to provide public infrastructure and amenities by giving Owner the certainty and predictability in the development process provided by this Agreement.

O. By entering into this Agreement, in exchange for providing the benefits to City described herein, Owner will obtain sufficient certainty and predictability in the development process to justify the substantial investments required to plan and develop a Project that will take many years to fully construct, and will be able to proceed with development of the Project in accordance with the Applicable Law (as defined herein) and the Project Approvals, subject to the terms, conditions and exceptions contained herein. This Agreement will promote and encourage development of the Project by providing Owner and any future owners and lenders a greater degree of certainty of the ability to expeditiously and economically complete the development effort.

P. City and Owner have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project subject to conditions set forth herein. This Agreement is intended to be and should be construed as a development agreement within the meaning of the Development Agreement Statute. City and Owner have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute. The consideration to be received by City and the rights secured to Owner pursuant to this Agreement constitute sufficient consideration to support the covenants and agreements of City and Owner herein.

Q. City, by electing to enter into this Agreement, acknowledges that the obligations of City herein shall survive beyond the term or terms of the present City Council members and that such action

will serve to bind City and future City Councils to the obligations undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both City and its City Council and have been found to be fair, just and reasonable, and City has concluded that the pursuit of the Project will serve the best interests of its citizens and the public health, safety and welfare will be best served by entering into this obligation.

AGREEMENT

NOW, THEREFORE, with reference to the Recitals above, and in consideration of the mutual promises, obligations and covenants herein contained and other considerations, the value and adequacy of which are hereby acknowledged, City and Owner agree as follows:

1. **Definition of Terms.** The following capitalized terms are defined where indicated below, which shall apply when the capitalized terms are used in this Agreement:

Administrative Agreement Amendment: See Section 9.1.4.

Administrative Project Amendment: See Section 9.2.1.

Agreement: See Introductory paragraph.

Annexation Area: See Recital G.

Applicable Law: See Section 5.1.

Approval Date: See Recital K.

Approving Ordinance: See Recital K.

Benefitted Properties: See Section 7.2.1.

Benefitting Approvals: See Section 7.2.2.

Benefitting Improvements: See Section 7.2.2 and Exhibit C.

Benefitting Labor Costs: See Section 7.2.2.

CEQA: See Recital I.

City: See Introductory paragraph.

Construction Codes: See Section 5.4.1.

Cure Period: See Section 11.1.

Development Agreement: See Introductory Paragraph.

Development Agreement Statute: See Recital D.

Development Fees: See Section 5.3.1.

Development Restrictions: See Section 5.7.

Director: See Section 9.1.4.

Effective Date: See Section 4.1.

EIR: See Recital I.

Enforced Delay: See Section 15.9.

Enhanced Infrastructure Financing District or EIF: See Section 7.1.1.

Event of Default: See Section 11.1.

Ferrari Ranch Planned Development Master Plan: See Recital I.

Ferrari Ranch Vesting Tentative Map: See Recital I.

Financing Mechanism: See Section 7.1.1.

General Plan: See Recital I.

General Plan Amendment: See Recital I.

Initial Approvals: See Recital I.

LAFCO: See Recital I.

Local Traffic Improvements: See Section 7.2.5.

Master Plan: See Recital I.

Mitigation Program: See Recital I.

Mortgage: See Section 13.1.

Mortgagee: See Section 13.1.

New Rules: See Section 5.5.1.

Notice of Default: See Section 11.1.

Notice of Intent to Terminate: See Section 12.2.

Notice of Non-Compliance: See Section 10.4.

Notice of Termination: See Section 12.2.

Offsite Land: See Section 5.12.

Original Development Agreement: See Recital A.

Owner: See Introductory paragraph and signature pages.

Party and Parties: See Introductory paragraph.

PDMP: See Recital F.

Portion: See Section 9.1.3.

Prezoning: See Recital I, 3.

Processing Agreement: See Recital E.

Processing Fees: See Section 5.3.2.

Project: See Recital C.

Project Approvals: See Recital F.

Project-Related Infrastructure: See Section 8.1.

Property: See Recital B.

Regional Traffic Improvements: See Section 7.2.5.

Regional Transportation Impact Fee or RTIF: See Section 5.3.1.

Reimbursable Expenses: See Section 7.2.2.

Release from Obligations: See Section 12.3.

Sewer Facilities: See Section 8.1.

Storm Drainage Facilities: See Section 8.1.

Subsequent Approvals: See Recital J.

Tentative Map: See Recital F.

Term: See Section 5.2.1.

Transportation Facilities: See Section 8.1.

Transportation Improvement Plan or TIP: See Section 7.2.5 and Exhibit D.

Water Facilities: See Section 8.1.

2. **Property and Owner.**

2.1 Property. The Property which is the subject of this Development Agreement is described in Recital B.

2.2 Interest of Owner. Owner has a legal or equitable interest in the Property in that it owns the Property in fee simple. Accordingly, this Agreement once executed and effective shall be fully binding and enforceable by the Parties.

3. **Relationship of City and Owner.**

This Agreement has been negotiated and voluntarily entered into by City and Owner. Owner is not an agent of City, and City is not an agent of Owner. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owner joint venturers or partners.

4. **Effective Date and Term.**

4.1 Effective Date. The effective date of this Agreement ("Effective Date") shall be August 13, 2025 which is thirty (30) days after the Approval Date as defined in Recital G. Said date shall function as the Effective Date for purposes of this Agreement.

4.2 Term of Agreement.

The following provisions were established by the Parties as a reasonable estimate of the

time required to carry out the Project, develop the Property, and obtain the public benefits of the Project. City finds that such time and provisions are reasonably necessary to assure City of realization of the public benefits of the Project.

4.2.1 Term. The term of this Development Agreement (the "**Term**") shall commence on the Effective Date and shall continue until June 22, 2037, unless otherwise modified, extended or terminated as provided in this Agreement.

4.2.2 Tolling of Term. The Term shall not begin or continue to run during any time that there is litigation or other action challenging this Agreement or any other Project Approval, or challenging or preventing Owner's efforts to implement the Project, or challenging or preventing City or any service provider from taking the actions necessary to develop or occupy the Project, including associated environmental analyses and determinations. The Term shall be extended for the period of time from the date such litigation or other action is commenced until its final conclusion so as to eliminate the challenge or remove the obstacle. By way of illustration but not limitation, in the case of litigation the tolling and extension period shall start upon filing of such litigation and continue until its dismissal or final entry of judgment. Filing of litigation shall not delay or stop the development, construction or occupancy of the Project or processing and approval of any Subsequent Approval unless enjoined by a court of competent jurisdiction, and City shall not stipulate to the issuance of any such order.

