



## TECHNICAL MEMORANDUM

**DATE:** January 23, 2020

**TO:** Cristian Gonzalez, City Manager, City of Mendota

**FROM:** Wood Technical Consulting Solutions, Inc.

**SUBJECT:** Water Source Feasibility Assessment for the Mendota Valley Agricultural Holdings Project

This technical memorandum provides an assessment of potential water sources that may be utilized to support operation of the Mendota Valley Agricultural Holdings Project (Project). The Valley Agriculture Holdings, LLC (Applicant) seeks to determine a viable water source for cannabis irrigation and operations on a vacant 114-acre parcel (APN 013-030-68s) located in the eastern portion of the City of Mendota (City). Where a potential water source may be feasible, this technical memorandum describes further investigations or actions that may be required to secure and utilize those potential water sources for the Project. Three water source alternatives are under consideration for the Project, including: City municipal water supplies, an onsite groundwater well, and treated City Wastewater Treatment Plant (WWTP) discharges. Onsite rainwater capture and storage may also be used to supplement the Project's water supplies and is examined herein as an additional option to support Project irrigation and operations. Table 1 provides an overview of the feasibility, constraints, and anticipated costs of each option.

### **Project Description**

The Applicant is proposing development of approximately 59 acres (2,570,000 square feet [sf]) of commercial cannabis cultivation and processing facilities within City limits. The 59 acres will be purchased from the City and is a portion of a larger 114-acre vacant and unimproved parcel of land currently owned by the City. The Project would result in the development of 1.2 million sf (29.2 acres) of hoop houses, 60,000 sf of headhouses (two structures each 30,000 sf in size; 1.37 acres), 8,000 total sf (0.18 acres) of employee buildings (i.e. restrooms, break rooms, offices), roads, and other ancillary infrastructure. Project implementation would result in up to 2 million sf (45.9 acres) of cannabis canopy onsite, and require construction of supporting water and wastewater infrastructure, including a viable water source and any onsite water treatment necessary for agricultural irrigation and municipal use, and a septic system to accommodate wastewater.

Implementation of the Project would occur over two phases, and the selected water source infrastructure would be developed concurrently with or prior to Phase 1 (construction of hoop houses, employee buildings and supporting infrastructure). Utilizing a conservative estimate of 2- to

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3-acre-feet per year (AFY) per acre of cannabis canopy for irrigation, the Project would require approximately 100 to 150 AFY of water for cannabis irrigation and operations. An additional 1-2 AFY of potable water is anticipated for municipal uses onsite associated with typical business operations (restrooms, bathrooms, sinks, etc.). Landscape water demand, if any, for landscape screening or planters should be relatively low, but has not yet been calculated.

**City Municipal Water Supplies**

Under this alternative, the Project would utilize the City municipal water supply via a connection to the transmission main network (see Attachment A). The City sources high-quality, potable water from three primary production groundwater wells located on a private well field approximately 3.5 miles northeast of the City, near the San Joaquin River and two emergency backup wells off Bass Avenue (City of Mendota 2009).

Under a lease agreement (Attachment B) with the well field property owners, the City obtains higher-quality groundwater in exchange for lower-quality water suitable for crop irrigation that is pumped from City-operated groundwater wells located west of the Fresno Slough. The lease agreement began in 1999 and runs for 25 years with 5-year renewals upon the end of the agreement, for a period of up to 40 years. The lease agreement may be renegotiated following its termination, which may affect the annual price. Per the existing lease agreement, the City pays a flat annual rate of approximately \$118,940 (in 2020 dollars) to pump up to 2,000 AFY before additional rent must be paid to the property owner. Pumping over 2,000 AFY requires additional annual rent in increments of approximately \$7,723 (in 2020 dollars) per increase of 100 AFY. As of the 2017-18 fiscal year, the City currently pumps approximately 1,800 AFY to meet its water demand of 1,485 AFY. City water demand is projected to increase with anticipated future development to an estimated 2,200 AFY by 2025.

Utilization of City municipal water supplies for the Project would require new infrastructure to convey water from the City's transmission mains to the Project site, and could include one of the two following routes, as discussed with City Public Works:

1. The nearest transmission main is a 10-inch main located approximately 0.45 miles southeast of the Project site, east of West Belmont Avenue and south of the William Robert Johnson Municipal Airport (see Attachment A). The most direct route to the transmission main from the Project site would require construction of a water line across roadway infrastructure and

the San Luis Drain<sup>1</sup>. This route would need to traverse approximately 4 privately owned parcels, which may require easement negotiations with property owners that could complicate Project implementation. While property owners and infrastructure management agencies may be willing to grant easements, their cooperation is not guaranteed.

2. Alternatively, a longer route that is entirely within the public right-of-way adjacent to transportation corridors could be selected to connect to a 12-inch main near the intersection of Belmont Avenue and San Benito Avenue (Highway 180). This route would require City approval, but would avoid potentially lengthy and costly negotiations with adjacent property owners. However, if the decided route crosses the Union Pacific Railroad (UPRR) which runs perpendicular to Belmont Avenue, an encroachment permit from the UPRR Company would be required. In order to obtain an encroachment permit, the Applicant would need to submit an online application accompanied by complete engineering plans and a non-refundable \$3,055 application fee, in addition to reimbursing the UPRR Company for all expenses incurred for application review (UPRR 2019a). Plans for pipeline crossing must also be compliant with UPRR guidelines<sup>2</sup> for railway engineering standards (UPRR 2019b). This pipeline would be a dead-end pipe terminating at the Project site.

While preliminary conversations with City Public Works are optimistic regarding a connection to City infrastructure and municipal water supplies, use of City municipal water would require additional inspections to determine connection to, and capacity of, a proposed transmission line, drilling a water line, and associated expenses. Infrastructure installation may necessitate horizontal directional drilling methods to avoid impacts to existing infrastructure, which would be determined during geotechnical investigation determining the appropriate path and method for installation. Because construction of water infrastructure would require City permits as well as potential approvals from adjacent property owners and the Airport, the precise water line route would be determined through the permitting process. Therefore, the most feasible water line route would be determined upon further investigation by the Applicant's engineers and agreed upon with the City.

Under the City's existing lease agreement, utilization of additional groundwater supplies to serve the Project is considered a feasible option that would require payment of additional rent to the lease operator through the City. While City supplies can currently accommodate an increase of 100 to 150

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<sup>1</sup> The San Luis Drain is a portion of a drainage feature for the San Luis Unit, which is part of both the federal Central Valley Project and the California State Water Project. Authorized by the San Luis Act in June 1960 (Public Law 86-488), it is jointly operated by the Bureau of Reclamation and the California Department of Water Resources (Bureau of Reclamation 2019).

<sup>2</sup> UPRR follows the AREMA Manual for Railway Engineering Chapter 1 – Part 5 Pipelines. To purchase a copy of the AREMA guidelines, a request must be sent to AREMA (UPRR 2019b).

AFY to support the proposed Project, the increased total could approach the maximum allocation of 2,000 AFY under the existing annual City payment. Given the projected increase in City water demand, payment of increased rent to allow City pumping to exceed 2,000 AFY would likely be required over the life of the Project if not upon Project implementation. The amount paid may also be subject to change throughout the life of the Project upon lease expiration. While a series of 5-year extensions are possible under the existing agreement, the agreement expires in 2039 and would at a minimum require renegotiation, which may affect price. The Applicant may also negotiate with the City to pay a fair share fee for the additional exchange of water necessary to serve the Project. Further coordination with the City is required to determine the stipulations of entering such an agreement and determine annual cost.

### Onsite Well Construction

Groundwater is the primary source of water for agricultural irrigation within the region. Groundwater pumped from wells drilled onsite would be a potential alternative for the Project, which would involve construction of a new groundwater well(s) on the 59-acre Project site parcel. Construction of a water well system is typically comprised of drilling the well and installation of water distribution lines to buildings, pumps and associated wiring, pressure tanks, and any water treatment equipment that may be necessary depending on water quality (National Ground Water Association [NGWA] 2019).

Groundwater underlying the Mendota area Project site is in the Delta-Mendota Subbasin of the San Joaquin Valley Groundwater Basin. Within this groundwater basin, groundwater resources are confined within two water bearing layers – the upper aquifer and the lower aquifer – separated by an impermeable layer of fine-grain clay sediments referred to as the Corcoran Clay layer. As the Corcoran Clay layer is impermeable to groundwater movement, groundwater levels in upper and lower aquifers are generally independent of each other and do not mix. Within the upper aquifer, the depth to groundwater can vary by season, but is generally encountered at a depths ranging from 25 to 60 feet below ground surface (bgs) (Department of Water Resources [DWR] 2019a). Depth of the Corcoran Clay layer is between 100 to 500 feet bgs and can be up to 160 feet thick in some places, resulting in much greater depths to groundwater within the lower aquifer.

Groundwater quality differs between the upper and lower aquifers, but generally, water quality is low in the upper aquifer and high in the lower aquifer (DWR 2006).

1. The *upper aquifer*<sup>3</sup> is loosely divided into two zones, the shallow zone and the deep zone. The shallow and deep zones are divided by the A-Clay, a fine-grained<sup>4</sup> layer located 70 to 130

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<sup>3</sup> Defined as the water-bearing strata above the Corcoran Clay layer.

<sup>4</sup> Predominantly composed of clay and silt.

feet bgs. In the Project vicinity, concentrations of total dissolved solids (TDS) in the shallow zone (above ~70 feet) range from 1,200 mg/L to as high as 6,200 mg/L. TDS in the deep zone (below ~130 feet) range from 5,000 mg/l to 7,000 mg/L. These values indicate very high amounts of TDS in the upper aquifer, and that TDS concentrations generally increase with depth. Annual monitoring data shows TDS concentrations have been increasing since 2000 due to the easterly migration of a highly saline groundwater front, and may likely continue to vary and increase throughout the life of the Project.

