



**REGULAR MEETING AGENDA
OF THE
ARVIN CITY COUNCIL / SUCCESSOR AGENCY TO THE
ARVIN COMMUNITY REDEVELOPMENT AGENCY / ARVIN HOUSING
AUTHORITY / ARVIN PUBLIC FINANCING AUTHORITY**

**TUESDAY SEPTEMBER 18, 2018 6:00p.m.
CITY HALL COUNCIL CHAMBERS
200 CAMPUS DRIVE, ARVIN**

CALL TO ORDER

Mayor Jose Gurrola

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

Jose Gurrola	Mayor
Jess Ortiz	Mayor Pro Tem
Jazmin Robles	Councilmember
Erika Madrigal	Councilmember
Gabriela Martinez	Councilmember

STAFF

Richard G. Breckinridge	Interim City Manager/Chief of Police
Shannon L. Chaffin	City Attorney – Aleshire & Wynder
Jeff Jones	Finance Director
Adam Ojeda	City Engineer – DeWalt Corporation
Cecilia Vela	City Clerk

PUBLIC COMMENTS:

The meetings of the City Council and all municipal entities, commissions, and boards (“the City”) are open to the public. At regularly scheduled meetings, members of the public may address the City on any item listed on the agenda, or on any non-listed matter over which the City has jurisdiction. At special or emergency meetings, members of the public may only address the City on items listed on the agenda. The City may request speakers to designate a spokesperson to provide public input on behalf of a group, based on the number of people requesting to speak and the business of the City.

In accordance with the Brown Act, all matters to be acted on by the City must be posted at least 72 hours prior to the City meeting. In cases of an emergency, or when a subject matter needs immediate action or comes to the attention of the City subsequent to the agenda being posted, upon making certain findings, the City may act on an item that was not on the posted agenda.

AGENDA STAFF REPORTS AND HANDOUTS:

Staff reports and other disclosable public records related to open session agenda items are available at City Hall, 200 Campus Drive, Arvin, CA 93203 during regular business hours.

CONDUCT IN THE CITY COUNCIL CHAMBERS:

Rules of Decorum for the Public

Members of the audience shall not engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, clapping, whistling, stamping of feet or other acts which disturb, disrupt, impede or otherwise render the orderly conduct of the City meeting infeasible. A member of the audience engaging in any such conduct shall, at the discretion of the presiding officer or a majority of the City, be subject to ejection from the meeting per Gov. Code Sect. 54954.3(c).

Removal from the Council Chambers

Any person who commits the following acts in respect to a meeting of the City shall be removed from the Council Chambers per Gov. Code Sect. 54954.3(c).

- (a) Disorderly, contemptuous or insolent behavior toward the City or any member thereof, tending to interrupt the due and orderly course of said meeting;
- (b) A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due and orderly course of said meeting;
- (c) Disobedience of any lawful order of the Mayor, which shall include an order to be seated or to refrain from addressing the City; and
- (d) Any other unlawful interference with the due and orderly course of said meeting.

AMERICANS with DISABILITIES ACT:

In compliance with the ADA, if you need special assistance to participate in a City meeting or other services offered by the City, please contact the City Clerk’s office, (661) 854-3134. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

1. Approval of Agenda as To Form.

Motion _____ Second _____ Vote _____

Roll Call: CM Robles _____ CM Madrigal _____ CM Martinez _____ MPT Ortiz _____ Mayor Gurrola _____

2. PUBLIC COMMENTS

(This is the opportunity for the public to address the City Council on any matter on the agenda or any item of interest to the public that is within the subject matter jurisdiction of the City Council.)

3. CONSENT AGENDA ITEM(S)

A. Approval of Demand Register(s) of August 31, 2018 – September 13, 2018.

B. Approval of Payroll Register(s) of September 07, 2018.

C. Approval of the Minutes of the Regular Meeting(s) of September 04, 2018.

D. Approval of A Resolution of the City Council of the City of Arvin Authorizing the Interim City Manager to Apply for Mills-Alquist-Deddeh (TDA) Act Funds.

E. Approval of A Resolution of the City Council of the City of Arvin Authorizing the Interim City Manager to Apply for Non-Transit Funding from the Mills-Alquist-Deddeh (TDA) Act Funds.

F. Approval of A Resolution of the City Council of the City of Arvin Approving the Sale of Vehicles Declared as Surplus.

Staff recommends approval of the Consent Agenda.

Motion _____ Second _____ Vote _____

Roll Call: CM Robles _____ CM Madrigal _____ CM Martinez _____ MPT Ortiz _____ Mayor Gurrola _____

4. PUBLIC HEARING(S)

A. A Public Hearing to Consider An Appeal of the Arvin Planning Commission Conditional Use Permit and Site Development Plan (SDP) 2018-240LA – 240 Langford Avenue – Ismaili Market – Expansion of a Non-Conforming Use – Regarding Storage and Patio Use, and Denial of Expansion for a Take-Out Kitchen, Located within the R-1 Single Family Dwelling Zone at 240 Langford in Arvin, and adopt the Notice of Exemption Per CEQA Guidelines Section 15061(B) (3) (City Planner)

Staff recommends the City Council affirm the Planning Commission decision of April 19, 2018 conditionally approving Conditional Use Permit and Site Development Plan (SDP) 2018-240LA – Ismaili Market – Expansion of a Non-Conforming Use – Regarding Storage and Patio Use, and Denial of Expansion for a Take Out Kitchen, Located within the R-1 Single Family

Dwelling Zone at 240 Langford in Arvin, and adopt the Notice of Exemption Per CEQA Guidelines Section 15061(B) (3) and direct staff to present a City Council Resolution at the next regular meeting date.

Motion _____ Second _____ Vote _____

Roll Call: CM Robles ____ CM Madrigal ____ CM Martinez ____ MPT Ortiz ____ Mayor Gurrola ____

- B.** A Public Hearing to Consider Adoption of an Uncodified Ordinance of the City Council of the City of Arvin for a Third Amendment to the Development Agreement with Auburn Oaks Developers, LLC, and CEQA Determination. (City Planner)

Staff recommends the City Council consider adopting the Ordinance to be read by title only, open the hearing, allow for public testimony, close the hearing, waive second reading of the Ordinance, and approve the adoption of the Ordinance.

Motion _____ Second _____ Vote _____

Roll Call: CM Robles ____ CM Madrigal ____ CM Martinez ____ MPT Ortiz ____ Mayor Gurrola ____

5. ACTION ITEM(S)

- A.** Consideration and Approval of A Resolution Approving the Employment Agreement with Richard G. Breckinridge for the City Manager Position with the City of Arvin. (HR Administrator)

Staff recommends approval of the Resolution and Employment Agreement between City of Arvin and Richard G. Breckinridge with an effective date of September 18, 2018 and Authorize the Mayor to execute the Agreement on behalf of the City.

Motion _____ Second _____ Vote _____

Roll Call: CM Robles ____ CM Madrigal ____ CM Martinez ____ MPT Ortiz ____ Mayor Gurrola ____

6. STAFF REPORTS

7. COUNCIL MEMBER COMMENTS

8. CLOSED SESSION ITEM(S)

- A.** Conference with Legal Counsel: Anticipated Litigation (Pursuant to Government Code § 54956.9(d)(4)
Two Potential Cases

B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Pursuant to Government Code § 54956.9(d)(1))
Ronald Austin v. Arvin Police Department, et al., Kern County Superior Court
Case No. BCV-18-101803

9. ADJOURNMENT

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the Arvin City Council Chambers Bulletin Board not less than 72 hours prior to the meeting. Dated September 13, 2018.



Cecilia Vela, City Clerk

Edit List of Invoices - Summary

DEMAND LIST 09.05.18

3.A.a

Date: 09/07/2018

Time: 7:22 am

Page: 1

City of Arvin

Ref. No.	Vendor Name	Invoice No.	Posting Date	PO Number	Invoice Date	Invoice Description	Invoice Amount
47702	ARVIN COMM SERVICES DIST		09/06/2018		09/06/2018	SERVICE 7.24.18-8.23.18	
		CITY OF ARVIN 7.24.18-8.23.18					11,508.75
						Vendor Total:	11,508.75
47703	BAKERSFIELD CALIFORNIAN	1ARV05	09/06/2018		08/31/2018	LEGAL PUBLICATIONS AUG. 2018	
		2703980					2,043.54
						Vendor Total:	2,043.54
47704	BEAR MTN WATERWORKS		09/06/2018		08/22/2018	RP TESTED & PASSED GITS PAR	
		1588					165.00
						Vendor Total:	165.00
47705	BRIAN HANEY		09/06/2018		09/06/2018	INVESTIGATING CONSULTING 8/1	
		INVESTIGATING CONSULTING 8/18					514.62
						Vendor Total:	514.62
47706	BUSINESS LICENSE REFUND		09/06/2018		09/06/2018	DEPOSIT REIMBURSEMENT	
		RECEIPT#30994					63.20
						Vendor Total:	63.20
47707	C & T AUTOMOTIVE, INC		09/06/2018		08/23/2018	MAINTENANCE FLEET#279	
		900025050					650.12
47708	C & T AUTOMOTIVE, INC		09/06/2018		08/23/2018	MAINTENANCE FLEET#279	
		900025052					49.75
						Vendor Total:	699.87
47709	CENTRAL CALIF. ASSOC. PUBLIC		09/06/2018		09/06/2018	COA UNION DUES 9.7.18	
		COA UNION DUES 9.7.18					652.45
						Vendor Total:	652.45
47710	COMMUNICATION ENTERPRISES		09/06/2018		09/06/2018	LTR 450 DISPATCH 9/18 TRANSIT	
		1096031					135.00
						Vendor Total:	135.00
47711	COMPLETE HARDWARE STORE & MORE		09/06/2018		08/30/2018	SUPPLIES DIGIORGIO PARK	
		208284					79.48
47712	COMPLETE HARDWARE STORE & MORE		09/06/2018		08/29/2018	SUPPLIES FOR PARKS	
		208171					53.18
						Vendor Total:	132.66
47713	DANIELS TIRE SERVICE		09/06/2018		08/14/2018	M& I BOBCAT REPAIR	
		240113685					1,511.81
						Vendor Total:	1,511.81
47714	DIETZ & WATSON INC.		09/06/2018		09/06/2018	NNO EVENT 8/2018	
		1945468					60.00
						Vendor Total:	60.00
47732	GARCIA, JASMIN		09/06/2018		09/06/2018	EDUCATION REIMBURSEMENT 8/	
		EDUCATION REIMBURSEMENT 8.23.18					1,397.55
						Vendor Total:	1,397.55
47715	INDEPENDENT FIRE & SAFETY		09/06/2018		08/15/2018	FE ANNUAL MAINT. 08/15-ADOBE	
		36803					261.75
47716	INDEPENDENT FIRE & SAFETY		09/06/2018		08/15/2018	FE ANNUAL MAINT. 08/15-M&I DEF	
		36805					324.02
47717	INDEPENDENT FIRE & SAFETY		09/06/2018		08/15/2018	FE ANNUAL MAINT. 8/15-COMM.DI	
		36801					41.00
47718	INDEPENDENT FIRE & SAFETY		09/06/2018		09/06/2018	FE ANNUAL MAINT.8/15-CITY HALI	
		36802					86.00
47719	INDEPENDENT FIRE & SAFETY		09/06/2018		08/22/2018	FE ANNUAL MAINT. 08/15-ADOBE	
		36841					44.00