4.3 Term of Project Approvals. Pursuant to the Subdivision Map Act (Government Code section 66410 et seq.), and in particular, Government Code section 66452.6(a), the term of any tentative or vesting tentative map, parcel map or vesting parcel map, and subdivision improvement agreement for the Property or any Portion thereof, shall be the longer of (i) the Term of this Agreement (as it may be extended) or (ii) the term of such map otherwise allowed under the Subdivision Map Act and the Municipal Code (as may be extended by changes to such laws during the life of the map). Pursuant to Government Code section 65863.9, the term of any use permit or other entitlement for development for the Property or any Portion thereof shall be the longer of (i) the Term of this Agreement (as it may be extended), (ii) the term of such permit or entitlement, or (iii) the term of the subdivision or parcel map relating to that portion of the Property that is the subject of the permit or entitlement.

5. Vested Rights/Use of the Property/Applicable Law/Processing.

5.1 Right to Develop. Owner shall have the vested right to develop the Project on the Property in accordance with, and subject only to, the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. For the Term of this Agreement, the City's ordinances, codes, resolutions, rules, regulations and official policies governing the development, construction, subdivision, occupancy and use of the Project and the Property including without limitation the General Plan, the Atwater Municipal Code, and the Master Plan, shall be those that are in force and effect on May 22, 2017 (collectively, the "**Applicable Law**"). In exercising its discretion when acting upon Subsequent Approvals, City shall apply the Applicable Law as the controlling body of law. Notwithstanding the foregoing, Owner in its sole discretion may elect to comply with or receive the benefits of changes in Applicable Law by providing written notice to City of said election. Notwithstanding anything to the contrary contained herein, this Agreement shall not supersede any

other rights Owner may obtain pursuant to City's approval of the Vesting Map or any other vesting tentative tract map or vesting tentative parcel map for the Project.

5.2 Permitted Uses. The permitted uses of the Property, density and intensity of use of the Property, the maximum height, bulk and size of proposed buildings, the general provisions for reservation or dedication of land for public purposes and for the location and maintenance of on-site and off-site improvements and public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in the Project Approvals and this Agreement.

5.3 Applicable Fees, Exactions and Dedications.

5.3.1 Development Impact Fees. City may levy those fees, charges, exactions and dedication requirements relative to development of the Property which were in force and effect as of May 22, 2017 (collectively, the "**Development Fees**"). Unless otherwise set forth in this Agreement, no increase in the amount of Development Fees and no new Development Fees shall be imposed. Notwithstanding the above:

(a) Adjustments to the Regional Transportation Impact Fee ("**RTIF**") may be allowed if and when adopted by the City Council or if already specified or authorized in applicable City codes and regulations, so long as the fee as adjusted is applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance. If City elects to withdraw from the RTIF program and adopt a new local transportation impact fee, the amount of such fee equal to the "return to source" funds the City then was receiving from the RTIF may be levied on future applications for the Project from the time the new fee takes effect, and the entirety of such new City fee may be imposed starting on June 23, 2027.

(b) No increase to any other Development Fee shall be allowed prior to June 23, 2027, even if already specified or authorized in applicable City codes and regulations; provided, City may adjust the amount of its different Development Fees from time to time so long as the total of all City Development Fees does not exceed the total in effect as of the Approval Date (e.g., reducing one fee and increasing another fee by the same amount). Beginning on June 23, 2027, new increases to Development Fees and any new Development Fees adopted since the Approval Date may be applied from time to time during the remainder of the Term so long as the fees as adjusted are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

(c) This Agreement does not limit City's discretion to impose or require payment of fees, dedication of land, or construction of public improvements or facilities in connection with development of the Property that are identified as required to mitigate specific environmental and other impacts of a Subsequent Approval, so long as not inconsistent with the terms and conditions of this Agreement.

(d) Nothing shall restrict the ability of City to impose conditions or fees on the issuance of building permits that lawfully could have been imposed as conditions of approval of an approved tentative map based on a finding that the condition or fee is necessary because

(i) it is required in order to comply with state or federal law, or (ii) failing to impose the condition or fee would place occupants of the Project or the community in a condition dangerous to their health or safety.

5.3.2 Processing Fees. City may levy those fees and charges adopted for the purpose of defraying City's actual costs incurred for the processing and administration of the Subsequent Approvals and any form of regulatory permit, license, land use entitlement, financing district or mechanism, or other approval related to development, use or occupancy of the Property, or to defray the costs of periodically updating City's plans, policies and procedures, including without limitation the fees and charges referred to in Government Code section 66014 (collectively, the "**Processing Fees**") which are in force and effect as of May 22, 2017, so long as and to the extent that such fees are applied uniformly to all similar development on a City-wide basis. City may levy new or increased Processing Fees adopted after the Approval Date so long as (a) such fees are applied uniformly to all similar development on a City-wide basis, (b) the application of such fees is prospective, and (c) the application of such fees would not prevent, impose a substantial financial burden on, or materially delay development of the Project in accordance with this Agreement. By so agreeing, Owner does not waive its rights to challenge the legality or amount of any such new or increased Processing Fee.

5.4 Construction Codes.

5.4.1 Uniform Codes Applicable. Notwithstanding the provisions of Section 5.1 above, to the extent Applicable Law includes requirements under the state or locally adopted building, plumbing, mechanical, electrical and fire codes (collectively the "**Construction Codes**"), the Construction Codes included shall be those in force and effect at the time Owner submits its application for the relevant building, grading, or other construction permits to City; provided, in the event of a conflict between such Construction Codes and the Project Approvals, the Project Approvals shall, to the maximum extent allowed by law, prevail.

5.4.2 Rules for Public Improvements. For construction of public infrastructure, the Construction Codes along with any ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to such construction shall be those in force and effect at the time of execution of the applicable improvement agreement between City and Owner, or at the time of permit approval if there is no improvement agreement.

5.5 New Rules and Regulations.

5.5.1 During the term of this Agreement, City may apply new or modified ordinances, resolutions, rules, regulations and official policies of the City to the Property which were not in force and effect on the May 22, 2017 ("New Rules"), so long as the New Rules are applied uniformly to similar development on a City-wide basis; provided, however, such New Rules shall be applicable to the Project or the Property only to the extent that such application will not modify, prevent or impede development of the Project or conflict with any of the vested rights granted by this Agreement, the Applicable Law, or the Project Approvals. In addition to any other conflicts that may occur, each of the following New Rules shall be deemed to conflict and may not be applied if it would:

(a) Cause or impose a substantial financial burden on, or materially delay development of the Property as otherwise contemplated by this Agreement or the Project Approvals;

(b) Frustrate in a more than insignificant way the intent or purpose of the Project Approvals or preclude compliance therewith including, without limitation, by preventing or imposing limits or controls in the rate, timing, phasing or sequencing of development of the Project;

(c) Prevent or limit the processing or procuring of Subsequent Approvals;

(d) Reduce the density or intensity of use of the Property as a whole, or otherwise require any reduction in the square footage of, or total number of, proposed improvements;

(e) Restrict the types of uses permitted, in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement and the Master Plan; and/or

(f) If any of such ordinances, resolutions, rules, regulations or official policies do not have general (City-wide) applicability.