2. High-quality water may be accessed in the *lower aquifer* beneath the Corcoran Clay layer at around 550 bgs, however, pumping from the lower aquifer is likely to be highly regulated due to local, regional, and state regulations on groundwater quality, levels, and the potential for subsidence.

Groundwater sourced from an onsite well would likely require further treatment based on the existing salinity concentrations of groundwater beneath the Project site to be suitable for crop irrigation and Project operations. For instance, high concentrations of TDS limit the suitability of a water source for agricultural irrigation and may have detrimental impacts on cannabis cultivation. Water quality (i.e. TDS concentration) required for cannabis is unclear and the effects of salinity on cannabis require further research. Groundwater with TDS concentrations lower than 600 mg/L may be used as an agricultural supply and is generally suitable for all crops; however, concentrations exceeding 1000 mg/L are generally not suitable for salt-sensitive crops (SWRCB 2016). This option therefore would likely require Reverse Osmosis (RO) or other desalination techniques to remove TDS any other potential contaminants. Groundwater testing at the Project site would therefore be required to confirm contaminant levels, including TDS, and determine groundwater quality to inform the level of treatment and type of system required for use.

Regarding regulatory requirements, construction of a well would be subject to local and state regulations including the Sustainable Groundwater Management Act (SGMA), SWRCB Cannabis Cultivation Policy groundwater requirements, and DWR Bulletin 74 for well standards (DWR 2019a; SWRCB 2019a; DWR 2019b). The Groundwater Sustainability Plan (GSP) for the City and Delta-Mendota Subbasin is currently being developed under SGMA and may affect restrictions on groundwater pumping in the Mendota area. The Draft GSP for the Delta-Mendota Subbasin is anticipated for public release in early 2020, and will be implemented in 2021 or 2022. Therefore, while the GSP is unlikely to affect well construction, the GSP has some potential to affect well operations. The Applicant would need to obtain permits from the Fresno County Department of Public Health, Environmental Health Division before construction, modification, or destruction takes place. Any water well construction activities must be performed only by a licensed C-57 Water Well Contractor and must meet applicable local and state water standards. Installation, repair, or replacement of a well pump must be performed by a person who possesses a valid C-57, C-61 or Class A contractor's

license. Depending on site conditions, a licensed California geologist or hydrogeologist may be consulted on well siting, design, and/or construction (DWR 2019b).

In addition to existing regulatory requirements, groundwater pumping and exchange in the Mendota area has been subject to various agreements between the Bureau of Reclamation, the Regional Water Quality Control Board, and local water districts, and other landowners were developed under Settlement Agreements that restrict the depth and amount of groundwater pumping. Under Settlement Agreements 1 and 2 (1998), groundwater wells must be perforated at a depth of at least 70 feet bgs to protect water quality and limit surface water drawdowns due to interconnected surface water in the upper aquifer system. Municipal wells located approximately 1.2 miles north of the Project site and west of the Fresno Slough that pump groundwater from the lower aquifer are drilled to depths of 250 to 550 bgs (State Water Resources Control Board [SWRCB] 2019a).

The cost of a water well system can vary greatly depending on several variables, including well depth and diameter, pump type, other materials used in the well drilling process, and cost of inspection and maintenance. Drilling a new well to over 70 feet bgs in the upper aquifer would cost approximately \$400,000 to \$500,000 in the Mendota area, independent from any onsite treatment required. Drilling to approximately 550 feet bgs in the lower aquifer would cost upwards of \$1 million, but may not require onsite treatment for use. Costs associated with this alternative may also include an RO system depending on existing contaminant concentrations and levels of TDS. Water treatment infrastructure may vary significantly in price depending on the source water quality and the system provider, and further analysis of onsite groundwater quality is required to determine the treatment necessary for irrigation of recreational cannabis. Professional well installation and inspection costs can also vary significantly depending on the level of service provided.

### **City Wastewater Treatment Plant (WWTP)**

This alternative would involve obtaining City WWTP discharges and treating onsite to a level suitable for cannabis irrigation and Project operations. The 120-acre WWTP is located directly northwest of the Project site and consists of aerated and facultative lagoons, percolation ponds, and 57 acres of shallow basins for wastewater treatment and disposal. The WWTP treats wastewater to a secondary un-disinfected level that is unsuitable for irrigation of crops for human consumption, and disposes a majority (>80%) of the effluent through evaporation ponds. Permitted treatment capacity of the WWTP is 2.0 million gallons per day (MGD) with a disposal capacity of 1.12 MGD, which equates to approximately 1,255 AFY. The disposed 1,255 AFY is available for use, however, it would require further tertiary treatment or an RO system to reach the desired water quality for Project operations.

The WWTP discharges undergo secondary treatment prior to disposal, which removes biological nutrients and remaining solids through bacterial decomposition. Tertiary treatment is the final cleaning process that improves wastewater quality before it is reused, recycled, or discharged into

the environment. Bacteria, viruses, parasites, and other microorganisms that are harmful to human health are also removed at the tertiary stage. Tertiary treatment of wastewater is typically achieved through chlorine treatment or ultraviolet (UV) light disinfection (Environmental Protection Agency [EPA] 1999). UV disinfection is a widely accepted solution for municipal wastewater disinfection, and is a safe and cost effective alternative to chlorine treatment. The effectiveness of a UV disinfection system depends on several variables such as the characteristics of the wastewater, the intensity of UV radiation, and the radiator configuration. Use of a UV treatment system therefore requires further investigation to determine quality of the source wastewater, feasibility of UV treatment, and other treatment (i.e. RO) necessary for Project irrigation and operations.

The City has indicated that the Applicant could pursue this alternative and that the WWTP discharges could be obtained at no cost. While this alternative would therefore be lowest in the direct cost for water, additional infrastructure improvements (i.e. tertiary-level water treatment) would be necessary for implementation. Such improvements would include a water line connection either directly to the WWTP discharge structure or pumped from the disposal systems (percolation ponds and shallow evaporation basins), and tertiary treatment and/or RO infrastructure. The type of necessary filtration infrastructure would depend on the impurities in the source wastewater, and requires further analysis and wastewater operator contact to determine the most viable system to meet the Project's needs and treat water to a level suitable for irrigation of recreational cannabis.

Cost incurred from this option would include the construction of water infrastructure to convey secondary treated water from the WWTP to the Project site, and installation and maintenance of the tertiary treatment or RO system. Tertiary treatment and RO systems vary significantly in price depending on several factors, including capacity, source water quality, and provider. Further investigation and a quote from a professional provider would therefore be required to determine a cost range for the type of system required for Project implementation.

### **Onsite Rainwater Capture**

Though not likely to meet the complete demands of the Project, onsite rainwater capture is a potential supplement to the water source alternatives described herein. The Project proposes to construct a stormwater capture basin to retain stormwater conveyed from buildings and impervious surfaces onsite, which could potentially supplement the Project's water supplies. Precipitation that falls on the proposed hoop houses and buildings on the Project site would be conveyed to the stormwater capture basin to be stored for future use. Fresno County receives an annual average of 11.5 inches of precipitation, which has fluctuated between 8.65 and 13.65 inches per year in the past three years on record (National Weather Service 2018). Precipitation frequency and intensity is also projected to increase in variability with future climate change, the impact of which must be considered in any reliance on rainwater supplies for Project operations.



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As described above, the Project would develop approximately 1,340,000 sf of new buildings including hoop houses, headhouses, and employee buildings, which would potentially be lined with gutters and drains to convey runoff to the stormwater capture basin. Using the total building area and the Rational Method Equation<sup>5</sup> for calculating runoff, the Project could capture approximately 21.9 AFY on average to use for irrigation or to supplement emergency uses (e.g. to supply the fire tank). Although hoop houses may not have gutters installed to directly capture precipitation, the hoop houses would still generate concentrated runoff that could be captured by onsite drains and funneled into surface storage basins or subsurface cisterns. This calculation assumes that rainwater retention infrastructure (i.e. gutters and drains to convey runoff to the stormwater capture basin) is established to capture the maximum amount of runoff from each building, and does not include the conveyance of sheet flow from other impervious surfaces (e.g., paved parking areas or roads) into the stormwater capture basin.

**Preliminary Conclusion**

The water sources available to the Applicant are varied, due to environmental and regulatory constraints. While additional research on all options is recommended, Applicant and additional City input should be solicited before pursuing each alternative further.

Based on ease of access to clean water supply, establishing a connection to the City municipal water supply would be the most straightforward. Due to the relatively distant locations of the nearest water mains, this option requires additional coordination between the City and Applicant, or between the Applicant and public and private property owners, to install the water line extension. While the Applicant has indicated that a closer water main may be present, no evidence could be found to support the statement in provided mapping or discussion with City staff. Visual observations are being made to confirm. An anticipated route and connection point is necessary for further investigation, and an associated cost estimate for water line installation can be assembled.

**Attachments**

Attachment A – City of Mendota Water System Map

Attachment B – B&B Ranch Water Well Lease Agreement

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<sup>5</sup> The Rational Method Equation was developed to model peak flow rates of small, urban watersheds, and can be used to calculate runoff from various surfaces (Natural Resources Conservation Service n.d.).