Attachment: Demand Register 08/31/18 - 09/13/18 (Demand Register August 31, 2018 - September 13, 2018)

Edit List of Invoices - Summary

DEMAND LIST 09.05.18

3.A.a

Date: 09/07/2018

Time: 7:22 am

Page: 2

City of Arvin

Ref. No.	Vendor Name	Invoice No.	Posting Date	PO Number	Invoice Date	Invoice Description	Invoice Amount
47720	INDEPENDENT FIRE & SAFETY	36800	09/06/2018		08/15/2018	FE ANNUAL MAINT. 08/15 TRANSI	165.75
						Vendor Total:	922.52
47721	JTS TRUCKING REPAIR	222949	09/06/2018		08/27/2018	SUPPLIES VEHICLE MAINTENANC	214.93
47722	JTS TRUCKING REPAIR	223088	09/06/2018		08/22/2018	MAINTENANCE FLEET#207	540.00
47723	JTS TRUCKING REPAIR	223591	09/06/2018		09/06/2018	MAINTENANCE FLEET#203	90.00
47724	JTS TRUCKING REPAIR	223590	09/06/2018		09/06/2018	MAINTENANCE FLEET#211	141.72
47725	JTS TRUCKING REPAIR	223589	09/06/2018		09/06/2018	MAINTENANCE FLEET#209	141.72
47726	JTS TRUCKING REPAIR	223588	09/06/2018		09/06/2018	MAINTENANCE FLEET#211	222.80
						Vendor Total:	1,351.17
47727	KERN COUNTY ANIMAL SERVICES	SVC 4.18-6.18	09/06/2018		08/03/2018	SVC. APRIL-JUNE 2018	26,250.00
						Vendor Total:	26,250.00
47728	KERN RIVER POWER EQUIPMENT INC	84808	09/06/2018		08/29/2018	SUPPLIES LAWN-PARKS	1,723.21
47729	KERN RIVER POWER EQUIPMENT INC	84737	09/06/2018		08/29/2018	MOWER#4 MAINTENANCE	482.75
						Vendor Total:	2,205.96
47730	MARTIN & CHAPMAN CO	2018369R	09/06/2018		06/21/2018	ELECTION SUPPLIES	196.16
						Vendor Total:	196.16
47731	MOUNTAINSIDE DISPOSAL	511957	09/06/2018		08/31/2018	LANDFILL FEE 9.2018	162.12
						Vendor Total:	162.12
47733	PG & E		09/06/2018		09/06/2018	SOLAR SVC. TRU UP 9.18	1,147.69
47734	PG & E	A#282917357-9	09/06/2018		08/23/2018	SVC 8.10.18-8.23.18	522.85
47755	PG & E	A#8440977428-2	09/06/2018		08/30/2018	SVC. AUG. 2018	339.29
						Vendor Total:	2,009.83
47735	PRINTING SYSTEMS	204159	09/06/2018		08/27/2018	OFFICE SUPPLIES-CITY HALL	161.84
						Vendor Total:	161.84
47736	PRO AIR	16821	09/06/2018		07/23/2018	A/C REPAIR-VETERANS	178.00
						Vendor Total:	178.00
47738	SIRCHIE	0362682-IN	09/06/2018		08/29/2018	LAB SUPPLIES-POLICE DEPT.	517.84
47739	SIRCHIE	0363349-IN	09/06/2018		09/04/2018	LAB SUPPLIES-POLICE DEPT.	202.86
						Vendor Total:	720.70
47737	SPECTRUM BUSINESS	64070101082618	09/06/2018		08/26/2018	SVC SEP. 2018	274.28
						Vendor Total:	274.28

Attachment: Demand Register 08/31/18 - 09/13/18 (Demand Register August 31, 2018 - September 13, 2018)

Edit List of Invoices - Summary

DEMAND LIST 09.05.18

3.A.a

Date: 09/07/2018

Time: 7:22 am

Page: 3

City of Arvin

Ref. No.	Vendor Name	Invoice No.	Posting Date	PO Number	Invoice Date	Invoice Description	Invoice Amount	
47701	ST. THOMAS CHURCH		09/06/2018		09/06/2018	EVENT REFUND 8/25/18-8/26/18		
		REIMBURSEMENT RECEIPT#31219					450.00	
						Vendor Total:	450.00	
47740	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-COMM.DEV.DE		
		72003030094-0-1					72.82	
47741	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-POLICE DEPT.		
		7203227742-0-1					655.31	
47742	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-CITY HALL		
		7201897795-0-1					119.06	
47743	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-CITY HALL		
		7203312648-0-1					59.20	
47744	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-COMM.DEV.DE		
		7202886787-0-1					119.45	
47745	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-FINANCE		
		7203398850-0-1					187.60	
47746	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-TRANSIT		
		7202609096-0-1					244.74	
47747	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-TRANSIT		
		7202609096-0-2					20.88	
47748	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-TRANSIT		
		7202609096-0-3					30.30	
47749	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-TRANSIT		
		7202609096-0-4					21.42	
47750	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-COMM.DEV.DE		
		7202643656-0-1					102.57	
47751	STAPLES BUSINESS ADVANTAGE		09/06/2018		09/06/2018	OFFICE SUPPLIES-COMM.DEV.DE		
		7203173764-0-1					168.22	
						Vendor Total:	1,801.57	
47752	SUPPLYWORKS		09/06/2018		08/14/2018	CLEANING SUPPLIES-COA		
		451113781					2,631.75	
						Vendor Total:	2,631.75	
47753	VANTAGE POINT TRANSFER AGENTS		09/06/2018		09/06/2018	457KLOAN/CONTRIBUTIONS 9.7.1		
		457KLOAN/CONTRIBUTIONS 9.7.18					257.95	
						Vendor Total:	257.95	
47754	VERIZON WIRELESS 609123961-4		09/06/2018		09/06/2018	SVC. 7.26.18-8.25.18		
		9813495913					304.08	
						Vendor Total:	304.08	
							Grand Total:	58,762.38
							Less Credit Memos:	0.00
							Net Total:	58,762.38
							Less Hand Check Total:	0.00
							Outstanding Invoice Total:	58,762.38
Total Invoices: 55								

Attachment: Demand Register 08/31/18 - 09/13/18 (Demand Register August 31, 2018 - September 13, 2018)

COST REPORT

PAYROLL 09-07-18

Emp. Code Desc.: CITY OF ARVIN
 From 08/25/2018 to 09/07/20
 City of Arvin

Date: 9/12/2018
 Time: 14:12:49

Employee Name	Employee ID	PER3E PER3 SUTA	FUTA PER5E PERS4	MC PER6E PERS5	MC1 PER9E PERS6	PER1E PERCP PERS8	PER2D PERS PERS9	PER2E PERS1 SS	PER2M PERS2 SS1	Oth To
Grand Total:	Employee Count: 48	0.00	0.00	1,504.36	460.70	0.00	631.22	0.00	810.50	0.00
		1,482.48	119.74	0.00	0.00	599.28	0.00	0.00	2,189.71	22,678.10
		2,768.41	0.00	0.00	1,797.42	1,649.14	0.00	6,459.25	2,205.93	
		0.00								

EARNINGS REPORT

PAYROLL 09-07-18

Emp. Code Desc.: CITY OF ARVIN
 From 08/25/2018 to 09/07/20
 City of Arvin

Date: 9/12/2018
 Time: 14:12:20

Employee Name	Employee ID	15X ADMLV	1X ALLOW	1XFTO BERV	25X BNFT1	2X COMP	3X CTO	ADJ CTYWK	ADLCO DEGRE	Oth To
		DIFFL	FH	FTO	HLPER	HOL	HP1X	INSUR	JURY	
		LONG	MILIT	MISC	PBD	PBD3	PBDCO	PERE	PERS	
		PHALW	POST	PTO	REG	RETOT	RETRO	SCKCO	SEVR	
		SHOEA	SICK	SRO	STDBY	TRAIN	TUPGR	UACL	UAPEP	
		UNADV	URCL	URPEP	VAC	VACCO	VACTO	WRKCO	STLMT	
		ADPAY	SSWEP							
Grand Total:	Employee Count: 48	0.00	18,598.20	0.00	0.00	1,206.30	0.00	0.00	0.00	0.00
		0.00	0.00	357.60	715.45	0.00	937.85	0.00	207.71	124,199.00
		163.28	934.56	161.54	0.00	5,909.13	4,916.56	1,494.16	0.00	
		2,199.22	0.00	0.00	559.59	0.00	0.00	0.00	0.00	
		225.00	648.88	0.00	81,298.77	0.00	0.00	0.00	0.00	
		0.00	799.77	0.00	0.00	0.00	11.00	0.00	0.00	
		90.78	0.00	0.00	1,712.42	0.00	0.00	0.00	0.00	
		477.04	574.56							

Attachment: 3B Payroll Register (Payroll Register(s) of September 07, 2018)

REGULAR MEETING MINUTES

ARVIN CITY COUNCIL / SUCCESSOR AGENCY TO THE ARVIN COMMUNITY REDEVELOPMENT AGENCY / ARVIN HOUSING AUTHORITY / ARVIN PUBLIC FINANCING AUTHORITY

SEPTEMBER 04, 2018

CALL TO ORDER @ 6:00PM

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL: Mayor Gurrola absent; All others present.