5.5.2 Notwithstanding Section 5.5.1, City shall not be precluded from applying any New Rules to the Project or the Property under the following circumstances, where the New Rules are:

(a) Specifically mandated by changes in state or federal laws or regulations adopted after the May 22, 2017 pursuant to Government Code section 65869.5;

(b) Specifically mandated by a court of competent jurisdiction taking into consideration the vested rights protection provided by this Agreement and the Development Agreement Statute;

(c) Changes to the Uniform Building Code or similar uniform construction codes, or to City's local construction standards for public improvements so long as such code or standard has been adopted by City and is in effect on a City-wide basis; or

(d) Required as a result of facts, events or circumstances presently unknown or unforeseeable that would otherwise have an immediate adverse risk on the health and safety of the surrounding community.

5.6 Flood Protection. In conjunction with filing the initial application for a detailed development plan approval pursuant to Section 17.44.110 of the Atwater Municipal Code, Owner shall prepare and submit a detailed flood study confirming that areas subject to flooding within the Project outside of the Canal Creek channel itself will meet federal, state and local flood control protection standards as of May 22, 2017.

5.7 Moratorium Not Applicable. Notwithstanding anything to the contrary contained herein, if an ordinance, resolution, policy, directive or other measure is enacted or becomes effective, whether by action of City, by initiative, referendum, or otherwise, and if it imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which affects all or any part of the Property or Owner's ability to develop the Project (collectively, "**Development Restrictions**"), City agrees that such Development Restriction shall not apply to the Project, the Property, this Agreement or the Project Approvals unless it is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code section 8558, provided that to the extent it applies to all or any part of the Project then the Term shall automatically be extended for a period of time equal to the period during which the Development Restriction applies.

5.8 New Taxes and Assessments. No new taxes, assessments or other charges not in force and effect as of May 22, 2017 shall be levied against the Property, the Project or Owner except as specified in this Agreement. No increase in an existing tax, assessment or other charge shall be levied prior to June 23, 2027, even if an increase already is specified or authorized in applicable City codes and regulations. Thereafter, new increases to those taxes, assessments and other charges in force and effect as of May 22, 2017 may be applied during the remainder of the Term so long as the adjustments are applied uniformly to similar development within the City; provided, Owner preserves its right to object to such adjustment for failing to comply with statutory or procedural requirements, including but not limited to nexus standards and CEQA compliance.

5.9 Development of the Project; Phasing; Timing.

5.9.1 No Requirement to Develop. Notwithstanding any provision of this Agreement, City and Owner expressly agree that there is no requirement that Owner must initiate or complete any action, including without limitation development of the Project or any phase of the Project, within any period of time set by City, and City shall not impose such a requirement on any Project Approval or Subsequent Approval except as needed to ensure that necessary infrastructure is completed in an orderly fashion. Nothing in this Agreement is intended to create nor shall it be construed to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Owner under this Agreement if the development fails to occur. It is the intention of this provision that Owner be able to develop the Property in accordance with its own time schedules and the Project Approvals. City acknowledges that Owner at this time cannot predict when or the rate at which or the order in which phases of the Project will be developed, and City recognizes that many factors affect such actions that may not be within Owner's control, including but not limited to market orientation and demand, interest rates and funding availability, and competition. Nothing in this Agreement shall exempt Owner from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof, nor shall this Section 5.9 affect the term of this Agreement or of any related Project Approvals or Subsequent Approvals.

5.9.2 No Restriction on Timing. City agrees that Owner shall be able to develop in accordance with Owner's own time schedule as such schedule may exist from time to time, and Owner shall determine which part of the Property to develop first, and in what sequence, and at Owner's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties'

agreement, it is the Parties' intent to avoid that result by acknowledging that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, and that the timing, rate or sequence of development and occupancy of the Project shall not be restricted or dictated by any means other than as specifically may be recognized in this Agreement.

5.10 Processing and City Discretion.

(a) Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, nor to limit the discretion of City or any of its officers or officials with regard to those Subsequent Approvals that require the exercise of discretion by City, provided that such discretion shall be exercised consistent with the vested rights granted by this Agreement, the Applicable Law and the Project Approvals.

(b) Owner acknowledges that implementation of the Project will require City's consideration and approval of applications for Subsequent Approvals and that City will complete environmental review in connection with those Subsequent Approvals as required by CEQA and other applicable federal, state and local laws and regulations. City's environmental review of the Subsequent Approvals pursuant to CEQA shall utilize the EIR to the fullest extent permitted by law; provided, however, nothing in this Agreement shall be deemed to limit the legal authority of City to conduct any environmental review required under CEQA or other applicable laws and regulations.

5.11 Regulation by Other Public Agencies. The Parties acknowledge that other public agencies not within City's control may possess authority to regulate aspects of development of the Property, and this Agreement does not limit such authority of other public agencies.

5.12 Eminent Domain. The Parties acknowledge and agree that development of the Project-Related Infrastructure (as defined in Section 8.1) is a critical component of the Project and also will result in key benefits to the community generally. The Parties further acknowledge that fulfilling said obligations may require acquisition of additional land outside the Property. If such acquisition is necessary to develop any aspect of the Project Infrastructure, Owner shall use its best efforts to acquire any and all such land ("Offsite Land"), which shall include: a) paying for and obtaining an appraisal prepared by a qualified Member of the Appraisal Institute (MAI), in connection with acquisition of the Offsite Land; and b) offering to acquire the Offsite Land based on such appraisal. In the event Owner is not successful in acquiring the Offsite Land, City and Owner shall meet and confer to determine: (a) whether the need for the Offsite Land is such that City should consider informally intervening to facilitate said acquisition; (b) whether there may be other feasible means of accomplishing the public objectives at issue such that acquisition of the Offsite Land is no longer needed; and (c) whether it would be appropriate for City to consider using its statutory powers of eminent domain to acquire the Offsite Land. In the event that City determines to use its statutory powers of eminent domain to pursue acquisition of the Offsite Land, Owner shall be responsible for all costs associated therewith. Notwithstanding the foregoing, neither this Section 5.12 nor any other provision of this Agreement is intended to abrogate City's responsibilities, in the exercise of eminent domain, to satisfy the substantive and procedural requirements of the Eminent Domain Law (California Code of Civil Procedure Part 3, Title 7, Sections 1230.010-1273.050), as amended from time to time. In the event the Offsite Land is not ultimately acquired, either through private acquisition or eminent domain, or in the event that City determines not to pursue eminent domain of the Offsite Land, Owner's obligations in connection with

that aspect of the Project Infrastructure that necessitated acquisition of the Offsite Land shall terminate and be of no further force or effect in accordance with Government Code section 66462.5 of the Subdivision Map Act.

6. **Obligations of City.**

The Parties acknowledge and agree that Owner's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Owner's decision to annex the Property to the City and process siting of the Project in the City, is material consideration for City's agreement to perform and abide by the covenants and obligations of City, as set forth in this Agreement.