**Table 1. Water Source Alternatives Overview**

Water Source Alternative	Feasibility Overview	Constraints	Costs to Consider
<p><b>City Municipal Water Supplies</b></p>	<ul style="list-style-type: none"> <li>High-quality treated municipal groundwater supplies would be conveyed to the Project site through City transmission mains and constructed water infrastructure</li> <li>The Applicant may need to enter an agreement with the City to increase municipal groundwater allocations</li> <li>Would not require onsite water treatment</li> </ul>	<ul style="list-style-type: none"> <li>Requires connection to the City's transmission main 0.45 miles southeast of the Project site</li> <li>Requires routing new infrastructure south along existing Right of Way and then north along West Belmont Avenue, or beneath West Belmont Avenue and the San Luis Drain</li> <li>Construction may traverse at least 4 other parcels</li> <li>Permits and approvals required from the City, UPRR, and adjacent landowners depending on route</li> <li>May need booster pump and/or tank due to length of dead-end line</li> </ul>	<ul style="list-style-type: none"> <li>Water infrastructure components to connect to transmission main (e.g. pipelines, pumps, meters)</li> <li>Construction costs; trenching and potential horizontal directional drilling</li> <li>Annual rent (~\$7,723 per 100 AFY) to allow City pumping to exceed 2,000 AFY</li> <li>One-time \$3,055 application fee for UPRR encroachment permit (if required) in addition to costs incurred by UPRR for application review</li> <li>Cost of municipal water per gallon</li> </ul>
<p><b>Onsite Well Construction</b></p>	<ul style="list-style-type: none"> <li>New private groundwater well would be drilled to at least 70 feet bgs and ancillary infrastructure would be constructed on the Project site</li> </ul>	<ul style="list-style-type: none"> <li>Potential constraints due to groundwater levels and quality</li> <li>Groundwater may require further onsite treatment (e.g. RO) for cannabis irrigation</li> <li>Subject to local and state regulations for well construction, maintenance, and groundwater extraction (e.g. City Municipal Code, SWRCB, DWR)</li> </ul>	<ul style="list-style-type: none"> <li>Well drilling and contractor costs dependent on the well size, depth, pump types, and other materials</li> <li>Inspection and maintenance of well facilities by a licensed professional</li> <li>Potential onsite water treatment system (e.g. RO)</li> </ul>
<p><b>City WWTP</b></p>	<ul style="list-style-type: none"> <li>WWTP discharges of 1.12 MGD (total of 1,255 AFY) are available for use at no cost to the Applicant</li> <li>WWTP discharges would be conveyed to and treated at the Project site</li> </ul>	<ul style="list-style-type: none"> <li>Requires new infrastructure to convey WWTP discharges to the Project site</li> <li>Requires further onsite treatment and disinfection (e.g. RO) for cannabis irrigation</li> </ul>	<ul style="list-style-type: none"> <li>Installation of water distribution lines to buildings, pump and associated wiring, pressure tanks</li> <li>Onsite water treatment system (e.g. tertiary treatment or RO)</li> </ul>
<p><b>Onsite Rainwater Capture</b></p>	<ul style="list-style-type: none"> <li>Precipitation captured Project structures (e.g. hoop houses, headhouses, employee buildings) and conveyed to a stormwater catch basin</li> </ul>	<ul style="list-style-type: none"> <li>Not sufficient to meet Project water demands; would supplement options listed above</li> </ul>	<ul style="list-style-type: none"> <li>Installation of stormwater capture and conveyance system</li> <li>Storage and pump system for reuse</li> </ul>

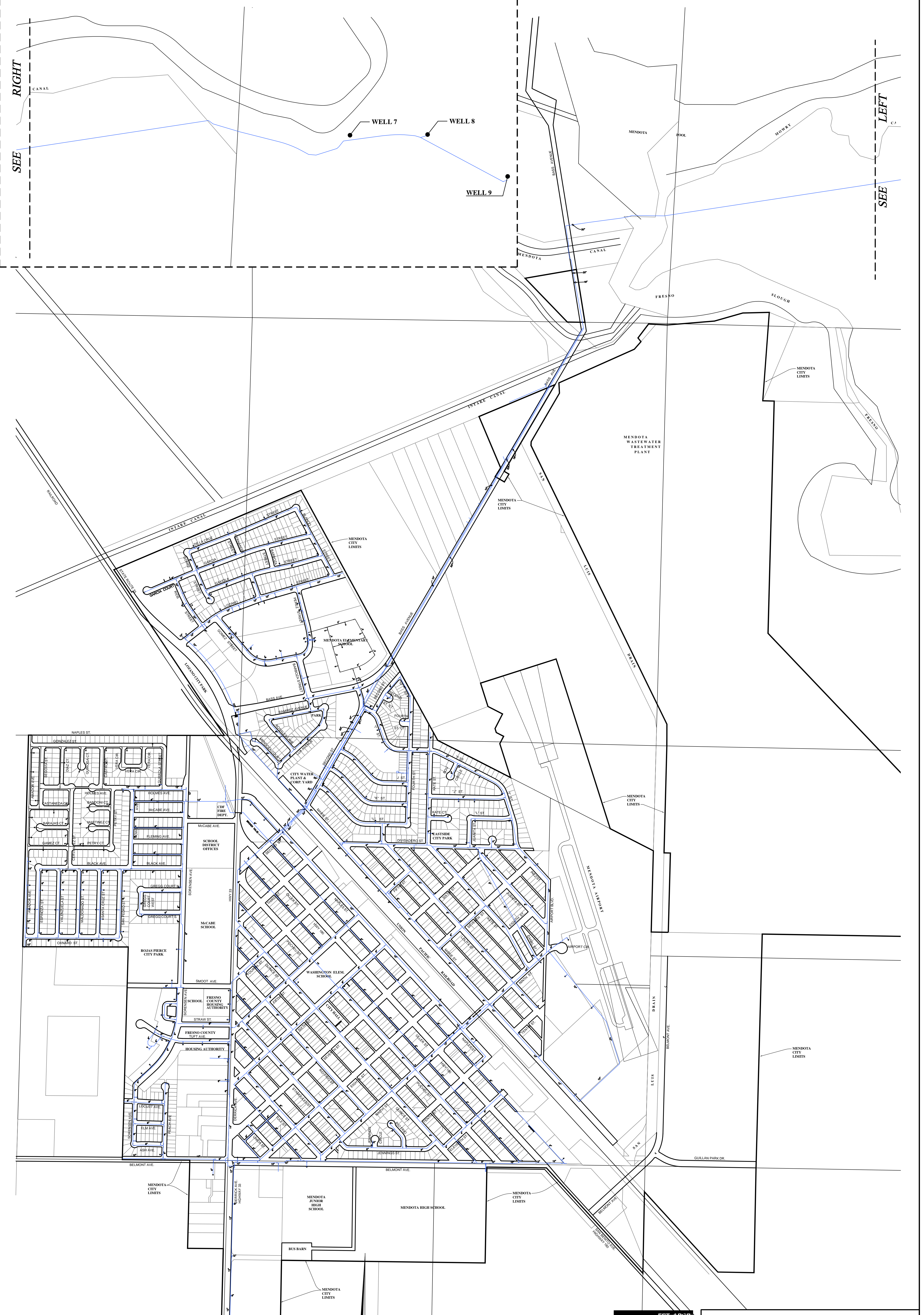
	<ul style="list-style-type: none"><li>• Would supply a maximum average of 21.93 AFY if buildings only were outfitted with</li></ul>	<ul style="list-style-type: none"><li>• Maximum water supplies requires a capture and conveyance system installed on all buildings</li></ul>	
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## References

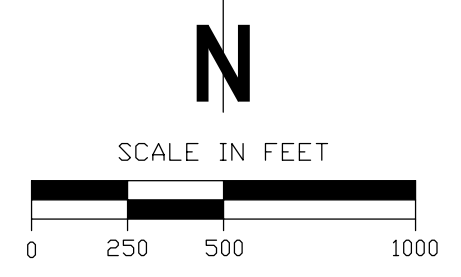
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**Attachment A**  
**City of Mendota Water System Map**





WHERE UNDERGROUND AND SURFACE STRUCTURES ARE SHOWN ON THESE MAPS, THE LOCATIONS, DEPTH AND DIMENSIONS OF STRUCTURES ARE BELIEVED TO BE REASONABLY CORRECT, BUT ARE NOT GUARANTEED. SUCH STRUCTURES ARE SHOWN FOR THE INFORMATION OF THE USER, BUT INFORMATION SO GIVEN IS NOT TO BE CONSTRUED AS A REPRESENTATION THAT SUCH STRUCTURES WILL, IN ALL CASES, BE FOUND WHERE SHOWN, OR THAT THEY REPRESENT ALL OF THE STRUCTURES WHICH MAY BE ENCOUNTERED.



- LEGEND**
- WATER VALVE
  - FIRE HYDRANT
  - WATER MAIN
  - CITY LIMITS

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**CITY OF MENDOTA**  
**WATER SYSTEM MAP**  
 DATE: 04/01/2019



**Attachment B**

**B&B Ranch Water Well Lease Agreement**

## LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into this 14<sup>th</sup> day of December, 1999, by and between BB LIMITED, a California limited partnership (hereinafter referred to as "Lessor") and the CITY OF MENDOTA, a Municipal corporation of the State of California (hereinafter referred to as "Lessee") with reference to the following facts:

A. Lessor is the owner of a 1172 acre ranch located in the County of Fresno, State of California, and has for many years been extracting ground water from sources lying beneath the ranch to irrigate its crops. Historically the ground water extracted by Lessor has been of a quality which would render it useable for domestic purposes after such treatment as may be required by applicable governmental regulations for such use.

B. The City of Mendota requires potable water for domestic supply purposes and possesses nonpotable water suitable for irrigation purposes to provide Lessor in exchange for the right to draw potable water from the property of Lessor.

C. The parties enter into this Lease Agreement with the intention of facilitating the withdrawal by Lessee of potable water from Lessor's property and the replacement of such water with nonpotable irrigation water, all pursuant to the terms and conditions hereof.

For and in consideration of the following terms and conditions, Lessor hereby Leases to Lessee the Property and Premises (hereinafter defined) located in the County of Fresno, California.

### ARTICLE I DEFINITIONS

**Section 1.1 "Bridge"** shall mean the facility to be acquired and maintained by Lessee under Section 6.6.

**Section 1.2 "Irrigation Water"** shall mean the water required to be delivered by Lessee to Lessor under Section 3.3.

**Section 1.3 "Lease Year"** shall mean a 12-month period beginning December 1 and ending the following November 30.

**Section 1.4 "Premises"** shall mean the right to construct, operate and maintain the facilities described in Article 6, to occupy portions of the Property necessary to construct, operate and maintain such facilities as such area is described in Exhibit B and to withdraw water from the Property.



**Section 1.5 "Property"** shall mean the entire property of which the Premises are a part consisting of a 1172 acre ranch more particularly described in Exhibit A attached hereto.