1. Approval of Agenda as To Form.

Motion to add Closed Session Item 8C to the agenda:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Pursuant to Government Code § 54956.9(d)(1))

**Ronald Austin v. Arvin Police Department, et al., Kern County Superior
Court Case No. BCV-18-101803**

Motion CM Robles Second CM Martinez Vote 4-0

Motion to approve the agenda with the addition of Closed Session Item 8C.

Motion CM Robles Second CM Madrigal Vote 4-0

2. PUBLIC COMMENTS

(This is the opportunity for the public to address the City Council on any matter on the agenda or any item of interest to the public that is within the subject matter jurisdiction of the City Council.)

3. CONSENT AGENDA ITEM(S)

A. Approval of Demand Register(s) of August 17, 2018 – August 30, 2018.

B. Approval of Payroll Register(s) of August 24, 2018.

C. Approval of the Minutes of the Special Meeting(s) of August 01, 2018 and Regular Meeting(s) of August 21, 2018.

D. Approval of A Resolution of the City Council of the City of Arvin Approving the Second Amendment to Professional Services Agreement By and Between the City of Arvin and the DeWalt Corporation for City Engineer Services.

Resolution No. 2018-58

Agreement No. 2018-22

- E. Approval of A Resolution of the City Council of the City of Arvin Approving the Proposed Changes for the Sycamore Drainage Project and Authorizing the City Manager to Sign and Execute Change Orders.

Resolution No. 2018-59

Staff recommends approval of the Consent Agenda.

Consent Agenda Item 3E pulled for discussion.

Motion to approve the Consent Agenda Items 3A – 3D.

Motion CM Martinez Second CM Robles Vote 4-0

Motion to approve Consent Agenda Item 3E.

Motion CM Madrigal Second CM Robles Vote 4-0

4. PUBLIC HEARING(S)

- A. A Public Hearing to Consider A Resolution of the City Council of the City of Arvin Approving Conditional Use Permit 2017-Petro Lud - Stockton Project - Oil and Gas Exploratory and Production Well -APN 189-351-36 Southwest Corner of Sycamore Road and Meyer Street, Establishment of a Drill Pad No Larger than 300'-0" X 500'-0" and Four (4) Exploratory Well Sites Which May Be Converted Into Production Wells and Adoption of a Related CEQA Exemption Findings Pursuant to the California Environmental Quality Act. (Item continued from Meeting of August 21, 2018; public comment/hearing portion of proceeding was closed at that meeting) (City Planner)

Staff recommends consideration for adoption of the attached Resolution.

- **Mr. Kennan Behrle, Attorney for Westminster Capital, Inc. and Ms. Chelsea Tu, Senior Attorney for the Center for Race, Poverty, & the Environment addressed item 4(A) in the public comment period.**
- **When continued item 4(A) was called, the City Clerk read a statement into the record from Mayor Gurrola as follows:**

“Colleagues and members of the public, unfortunately I am not able to attend this evening’s City Council meeting. I have an announcement to make regarding Agenda Item 4(A) – the hearing on the appeal of the Conditional Use Permit 2017 – Petro Lud approval by the Planning Commission.

As you know, I have not shied away from controversy or tough decisions to protect public health and safety, and I have been a strong advocate for clean air, clean water, and renewable energy. While I recognize that the City’s original oil and gas production ordinance is applicable to this particular matter, I have a strong personal conviction that the ordinance is so inadequate that no approvals should be issued under that ordinance for any type of project under any conditions. Balanced against this conviction is the responsibility of a decision-maker to apply the law as written and to be fair

and impartial in a quasi-judicial proceeding such as this. However, my feelings regarding the ordinance, and my bias against any project that may be proposed under it, are so strong that I do not believe that I could be a fair and impartial decision-maker in this matter at this time. For these reasons, even if I were in attendance I would like the City Council and public know that I am reluctantly recusing myself from Agenda Item 4(A) in order to ensure a fair process. In the event that the updated oil and gas ordinance would apply to a future project that was before the Council, I would look at the facts and circumstances at that time to determine if I am able to participate in those matters as a fair and impartial decision-maker.”

- The City Attorney advised of the City’s obligation to comply with state law regarding these sorts of recusals, and that the matter could proceed in the absence of the Mayor given his recusal.
- The City Attorney advised that two additional letters had been received from Center for Race, Poverty and the Environment, as well as a letter from Stoel Reeves, attorney for the Applicant. As the public comment portion of the proceeding had already been closed prior to the additional letters being received by the City, these letters were not currently part of the administrative record, but had been lodged with the City Clerk. The City Attorney provided a legal assessment of the letters and legal options to the City Council, as well as a recommendation regarding clarification of the drill site dimensions of 400 ft. by 400 ft.
- At the request of the appellants, and upon no objection by the Applicant, the City Council re-opened public comments limited to addressing issues related to item(s) attached to the Agenda Report for September 4, 2018. To the extent that the belated correspondence or comments made by appellants during general public comment addressed these issues, those portions and comments were added to the administrative record.
- Both Mr. Berhle and Ms. Tu spoke for a fourth time on behalf of appellants. Three (3) members of the public (Juan Flores representing Center on Race, Poverty and the Environment; Salvador Partida representing A Committee For A Better Arvin, and Arvin resident Estella Escoto) spoke a second time against the project. Nine (9) members of the public including Representatives Gustavo Aguirre and Cesar Aguirre from the Central California Environmental Justice Network spoke against the project. Five (5) members of the public spoke in favor of the project, and one member (an adjacent landowner) made a request to place landscaping or some type of buffer between their property and the project site.
- The City Council again closed the public testimony portion of the hearing, and the City Attorney addressed the additional comments.
- After deliberation and questions to the City Attorney, the City Council moved to adopt the proposed resolution, with appropriate edits to resolution to reflect drill pad dimensions 400’ ft. x 400’ ft. consistent with the Planning Commission approval.

Motion to approve the Resolution with appropriate edits to resolution to reflect drill pad dimensions 400' ft. x 400' ft. consistent with the Planning Commission approval.

Motion MPT Ortiz

Second CM Robles

Vote 4-0

Resolution No. 2018-60

- B.** A Public Hearing to Consider Introduction of an Uncodified Ordinance of the City Council of the City of Arvin for a Third Amendment to the Development Agreement with Auburn Oaks Developers, LLC, and CEQA Determination. (City Planner)

Staff recommends the City Council consider introducing the Ordinance to be read by title only, open the hearing, allow for public testimony, close the hearing, waive first reading of the Ordinance, and approve the introduction of the Ordinance.

Hearing opened.

No public testimony received.

Hearing closed.

Motion to waive first reading of the Ordinance to be read by title only and approve the introduction of the Ordinance.

Motion CM Robles

Second CM Martinez

Vote 4-0

- 5. WORKSHOP** – Discussion and Update Regarding General Plan and Housing Element Implementation (City Planner)
- 6. STAFF REPORTS**
 - A.** General Fund Fiscal Year-End 17/18 Update (Finance Director)
 - B.** Monthly Financial Report – June 2018 Update (Finance Director)
- 7. COUNCIL MEMBER COMMENTS**
- 8. CLOSED SESSION ITEM(S)**
 - A.** Conference with Legal Counsel: Anticipated Litigation (Pursuant to Government Code § 54956.9(d)(4)
Two Potential Cases
 - B.** Public Employee - Appointment (Pursuant to Government Code §54957)
Title: City Manager
 - C.** CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Pursuant to Government Code § 54956.9(d)(1))

Ronald Austin v. Arvin Police Department, et al., Kern County Superior Court
Case No. BCV-18-101803

CLOSED SESSION REPORT BY CITY ATTORNEY:

Item 8A and 8C: No reportable action.

Item 8B: The City Council was pleased to announce it had selected Jerry Breckinridge as the new City Manager, subject to contract approval, and that he would be serving as the acting Chief of Police at the Council's request until a new Chief was appointed.

9. ADJOURNED @ 8:57pm

Respectfully submitted,

Cecilia Vela, City Clerk

DRAFT

Attachment: 3C Minutes of the Regular Meeting of Sept. 4, 2018 (Minutes of the Regular Meeting(s) of September 04, 2018)



CITY OF ARVIN
Staff Report

Meeting Date: September 18, 2018

TO: City Council

FROM: Jeff Jones, Finance Director
Jerry Breckinridge, Interim City Manager

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN AUTHORIZING THE INTERIM CITY MANAGER TO APPLY FOR MILLS-ALQUIST-DEDDER (TDA) ACT FUNDS.

Background/Discussion:

Arvin Transit provides fixed route and ADA (Americans with Disabilities) bus service to the City of Arvin and other areas within the County of Kern.

TDA is a funding source for the development and support of maintaining our public transit needs that exist in California. TDA provides two major sources of funding. Local Transportation Fund and State Transit Assistance Fund. TDA Funds are distributed to KernCOG who oversees the administration and distribution of the funds to the various city and county agencies for transit operations. Excess TDA monies not used for transit, after going through an unmet transit needs process, are then available for street maintenance purposes.

Fiscal Impact:

This is actual revenue item in the full amount of \$792,012.29 in fiscal year 2017-2018.

Recommendation:

Staff recommends that the City Council authorize the Interim City Manager to file a claim from TDA funding for the City's transit projects for FY 2017-2018 with the Kern Council of Governments (KernCOG).

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN AUTHORIZING THE INTERIM CITY MANAGER TO APPLY FOR MILLS-ALQUIST-DEDDER (TDA) ACT FUNDS.