6.1 Reserved.

6.2 Cooperation in Subsequent Approvals.

6.2.1 Owner's Application for Subsequent Approvals. Owner shall be obligated to obtain any and all required Subsequent Approvals to develop the Project. Owner's obligations under this Section 6.2.1 apply to those approvals that are under City's jurisdiction and also to those approvals that may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Project (including, without limitation, the Department of Transportation; agencies having jurisdiction over boundary changes or district formation, flood control, sewer service, water service or fire protection; and agencies having jurisdiction over air quality, biological resources, solid wastes and hazardous wastes and materials). City shall cooperate with Owner in its efforts to obtain such approvals from other agencies and shall at the request of Owner use its best efforts to ensure the timely availability of such approvals.

6.2.2 City's Processing of Subsequent Approvals. City shall cooperate and diligently work to promptly process and consider all applications for Subsequent Approvals, provided they are in a proper form and include payment of any applicable fees and provided that Owner is in compliance with this Agreement. In the event that City and Owner mutually determine that additional personnel or outside consultants need to be retained to assist City to expeditiously process any Subsequent Approval, the cost of any such personnel or consultants shall be paid by Owner but shall be under the direction of City. City shall retain its discretion in its consideration of any and all Subsequent Approvals but shall exercise that discretion in a manner consistent with the Master Plan and this Agreement.

6.3 Availability of Public Services.

6.3.1 Sewage Capacity. To the extent permitted by law, City shall reserve or provide such capacity for sewage transmission and treatment as may be necessary to serve the Project. Owner will consult and cooperate with City from time to time in determining the anticipated timing, sequence and amount of development in the Project so as to give City sufficient advance notice to ensure that adequate capacity is available when needed, so as to avoid delaying development or occupancy of any portion of the Project.

6.3.2 Water System. To the extent required to ensure adequate domestic and

firefighting water capacity and redundancy for the Project, City shall cooperate in connecting the Project's water supply system with the City's. City acknowledges that such connection also benefits City by providing similar redundancy from the Project's water well.

6.3.3 Construction Water. Until the Project's own water supply infrastructure is installed and operating, City agrees to make construction water available to the Project by permitting the Project to connect with the existing City water supply infrastructure at one or more locations Owner may from time to time request, subject to City approval in its reasonable discretion, at Owner's cost and on those terms and conditions and charges customarily applied by City to similar requests consistent with City standards. City also shall permit Owner to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to various portions of the Property for Owner's use in any and all Project grading and construction operations.

6.4 Right to Rebuild. City agrees that Owner, in Owner's sole discretion, may renovate or rebuild the Project or portions thereof during the Term should it become necessary due to natural disaster, changes in seismic, flood or other requirements, or other causes. Any such renovation or rebuilding shall comply with the terms of this Agreement and shall be subject to CEQA as may be required under applicable law.

7. **Financing Mechanisms and Owner Funding.**

7.1 Assessment Districts or Other Funding Mechanisms. The Parties acknowledge that each of them requires financial assistance to build the infrastructure and improvements required to support the Project and serve the Annexation Area, and that City's assurances to cooperate in arranging such assistance is a material consideration for Owner agreeing to proceed with development of the Project. City also acknowledges that development of the Project will provide material benefits, including but limited to employment opportunities for City's residents and tax revenues to support City operations, constituting consideration for City to enter into this Agreement and to provide the assurances in this Section 7.

(a) City shall cooperate in the formation of, or annexation to, one or more assessment districts, geologic hazard abatement districts, landscaping and lighting districts, community facilities districts, utility authority, lease leasebacks, project-specific tax reimbursement tax-exempt financing mechanisms, or other funding mechanisms related to public safety, traffic, sewer, water, fire, storm water, recreation or other infrastructure or public service needs (collectively, "**Funding Mechanisms**") that include the Property and to the extent permitted by law include other properties within or outside the City, to the extent such Funding Mechanism and its provisions are permitted under applicable law, that Owner requests to help fund infrastructure improvements and to ensure the orderly development of the Project.

(b) City shall diligently and expeditiously process applications by Owner necessary to establish such Funding Mechanisms, as long as (i) the application complies with law, (ii) is consistent with City standards, and (iii) will result in no commitment of City general funds. Notwithstanding the foregoing, while City agrees to cooperate in the process of formation of Funding Mechanisms, the final determination as to City's participation in any Funding Mechanism, including an EIFD as defined below (either by pledging property tax increment or otherwise) or any other financing district shall be made by the City Council in its sole and absolute discretion.. City shall cooperate in

good faith with Owner's efforts to obtain the participation of Merced County or other public agencies as needed to establish and implement such Funding Mechanisms. Without limiting the foregoing, among the Financing Mechanisms Owner may request, City acknowledges that Owner initially proposes utilizing one or more Enhanced Infrastructure Financing Districts ("EIFD") pursuant to Government Code section 53398.50 et seq. with participation by Merced County to fund infrastructure of regional significance within and outside the City.

(c) City shall diligently seek to sell any bonds to be issued and secured by such Funding Mechanisms upon the best terms reasonably available in the marketplace.

(d) Notwithstanding the foregoing, Owner retains all its rights to oppose the formation or proposed assessments of new Funding Mechanisms, or any new or increased assessment under a Funding Mechanism, or to request or pursue assessment credits or reductions, unless otherwise provided for herein. Notwithstanding any terms to the contrary, nothing contained in this Agreement shall be construed as waiving City's discretion to the extent required under applicable law in deciding whether and in what form to establish a Funding Mechanism, impose and collect assessments, issue and sell bonds, or undertake any other discretionary action related thereto. Any and all costs associated with forming or joining and then implementing Funding Mechanisms under this Section 7.1 shall be shared equally by City (50%) and Owner and other benefitting property owners (50%).

7.2 Owner Reimbursement by Benefitting Properties.

7.2.1 Reimbursement Obligation. City acknowledges that Owner has expended and will expend considerable funds for approvals and improvements which may benefit properties within the Annexation Area but outside the Property (collectively, the "**Benefitted Properties**") by facilitating their development and use. To the extent that the owner of a Benefitted Property either (i) applies for and is approved to develop the Benefitted Property relying on the Benefitting Approvals (as defined below), or (ii) makes use of a Benefitting Improvement (as defined below) to support either the current use on the Benefitted Property or some new development or use on the Benefitted Property, Owner shall be entitled to reimbursement based on a pro rata, fair share apportionment of the Reimbursable Expenses (as defined below), such reimbursement to come directly from the owner of the Benefitted Property unless Owner agrees to reimbursement via a Financing Mechanism. Notwithstanding the foregoing, Owner agrees that residential development will not be required to provide any payment, and the Reimbursable Expenses will be shared by development on the Property and non-residential development on the Benefitted Properties.