**Section 1.6 "RUS"** shall mean the Rural Utilities Service of the United States Department of Agriculture.

**Section 1.7 "Term"** shall mean the period defined in Section 2.1 and as extended pursuant to Section 2.2.

## ARTICLE 2 TERM OF LEASE

**Section 2.1 Term.** The term of this Lease shall be a period of twenty-five (25) years commencing on December 1, 1999 and ending on November 30, 2024, unless sooner terminated as provided herein, and subject to the further conditions as follow herein.

**Section 2.2 Option to Extend Term.** Lessee shall have the option to extend the Term for three additional periods of five (5) years each. Lessee may exercise such options by written notice to Lessor delivered at least 180 days prior to the expiration of the then existing Term. The rent for each additional five (5) year extension of the Term shall be subject to adjustment as provided in Section 3.6.

## ARTICLE 3 RENT

**Section 3.1 Rent.** Rent shall be payable from Lessee's "Enterprise Funds" as follows:

**3.1.1** Lessee shall pay to Lessor the base sum of \$77,000.00, as annual rent for the Premises; a sum equal to the first year's rent shall be paid concurrently with the signing of this Agreement.

**3.1.2** The remaining rent shall be paid in semi-annual installments beginning on the first day of December ~~1999~~ and continuing semi-annually on the first day of June and December thereafter. <sup>2000</sup>

**3.1.3** The additional rent due under Section 3.5 shall be calculated annually for each Lease Year of the Term, and to the extent that the rate of extraction of water exceeds 2,000 acre feet for any given Lease Year, the additional rent due under Section 3.5 shall be payable within thirty (30) days of the end of each respective Lease Year of the Term.

**3.1.4** If any payment of rent due under this section is not made within ten (10) days of its due date, a late penalty of five percent (5%) of the amount overdue shall be due and payable.

**Section 3.2 Place of Payment.** All rent that becomes due and payable under this Lease shall be paid to Lessor at the office of Lessor located at 2331 Honolulu Ave., Suite E, Montrose, California 91020, or at any other place or places that Lessor may designate by written notice to Lessee.

**Section 3.3 Additional Rent: Provision of Irrigation Water.** In addition to the cash rent provided for herein, Lessee agrees to provide to Lessor an amount of water from Lessee's wells at the City Wastewater Treatment Plant ("WWTP"), or alternate source, equivalent to the amount of water Lessee uses from the Premises, but not less than 2,000 acre-feet per year. Lessee shall not deliver water from its WWTP wells to any other party other than Lessor as required hereunder. Lessee shall provide the water from the WWTP wells or other source by delivering such water into the Fresno Slough to be withdrawn by Lessor through the surface water intake structure otherwise described herein. The timing of Lessee's delivery into the Fresno Slough shall be in accordance with a schedule furnished from time to time by Lessor. Lessee and Lessor agree that the water from the WWTP wells or other source as delivered through the Fresno Slough must be of a quality acceptable to the San Joaquin Exchange Contractors Collective Membership. Lessor may waive the delivery of Lessee's water hereunder in Lessor's absolute discretion. Failure of Lessee to deliver the water required as additional rent under this Section 3.3 is a material breach of this Lease unless Lessor elects to utilize the backup sources provided for in Section 4.8 below and is able to make up for the volume of water which Lessee fails to deliver under this provision from such alternate sources.

**Section 3.4 Cost of Living Adjustment.** The annual rent provided for in Section 3.1.1 above shall be subject to adjustment annually at the end of each Lease Year ("the Adjustment Date") as follows:

(a) The base for computing the adjustment is the Consumer Price Index for all urban consumers (base year 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the San Francisco/Oakland/San Jose Metropolitan area, for the third month prior to the date of commencement of the Term for the first annual adjustment and for the third month prior to the commencement of each Lease Year which has just ended for all subsequent annual adjustments ("Beginning Index"). If the Index published three months prior to the Adjustment Date ("Extension Index") has increased over the Beginning Index, the annual rent for the following Lease Year (until the next rent adjustment) shall be set by multiplying the then current annual rent by a fraction, the numerator of which is the Extension Index, and the denominator of which is the Beginning Index. For example, if the Consumer Price Index for all urban consumers were 100 for September 1999 (Beginning Index) and 105 for September 2000 (Extension Index), then the base rent for the second year of the Lease (December 1, 2000, to November 30, 2001) would be \$80,850.00. See equation below:

$$\frac{105}{100} \times \$77,000 = \$80,850$$

On adjustment of the annual rent as provided in this Lease, Lessor shall give Lessee written notice stating the new annual rent.

(b) If the Index has changed so that the base year differs from that used as of the first of the month immediately preceding the month in which the Term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(c) Notwithstanding the provisions of subparagraphs (a) and (b) above to the contrary, if the adjustment to the annual rent provided for in subparagraphs (a) and (b) shall be less than a three and one half percent (3.5%) increase in the annual rent of the preceding Lease Year, then such annual rent shall be subject to an adjustment equal to an increase of three and one half percent (3.5%) of the annual rent of such preceding Lease Year. The first annual rent adjustment shall be made on December 1, 2000.

(d) In addition to the adjustment required above, the levels of additional rent provided for in Section 3.5 shall be subject to increase in the same manner as provided above in subparagraphs (a), (b) and (c).

**Section 3.5 Additional Rent.** Lessor and Lessee agree that the annual rent called for herein is based upon, among other things, Lessee's right to construct water service facilities and thereafter pump water from the Premises. The annual rent of \$77,000.00 shall be considered a base rent for Lessee's right to pump up to 2,000 acre-feet per year from the Premises. For each 100 acre-feet, or portion thereof, over and above 2,000 acre-feet per Lease Year pumped by Lessee, Lessee's rent shall be increased by \$5,000.00, in accordance with the following schedule:

<u>Water Pumped Per Year</u>	<u>Annual Rent</u>
0 to-2,000 acre-feet	\$77,000
2,001 to 2,100 acre-feet	\$82,000
2,101 to 2,200 acre-feet	\$87,000
2,201 to 2,300 acre-feet	\$92,000
2,301 to 2,400 acre-feet	\$97,000

**Section 3.6 Adjustment to Rent on Extension of Term.** Upon each exercise of Lessee's option under Section 2.2, The rent due under Sections 3.1 and 3.5 ("Cash Rent") during such additional term shall be adjusted to reflect the fair market rental value of the Premises at the time such option is exercised by Lessee as provided in this Section.

**3.6.1** The fair market rental value shall be the price at which a willing seller and a willing buyer would purchase the water which the Lessee can take from the Premises and shall consider the following matters:

(a) This lease involves the delivery of high quality ground water suitable for domestic purposes in exchange for the cash rent provided for herein and the delivery by Lessee to Lessor of lower quality water suitable for agricultural irrigation purposes. The Cash Rent payable hereunder is the difference in value between the water being exchanged.

(b) Sales of water by other purveyors in California, such as the Metropolitan Water District or CCID, shall be considered.

(c) For the purposes of determining such fair market rental value, it shall be assumed that Lessee will not require that any improvements be made to the Premises in connection with its occupancy; therefore no consideration shall be given to any factors relative to expenses incurred by the Lessee to extract and deliver the water being exchanged hereunder.

(d) In no event shall the Cash Rent for any extended period of the Term as adjusted under this Section be less than that applicable for the then expiring period of the Term.

**3.6.2** Lessee and Lessor shall attempt to agree upon the fair market rental value for the Premises, and if they are able to so agree, the Cash Rent during the renewal period shall be the fair market rental value as determined by them.

**3.6.3** If Lessee and Lessor fail to agree upon the fair market rental value within thirty (30) days from the date Lessee gives notice of his option to renew the Lease, then within ten (10) days following the expiration of such thirty (30) day period, the parties shall determine the fair market Cash Rent pursuant to Section 3.6.8 of this Agreement. The trier of fact shall determine the fair market Cash Rent within sixty (60) days following the submission of the matter for resolution. The trier of fact shall consider the matters set forth in Section 3.6.1 in making a determination of the fair market Cash Rent.

**3.6.4** If neither party disputes the determination of the Cash Rent (pursuant to section 3.6.8) within fifteen (15) days of the notice of the decision by the arbitrators, the Cash Rent so determined shall be the Cash Rent for the applicable extension of the term subject to adjustment under Section 3.4 and 3.6.6. In such event, the fees and costs of the arbitrators shall be borne equally by the Lessor and Lessee.

**3.6.5** If either party finds that the final arbitrated determination of fair market Cash Rent is unacceptable, that party may terminate this Lease upon notice to the other party within fifteen (15) days of the notice of the arbitrators decision. Upon such termination, the party terminating the Lease shall pay all fees and costs of the

arbitrators incurred in connection with the above-described arbitration. If Lessor elects to terminate this Lease under this section, Lessor shall pay to Lessee the unamortized portion of the costs incurred by Lessee in repairing the Bridge as required by Section 6.1.5 based upon straight line depreciation scheduled over a period of forty years. If Lessee elects to terminate this Lease under this section, Lessee shall not have the right to recover the unamortized portion of the costs incurred by Lessee in repairing the Bridge as required by Section 6.1.5.

**3.6.6** Upon the adjustment of the Cash Rent under this provision, that Cash Rent for the first year of the extended Term shall be subject to adjustment under Section 3.4, and the Beginning Index for the first adjustment shall be the Index for the third month prior to the commencement of the extended Term.

**3.6.7** If the final determination of the adjustment in the Cash Rent does not occur until after the commencement of the extended Term, Lessee shall pay the Cash Rent then applicable until such final determination at which time any additional Cash Rent due for the extended Term by virtue of such determination shall be due and payable within thirty (30) days of the final determination of Cash Rent.