WHEREAS, Public Utilities Code §§ 99200, et seq., known as the Mills-Alquist-Dedder Act also known as the Transportation Development Act (“TDA”), allocates funds to local entities from the Local Transportation Fund and the State Transit Assistance Fund for various transportation purposes; and

WHEREAS, entities in Kern County that wish to receive funding from the Local Transportation Fund or the State Transit Assistance Fund must file their requests with the Kern Council of Governments (KernCOG) pursuant to the provisions of the TDA and 21 California Code of Regulations (“CCR”) §§ 6600, et seq.; and

WHEREAS, the City of Arvin currently provides public transportation within the jurisdiction through existing bus services provided by the City of Arvin Transit Department, thereby reasonably meeting its transportation needs for the Fiscal Year 2017-2018; and

WHEREAS, the City of Arvin’s general fund needs reimbursement for funding provided to its Transit Dept. during Fiscal Year 2017-2018 in the amount of \$792,012.29.

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

1. The above recitals are true and correct;
2. The Arvin City Council hereby authorizes the Interim City Manager to file a claim and any other ancillary documents thereto, for Fiscal Year 2017-2018 in the amount of \$792,012.29; and to accept on behalf of the City any funds received from KernCOG based on this claim; and
3. The Arvin City Council hereby authorizes the Interim City Manager to file a claim and any other ancillary documents thereto, for Fiscal Year 2017-2018 in the amount of \$792,012.29; and to accept on behalf of the City any funds received from KernCOG based on this claim.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a Regular Meeting thereof held on the 18th day of September, 2018 by the following vote:

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
 Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

Kern Council of Governments

TRANSPORTATION DEVELOPMENT ACT
PUBLIC TRANSIT CLAIM

2017-2018

PART 1 OF 8 -- CLAIMANT INFORMATIONI. Claimant Information

Agency: City of Arvin

Mailing Address: P.O Box 548

Office Address: 200 Campus Drive

City, State, Zip Arvin, CA 93203

Telephone: (661) 854-3134

II. Contact Person

Name: Jeff Jones

Title: Finance Director

Department: Administration

Mailing Address: P.O Box 548

Office Address: 200 Campus Drive

City, State, Zip Arvin, CA 93203

Telephone: (661) 606-60

FAX: (661) 854-0817

E-Mail: jeffjones@arvin.org

WEB Site: www.arvin.org

Kern Council of Governments

TRANSPORTATION DEVELOPMENT ACT
PUBLIC TRANSIT CLAIM

PART 2 OF 8 - CLAIM AND ASSURANCES

For Fiscal Year 2017-2018

A. CLAIM: The City of Arvin hereby claims Local Transportation Fund and State Transit Assistance Fund apportionments and allocations for the 2017-2018 fiscal year plus all unencumbered funds and/or deferred revenues held in its local treasury for public transit uses.

B. COMPLIANCE

ASSURANCES: The City of Arvin hereby certifies that, as a condition of receiving funds pursuant to California Public Utilities Code Sections 99200, et. seq., and California Code of Regulations Sections 6600, et. seq., as amended, it shall ensure that:

1. All funds will be expended in compliance with the requirements of California Public Utilities Code Sections 99200 through 99408, California Code of Regulations Sections 6600 through 6756 and Kern Council of Governments' Transportation Development Act Rules and Regulations.

2. All funds will be expended in accordance with the budgets described in Part 6 of this claim, attached hereto and made a part hereof, by this reference.

These assurances are given in consideration of and the for the purpose of obtaining any and all funds apportioned and allocated for public transit purposes pursuant to Public Utilities Codes, Division 10, Part 11, Chapter 4 of the State of California.

The person whose signature appears below has been authorized to provide the assurances cited above and to prepare, submit and execute this claim on behalf of:

City of Arvin
Claimant

Signature Date

R.Jerry Breckinridge, Interim City Manager
Title

C. FINANCIAL

ASSURANCES: As the chief financial officer of the City of Arvin I hereby attest to the reasonableness and accuracy of the financial information presented in this claim and declare it to be consistent with the uniform system of accounts and records adopted by the Controller of the State of California.

Signature Date

Jeff Jones, Finance Director
Title

Attachment: Exhibit to Resolution - TDA Funds (Authorization to Apply for TDA Funds)

Kern Council of Governments

PART 3 OF 8--PROJECTED PUBLIC TRANSIT RESOURCES

For Fiscal Year 2017-2018

CLAIMANT: City of Arvin

I. FY 2017-2018 PROJECTED AVAILABLE RESOURCES

A. Deferred Revenues -- unexpended prior year cash receipts held in the claimant's treasury as of June 30, 2018 (from the most recent audit report) -

B. Unreserved/Unrestricted Retained Earnings -

C. Interest Earnings -- interest earnings on claimant cash balances through June 30, 2018 -

D. Federal Grants & Reimbursements (Source & Amount):
1. FTA Planning Assistance
2. FTA Operating Assistance 66,729.00
3. FTA Capital Assistance
4. LCTOP

E. State Grants & Reimbursements (Source & Amount):
1. _____
2. _____

F. Local Cash Grants & Reimbursements (Source & Amount)
1. LTF--Regional Planning (PUC 99262)
2. LTF--Operations/Capital (PUC 99260a)
3. LTF--Capital Reserve Withdrawal (CCR 6648)
4. LTF--Social Service Transit (PUC 99275)
5. LTF--Contracted/Purchased Transit Services (PUC 99400c)
6. STAF--Operations (CCR 6730a) 587,573.77
7. STAF--Capital (CCR 6730b)
8. STAF--Contracted/Purchased Transit Services (CCR 6731b)
9. STAF--Social Service Transit (CCR 6731c)
10. County of Kern--Service Contract(s)
11. _____

G. Operating Revenues:
1. Passenger Fares 78,590.00
2. Special Fares
3. School Bus Service
4. Freight Tariffs
5. Charters

H. Other Revenues (Source & Amount):
1. 171,091.30
2. _____

I. TOTAL FY 2017-2018 PROJECTED AVAILABLE RESOURCES -- enter here and Part 4, Line J (Sections A+B+C+D+E+F+G+H) 903,984.07

Attachment: Exhibit to Resolution - TDA Funds (Authorization to Apply for TDA Funds)

Kern Council of Governments

PART 5 OF 8--BUDGETED PUBLIC TRANSIT RESOURCES

For Fiscal Year 2017-2018

CLAIMANT: City of Arvin

I. FY 2017-2018 NONCURRENT TDA & OTHER BUDGETED RESOURCES

A. Deferred Revenues & Available Reserves-- unexpended prior year cash receipts and reserves held in the claimant's treasury as of June 30, 2018 (From Part 4, Line P) 0.00

B. Interest Earnings--interest earnings on claimant cash balances through June 30, 2018 _____

C. Federal Grants and Reimbursements:

- 1. FTA Planning Assistance _____
- 2. FTA Operating Assistance 66,729.00
- 3. FTA Capital Assistance _____
- 4. LCTOP 20,000.00

D. State Grants and Reimbursements (Source/Amount):

- 1. _____
- 2. _____

E. Non-TDA Local Cash Grants and Reimbursement (Source/Amount):

- 1. _____
- 2. _____
- 3. _____

F. Operating Revenues:

- 1. Passenger Fares _____
- 2. Special Fares \$63,020
- 3. School Bus Service _____
- 4. Freight Tariffs _____
- 5. Charters _____

G. Other Revenues (Source/Amount):

- 1. Animal Control Revenue \$5,099
- 2. _____

I. FY 2017-2018 NONCURRENT TDA & OTHER BUDGETED RESOURCES--enter here and on Part 6, Line J (Sections A+B+C+D+E+F+G) \$154,848

Attachment: Exhibit to Resolution - TDA Funds (Authorization to Apply for TDA Funds)

Kern Council of Governments

PART 6 OF 8--BUDGETED PUBLIC TRANSIT EXPENSES

For Fiscal Year 2017-2018

CLAIMANT: City of Arvin

J. FY 2017-2018 NONCURRENT TDA & OTHER BUDGETED RESOURCES (From Part 5, Line I) \$154,848

II. FY 2017-2018 BUDGETED EXPENSES & USES

K. Personnel:

- 1. Administrative Salaries & Wages
- 2. Operating Salaries & Wages 40,262.31
- 3. Other Salaries & Wages 356,385.58
- 4. Fringe Benefits 197,858.03

L. Services & Supplies:

- 1. Professional Services
- 2. Maintenance Services 12,302.95
- 3. Other Services 2,939.23
- 4. Vehicle Maintenance & Supplies 140,514.25
- 5. Utilities 10,524.98
- 6. Insurance 45,643.09
- 7. Purchased Transportation Services
- 8. Miscellaneous
- 9. Expense & Inter-fund Transfers
- 10. Interest
- 11. Lease & Rentals 5,060.80
- 12. Other 135,368.62

M. Capital Assets (Itemize and identify funding source - i.e., TDA, FTA 5311, CMAQ):

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

N. Other Uses:

- 1. Regional Planning Contribution (from most recent TDA estimate) _____
- 2. Capital Outlay Reserve Contribution _____

O. FY 2017-2018 BUDGETED EXPENSES & USES (Sections K+L+M+N) \$946,860

P. FY 2017-2018 UNFUNDED BALANCE (Line J-O) (\$792,012)

Attachment: Exhibit to Resolution - TDA Funds (Authorization to Apply for TDA Funds)

Kern Council of Governments

PART 7 OF 8--TDA FUNDING CLAIM

For Fiscal Year 2017-2018

CLAIMANT: _____ City of Arvin _____

I. FY 2017-2018 UNFUNDED BALANCE (From Part 6, Line P) _____ (\$792,012)

II. FY 2017-2018 TDA TRANSIT FUNDING CLAIM

- 1. LTF--Regional Planning (PUC 99262) (Same as Part 6, Line N1) _____
- 2. LTF--Operations/Capital (PUC 99260a) _____ \$96,643
- 3. LTF--Capital Reserve Withdrawal (CCR 6648) _____
- 4. LTF--Social Service Transit (PUC 99275) _____
- 5. LTF--Contracted/Purchased Transit Services (PUC 99400c) _____
- 6. LTF--Capital Res. Contrib.(CCR 6648) (Same as Part 6, Line N2) _____
- 7. STAF--Operations (CCR 6730a) _____ \$695,369
- 8. STAF--Capital (CCR 6730b) _____
- 9. STAF--Contracted/Purchased Transit Services (CCR 6731b) _____
- 10. STAF--Social Service Transit (CCR 6731c) _____
- 11. _____
- 12. _____