7.2.2 Reimbursable Expenses. City agrees that expenditures by Owner for the following items will qualify for fair share reimbursement by the Benefitted Properties pursuant to the terms of this Section 7.2 (collectively, the "Reimbursable Expenses");:

(a) Preparation, processing and approval of the EIR, General Plan Amendment, Prezoning, Master Plan, Agricultural Designation Removal, Annexation, and General Plan Housing Element update, including related consultant studies and work (collectively, the "**Benefitting Approvals**");

(b) Those portions of Project-Related Infrastructure (as defined in

Section 8.1) to be built or funded by Owner as part of developing the Project, that either are (i) oversized to accommodate use by the Benefitted Properties or (ii) extend services that as of June 22, 2017 were not available to the Benefitted Properties, including related consultant studies and work (collectively, the "**Benefitting Improvements**");

(c) Consultant and legal fees to manage and implement the planning, design, approval and implementation effort, payments to subsidize or reimburse City approval processing and other expenses, and expenses to determine the appropriate water service entity and other utility service providers (collectively, the "**Benefitting Labor Costs**")

7.2.3 Reimbursement Procedure.

(a) If Owner seeks reimbursement from time to time under this Section 7.2, City shall negotiate in good faith with Owner to enter into one or more reimbursement agreements with Owner, in which among other things City will (i) identify the improvements qualifying as Benefitting Improvements, (ii) identify the properties qualifying as Benefitted Properties as to each Benefitting Approval or Benefitting Improvement, (iii) determine the Owner costs qualifying as Reimbursable Expenses, (iv) establish the allocation of Reimbursable Expenses to each Benefitted Property, and (v) establish the timing and method of reimbursement to Owner.

(b) City thereafter shall use its best efforts, to the extent permitted under applicable law, (i) to require as a condition to approval of development or use on the Benefitted Property that Owner be reimbursed by the owner of the Benefitted Property at the earliest opportunity, and (ii) to form, consistent with all applicable federal, state, and local laws and regulations (including without limitation Proposition 218), a local benefit district for the purpose of facilitating the reimbursement of Owner, to the extent such reimbursement is not otherwise provided. Owner shall pay all of City's costs associated therewith and shall indemnify and hold City harmless from and against all claims in connection therewith. Notwithstanding the foregoing, Owner agrees that City's obligations hereunder are limited to facilitating reimbursement from other private property owners as set forth above, and City shall have no obligation to reimburse Owner.

7.2.4 Reimbursement by Financing Mechanisms. To the extent not reimbursed by the Benefitted Properties, Owner shall be entitled to reimbursement from the Financing Mechanisms for Owner's actual costs to install improvements that are included in the Financing Mechanisms beyond Owner's fair share for such improvements, including but not limited to a share of the costs to plan and design such improvements. The details of such reimbursement shall be included as part of establishing each Financing Mechanism.

7.2.5 Credit Against Traffic Fees.

(a) In return for Owner's obligation to install any of the "City Fee Program" facilities listed in Table 9 of the Transportation Improvement Plan ("TIP"), such Table 9 attached hereto as **Exhibit C** (the "Local Traffic Improvements"), Owner shall be entitled to credit its costs against City's Traffic Circulation Fee that otherwise would be payable for development of the Project.

(b) In return for Owner's obligation to install any of the "Regional Fee

Program" facilities (or portions thereof) listed in Table 9 of the TIP, as shown in **Exhibit C** (the "**Regional Traffic Improvements**"), Owner shall be entitled to credit its costs against the RTIF that otherwise would be payable for development of the Project.

(c) City agrees that credit against City's Traffic Circulation Fee and against the RTIF is justified by the many traffic improvements beyond CEQA-required mitigation measures that Owner will provide, in addition to the substantial employment, tax and other benefits that the Project will provide City, the County and their residents.

8. **Owner Obligations.**

8.1 Project-Related Infrastructure. As part of developing the Project, Owner shall build or cause to be built the following public improvements (collectively, the "**Project Related Infrastructure**"):

(a) Any remaining water storage, transmission and distribution facilities that are necessary beyond those that are identified to be federally funded. Such infrastructure is shown in Figure 20 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Water Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(b) Any remaining sanitary sewer facilities that are necessary beyond those that are identified to be federally funded. Such infrastructure is shown in Figure 23 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Sewer Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them;

(c) Any remaining storm drainage facilities that are necessary beyond those that are identified to be federally funded. Such infrastructure is shown in Figure 26 of the Master Plan and in Sheet 7 of the Vesting Map (collectively, the "**Storm Drainage Facilities**"); provided, the Master Plan shall govern if there is any inconsistency between them; and

(d) The traffic, roadway and transportation facilities shown in Figures 14 and 15(a) of the Master Plan, in Sheet 2 of the Vesting Map, and in the TIP attached hereto as **Exhibit D** (collectively, the "**Transportation Facilities**"); provided, the TIP shall govern if there is any inconsistency between them.

The precise phasing of each aspect of the Project-Related Infrastructure will be determined at the time of Subsequent Approvals. Notwithstanding the above, Owner may be eligible for reimbursement by the Benefitted Properties, funding or reimbursement by the Financing Mechanisms, and/or credit against Development Fees, to the extent authorized by this Agreement as to qualifying portions of the Project-Related Infrastructure.

9. **Amendment or Cancellation.**

9.1 Amendment of Agreement.

9.1.1 Modification Because of Conflict with State or Federal Laws. If state or

federal laws or regulations enacted after May 22, 2017 or an action of any state or federal agency prevents or precludes compliance with one or more provisions of this Agreement or the Project Approvals or require changes in plans, maps or permits approved by City, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state laws or regulations or with the actions of state or federal agencies in a manner that protects, to the greatest extent feasible, the vested rights of Owner under this Agreement. Any such amendment of this Agreement shall be consented to by Owner and considered by the City Council. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans. During the interim until this Agreement is so amended, or for the remainder of the Term if this Agreement is not so amended, the provisions at issue shall be deemed suspended but the remainder of this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce; provided, Owner retains the right in Owner's sole discretion to terminate this Agreement and Owner's obligations hereunder in response to suspension of such provisions.

9.1.2 Amendment or Cancellation by Mutual Consent. This Agreement may be amended (in whole or part) in writing from time to time by mutual consent of the Parties and in accordance with the procedures of Government Code section 65868. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by an action which complies with Government Code section 65868.

9.1.3 Amendment as to Portion of Property. When a Party that is successor to Owner as to a portion of the Property ("**Portion**") seeks such an amendment, then such Party may only seek amendment of this Agreement as directly relates to the Portion, and the Party or Parties owning the remainder of the Property shall not be required or entitled to be a signatory or to consent to an amendment that affects only the other Party's Portion so long as such amendment does not directly or indirectly affect the rights or obligations of the Parties owning the remainder of the Property. If any Portion of the Property is subject to a document which creates an association which oversees common areas and any construction or reconstruction on or of the same, then the association shall be deemed to be the "owner" of that Portion of the Property for the purpose of amending this Agreement.

9.1.4 Administrative Agreement Amendments. Notwithstanding the provisions of Section 9.1.2, City's Community Development Director or designee ("**Director**") may, except to the extent otherwise required by law, enter into certain amendments to this Agreement on behalf of City so long as such amendment does not substantially affect (a) the Term; (b) the permitted uses of the Property; (c) provisions for significant reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property; (f) the maximum height or size of proposed buildings; or (g) monetary contributions by Owner as provided in this Agreement ("**Administrative Agreement Amendment**"), and shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment hereto. The Director shall determine whether a reservation or dedication is "significant", and shall evaluate and apply the term "substantially affect" in the context of the Project as a whole.