**3.6.8** This Lease is made and entered into in the State of California and shall in all respects be interpreted and governed under the laws of said State. Any dispute or controversy between the parties regarding the interpretation or application of the terms of this Lease, including the fair market Cash Rent, or regarding any act which allegedly has or would violate any provisions of this Lease, if not settled by direct discussion, shall be submitted to mediation administered by the American Arbitration Association under its Commercial Rules before resorting to arbitration. Thereafter, any remaining disputes shall be resolved by final and binding arbitration under the Commercial Rules of the American Arbitration Association ("AAA") and Title 9, Chapters 1-5 of the California Code of Civil Procedure (Code Civ. Proc. §1280 et seq.) including the rules for selection of an arbitrator, as they may exist at the time of demand for arbitration, except to the extent said provisions are in conflict with this Lease, and excluding Code Civil Procedure section 1282.2(a)(1), provided either party gives written notice to the other and the to AAA of this Lease and intent to arbitrate. Such notice to be given by facsimile and U.S. mail to the parties referred to in paragraphs 12.3 and 12.4 of this Lease. The mediation and arbitration shall occur in Mendota, California, or elsewhere if all parties so agree, and, if arbitration is required, the arbitrator shall have full authority to award any relief authorized in law or equity, or both, for any breach of this Lease. Nothing herein shall bar the parties to this Lease or any of them from introducing this Lease in any judicial, administrative, or other proceeding in seeking dismissal or other appropriate remedies based thereon.

If any action or proceeding is brought to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

## ARTICLE 4 USE OF PREMISES

**Section 4.1 Lessee's Use of Premises.** Except as otherwise provided herein, the Premises may, during the Term of this Lease, be used by Lessee for the purpose of installing up to three (3) domestic water wells, appurtenant equipment, and conveyance pipelines for Lessee's exclusive use. Lessee's wells shall be limited to the pumping of not more than a combined total of 2,400 acre-feet per year. The installation of the three domestic water wells, appurtenant equipment and conveyance pipelines shall be at locations as may be approved by Lessor, such approval not to be withheld unreasonably. Lessee agrees that such water shall be solely for the use or consumption of the citizens of the City of Mendota and will not be resold or reconveyed to any third party outside the limits of the City, except as required by regulation for domestic use.

**Section 4.2 Standard of Lessee's Operations.** Lessee's operations hereunder shall be conducted in a way so as to minimize any disruption of or damage to the agricultural operations existing from time to time on the Property. Lessee shall install the conveyance pipelines so as not to interfere with Lessor's farming operations and shall bury the pipelines at a depth of at least thirty-six (36) inches from the top of the pipelines to the surface of the surrounding ground.

**Section 4.3 Lessee's Access.** Lessee shall enjoy the right of reasonable ingress and egress across the Premises for the purpose of constructing, operating, maintaining, and inspecting Lessee's facilities. Lessee will provide Lessor with a license or easement, as required, across the Bridge. The use of the Bridge shall be limited to Lessee's employees and agents, Lessor and Lessors employees, agents, tenants and invitees. Lessee shall not authorize the Bridge to be used by the general public.

**Section 4.4 Compliance with Law.** Lessee shall not use or permit the Premises, or any portion thereof, to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance, as now or hereafter defined by any statutory or decisional law applicable to the Premises, on the Premises or any part thereof.

**Section 4.5 Permits and Consents.** Lessee agrees to obtain and maintain, on the parties' behalf, all necessary written authorization and permits to allow Lessee to transport the domestic water from the Property for Lessee's use. In addition, Lessee shall secure and maintain the consent of the Exchange Contractors and/or any other public agencies, which may have an interest in the exchange of water taking place under this Lease, and notify adjoining landowners and the Columbia Canal Company for the delivery of the Irrigation Water from Lessee to Lessor. Lessee shall provide Lessor with copies of all effective permits, notices and consents required under this section prior to taking delivery of any water from the Property. Should any government or other agency intercede upon the ability of Lessor to take delivery of the Irrigation Water, other than due to Lessor's acts or omissions, Lessee shall be solely responsible to rectify the situation or to provide water through the domestic system or other source as provided in Section 4.8.

**Section 4.6 Lessor's Right to Take Water From Property.** Lessor agrees to reduce the pumping of wells on the Property by an amount equivalent to the volume of water produced by Lessee's wells. Lessee agrees that this will be accomplished by Lessor selling to Lessee two of Lessor's existing agricultural wells on the Property. The transfer of ownership of these wells will occur simultaneously with the signing of this Lease. The price of the wells is included in the Rent. Lessor shall retain the right to operate these wells for agricultural use up until the time the anticipated surface water delivery system described in Sections 6.1.3 and 6.1.4 herein are completed and operational. Lessor shall also have the right to use these wells in emergency situations where the surface water delivery system is inoperable or inadequate as provided in Section 4.8. Lessor agrees not to develop any new agricultural wells on the Property during the Term of this Lease. Lessor may continue to use its existing well adjacent to the Property for agricultural purposes only. Lessor reserves the right to develop a new domestic well to serve the existing residences on the Property.

#### **Section 4.7 Pumping Activities Reports**

**4.7.1** Lessee shall, on the fifteenth day of each month during which the wells on the property are operated, deliver to Lessor and to Burkhart Farms, records showing all amounts of the groundwater pumped from the Property during the previous month. Measurements for all metering and reports shall be in acre-feet. Lessee shall also permit Lessor to conduct its own tests on the quality and quantity of water pumped from the Property.

**4.7.2** Lessee shall be responsible for the payment of all costs incurred in conducting California Title 22 General Mineral, Physical, and Inorganic Analysis for the wells on the property.

**4.7.3** Copies of all reports, tests, analyses on the operation of the wells on the property, and the quality and quantity of water pumped in the wells shall be sent to the State Department of Health Services by Lessee.

**4.7.4** Lessee shall provide the same reports, and provide and allow the same testing for water pumped from the City Wastewater Treatment Plant wells, or alternate source, as set out in Section 4.7.1.

**Section 4.8 Failure of Exchange Water System.** If the supply of Irrigation Water to Lessor is for any reason not timely or not in sufficient quantities to fulfill the requirements of Section 3.3, Lessor shall be entitled to obtain sufficient water to make up any such shortfall from Lessee's water system on the Premises. In that connection, Lessee agrees to maintain in operational condition the two agricultural wells described in Section 3.3 throughout the Term so that Lessor may draw water from them to make up for any shortfall in Lessee's delivery of Irrigation Water. Lessee shall conduct bi-annual inspections and operation of the agricultural wells to assure their availability for Lessor's exclusive use as a back up source during the Term. If for any reason the agricultural wells are inoperative or inadequate to provide sufficient water to make up such shortfall, Lessor shall be entitled to draw water from Lessee's system at the point of connection required by Section 6.1.2;



provided that in no event shall Lessor's taking of water from Lessee's domestic water system impair Lessee's compliance with applicable regulations and conditions regarding the supply of domestic water to Lessee's customers. If Lessee cannot deliver the Irrigation Water or water from either of the two back up sources provided above, Lessee shall be in a material breach of this Lease and, among other matters, liable for any resultant losses to the agricultural crops of Lessor and/or Lessor's tenants or assigns.

**4.8.1** If Lessee's failure to deliver the agricultural water continues for a period of one hundred twenty (120) days, Lessee is in violation of the EIR and also in breach of this Lease even though Lessor is able to obtain water from one of the alternate sources described above for significant damage will occur to the aquifer underlying the Property.

**Section 4.9 Lessee's Obligation to Recharge Lessor's Groundwater.** Lessee shall construct the recharge facilities required by Section 6.1.6. Upon completion of construction of the recharge facilities, Lessee shall operate the recharge system to recharge the groundwater basin underlying the Property with an amount of water necessary to maintain the aquifer underlying the Property, such determination to be based in part on standing water levels from time to time throughout the Term. Lessee shall install a sufficient number of monitoring wells to facilitate the measuring of standing water levels in the aquifer underlying the Property. Lessee shall monitor the standing water level in the existing monitoring well and such additional monitoring wells as may be installed with the recharge facilities, such readings to be made quarterly throughout the Term and written notice thereof given to Lessor by Lessee within thirty (30) days of each such test. The parties understand that the data developed from measuring the standing water level in the monitoring wells prior to construction and operation of the recharge facilities shall determine the baseline for determining the standing water level necessary to meet Lessee's recharge obligations hereunder. The facility shall be operated by Lessee whenever there are flood flows available which can be acquired by Lessee. If over a period of five (5) years the aquifer declines, as the result of Lessee's water extraction activities under this Lease, without any available flood flow, Lessee shall acquire alternative sources of water sufficient to recharge the aquifer. Lessee shall operate the recharge facility in such a way so as to prevent any damage to the agricultural crops existing from time to time on the Property.

**Section 4.10 Rights Reserved to Lessor.** Except for the express uses permitted by Lessee hereunder, all use and occupancy of the Property is reserved unto Lessor and/or Lessor's assignees. Lessee agrees that this Lease does not include any water rights that may be attached to the Property, nor does the Lease include the transfer of any water rights (surface or otherwise) not specifically included in this Lease; furthermore, this Lease simply provides for the exchange of water as provided herein.

## ARTICLE 5 TAXES AND UTILITIES

**Section 5.1 Taxes.** In addition to the rents required to be paid under this Lease, Lessee shall pay, and Lessee hereby agrees to pay, any and all taxes, assessments, and

other charges of any description levied or assessed during the Term of this Lease by any governmental agency or entity on or against the improvements made and owned by Lessee on the Premises.

**Section 5.2 Payment of Taxes.** Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid by Lessee at least ten (10) days before each such tax, assessment, or installment of tax or assessment becomes delinquent and the official and original receipt for the payment of such tax, assessment, or installment shall immediately be given to Lessor by certified mail.

**Section 5.3 Utilities.** Lessee shall pay or cause to be paid, and hold Lessor and its Property, free and harmless from, all charges for the furnishing of gas, water, electricity, and other public utilities to the Premises during the Term of this Lease.