III. FY 2017-2018 TDA FUNDING CLAIM (Should equal line I) _____ \$792,012

UNEXPENDED RESOURCES AS OF JUNE 30, 2018 (Line I+Line III)(Should be \$0) _____ (\$0)

Attachment: Exhibit to Resolution - TDA Funds (Authorization to Apply for TDA Funds)

Kern Council of Governments
PART 8.1 OF 8--SUPPLEMENTAL PUBLIC TRANSIT INFORMATION
For Fiscal Year 2017-2018

Attach the following documents:

- 1) A copy of the governing body's authorization to execute and file this claim.
- 2) A completed copy of the attached questionnaire (BELOW) on system characteristics and any additional documentation required as a result of responding to each query.
- 3) A listing of all transit service subcontractors (BELOW) and a copy of the contract document, if not previously submitted.
- 4) A copy of the "unmet transit needs" documentation, including a legal notice of a public hearing, the minutes of the public hearing held by the local governing body and a resolution making the appropriate "unmet transit needs finding".
- 5) A copy of the Department of California Highway Patrol form number CHP339, "Transit Operator Compliance Certificate", dated within the past 13 months, documenting participation in the California Department of Motor Vehicles "Driver Pull Notice Program.
- 6) Date of the most recent completed annual TDA internal audit: Month: Day: Year

Kern Council of Governments
PART 8.2 OF 8--SYSTEM CHARACTERISTICS QUESTIONNAIRE
 For Fiscal Year 2017-2018

(NOTE: Place an "X" in the proper column)

Question	YES	NO
1. Have all recommendations for corrective action from the FY 2017-2018 independent financial audit report been implemented ? IF NO, PLEASE SUBMIT A CORRECTIVE ACTION PLAN COVERING EACH RECOMMENDATION NOT ADDRESSED.	X	
2. Have all recommendations for corrective action from the FY 2017-2018 performance audit report been implemented ? IF NO, PLEASE SUBMIT A CORRECTIVE ACTION PLAN COVERING EACH RECOMMENDATION NO ADDRESSED.	X	
3. Have all past transportation development plan recommendations been implemented ? IF NO, PLEASE SUBMIT A CORRECTIVE ACTION PLAN COVERING EACH RECOMMENDATION NOT ADDRESSED.	X	
4. Does the claimant maintain it's financial records in accordance with the California State Controller's approved "uniform system of accounts and records ?	X	
5. Has the claimant submitted it's "Annual Report of Financial Transactions of Transit Operators" to the California State Controller for the fiscal year ended June 30, 2018 ?	X	
6. Is the system expected to meet the applicable farebox revenue ratio requirement for FY 2017-2018?	X	
7. Is the system budgeted to meet the applicable farebox revenue ratio requirement for FY 2017-2018 ?	X	
8. If the answer to questions 6 or 7 is NO (i.e. fares revenues alone are insufficient to meet the applicable revenue ratio requirement), has the claimant committed sufficient "local funds" to supplement fares and thereby comply ?	X	
9. Does the claimant expect to qualify for and claim an "extension of service exemption" for either FY 2016-2017 or FY 2017-2018 ?		X
10. Is a budget increase in excess of 15% proposed for FY 2017-2018?		X
11. Is an increase or decrease in excess of 15% in the scope of operations or capital budget provisions proposed for FY 2017-2018 ?		X

Kern Council of Governments
PART 8.3 OF 8--SYSTEM CHARACTERISTICS QUESTIONNAIRE
 For Fiscal Year 2017-2018

(NOTE: Place an "X" in the proper column)

Question	YES	NO
(NOTE: If the answer to question 11 or 12 is YES, PLEASE SUBMIT A STATEMENT WHICH DESCRIBES THE COMPONENTS OF THE INCREASE/DECREASE AND JUSTIFIES OR SUBSTANTIATES THE CHANGE.)		
12. Is the claimant proposing an increase in executive level salaries for FY 20__-20__ ? IF YES, PLEASE SUBMIT A STATEMENT WHICH DEFINES AND JUSTIFIES THE INCREASE.		X
13. Is the claimant precluded by contract from contracting with common carriers or persons operating under franchise or license ?		X
14. Does the claimant expect to subcontract with outside parties for the provision of operator services in FY 20__-20__ ? IF YES, PLEASE SUBMIT A COPY OF ALL NEW OR AMENDED CONTRACTS NOT PREVIOUSLY SUBMITTED.		X
15. Is the claimant precluded by contract from employing part-time drivers ?		X
16. Does the claimant routinely staff public transportation vehicles designed to be operated by one person with two or more persons ?		X
17. Has the claimant's participation in the California Department of Motor Vehicle "Driver Pull Notice Program" been certified by the California Highway Patrol within the past 13 months ? IF YES, PLEASE SUBMIT A COPY OF FORM chp 339, "TRANSIT OPERATOR COMPLIANCE CERTIFICATE".	X	
18. Is the claimant's retirement system fully funded with respect to it's officers and employees ?	X	
19. Does the claimant have a private pension plan ?		X
20. If the answer to question 19 is YES and the plan is a "defined benefit plan", does the claimant do each of the following:		
a. Conduct periodic actuarial studies of it's employee pension plans to determine the annual cost of future pension benefits ?		
b. Set aside and invest, on a current basis, funds sufficient to provide for the payment of future pension benefits ?		

Attachment: Exhibit to Resolution - TDA Funds (Authorization to Apply for TDA Funds)

Kern Council of Governments
PART 8.4 OF 8--SYSTEM CHARACTERISTICS QUESTIONNAIRE
For Fiscal Year 2017-2018

LISTING OF SUBCONTRACTORS
City of Arvin

- 1.

NONE

- 2.

- 3.

- 4.

- 5.

- 6.

- 7.

- 8.

- 9.

- 10.

(NOTE: If the contract is new or amended from prior years, please submit a copy.)



CITY OF ARVIN
Staff Report

Meeting Date: September 18, 2018

TO:	City Council
FROM:	Jeff Jones, Finance Director Jerry Breckinridge, Interim City Manager
SUBJECT:	A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN AUTHORIZING THE INTERIM CITY MANAGER TO APPLY FOR NON-TRANSIT FUNDING FROM THE MILLS-ALQUIST-DEDEH (TDA) ACT FUNDS.

Background/Discussion:

City of Arvin provides streets and roads for the Citizens of the City of Arvin. As such, these roads and streets require regular maintenance, which includes such items as filling potholes up to replacing sections of a street. This is done to preserve the quality of these streets and roads.

TDA is a funding source for the development and support of maintaining our public transit needs that exist in California. TDA provides two major sources of funding. Local Transportation Fund and State Transit Assistance Fund. TDA Funds are distributed to KernCOG who oversees the administration and distribution of the funds to the various city and county agencies for transit operations. Excess TDA monies not used for transit, after going through an unmet transit needs process, are then available for street maintenance purposes.

Fiscal Impact:

This amount recovers street and road expenses incurred by the City during FY 2016-2017.

Recommendation:

Staff recommends that the City Council authorize the Interim City Manager to file a claim from TDA funding for the City's streets and road maintenance projects for FY 2016-2017 with the Kern Council of Governments (KernCOG).

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN AUTHORIZING THE INTERIM CITY MANAGER TO APPLY FOR NON-TRANSIT FUNDING FROM THE MILLS-ALQUIST-DEDDEH (TDA) ACT FUNDS.

WHEREAS, Public Utilities Code §§ 99200, et seq., known as the Mills-Alquist Deddeh Act, also known as the Transportation Development Act (“TDA”), allocates funds to local entities from the Local Transportation Fund and the State Transit Assistance Fund for various transportation purposes; and

WHEREAS, entities in Kern County that wish to receive funding from the Local Transportation Fund or the State Transit Assistance Fund must file their requests with the Kern Council of Governments (KernCOG) pursuant to the provisions of the TDA and California Code of Regulations (“CCR”), Title 21, §§ 6600, et seq.; and

WHEREAS, the City of Arvin currently provides public transportation within the jurisdiction through existing bus services provided by the City of Arvin Transit Dept., thereby reasonably meeting its transportation needs for the Fiscal Year 2016-2017; and

WHEREAS, the City of Arvin Transit Department needs to obtain funding for Fiscal Year 2016-2017 in the amount of \$551,885.

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

1. The above recitals are true and correct;
2. The Arvin City Council hereby authorizes the Interim City Manager to file a claim and any other ancillary documents thereto, for Fiscal Year 2016-2017 in the amount of \$551,885; and to accept on behalf of the City any funds received from KernCOG based on this claim.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a Regular Meeting thereof held on the 18th day of September, 2018 by the following vote:

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

Kern Council of Governments

TRANSPORTATION DEVELOPMENT ACT
STREETS AND ROADS CLAIM (FY 2016-2017)

Part 1 of 6 - CLAIMANT INFORMATION

I. Claimant

Agency: The City of Arvin

Mailing Address: P.O. Box 548

Office Address: 200 Campus Drive

City/State/Zip: Arvin, CA. 93203

Telephone: 661-854-3134

WEB Site: www.arvin.org

II. Contact Person

Name: Jeff Jones

Title: Finance Director

Department: Administration

Office Address: same

City/State/Zip: same

Telephone: same

E-mail: jeffiones@arvin.org

The City of Arvin

TRANSPORTATION DEVELOPMENT ACT
STREETS AND ROADS CLAIM

Part 2 of 6 - Claim and Assurances
For Fiscal Year 2016-2017

A. CLAIM: The The City of Arvin hereby claims all Local Transportation Fund apportionments and allocations for the 2016-2017 fiscal year plus all unencumbered fund balances and/or deferred revenues held in its local treasury less funds first allocated for transit uses.