9.1.5 Amendment Exemptions. No amendment of an Initial Approval or Subsequent Approval, whether done as an administrative amendment or otherwise, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by the

Parties.

9.1.6 Amendment Limitations. In consideration of the scope of benefits to City provided by this Agreement and the Project, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to impacts on City directly attributable to such amendment.

9.2 Amendment of Project Approvals. To the extent permitted by law, any Initial Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner.

9.2.1 Administrative Project Amendments. Upon written request by Owner for an amendment or modification to an Initial Approval or Subsequent Approval, the Director shall determine (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole, and (b) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable Construction Codes, and State and Federal law. If the Director finds that the proposed amendment or modification satisfies the terms of this Section 9.2.1, and will result in no new significant environmental impacts not addressed and mitigated in the EIR or mitigated by conditions to any Project Approval, it shall be determined to be an "Administrative Project Amendment" and the Director may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice or public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or access points, changes in pedestrian path alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure that do not substantially alter the design concepts of the Project, and minor adjustments to the Project site diagram or Property legal description shall be treated as Administrative Project Amendments.

9.2.2 Non-Administrative Project Amendments. Any request of Owner for an amendment or modification to an Initial Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment pursuant to Section 9.2.1 shall be subject to review, consideration and action pursuant to Applicable Law and this Agreement.

10. **Annual Review.**

10.1 Initiation of Review. The annual review date for this Agreement shall be during the thirty (30) days following each anniversary of the Effective Date during the Term. The Director shall initiate the annual review, as required under Government Code section 65865.1, by giving Owner at least thirty (30) days' written notice that the City intends to undertake such review. At least ten (10) days prior to any annual review, City shall deposit in the mail and transmit by electronic mail to Owner a copy of all staff reports and related exhibits concerning contract performance that City will rely on in its annual review.

10.2 Good Faith Compliance. Owner shall provide evidence to the Director demonstrating Owner's good faith efforts to comply with the provisions of this Agreement. Owner shall

be permitted an opportunity to respond to City's documentation and City's evaluation of Owner's performance.

10.3 Procedure. Director shall review Owner's good faith compliance with the terms of this Agreement, after considering any evidence and responses provided by Owner, and shall make written findings and determinations on the basis of substantial evidence as to whether or not Owner has complied in good faith with this Agreement. Director's decision may be appealed to the City Council, which shall hold a duly noticed hearing on the appeal and thereafter uphold or reverse the Director's decision.

10.4 Notice of Non-Compliance. If on the basis of the annual review, the Director, or on appeal the City Council, finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, or if the City determines that Owner has failed to cure a default in accordance with Section 11.2, City may commence proceedings to enforce, modify or terminate this Agreement as follows. City shall give Owner a written "**Notice of Non-Compliance**" and thereafter Owner shall have forty-five (45) days, or such longer period as City and Owner may agree in writing, to respond in writing to such finding by specifying either how Owner's non-compliance has been cured (or is diligently being cured) or the grounds upon which it believes that it is complying with this Agreement. If Owner's response to the Notice of Non-Compliance has not been received by City within the prescribed forty-five (45) days, or such additional period of time as mutually agreed, the Notice of Non-Compliance shall be conclusively presumed to be valid, and the City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5. If Owner responds within the time period provided, the Parties agree to meet in good faith at reasonable times and from time to time for a period of at least sixty (60) days to arrive at a mutually acceptable resolution of the matters asserted in the Notice of Non-Compliance and disputed in the response. If after sixty (60) days, or any extension of time as mutually agreed to by the Parties, the Parties have failed to arrive at a mutually acceptable resolution of such matter(s), City may commence proceedings on termination or modification of this Agreement pursuant to Section 10.5.

10.5 Modification or Termination. If City determines to proceed with modification or termination of this Agreement after following the procedure under Section 10.4, City shall give notice to Owner or successor in interest thereto of its intention to do so in accordance with the procedures for such notice set forth in Government Code section 65868. Nothing in this Section 10 shall prevent or restrict Owner from providing additional evidence as to Owner's compliance with the terms of this Agreement.

10.6 Costs. Costs reasonably incurred by City in connection with the annual review shall be paid by Owner in accordance with the City's schedule of fees in effect at the time of review; provided, Owner shall not be liable for City's costs incurred to terminate this Agreement.

10.7 Written Notice of Compliance. Within thirty (30) days of a written request by Owner, City shall provide Owner with written notice of compliance, in recordable form, duly executed and acknowledged by City. Owner shall have the right in its sole discretion to record such notice of compliance.

10.8 Failure to Conduct Annual Review. If City fails to initiate or complete its annual review in any year, then after thirty (30) days of Owner's notice regarding such failure Owner shall be

deemed in compliance with the terms of this Agreement for the year in question.

11. **Default.**

11.1 Notice and Cure. Failure or unreasonable delay by a Party to perform any material provision herein shall constitute a default of this Agreement. The Party alleging a default shall serve written notice ("**Notice of Default**") upon the defaulting Party, specifying the nature of the alleged default and the manner and period of time in which the default may be satisfactorily cured. If the default is not cured by the defaulting Party within thirty (30) days after actual receipt of the Notice of Default by the defaulting Party or such longer period of time that may be specified in the Notice of Default (the "**Cure Period**"), such uncured default shall be treated as an "Event of Default"; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within the Cure Period, no Event of Default shall be deemed to have occurred if the defaulting Party (a) begins to cure the default within the Cure Period, (b) gives the nondefaulting Party notice before the end of the Cure Period that the cure cannot practicably be completed in the Cure Period, together with an explanation and estimated cure time needed, and (c) diligently pursues such cure to completion. Failure to give notice of an alleged default shall not constitute a waiver of any default.

11.2 Right to Challenge Notice. After receiving a Notice of Default, during the Cure Period a defaulting Party may provide evidence establishing it was never in fact in breach of this Agreement, and may initiate mediation proceedings. Unless curing the alleged default in the interim is reasonably necessary to protect the public health and safety, the defaulting Party need not initiate cure efforts specified in the Notice of Default during mediation and the Cure Period shall not begin to run until mediation either concludes or is terminated by a Party.

11.3 Remedies and Damages. Following expiration of any applicable Cure Period resulting in an uncured Event of Default, the nondefaulting Party may institute legal proceedings to enforce the terms of this Agreement, or in the event of a material Event of Default (as defined in Section 12.2) may terminate this Agreement pursuant to the provisions of Section 12.2, subject to the defaulting Party's ability to require mediation. In no event shall either Party be liable in damages for any default or upon termination of this Agreement, it being expressly understood and agreed that the sole legal or equitable remedy available to either Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to obligations to pay reasonable attorneys' fees and obligations to advance monies or reimburse monies.