**Section 5.4 Advance by Lessor.** Should Lessee fail to pay within the times specified in this Article any taxes, assessments, or other charges required by this Article to be paid by Lessee, Lessor may, without notice to or demand on Lessee, pay, discharge, or adjust such tax, assessment, or other charge for the benefit of Lessee. In such event, Lessee shall promptly on written demand of Lessor reimburse Lessor for the full amount paid by Lessor in paying, discharging, or adjusting such tax, assessment, or other charge together with a penalty equal to ten percent (10%) of the delinquent amount not to exceed Five Hundred Dollars (\$500) for any single delinquent amount. Where no time within which any charge required by this Article to be paid by Lessee is specified in this Article, such charge must be paid by Lessee before it becomes delinquent.

## ARTICLE 6 CONSTRUCTION BY LESSEE

**Section 6.1 Lessee's Improvements.** Lessee shall, at Lessee's sole cost and expense, construct or cause to be constructed on the Premises the following improvements:

**6.1.1** Three domestic water wells and appurtenances for Lessee's benefit and use, the approximate location and size of which are shown on the attached Exhibit B, which location should be consistent with the Final Environmental Impact Report for Water System Improvement Project for the City of Mendota - State Clearing House Number 98051133 ("EIR") and in proximity to the future recharge facility required under Section 6.1.6.

**6.1.2** Conveyance pipeline for Lessee's benefit and use, the approximate location of which is shown on the attached Exhibit B. Such pipeline shall be designed with a blind 12" "T" with an appropriate back flow preventer for emergency use by Lessor as provided in Section 4.8.

**6.1.3** One surface water intake structure to deliver the Irrigation Water with a minimum capacity of 10.0 cfs, to be located along the San Joaquin River for use

by the Lessor, but designed so that it is capable of delivery of lesser amounts at discretion of Lessor/operator, at the location as shown on Exhibit B.

**6.1.4** Surface water conveyance pipeline, capable of delivering 10.0 cfs from the intake structure to Lessor's existing distribution system for use by Lessor at the location shown on Exhibit B.

**6.1.5** Reconstruct the deck of the Bridge and supporting structure and install a heavy duty electrically controlled security gate for use by Lessor and Lessee to be located on the Bass Avenue side of the Bridge. Any modifications and improvements to the Bridge, including the required access control gate, shall be designed for the ease of passage of farm equipment and shall not include handrails or vertical extensions above the deck of the Bridge.

**6.1.6** Lessee agrees, consistent with the mitigation requirements of the EIR for its pending water project, to construct sufficient recharge facilities including injection wells on the Property in an area of approximately thirty (30) acres located in the northeast corner of the Property as delineated on Exhibit B, the precise site to be selected by Lessor, and Lessee, and to provide acceptable source(s) of water for recharge use. Lessee shall construct pumps located adjacent to the San Joaquin River capable of pumping flood flows from the river to the recharge facilities.

Such recharge facilities shall be constructed within five (5) years from the effective date of this Lease. Lessee shall be responsible for the design, construction, operation, and maintenance of the recharge facility, all at no cost to Lessor. Such recharge facility shall be of adequate design and capacity to assure adequate maintenance of the Property's groundwater supply pursuant to Section 4.9. If said recharge facility is not constructed within the specified five (5) year period, Lessee agrees to pay to Lessor a penalty of \$40,000 for each year during which the recharge facility is not constructed after December 1, 2004.

**6.1.7** One all-weather road from the Bridge to the new well field for the mutual use of Lessor and Lessee, the approximate location of which is shown on the attached Exhibit B.

**6.1.8** Should Flood waters be unavailable to meet the recharge requirements necessitating expansion of the recharge facility, any other mitigation alternative, such as purchase of other water for recharge or fallowing of the farm, this shall be the financial responsibility of the Lessee.

**Section 6.2 Approval by Lessor.** No structure or other improvement of any kind shall be erected or maintained on the Premises unless and until the plans, specifications, and proposed location of such structure or improvement have been approved in writing by Lessor. No structure or other improvements shall be erected or maintained on the Premises that do not comply with plans, specifications, and locations approved in writing by Lessor. Furthermore, no material addition to or structural alteration of any structure or

improvement on the Premises shall be commenced until and unless plans and specifications for such addition or alteration shall be approved in writing by Lessor which approval will not be withheld unreasonably.

**Section 6.3 Compliance with Law; Permits; Quality of Construction.** All structures and improvements shall be constructed, and all work performed on the Premises in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county, or local government agencies or entities having jurisdiction over the Premises. Lessee shall obtain at Lessee's expense all necessary permits to construct any improvements or alterations to the Premises and shall provide Lessor with copies of all such permits prior to commencing any work for which any permit is required. All work performed on the Premises pursuant to this Lease, or authorized by this Lease, shall be done in a good workmanlike manner and only with new materials of good quality and high standards.

**Section 6.4 Mechanic's Liens.** At all times during the Term of this Lease, Lessee shall keep the Property and improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, suppliers, or equipment performed on or furnished to the Premises. Should Lessee fail to pay and discharge or cause the Property to be released from any such lien or claim of lien within 20 days after service on Lessee of written request from Lessor to do so, Lessor may pay, adjust, compromise, and discharge any such lien or claim of lien on such terms and manner as Lessor may deem appropriate. In such event, Lessee shall, on or before the first day of the next calendar month following any such payment by Lessor, reimburse Lessor for the full amount paid by lessor in paying, adjusting, compromising, and discharging such lien or claim of lien, including any attorney's fees or other costs expended by Lessor, together with interest at the rate of ten percent (10%) per annum from the date of payment by Lessor to the date of repayment by Lessee. All of Lessee's contractors shall be licensed and bonded. Lessee shall provide Lessor with copies of all contractor bonds and insurance certificates.

**Section 6.5 Ownership of Improvements Constructed by Lessee.** Any and all improvements placed or erected on the Premises as part of Lessee's construction as well as any and all other alterations, additions, improvements, and fixtures, except furniture and trade fixtures, made or placed in or on the Premises by Lessee shall, subject to the provisions of Section 11.7, be solely owned by Lessee.

**Section 6.6 Access Bridge.** Lessee agrees to purchase from Lessor, the existing wooden Bridge crossing the Fresno Slough providing access to the Premises for its fair market value, which value is currently appraised at \$60,000.00. The purchase shall be consummated by separate agreement and funded concurrently with the City's grant/loan agreement with the United States Department of Agriculture. Within one year of the commencement of the Term, Lessee shall construct the improvements to the Bridge required by Section 6.1.5. Upon expiration of the Term, the Bridge with all its appurtenances and improvements along with the gate required under Section 6.1.5 shall revert to Lessor. Lessor shall have the right of ingress and egress over the Bridge. Lessee shall pay all costs of maintenance of the Bridge, keeping it in reasonable repair and

safe for Lessor's uses, and Lessor shall not be obligated to contribute to the maintenance, repair or replacement costs of the Bridge.

## ARTICLE 7 ENCUMBRANCE OF LEASEHOLD ESTATE

**Section 7.1 Encumbrances** Except as otherwise stated herein, Lessee may not, at any time during the Term of this Lease, encumber to any person or entity, by deed of trust or mortgage or other security instrument any of Lessee's interest under this Lease or the Leasehold estate hereby created in Lessee for any purpose or purposes without the consent of Lessor.

**7.1.1** Pursuant to RUS Instruction 1780.62(f), Lessor and Lessee agree that this Agreement shall serve as security for Lessee's loan from RUS.

## ARTICLE 8 REPAIRS AND RESTORATION

**Section 8.1 Maintenance.** At all times during the Term of this Lease, and except as otherwise set out herein, Lessee shall at Lessee's own cost and expense, keep and maintain all of its improvements now or hereafter on the Premises as well as all of its facilities now or hereafter appurtenant to the Premises in good order and repair and in a safe and clean condition. Furthermore, Lessee shall at Lessee's own cost and expense, maintain at all times during the Term of this Lease any of its improvements, landscaping, or facilities thereon in a clean, sanitary, neat, tidy, orderly, and attractive condition.

Lessor shall be responsible to keep, operate, and maintain the surface water intake structure and surface water conveyance pipeline.

**Section 8.2 Compliance With Law.** At all times during the Term of this Lease, Lessee, at Lessee's own cost and expense, shall:

(a) Make all alterations, additions, or repairs to the improvements or facilities on the Premises required by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local, or other governmental agency or entity; except that Lessor shall be responsible to keep, operate, and maintain the surface water intake structure and surface water conveyance pipeline.

(b) Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Property or the improvements or facilities on the Premises by any federal, state, county, local, or other governmental agency or entity.

(c) Indemnify and hold Lessor, the property of Lessor, Lessor's employees, management, owners, and agents, and Burkhart Farms, and its employees, management owners, and agents, including the Property, free and

harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Lessee's failure to comply with and perform the requirements of this section.

**Section 8.3 Damage or Destruction.** Should, at any time during the Term of this Lease, any improvements now or hereafter on the Premises be destroyed in whole or in part by fire, theft, the elements, or any other cause, this Lease shall continue in full force and effect and Lessee, at Lessee's own cost and expense, shall repair and restore the damaged or destroyed improvements according to the original plan thereof or according to any such modified plans and shall be completed with due diligence not longer than two months after the work is commenced. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Premises set forth in Article 6 of this Lease.

**Section 8.4 Lessor's Liability.** Lessor, its agents, employees, lessees and/or sublessees, or their agents or employees shall not be liable to Lessee for any damage to the leasehold or any of Lessee's improvements based upon their negligence or gross negligence. They shall only be responsible for damage caused by their intentional acts.

## ARTICLE 9 INDEMNITY AND INSURANCE

**Section 9.1 Indemnity.** The parties shall reciprocally indemnify each other as to claims by third parties as follows:

**9.1.1** Lessee shall indemnify and hold Lessor, the property of Lessor, and Lessor's employees, management, owners, and agents, and Burkhart Farms, and its employees, management, owners, and agents including the Property and any improvements now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Lessee's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including Lessee or any person who is an employee or agent of Lessee, or by reason of the damage to or destruction of any property, including property owned by Lessee or by any person who is an employee or agent of Lessee, from any cause whatever while such person or property is in or on the Property or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including Lessee or any person who is an employee or agent of Lessee, or the damage to or destruction of any property, including property owned by Lessee or any person who is an employee or agent of Lessee, caused or allegedly caused by either (a) the condition of the Premises or some improvement on the Premises, or (b) some act or omission on the Property of Lessee or any person in, on, or about the Property with or without the permission and consent of Lessee;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Lessee or any person or entity acting for or on behalf of Lessee; or

(d) Lessee's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Lessee or the Premises by any duly authorized governmental agency or political subdivision.