B. COMPLIANCE ASSURANCES: The The City of Arvin hereby certifies that, as a condition of receiving funds pursuant to Public Utilities Code Section 99200, et seq. and California Administrative Code Section 6600, et seq., as amended, it shall ensure that:

1. All funds will be expended in compliance with the requirements of Public Utilities Code Sections 99200 through 99408, California Administrative Code Sections 6600 through 6684, Office of the State Controller "Guidelines Relating to Gas Tax Expenditures" and Kern Council of Governments' Transportation Development Act Rules and Regulations.

2. All funds will be expended in accordance with the budgets described in Parts 4 and 5 of this claim, attached hereto and made a part hereof, by this reference.

These assurances are given in consideration of and for the purpose of obtaining any and all funds allocated for streets and roads purposes pursuant to Public Utilities Code, Division 10, Part 11, Chapter 4 of the State of California.

The person whose signature appears below has been authorized to provide the assurances cited above and prepare, submit and execute this claim on behalf of:

The City of Arvin
Claimant

Signature Date

R.Jerry Breckinridge, Interim City Manager
Title

C. FINANCIAL ASSURANCES: As the chief financial officer of the The City of Arvin I hereby attest to the reasonableness and accuracy of the financial information presented in this claim and declare it to be consistent with the uniform system of accounts and records adopted by the Controller of the State of California.

Signature Date

Jeff Jones, Finance Director
Title

Attachment: Exhibit to Resolution - Non TDA funds (Authorization to Apply for Non-TDA Funds)

City of Arvin

TRANSPORTATION DEVELOPMENT ACT
STREETS AND ROADS CLAIMPart 4 of 6 - Object Budget
For Fiscal Year 2016-2017

<u>Account/Description</u>	<u>Amount</u>
<u>I. Prior Year Available Resources</u>	
A. Available Resources - estimated unexpended prior year TDA cash receipts held in claimant's treasury as of June 30, 2017 (from Part 3, Line L)	\$ (16,082)
B. Trust Fund Balances at June 30, 2017	
1. Local Transportation Fund	
C. FY 2016-2017 Trust Fund Apportionments - (from Kern COG estimate)	
1. Local Transportation Fund	\$ 853,061
2. Regional Planning Contribution	\$ 24,381
D. FY 2016-2017 Interest Earned - estimated interest earnings on claimant cash balances through June 30, 2017.	\$ 20,574
E. TOTAL ESTIMATED FY 2016-2017 AVAILABLE RESOURCES (Line A+B1+C1+C2+D)	\$ 881,934
<u>II. FY 2016-2017 Planning & Transit Allocations</u>	
F. Local Transportation Fund	\$ -
1. Public Transit (from transit claim)	\$ 792,012
2. Regional Planning Contribution (from Fund Estimate, Schedule B)	\$ 20,574
G. NET ESTIMATED PRIOR YEAR AVAILABLE RESOURCES (Line E-F1-F2)	\$ 69,348
<u>III. FY 2016-2017 Estimated Expenditures</u>	
H. Administration and Engineering	\$ 49,686
I. Maintenance	
J. Construction	\$ 475,439
K. Equipment	
L. Other	\$ 10,679
M. TOTAL FY 2016-2017 ESTIMATED EXPENDITURES-Itemize in Part 5 (Line H+I+J+K+L)	\$ 535,803
N. Capital Outlay Reserve Allocations	
1. Local Transportation Fund	
O. DEFERRED REVENUES OR FUND BALANCE AT JUNE 30, 2017 (Line G-M-N1)	
FY 2016-2017 NET CLAIM AMOUNT (Line M - Line A)	\$ 551,885

The City of Arvin

TRANSPORTATION DEVELOPMENT ACT
STREETS AND ROADS CLAIM

Part 6 of 6 - Supplemental Information
For Fiscal Year 2016-2017

Attach the following documentation:

1. A copy of the proof of publication for the public notice regarding conduct of a hearing for the purpose of receiving public testimony regarding transit needs within the claimant's service area.
2. A copy of the governing body's resolution or minute order which makes one of the following findings:
 - a. There are no unmet transit needs.
 - b. There are no unmet transit needs that are reasonable to meet.
 - c. There are unmet transit needs, including needs that are reasonable to meet.
3. A copy of the governing body's authorization to execute and file this claim.

· Unit 249	2000 Ford Crown Victoria	VIN# 2FAFP71W4YX202196
· Unit 261	2008 Toyota Highlander	VIN# JTEEW41A382015302
· Unit 262	2008 Toyota Highlander	VIN# JTEEW41A182020000
· Unit 263	2008 Toyota Highlander	VIN# JTEEW41A382020533
· Unit 264	2008 Toyota Highlander	VIN# JTEEW41A382020564
· Unit 278	2009 Dodge Charger	VIN# 2B3KA43T39H519511
· Unit 302	1988 Chevrolet K-10	VIN# 1GCEV14K6HJ158420

If the City Council determines that these items are surplus and authorizes their sale, the Police Department intends to sell them at auction to the highest bidder.

FINANCIAL IMPACT

None. All proceeds will be deposited into the City's General Fund.

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN APPROVING THE SALE OF VEHICLES DECLARED AS SURPLUS

WHEREAS, the City Council has the authority to interpret its own ordinances and the Arvin Municipal Code (AMC); and

WHEREAS, the City Council adopted AMC Section 3.08.110 (Surplus property-Sale or other disposal) in 2012; which establishes a procedure to declare equipment surplus; and

WHEREAS, AMC Section 3.08.110 (a) states all department heads of the city shall submit to the city council at such times, and in such form as may be prescribed, reports showing stock, materials, equipment and any real property on hand not then in use in said department. When a surplus of stock, materials, equipment, or real property exists in any department, the city council may transfer the same to any other department having a need for such stock or any portion thereof on approval of the city council or its designated official; and

WHEREAS, AMC Section 3.08.110 (b) states, when it is found by the city council that stock, materials, equipment, or real property exists which is not needed for use by any city department, the city council may authorize the sale thereof, and the proceeds from any such sale or sales shall be deposited in the city treasurer; and

WHEREAS, AMC Section 3.08.110 (c) states, upon the city council's finding and authorization of the sale of surplus stock, materials, equipment, or real property, the city manager may take whatever steps necessary to obtain the highest price in exchange for the sale of the surplus stock, materials, equipment, or real property. The determination of the highest price that will be most favorable to the city will be made by the city manager, within his/her sole discretion. The city manager may thereafter enter into and complete the sale of the surplus stock, materials, equipment, or real property on behalf of the city; and

WHEREAS, the Chief of Police has found that eight (8) police department vehicles are no longer in use by the Arvin Police Department and are surplus.

NOW, THEREFORE, the City Council of the City of Arvin, does resolve as follows:

1. The City Council finds that the 8 police vehicles declared surplus by the Chief of Police are not needed for use by any City department. The City Council of the City of Arvin authorizes the sale of (8) police department vehicles declared surplus by the Chief of Police.
2. The City Council finds that this approval is in the best interests of the City of Arvin.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a Regular Meeting thereof held on the 18th day of September, 2018 by the following vote:

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

Arvin Police Department
Vehicles needing to be declared surplus

VEHICLE NUMBER	YEAR	MAKE	MODEL	VIN NUMBER	MILES
249	2000	Ford	Crown Vic	2FAFP71W4YX202196	102315
259	2008	Toyota	Highlander	JTEEW41A382013596	88532 Wrecked
261	2008	Toyota	Highlander	JTEEW41A382015302	107592
262	2008	Toyota	Highlander	JTEEW41A182020000	Not available
263	2008	Toyota	Highlander	JTEEW41A382020533	98940
264	2008	Toyota	Highlander	JTEEW41A382020564	63598
278	2009	Dodge	Charger	2B3KA43T39H519511	104334 Bad Motor
302	1988	Chev	K-10	1GCEV14K6HJ158420	181749



CITY OF ARVIN Staff Report

Meeting Date: September 18, 2018

TO: City Council

FROM: Jake Raper, City Planner
Jerry Breckinridge, Interim City Manager

SUBJECT: Public Hearing – Appeal of Arvin Planning Commission Conditional Use Permit and Site Development Plan (SDP) 2018-240LA - 240 Langford Avenue- Ismaili Market – Expansion of a Non-Conforming Use – Regarding Storage and Patio Use, and Denial of Expansion for a Take-Out Kitchen, Located within the R-1 Single Family Dwelling Zone at 240 Langford in Arvin, and adopt the Notice of Exemption Per CQA Guidelines Section 15061(B) (3)

RECOMMENDATION:

Staff recommends the City Council affirm the Planning Commission decision of April 19, 2018 conditionally approving Conditional Use Permit and Site Development Plan (SDP) 2018-240LA - Ismaili Market - Expansion of a Non-Conforming Use - Regarding Storage and Patio Use, and Denial of Expansion for a Take Out Kitchen, Located within the R-1 Single Family Dwelling Zone at 240 Langford in Arvin, and adopt the Notice of Exemption Per CQA Guidelines Section 15061(B) (3) and direct staff to present a City Council Resolution at the next regular meeting date.

City Council Options: Section 17.54.130 Decisions- Granting or denial -notice, Subsection B, Exhibit C, states that:” The decision appealed from shall be affirmed unless reversed by a vote of not less than a majority of all members of the city council.”

1. The City Council may uphold the decision of the Planning Commission, which would allow some use of the expansion; or
2. The City Council may reverse the Planning Commission action, minimum of 3 votes, which would require the removal of storage area and patio.

BACKGROUND:

The Planning Commission on April 19, 2018 conducted a public hearing on the above project. Per Staff’s recommendation, the Planning Commission conditionally approved an expansion of a non-conforming use, Neighborhood Market, by permitting storage addition. The applicant had requested the establishment of a Take-Out Kitchen, however the Planning Commission disapproved the request.

On April 26, 2018, the applicant was advised of the Planning Commission’s action and provided

a copy of the resolution, APC 2018-06 dated April 19, 2018.

The Applicant, Mr. Saleh Maher Ahmed, submitted a letter of appeal with the filing fee to the City Clerk.

The City Council on June 19, 2018 set the Public Hearing date of September 4, 2018. The staff was unable to advertise the public hearing date of September 4, 2018 and has advertised the appeal and public hearing notice for the September 18, 2018 City Council meeting. The City of Arvin Municipal Code, Section 17.54.130 (B) Decisions - Granting or denial Notice required that the City provide notice by publication in newspaper, notice to surrounding property owners within 300 feet, and interested parties ten (10) days prior to the public hearing date.