11.4 Default as to a Portion of the Property. When an Event of Default applies only to a Portion of the Property owned by a successor to Owner, and does not affect or involve the rights or obligations under this Agreement regarding the remainder of the Property or the separate Owner(s) of such remainder, the proceedings under this Section 11 and the remedies available to City shall be applied to and enforced against only said Portion and the Owner thereof, and this Agreement shall remain in full force and effect as to such remainder and separate Owner(s).

12. **Termination of Agreement.**

12.1 Termination Generally. This Agreement shall terminate (a) upon the expiration of the Term (plus any extensions mutually agreed), or (b) when the Project has been fully developed and (i) all of Owner's obligations in connection therewith and with this Agreement have been satisfied as reasonably determined by City and (ii) the Project and Property have no further need for the rights and protections provided by this Agreement as reasonably determined by Owner. This Agreement may be terminated by mutual consent of the Parties.

12.2 Termination Due to Default.

12.2.1 Default by Owner.

(a) After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by Owner or it is not being diligently cured in the manner set forth above, then in the case of an Event of Default that is alleged to be material, City may, at its option, give notice of its intent to terminate this Agreement pursuant to the Development Agreement Statute ("Notice of Intent to Terminate"). As used herein, City's finding of materiality allowing termination shall be based on the effect of the default in relation to the size and scope of the Project.

(b) The City Council shall hold a duly noticed and conducted public hearing within thirty (30) days after sending Owner the Notice of Intent to Terminate, in compliance with the requirements of the Development Agreement Statute. Owner shall have the right to offer written and oral evidence prior to or at the public hearing.

(c) Following consideration of the evidence presented in said hearing, if the City Council determines that a material Event of Default has occurred and is continuing, and elects to terminate this Agreement, City shall give Owner written notice of termination of this Agreement by certified mail ("Notice of Termination"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by Owner; provided, if Owner files an action to challenge City's termination of this Agreement within such sixty- (60-) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

12.2.2 Default by City. After notice and expiration of the Cure Period process as specified in Section 11 above and completion of any mediation process, if the Event of Default has not been cured by City or it is not being diligently cured in the manner set forth above, then in the case of a material Event of Default, Owner may, at its option, give City a Notice of Termination terminating this Agreement"), and this Agreement shall be deemed terminated sixty (60) days following receipt of the Notice of Termination by City; provided, if City files an action to challenge Owner's termination of this Agreement within such sixty (60) day period, this Agreement shall remain in full force and effect until a trial court has affirmed termination and all appeals have been exhausted (or the time for requesting any and all appellate review has expired). As used herein, Owner's treatment of an Event of Default as material allowing termination shall be based on the effect of the default on Owner's rights and obligations under this Agreement, Owner's ability to develop the Project, or financial commitments and requirements to develop the Project.

12.2.3 Remaining Rights and Obligations. Notwithstanding the

foregoing, a Notice of Termination given under this Section 12.2 is effective to terminate the obligations of the nondefaulting Party under this Agreement only if an Event of Default has occurred and such Event of Default, as a matter of law, authorizes the nondefaulting Party to terminate its obligations under this Agreement. In the event the nondefaulting Party is not so authorized to terminate, the nondefaulting Party shall have all rights and remedies provided herein or under applicable law, including, without limitation, the right to specific performance of this Agreement. Once a Party alleging an Event of Default has given a Notice of Termination, mediation proceedings may be instituted to attempt to resolve the dispute and determine the respective termination rights and obligations of the Parties under this Agreement. Where an Event of Default only involves a Portion pursuant to Section 11.4, termination of this Agreement shall only apply as to that Portion.

12.3 Release from Obligations with Respect to Individual Parcels. The Owner of a Portion may request that City provide certification in recordable form that said Owner and Portion have no further obligations under this Agreement (the "Release from Obligations"), which City in its reasonable discretion shall provide and the Owner may record. Thereafter the assignment provisions of Section 14 shall not apply, and the obligations of this Agreement shall terminate with respect to the Portion and the Owner of such Portion. Notwithstanding the above, the rights provided and protected by this Agreement shall remain in effect as to such Portion and its Owner (and successors) for the remainder of the Term, including without limitation the uses permitted and type and intensity of development.

12.4 Recordation of Termination. Upon termination of this Agreement as to all or part of the Property, City upon request by Owner shall cause a notice of termination to be duly recorded in the official records of Merced County.

13. Mortgagee Protection; Certain Rights of Cure.

13.1 Mortgagee Protection. This Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("Mortgage"). This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

13.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 13.1, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement or as may be otherwise authorized by City.

13.3 Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by City that Owner has defaulted or committed an Event of Default. Each Mortgagee shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed set forth in the City's notice. City, through the Director, may extend the cure periods provided in Section 11 for not more than an additional sixty (60) days upon request of Owner or a Mortgagee.

14. Transfers and Assignments.

14.1 Agreement Runs with the Land. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including but not limited to Civil Code section 1468. Each covenant to do, or refrain from doing, some act on all or any part of the Property, (a) is a burden upon such property, (b) is for the benefit of each other portion of the Property, (c) runs with such properties, and (d) is binding upon each Party and each successive Owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each Party and its property hereunder and each other person succeeding to an interest in such properties. The provisions of this Section 14.1 are subject and subordinate to the provisions of Section 9.1 which permit amendment of this Agreement.

14.2 Owner's Right to Assign. All of Owner's rights, interests and obligations hereunder (or any portion of such rights which Owner wishes to transfer) may be transferred, sold or assigned in conjunction with the transfer, sale, or assignment of the Property, or any Portion thereof, at any time during the Term, provided that no transfer, sale or assignment of Owner's rights, interests and obligations hereunder shall occur without prior written notice to City and approval by the Director, which approval shall not be unreasonably withheld or delayed and shall not be conditioned. The Director shall consider and decide the matter within twenty (20) business days after Owner's notice provided and receipt by the Director of all necessary documents, certifications and other information required by the Director to decide the matter. In considering the request, the Director shall base the decision upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out development of the Property to completion. The Director's approval shall be for the purposes of: a) providing notice to City; b) assuring that all obligations of Owner are allocated as between Owner and the proposed purchaser, transferee or assignee as provided by this Agreement; and c) assuring City that the proposed purchaser, transferee or assignee is financially capable of performing the Owner's obligations hereunder not withheld by Owner.

14.3 Release Upon Transfer. Upon the transfer, sale, or assignment of Owner's rights, interests and obligations hereunder, Owner shall be released from the obligations under this Agreement with respect to the Property transferred, sold, or assigned pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee to the extent that such obligations are expressly assumed by the transferee, purchaser, or assignee. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof pertaining to the Portion of the Property transferred to such transferee, purchaser or assignee, and shall provide all necessary documents, certifications and other

necessary information prior to Director approval if required by the provisions of this Agreement. The allocation of rights and responsibilities between the transferor and transferee shall be set forth in the assignment agreement executed by such parties.