**9.1.2** Lessor shall indemnify and hold Lessee, the property of Lessee, and Lessee's employees, management, owners, and agents, and any improvements of Lessee now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from third party claims arising in connection with Lessor's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including Lessor or any person who is an employee or agent of Lessor, or by reason of the damage to or destruction of any property, including property owned by Lessor or by any person who is an employee or agent of Lessor, from any cause whatever while such person or property is in or on the Property or in any way connected with the Premises or with any of the improvements or personal property on the Premises; or

(b) The death or injury of any person, including Lessor or any person who is an employee or agent of Lessor, or the damage to or destruction of any property, including property owned by Lessor or any person who is an employee or agent of Lessor, caused or allegedly caused by either (a) the condition of the Property or some improvement on the Property, or (b) some act or omission on the Property of Lessor or any person in, on, or about the Property with or without the permission and consent of Lessor; or

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Lessor or any person or entity acting for or on behalf of Lessor.

**Section 9.2 Liability Insurance.** Lessor specifically acknowledges that it has been informed, and is aware, that Lessee is partially self insured and a public entity member of the Central San Joaquin Valley Risk Management Authority. Certificates of coverage and limits will be provided to Lessor naming Lessor and Burkhart Farms as additional insureds. Lessor and Burkhart Farms will be provided with 30 days written notice of any changes in Lessee's insurance coverage. A copy of the declaration of Lessee's current coverage limits is attached herewith as Exhibit D.

## ARTICLE 10 ASSIGNMENT AND SUBLEASING



**Section 10.1 Assignment.** Lessee shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Property or the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of Lessor first had and obtained. Any assignment or transfer by Lessee without the prior written consent of Lessor, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Lessor, terminate this Lease. A consent by Lessor to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by Lessee. The consent of Lessor to any assignment of Lessee's interest in this Lease, however, shall not be unreasonably withheld. Any assignment shall require the assumption of each and every obligation of Lessee, and Lessee must prove to the reasonable satisfaction of Lessor that the proposed assignee has the financial, legal and technical capacity to perform the obligations of Lessee hereunder.

**Section 10.2 Sublease.** Lessee shall not have the right to sublease all or any portion of the Property or the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld.

## ARTICLE 11 DEFAULT AND TERMINATION

**Section 11.1 Termination by Lessee.** If, at any time during the Term of this Lease, the quality of water provided to Lessee from the Premises does not meet applicable standards for potability or cannot be treated to meet such standards in a cost effective manner or Lessee is unable to extract the quantity of water to be delivered to Lessee hereunder, Lessee with the concurrence of RUS may terminate this Lease; provided, however, that Lessee may not terminate this Lease if such lack of water quality or quantity is caused by Lessee's extraction activities or by its failure to perform recharge activities required under Section 4.9. Such termination shall be by written notice given to Lessor at least one hundred eighty (180) days prior to the effective date thereof. Upon such termination, Lessee shall have the obligation to continue any recharge of the aquifer required under Section 4.9 until the aquifer is restored to the "baseline" to be established pursuant to Section 4.9. Such obligation to continue the recharge under Section 4.9 shall continue until the first to occur of completion of the restoration to the "baseline" or the expiration of three "flood year" periods in which there is excess flood water available from the San Joaquin River to permit recharge under Section 4.9. Lessee shall continue to have access to the recharge facilities on the Property for purposes of fulfilling its obligations hereunder. Upon the termination of Lessee's recharge responsibilities hereunder, Lessee shall surrender the recharge facilities constructed under 6.1.6 or remove them as Lessor may elect. If Lessor elects to accept the reversion of the recharge facilities, Lessee shall assign to Lessor any right it has to flood or other waters appropriate to use to recharge the aquifer under the Property.

**Section 11.2 Breach.** Should Lessee otherwise breach this Lease or abandon the Premises prior to the natural expiration of the Term of this Lease, Lessor may continue this Lease in effect by not terminating Lessee's right to possession of the Premises, in which event Lessor shall be entitled to enforce all Lessor's rights and remedies under this

Lease including the right to recover the rent specified in this Lease as it becomes due under this Lease.

**Section 11.3 Lessor's Remedies.** All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the Term hereby demised to the Lessee. Should Lessee default in the performance of any covenant, condition, or agreement contained in this Lease and the default not be cured within one hundred twenty (120) days after written notice of the default is served on Lessee and RUS by Lessor, then Lessor may terminate this Lease and;

(a) Bring an action to recover from Lessee any amount necessary to compensate Lessor for the worth at the time of award of all detriment proximately caused by Lessee's failure to perform his obligations under this Lease less the amount of such rental loss for the same period that the Lessee proves could be reasonably avoided; and

(b) Bring an action, in addition to or in lieu of the action described in subsection 11.3.1(a) of this Section, to reenter and regain possession of the Premises and the Property in the manner provided by the laws of unlawful detainer of the State of California then in effect.

**Section 11.4 Lessee's Insolvency.** Should Lessee become insolvent as defined in this section, Lessor may, by giving One Hundred Twenty (120) days written notice to Lessor or to the person appointed to manage Lessee's affairs at the address for such person appearing in the official records of the court that appointed him and to RUS, terminate this Lease and forfeit Lessee's interest in the Premises and the Property and in any improvements or facilities in, on, or appertaining to the Premises. For purposes of this section, Lessee shall be conclusively presumed to have become insolvent if Lessee:

(a) Has a receiver appointed to take possession of all or substantially all of Lessee's Property because of insolvency;

(b) Makes a general assignment for the benefit of creditors; or

(c) Allows any judgment against Lessee to remain unsatisfied and unbounded for a period of thirty (30) days or longer.

**Section 11.5 Remedies Cumulative.** The remedies given to Lessor in this Article shall not be exclusive but shall be cumulative with, and in addition to, all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

**Section 11.6 Waiver.** The waiver by Lessor of any breach by Lessee of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or a different provision of this Lease.

**Section 11.7 Condition of Premises on Surrender; Removal of Facilities and Equipment.** On expiration or sooner termination of this Lease, Lessee shall surrender the

Premises and the Property to lessor in as good, safe, and clean condition as practicable, reasonable wear and tear excepted, except as follows:

**11.7.1** Lessee may remove for its own use, all equipment appurtenant to the domestic water wells, and conveyance pipelines as listed in Exhibit C attached hereto. Such removal must be completed within thirty (30) days of the expiration of the Term.

**11.7.2** Lessor may require the removal of any and all of Lessee's equipment and facilities installed in the Premises pursuant to this Lease. With respect to wells and well casings, such removal may be accomplished by proper abandonment accomplished in accordance with governmental regulations. To require such removal, Lessor must notify Lessee of the facilities and equipment Lessor desires removed at least ninety (90) days prior to the expiration of the Term.

**11.7.3** With respect to the transmission pipeline, Lessee may, at its option, abandon the pipeline in place without removal.

**11.7.4** Lessee shall regrade the recharge facility to the grade existing upon commencement of the Term subject to the provisions of Section 11.1 regarding recharge obligations of Lessee.

## ARTICLE 12 MISCELLANEOUS

**Section 12.1 Force Majeure.** Except as otherwise expressly provided in this Lease, should the performance of any act required by this Lease to be performed by either Lessor or Lessee be prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused, provided, however, that nothing contained in this section shall excuse the prompt payment of rent by Lessee as required by this Lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party, Lessor or Lessee, required to perform the act.

**Section 12.2 Attorneys' Fees.** Should any litigation be commenced between the parties to this Lease concerning the Premises, the Property, this Lease, or the rights and duties of either in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation, to a reasonable sum as and for his attorney's fees in such litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

**Section 12.3 Notice to Lessor.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or any law to be served on or given to Lessor by Lessee shall be in writing and shall be deemed duly

served and given when personally delivered to Lessor, to any managing employee of Lessor, or in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, addressed to Lessor at:

BB LIMITED  
Attention: Bill Ward  
2331 Honolulu Avenue, Suite E  
Montrose, California 91020

BURKHART FARMS  
Attention: Darrell Vincent  
Post Office Box 6  
Firebaugh, California 93622

Lessor may change Lessor's address for the purpose of this section by giving written notice of such change to Lessee.

**Section 12.4 Notice to Lessee.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Lessee shall be in writing and shall be deemed duly served and given when personally delivered to Lessee, any managing employee of Lessee, or in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, addressed to Lessee at:

CITY OF MENDOTA  
Attention: City Manager  
643 Quince Street  
Mendota, California 93640

with a copy to RUS at:

RURAL UTILITIES SERVICE  
United States Department of Agriculture  
430 G Street, Dept. 4169  
Davis, California 95616-4169

Lessee and RUS may change its address for the purpose of this section by giving written notice of such change to Lessor.

**Section 12.5 Governing Law.** This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises.

**Section 12.6 Binding on Successors.** This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, Lessor and Lessee, but nothing in this section shall be constructed as a

consent by Lessor to any assignment of this Lease or any interest therein by Lessee except as provided in Article 10 of this Lease.

**Section 12.7 Severability.** Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

**Section 12.8 Sole Agreement.** This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the Premises and the Property, the leasing of the Premises to Lessee, the construction of the improvement described in this Lease on the Premises, or the Lease terms herein specified, and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. Any agreements or representations respecting the Premises, their leasing to Lessee by Lessor, or any other matter discussed in this Lease not expressly set forth in this instrument are null and void.