The City published the Public Hearing Notice in the Bakersfield Californian and mailed the public hearing notice to the surrounding property owners within 300 feet and the appellant on September 4, 2018, Attachment 5.

Letter of Appeal and Petition dated May 2, 2018 - Attachment 1:

Mr. Maher Ahmed Saleh, on May 2, 2018 submitted a letter of appeal and attached a petition from neighbors in support of a proposed take out kitchen, Exhibit A. In summary, Mr. Saleh believes that in as much as the City approved a building permit for an addition for the purposes of storage and that the permit was still valid they began construction in 2017.

Planning Commission Report and Staff Recommendation, Attachment 2 and 3:

Planning Commission after the public hearing adopted APC Resolution No. 2018-06 on April 19, 2018, Exhibit B. In summary, the conditional approval, based upon Staff's recommendation, disapproved the take-out kitchen, required that the patio encroachment into the right-of-way be removed, and all walk-up service windows and outside countertops be removed.

Chapter 17.52 Nonconforming Buildings and Uses, Attachment 4:

Section 17.52.010 Nonconformance regulations, subsections A and B identifies that non-conforming buildings may be maintained provides that no physical changes occur and that no increase or enlargement of the area, space or volume, etc.

ATTACHMENT(S)/EXHIBIT(S):

Attachment 1 - Letter of Appeal and petition dated May 2, 2018

Attachment 2 - Planning Commission Staff Report dated April 19, 2018

Attachment 3 - Planning Commission Resolution No. APC 2018-06 dated April 19, 2018

Attachment 4 - AMC Chapter 17.52 Nonconforming Buildings and Uses

Attachment 5 - Public Hearing Notice for City Council Meeting date of September 18, 2018

05/02/18

**Letter Of Appeal
(CUP) and (SDP) 2018-240LA- Ismaili Market- Expansion of Non Conforming Use
Regarding Storage and Patio and Denial of Expansion of a take -out restaurant
Located within the R-1 Single Family Dwelling Zone,
APN# 192-130-26, Arvin, CA 92303.**

05-04-18P03:09 RCVD

To Whom it Concerns,

This letter is being written in response to the Conditional Use Permit (CUP) and Site Development Plan (SDP) 2018-240LA- Ismaili Market- Expansion of Non-Conforming Use Regarding Storage and Patio and Denial of Expansion of a take -out restaurant Located within the R-1 Single Family Dwelling Zone, APN# 192-130-26, Arvin, CA 92303.

We find that the findings from the hearing don't justify the denial of the Cup and site development plan for the Take-out Window. And we are appealing the ruling from the hearing held on 4-19-2018 In response to the finding we provide the following response.

2015- City of Arvin approves the permits for the 490 Sq.Ft. Addition that was intended for a storage and a future take-out window (upon approval from the city for the CUP to have the take -out window fully operable). An based off the City's approval in 2015 of the addition in 2017 we started to construct the 490 Sq. Ft addition that was approved by the City of Arvin in 2015. We understand that the approval by the city in 2015 was an over sight by the city, that oversight should not have to be at the expense of the Business owner or Place of Business which is bring jobs and revenue to the City of Arvin. An unfamiliar with how the building department works and the standard practices for Permitting. We constructed the 490 sq.ft. Addition in 2017 under the impression that the permit was still active and approved. The take-out window or covered patio wouldn't cause detrimental effects to the surrounding area or neighbors. Based on the fact that the property is currently a store, we find that denial from the hearing is a unfair ruling.

We plan to take the proper course of action to rectify the situation. By going through the proper channels to obtain a Zoning Variance to have the R-1 zoning Changed to a C-1 or C-2 zoning as cited in Section 17.54 for Variances, modifications, and Zone changes. As well all other permits and required impact fees to obtain those permits. We look forward to being able to work with the City of Arvin in order to come to a fair and reasonable agreement. Please also see attached Petition signed by home owners and residence in the surrounding area.

Sincerely,
Maher Ahmed Saleh

Maher Saleh

(661) 854-5641

cell (661) 331-5351

Petition

05-04-18P03:09 RCVD

Petition summary and background	AUTHORIZATION TO PRMIT ISMAILI MARKET AT 249 LANGFORD AVE IN ARVIN, TO HAVE A KITCHEN FOR THE SALE OF PREPARED FOOD. WE ARE IN NEED OF THIS SERVICE IN OUR AREA OF ARVIN
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to APPROVE THE CONDITIONAL USE PERMIT TO ISMAILI MARKET FOR THE SALE OF PREPARED FOOD AUTORIZACION PARA QUE LE PERMITAN A ISMAILI MARKET LA VENTA DE COMIDA PREPARADA

Printed Name	Signature	Address	PHONE NUMBER	Date
Alfred Duerrero	<i>[Signature]</i>	298 Langford Ave	661-346-6594	5-3-18
Jorge Moreno	<i>[Signature]</i>	424 S Hill St Arvin	661-436-0740	5/3/18
Raquel Duran	<i>[Signature]</i>	9255 Derby Arvin Ca 03	661-376-8619	5/3/18
Yolanda Arevalo	<i>[Signature]</i>	773 Butte Ave	661-564-1080	5/3/18
Patricia Heera	<i>[Signature]</i>	430 Olson way	661 800-6947	5-3-18
Victor J. Heera	<i>[Signature]</i>	430 Olson way	(805) 738-2622	5-3-18
Emanuel Gonzalez	<i>[Signature]</i>	1001 Wainwright	661-331-1620	5-3-18
Richard Gutierrez	<i>[Signature]</i>	200 th Ave spec #69	661-903-6023	5-3-18
Gabriel Mares	<i>[Signature]</i>	Meyer st Arvin	661-423 7535	5-3-18
Tommy	<i>[Signature]</i>	832 SOUTH A	661-376-6882	5-3-18
JOEFILIPPO	<i>[Signature]</i>	260 LANGFORD AVE	6615577417	5-3-18
FABIAN SOLIS	<i>[Signature]</i>	800 STOKSTON AVE	6615784875	5-3-18

Petition

05-24-18P03:10 RCVD

Petition summary and background	AUTHORIZATION TO PRMIT ISMAILI MARKET AT 249 LANGFORD AVE IN ARVIN, TO HAVE A KITCHEN FOR THE SALE OF PREPARED FOOD. WE ARE IN NEED OF THIS SERVICE IN OUR AREA OF ARVIN
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to APPROVE THE CONDITIONAL USE PERMIT TO ISMAILI MARKET FOR THE SALE OF PREPARED FOOD AUTORIZACION PARA QUE LE PERMITAN A ISMAILI MARKET LA VENTA DE COMIDA PREPARADA

Printed Name	Signature	Address	PHONE NUMBER	Date
pedro Martinez		441 HOLSON WAY	661-557-5806	05-3-18
Jose A. Armijo		711 Stockton Ave	661-854-7356	05-3-18
Alberto Santos		238 Langford Ave	661-978-4088	5-3-18
Cesar Vargas		61 Colorado Real St	661-903-2002	5-3-18
Angel Lopez		437 1/2 FRANKLIN ST	661-748-8275	5-3-18
Jane Lopez		200 5th Ave spc 25		5-3-18
Fred Garcia		432 Langford Ave	661-854-1742	5-3-18
Salvador Gonzalez		920 Wernick	(661) 535-5022	5-3-18
Juan Bedoya		863 Stockton Ave	(661) 889-8504	5-3-18
Muel Hernandez		705 Stockton Ave		5-3-18
Jesus Moreno		573 Grove St	661-369-9621	5-3-18
Niel Meru		157 Tallgrass ave	661-316-3717	5-3-18

05-04-18P03:10 RCVD

Printed Name	Signature	Address	PHONE NUMBER	Date
Raul Pantoja		201 Ojeda St	661 319-3420	5-3-18
Rafael - Col		703 - S-dean St	661- 2710787	5-5-18
Eugenia Hidalgo		209 Franklin ST	661- 247-3851	5-3-18
Vicente		290 LANGFORD		5/3/18
Fabian Martinez		2708 Tesoro Way	661-889-8452	05/3/18
Ehren Gomez		157 Fallbrook Ave Sp. 19	661- 428-3041	5/3/18
JESSICA VALENCIA		109 CARDIFF AVE	432-232-2674	5/3/18
Jose Aguilar		710 Stockton ^{Ave}	(661) 390-4094	5/3/18
Melissa Lozano		321 Franklin St	(661) 379-9694	5/3/18
Rubén Colman		201 Stockton	661 979 6172	5-3-18
Elizabeth Martinez		864 Stockton Ave	(661) 748 5590	5-3-18
Leopatra Murray		769 Stockton Ave	661 304 2041	5-4-18
JOSE GONZALEZ		769 Stockton Ave	661 436 2918	5-4-18
Arnulfo Arroyo		746 Stockton Ave	661 436 0751	5/4/18
Nemi Duran		157 Fallbrook Ave ^{#13}	661 852-8351	5/4/18
Lilibeth Caravez		157 fallbrook Au 23	661 389 3993	5/4/18

Petition

05-04-18 PM 5:10 RCVD

Petition summary and background	AUTHORIZATION TO PRMIT ISMAILI MARKET AT 249 LANGFORD AVE IN ARVIN, TO HAVE A KITCHEN FOR THE SALE OF PREPARED FOOD. WE ARE IN NEED OF THIS SERVICE IN OUR AREA OF ARVIN
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to APPROVE THE CONDITIONAL USE PERMIT TO ISMAILI MARKET FOR THE SALE OF PREPARED FOOD AUTORIZACION PARA QUE LE PERMITAN A ISMAILI MARKET LA VENTA DE COMIDA PREPARADA