14.4 Owner's Right to Retain Specified Rights or Obligations. Owner may withhold from a sale, transfer or assignment of this Agreement or any Portion o the Property transferred, certain rights, interests and/or obligations which Owner wishes to retain, provided that Owner specifies such rights, interests and/or obligations in a written document to be appended to this Agreement and recorded with the Merced County Recorder prior to the sale, transfer or assignment of the Property. Owner's purchaser, transferee or assignee shall then have no interest or obligations for such rights, interests and obligations and this Agreement shall remain applicable to Owner with respect to such retained rights, interests and/or obligations.

15. **Miscellaneous.**

15.1 Estoppel Certificate. Any Party may, at any time, and from time to time, request written notice from the other Party requesting such Party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying Party the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, or such longer period as may reasonably be agreed to in writing by the Parties. The Director shall be authorized to execute any certificate requested by Owner. The certificate shall be addressed to and may be relied upon by the requesting Party.

15.2 Severability; Conflict. The unenforceability, invalidity or illegality (collectively, "illegality" or "illegal") of any provision, covenant, condition or term of this Agreement (collectively, "provision(s)") shall not render the other provisions of this Agreement illegal, and shall be considered "severed" from this Agreement. In the event of a conflict between this Agreement or any provision hereof and the Project Approvals or any provision thereof, this Agreement shall control.

15.3 Attorneys' Fees and Costs.

15.3.1 Prevailing Party. If City or Owner initiates any action at law or in equity to enforce or to interpret the terms and conditions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled.

15.3.2 Third Party Challenge. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action, including but not limited to City's costs for outside counsel.

15.4 Bankruptcy. The obligations of this Agreement shall not be dischargeable in

bankruptcy.

15.5 Indemnification. Owner agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by Owner, or any actions or inactions of Owner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Owner shall have no obligation under this Section 15.5 with respect to negligence or wrongful conduct of City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been delivered or dedicated to and accepted by City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action for which Owner has a duty to defend or indemnify City then City will cooperate with Owner, will appear in such action and will not unreasonably withhold approval of a settlement otherwise acceptable to Owner. Notwithstanding anything to the contrary set forth in this Section 15.5 or elsewhere in this Agreement, it is understood that each Party or successor or transferee of Owner is providing the indemnities described in this Section 15.5 as to its respective development on its respective Portion only.

15.6 Insurance.

15.6.1 Public Liability and Property Damage Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain in effect a policy of commercial general liability insurance with a per-occurrence combined single limit of not less than one million dollars ($1,000,000.00) and a deductible of not more than ten thousand dollars ($10,000.00) per claim. The policy so maintained by Owner shall name City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

15.6.2 Workers' Compensation Insurance. At all times that Owner is constructing any improvements that will become public improvements, Owner shall maintain Workers' Compensation insurance for all persons employed by Owner for work at the Project site. Owner shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Owner agrees to indemnify City for any damage resulting from Owner's failure to maintain any such insurance.

15.6.3 Evidence of Insurance. Prior to commencement of construction of any improvements which will become public improvements, Owner shall furnish City satisfactory evidence of the insurance required in this Section 15.6 and evidence that the carrier is required to give City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy.

15.7 Notices. All notices required or provided for under this Agreement shall be in writing. A Party may change address by giving notice in writing to the other Party and thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following business day. Notices may also be given by facsimile transmission which shall be deemed

given upon verification of receipt if received during normal business hours, otherwise on the next business day.

Notices required to be given to City shall be addressed as follows:

City Manager
City of Atwater
1160 Fifth St.
Atwater, CA 95301
Fax: (209) 357-6364

With copies to:

Frank Splendorio
Best, Best, and Krieger, LLP
City of Atwater City Attorney
500 Capitol Mall
Suite 2500
Sacramento, CA 95814
Fax: (916) 325-4010

Notices required to be given to Owner shall be addressed as follows:

Ferrari Ranch Owners c/o John P. Ferrari
By Mail: P.O. Box 55 Ballico, CA 95303
By Delivery: 11016 North Ballico Avenue
Ballico, CA 95303
Fax: (209) 667-1013

With copies to:

David Dolter
3068 Oakraider Drive
Alamo, CA 94507
Fax: (925) 718-8532

15.8 Agreement is Entire Understanding. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject of this Agreement.

15.9 Enforced Delay: Extension of Time of Performance. No Party shall be deemed in default of its obligations under this Agreement where a delay or default is due to an act of God, natural disaster, accident, breakage or failure of equipment, enactment of conflicting federal or state laws or regulations, third-party litigation, strikes, lockouts or other labor disturbances or disputes of any character, interruption of services by suppliers thereof, unavailability of materials or labor,

rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, terrorism, inability or delay in obtaining funding through Financing Mechanisms, inability or delay in obtaining use of Offsite Land, unforeseen adverse economic circumstances, or by any other severe and unforeseeable occurrence that is beyond the control of that Party (collectively, "**Enforced Delay**"). Performance by a Party of its obligations shall be excused during, and extended for a period of time equal to, the period (on a day-for-day basis) for which the cause of such Enforced Delay is in effect.

15.10 Dispute Resolution.

15.10.1 Mediation. If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement, City and Owner shall first attempt to resolve it through informal discussions. In the event a dispute cannot be resolved in this manner within twenty-one (21) days, City and Owner shall endeavor to settle the dispute by non binding mediation using the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") or other mutually acceptable mediator. Either City or Owner may commence mediation by providing the other Party a written request for mediation setting forth the subject of the dispute and the relief requested. City and Owner shall cooperate in selecting a mediator (either from JAMS' panel of neutrals or otherwise) and in scheduling the mediation proceedings. If the Parties cannot agree on the appointment of the mediator or the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion and/or set the mediation date. City and Owner agree to participate in any such mediation in good faith, and shall share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by either of the Parties, their agents, employees, experts and attorneys, and by the mediator and any mediator employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending completion of the mediation process. Each Party shall bear its own expenses of mediation, and shall share the mediator fees and other costs of mediation.

15.10.2 Litigation. By agreeing to the mediation process in Section 15.10.1, neither City nor Owner hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Except for an action for equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after completion of the initial mediation session or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after commencement of a civil action, if the Parties agree in writing. Nothing in this Agreement shall prevent the Parties from submitting a dispute to binding or non-binding arbitration if mutually acceptable.

15.11 Further Documents. Each Party shall execute and deliver to the other Party all other instruments and documents as may be reasonably necessary to carry out the purpose of this Agreement in order to provide or secure to the other Party the rights and privileges granted by this Agreement.

15.12 Time of Essence. Time is of the essence in the performance of each and every

covenant and obligation to be performed by the Parties hereunder.

15.13 Recordation of Agreement. Within ten (10) days of the Effective Date, City shall cause this Agreement to be duly recorded in the official records of Merced County.

15.14 Recitals: Exhibits. The foregoing Recitals are true and correct and are made a part hereof. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A: Legal Description of the Property
Exhibit B: Map of Annexation Area and Property
Exhibit C: Local and Regional Traffic Improvements
Exhibit D: Transportation Improvement Plan ("TIP")

15.15 Counterparts. This Agreement may be executed m two or more counterparts, each of which is deemed to be an original.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURES ON NEXT PAGE.]