**Section 12.9 Time of Essence.** Time is expressly declared to be the essence of this Lease.

**Section 12.10 Memorandum.** Lessor and Lessee shall, at the request of either at any time during the Term of this Lease, execute a memorandum or "short form" of this Lease for purposes of, and in a form suitable for, being recorded. The memorandum or "short form" of this Lease shall describe the parties, Lessor and Lessee, set forth a description of the Premises, specify the Term of this Lease, and shall incorporate this Lease by reference.

This Lease shall be executed with duplicate originals, either of which shall constitute the Lease Agreement.

Executed on December 14, 1999, at Mendota, California.

CITY OF MENDOTA  
("Lessee")

By: Joseph Amador  
Joseph Amador, Mayor

BB LIMITED  
("Lessor")

By: William Ward  
William Ward, General Partner

## EXHIBITS

- Exhibit A    Legal Description
- Exhibit B    Map
- Exhibit C    List of Equipment
- Exhibit D    Lessee's Declaration of Insurance

**AGREEMENT FOR  
SALE OF  
ACCESS BRIDGE**

THIS AGREEMENT is made as of the date last executed below, by and between BB LIMITED, a California limited partnership ("Seller"), and the CITY OF MENDOTA, a Municipal Corporation of the State of California ("Buyer"), with reference to the following facts:

**RECITALS**

A. Seller is the owner of an 1172 acre ranch (the "Property") located in the County of Fresno, State of California.

B. On December 14, 1999, Buyer and Seller entered into an agreement ("Lease Agreement") wherein Buyer (then "Lessee") would withdraw potable water from the Property in exchange for the replacement of such potable water with nonpotable irrigation water for use by Seller (then "Lessor"). Under Section 6.6 of the Lease Agreement, Buyer agreed to buy and Seller agreed to sell, at a future date, the wooden access bridge ("Access Bridge") crossing the Kings River Slough providing access to the Property.

C. The parties now wish to consummate the sale of the Access Bridge under the following terms and conditions:

**ARTICLE I**

***Purchase and Sale***

1.01 Subject to the terms and conditions set forth in this Agreement, Seller will transfer and convey its interest in the Access Bridge to Buyer by providing a Grant Deed to Buyer in the form attached hereto as Exhibit A.

1.02 As consideration for the above, Buyer shall pay a total of Sixty Thousand Dollars (\$60,000), paid to Seller in the form of a cashier's check.

1.03 Buyer and Seller acknowledge that upon Buyer's acquisition Access Bridge that notwithstanding its ownership of the Access Bridge, it is still subject to all other terms and conditions of the Lease Agreement.

**ARTICLE II**

***Representations and Warranties***

2.01 Buyer represents and warrants that it has thoroughly inspected the Access Bridge, and agrees to accept the Access Bridge in its current condition, "as is".



2.02 Seller makes no representations as to the structural integrity or current condition of the Access Bridge, and further makes no warranties or representations whatsoever as to any other matter relating to the Access Bridge.

### ARTICLE III

#### *Escrow*

3.01 The parties appoint David Weiland, Esq. to act as escrow holder in consummating the transaction contemplated hereby.

3.02 Seller shall deposit a grant deed of the Access Bridge, executed and acknowledged in the form of that attached hereto as Exhibit A.

3.03 Buyer shall deposit the sum of Sixty Thousand Dollars (\$60,000) in cash along with such additional sums as are required to record the grant deed and otherwise comply with this Agreement.

3.04 Upon the deposit required under the foregoing two sections, escrow holder shall cause the grant deed to be recorded in the Office of the County Recorder of Fresno County, California, and forward the sum of \$60,000 to Seller.

3.05 There shall be no title insurance required in connection with this transaction.

3.06 This escrow shall close and the foregoing actions of the escrow holder completed on or before June 15, 2002.

### ARTICLE IV

#### *Miscellaneous*

4.01 Buyer and Seller shall each pay their own costs and expenses incurred in connection with the purchase and sale described herein.

4.02. This Agreement constitutes the entire agreement between Buyer and Seller concerning their rights and obligations with respect to the sale and purchase of the Access Bridge.

4.03. This Agreement may be amended or modified at any time with respect to any provision by a written instrument executed by Buyer and Seller.

4.04. If Buyer or Seller brings any legal action or seeks arbitration regarding any provision of this Agreement, the prevailing party in the litigation or arbitration shall be entitled to recover all expenses, including reasonable attorneys fees, from the other party, in addition to any other relief that may be granted.

4.05. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Buyer and Seller.

4.06. This Agreement shall be governed by and construed in accordance with California law.

4.07. This Agreement may be signed in counterpart, which when taken together shall constitute the original document.

Dated: June 25, 2002

BUYER:

City of Mendota, a Municipal Corporation of the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Joseph R. Higgins

6/25/02

Dated: June 14, 2002

SELLER:

BB Limited, a California limited partnership

By: William Ward

William Ward  
General Partner

E-mail: [kkimbell@aklaw.net](mailto:kkimbell@aklaw.net)

May 16, 2002

VIA EMAIL [dweiland@daklaw.com](mailto:dweiland@daklaw.com)

David J. Weiland, Esq.  
Dowling, Aaron & Keeler, Inc.  
6051 North Fresno Street, Suite 200  
Fresno, California 93710

RE: ***BB Ltd./City of Mendota***

Dear Dave:

Enclosed please find the Agreement for Sale of Access Bridge drafted to incorporate what we have discussed. Appended to that agreement is the form of grant deed that I propose be prepared to convey the bridge. Please look at the grant deed carefully, for this is an unusual piece of real estate to be dealing with. I have left the reference to the Revenue and Taxation Code in the grant deed blank for you to complete, for I am sure off the top of your head what the code section is under which transfers to public agencies are exempt from documentary transfer tax. Also you may want to complete the tax statement box. Since this is emailed, you can modify it.

We look forward to completing this transaction as quickly as the City can do so.

Yours very truly,

ALLEN & KIMBELL, LLP

By  
Charles D. Kimbell

CDK/db  
Enclosure

Cc: Mr. Leonadi Ward via email  
Document in ProLaw 6420 37-42-04

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SALE OF  
ACCESS BRIDGE**

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1.03 Buyer and Seller acknowledge that upon Buyer's acquisition Access Bridge that notwithstanding its ownership of the Access Bridge, it is still subject to all other terms and conditions of the Lease Agreement.

**ARTICLE II**

***Representations and Warranties***

2.01 Buyer represents and warrants that it has thoroughly inspected the Access Bridge, and agrees to accept the Access Bridge in its current condition, "as is".

2.02 Seller makes no representations as to the structural integrity or current condition of the Access Bridge, and further makes no warranties or representations whatsoever as to any other matter relating to the Access Bridge.

### **ARTICLE III**

#### ***Escrow***

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3.02 Seller shall deposit a grant deed of the Access Bridge, executed and acknowledged in the form of that attached hereto as Exhibit A.

3.03 Buyer shall deposit the sum of Sixty Thousand Dollars (\$60,000) in cash along with such additional sums as are required to record the grant deed and otherwise comply with this Agreement.

3.04 Upon the deposit required under the foregoing two sections, escrow holder shall cause the grant deed to be recorded in the Office of the County Recorder of Fresno County, California, and forward the sum of \$60,000 to Seller.

3.05 There shall be no title insurance required in connection with this transaction.

3.06 This escrow shall close and the foregoing actions of the escrow holder completed on or before June 15, 2002.

### **ARTICLE IV**

#### ***Miscellaneous***

4.01 Buyer and Seller shall each pay their own costs and expenses incurred in connection with the purchase and sale described herein.

4.02. This Agreement constitutes the entire agreement between Buyer and Seller concerning their rights and obligations with respect to the sale and purchase of the Access Bridge.

4.03. This Agreement may be amended or modified at any time with respect to any provision by a written instrument executed by Buyer and Seller.

4.04. If Buyer or Seller brings any legal action or seeks arbitration regarding any provision of this Agreement, the prevailing party in the litigation or arbitration shall be entitled to recover all expenses, including reasonable attorneys' fees, from the other party, in addition to any other relief that may be granted.

4.05. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Buyer and Seller.

4.06. This Agreement shall be governed by and construed in accordance with California law.

4.07. This Agreement may be signed in counterpart, which when taken together shall constitute the original document.

Dated: June \_\_\_\_\_, 2002

**BUYER:**

**City of Mendota, a Municipal Corporation of the State of California**

By:       **DRAFT**        
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: June \_\_\_\_\_, 2002

**SELLER:**

**BB Limited, a California limited partnership**

By:       **DRAFT**        
William Ward  
General Partner

EXHIBIT "A"

A.P. Nos.

WHEN RECORDED MAIL TO:  
Charles D. Kimbell, Esq.  
ALLEN & KIMBELL, LLP  
317 East Carrillo Street  
Santa Barbara, California

MAIL TAX STATEMENTS TO:

City of Mendota  
\*\*\*

Space Above For Recorder's Use  
No Documentary Transfer Tax due  
Revenue and Taxation Code § \_\_\_\_\_

GRANT DEED

FOR VALUABLE CONSIDERATION receipt of which is hereby acknowledged,

**BB Limited, a California limited partnership**

hereby GRANT(s) to

**City of Mendota, a Municipal Corporation of the State of California**

the following described real property in the County of Fresno, State of California:

That certain bridge and all supporting structures and appendages connected to Grantor's real property described in attached Exhibit "A" and extending westerly across the Kings River Slough/Mendota Pool to City of Mendota owned lands situated between Bass Avenue and the southern branch of the Mendota Pool just north of Delta Mendota Canal.

Dated: \_\_\_\_\_, 2002.

BB Limited, a California limited partnership

**DRAFT**

By: William Ward  
Its: General Partner

[Signatures Must Be Acknowledged]

Grant Deed BB Ltd./City of Mendota

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF SANTA BARBARA         )        ss.

On \_\_\_\_\_, before me, the undersigned Notary Public, personally appeared **William Ward** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

**DRAFT**  
\_\_\_\_\_  
Notary's Signature



**EXHIBIT "A"**

Grantor's Real Property