Printed Name	Signature	Address	PHONE NUMBER	Date
BELTHER BETH	<i>[Signature]</i>	863 - Stockton	661-37634-36	5-3-18
Fabian Garcia	<i>[Signature]</i>	859-Stockton	661-421-1388	5-3-18
Enrique Garcia	<i>[Signature]</i>	859-Stockton	661-7030870	5-3-18
Juan Perez	<i>[Signature]</i>	241/1/2 Franklist	6613421851	5318
Jose	<i>[Signature]</i>	711 Stockton Ave	661 854 7356	5/03/18
Antonio Masquez	<i>[Signature]</i>	1864 Stockton Av	661 662 6259	5/04/18

CITY OF ARVIN
200 CAMPUS DR
ARVIN, CA 93203

Payee: MAHER AHMED SALEH
Date: 5/4/2018 Time: 3:07 PM
Receipt Number: 6FL / 30879
Clerk: CECILIA

APPEAL CUP AND SDP 2018-240LA
ISMAILI MARKET 240 LANGFORD

ITEM	REFERENCE	AMOUNT
BUILD APPEAL CUP AND SDP 2018-240LA		
OTHER PERMIT FE		420.00
Total:		420.00
Check	3774	420.00
Change:		0.00



**ARVIN PLANNING COMMISSION
Agenda Report**

Meeting Date: April 19, 2018

TO:	Planning Commission
FROM:	Jake Raper, City Planner – Contract Planner JAS Consultants
SUBJECT:	Conditional Use Permit (CUP) and Site Development Plan (SDP) 2018-240LA – Ismaili Market- Expansion of a Non-conforming Use Regarding Storage and Patio Use and Denial of Expansion of a Take-Out Kitchen Located within the R-1-Single Family Dwelling Zone, APN 192-130-26, Arvin, CA 92303

RECOMMENDATION

CONDITIONALLY APPROVE:

Approve Resolution of the City of Arvin Planning Commission Approving Conditional Use Permit (CUP) and Site Development Plan (SDP) 2018-240LA – Ismaili Market- Expansion of a Non-conforming Use- Regarding Storage and Patio Use and denying of expansion for a takeout kitchen, located within the R-1-Single Family Dwelling Zone at 240 Langford in Arvin, and Adopt the Notice of Exemption Per CEQA Guidelines Section 15061(B)(3);

I. BACKGROUND

The applicant is requesting approval of a Conditional Use Permit (CUP) to allow for the expansion of a non-conforming neighborhood grocery store (commercial use) located in a residential zone. The subject property is located at the northeast corner of Langford Avenue and Stockton Avenue and is zoned R-1-Single Family Dwelling. The subject property is developed with a 24'-6" X 50'-0" 1,274 square foot neighborhood market, a 1,346-square foot residence and a 700-square foot detached garage, all of which were built prior to the City's incorporation on December 21, 1960; Attachment 1 – Site Plan, Attachment 2 -Floor Plan of Proposed Addition 2015, Attachment 3 – Aerial Photo of Site; Attachment 3, 4, 5,6, 7, 8, 9, and 10 Photographs of the Existing Site Improvements.

Pursuant to Section 17.08.020 (R-1 Zone) of the Municipal Code, a commercial use is not an allowed use within the R-1 Zone. As such the existing neighborhood grocery store on the property is considered a legal non-conforming use and is subject to the rules and regulations of Section 17.52.010 (Nonconforming Uses) of the Municipal Code which addresses non-conforming land uses. As a rule, a non-conforming use may be maintained and continued; provided there is no increase or enlargement of the area, space, or volume occupied or devoted to the non-conforming use, and there is no intensification of the land use. However, Section 17.56 (Conditional Uses) and Section 17.54 (Variances, Modifications, and Zone Changes) of the Municipal Code establishes procedure for the Planning Commission to process requests for Conditional Uses. As authorized by Chapter 17.08.020 Permitted Uses, Subsection J, the Planning Commission may permit addition uses according to the provision of Chapter 17.56 Conditional Use Permits. *Based upon the unique circumstances of this project, the applicant's request to expand the non-conforming use by a conditional use permit may be a procedure to allow the expansion.*

Prompted by a building code violation, the applicant is requesting approval of a CUP to legalize a 490-square foot addition that is proposed as a take-out kitchen and an 800-square foot open patio that is attached to the take-out kitchen. These improvements were partially constructed without building permits; Attachments 3, 4 Photographs of street side yard and rear yard. During construction the applicant received a building citation and has since been coordinating with the Community Development Department to gain clearance for the proposed addition.

The applicant has submitted Conditional Use Permit and Site Development Permit for the proposed expansion.

In 2015, prior to the commencement of any construction activity, the applicant applied for a 490-square foot (20'-0" X 24.5') addition to the existing store represented as a storage area, Attachment 2, 2015-Floor Plan of Proposed Addition. The 490-square foot addition was approved for storage only, the application did not include the open patio area, and building permit was cleared for construction and the permit was subsequently issued by the City. However, the addition was never completed, consequently, the building permit was never utilized and it expired.

The prior approval in 2015 of the 490-square foot addition was an oversight by City staff and the lack of coordination allowed the clearance and approval. The building permit was not exercised by the applicant by the payment of fees and construction per the building code.

However, in 2017, the applicant partially constructed the addition as a Take-Out Kitchen and an Open Patio – the construction is without City Clearance. The City Municipal Code clearly states that any expansion of a non-conforming use is not permitted, however the code also provides an opportunity for the Planning Commission to approve other uses as noted above. In 2017, the applicant was cited for constructing the proposed 490 square foot take-out kitchen, 800 square foot open patio without proper approval or building permits.

Nevertheless, in processing the 490 storage addition staff determined that the additional storage space would not provide an intensification of land use as well as the open patio area. For instance, additional storage space would not result in an increase of the commercial sales area, and it would not generate additional parking spaces. Furthermore, the additional storage area would not generate additional customer demand.

II. GENERAL PLAN AND ZONING CONFORMITY:

Project Location: The subject property is located at 240 Langford Avenue. The convenience store is located on the corner of Langford Avenue and Stockton Avenue. The residence is located to the east of the convenience store and fronts Langford Avenue. Surrounding development consists entirely of single family development.

General Plan Land Use Designation: Low Density Residential

Zoning Designation: The site zoning designation is R-1.

In order to approve a CUP for the expansion of a non-conforming use, it must be determined that the project is being held to the same standards as other properties in the vicinity that are also in the same General Plan and zoning designation. Therefore, the project would be required to be in conformance with the following General Plan and zoning regulations:

Height- The maximum allowed height for the subject site is 35 feet. The proposed project is a one-story structure with a maximum height of 16'-6". The proposed project follows the maximum height limit requirement.

Front Yard- The minimum required front yard setback is 20 feet. The existing convenience store is setback from the front property line by approximately 8 feet. However, the proposed addition is located in the rear of the building. Therefore, the proposed addition does not intensify the non-conforming front yard setback.

Street side yard- The minimum required street side yard setback is 10 feet. The existing convenience store is setback approximately 12 feet from the street side yard. However, the Patio Addition extends beyond the building footprint all the way to the property line, creating a 0-foot street side yard setback. Therefore, the proposed addition is not in compliance with the minimum zoning standards and it would create a new non-conforming setback.

Rear yard- The minimum required rear yard setback is 10 feet. A rear yard setback of 225 feet is proposed. Therefore, the project complies with the rear yard setback.

Parking-The development code requires a minimum of 1 parking space for every 250 square feet of customer sales area. Therefore, the existing 1,200 square foot convenience store would be required 5 parking spaces; the proposed 490 square foot take-out kitchen would be required an additional 3 parking spaces. The existing site does not contain any parking spaces and no new parking spaces are proposed. Therefore, the proposed addition is not in compliance with the minimum zoning standards and it would further intensify an existing non-conforming use.

Landscape requirements- The development code requires, among other things, a minimum of 10% of the site be landscaped, a landscape buffer between commercial and residential uses, and perimeter landscaping adjacent to the right-of-way. The existing convenience store does not meet the minimum landscape requirements as less than 10% of the site is currently landscaped, there is no landscape buffer that separates the commercial and residential uses, and there is no perimeter landscaping. The site plan does not indicate that any new landscape areas are being proposed. Therefore, the proposed addition is not in compliance with the minimum zoning standards and it would further intensify an existing non-conforming use.

General Plan Consistency- The subject property has a General Plan land use designation of Low Density Residential which allows traditional single-family homes with one to six dwelling units per acre. The existing convenience store and the proposed take-out kitchen are inconsistent with the General Plan land use designation. Therefore, the proposed addition is not in compliance with the General Plan and it would further intensify an existing non-conforming use by creating additional sales area that is non-conforming with the General Plan.

Staff has been working with the applicant to resolve the ongoing building violations and is sensitive to the fact that the proposed improvements have already been constructed. However, the Municipal Code is clear with respect to non-conforming land uses; there shall be no increase or enlargement of a non-conforming use, and there shall be no intensification of the land use. As a result, staff is recommending that the Planning Commission deny the applicant's request to allow a 490-square addition that is proposed as a take-out kitchen; but to subsequently find that the proposed addition may be allowed as storage only. If the Planning Commission determines that the proposed addition may be allowed as storage, it shall be subject to the following conditions: 1) At the street side yard setback, the proposed addition, including the open patio, may not encroach any closer to the property line than that of the existing building; and 2) All service windows and outside countertops shall be removed. That the area shall be used for storage only in relationship to the existing store. With respect to the constructed open patio, staff recommends approval subject to the same conditions.

In coming to this recommendation staff applied the same presumed rationale as was previously used in 2015. The approval of additional floor area as storage space, as opposed to a take-out kitchen, would not in of itself create an intensification of land use. For instance, additional storage space would not result in

an increase of the commercial sales area, and it would not require any more parking spaces than what would otherwise already be required. Therefore, the additional storage area would not generate an increase in customer demand. Lastly, with the recommended conditions of approval the additional floor area would not create any new nonconforming setbacks.

III. PUBLIC NOTIFICATION AND CONSULTATION:

The City properly noticed the April 19, 2018 hearing before the Planning Commission for the proposed CUP 2018-240LA pursuant to Government Code sections 65090 and 65091 by publication in the newspaper, Attachment 7. In addition, the City Clerk provided notice of the proposed conditional use permit by mailing the public notice to all property owners within the 300-foot radius.

IV. ENVIRONMENTAL CONSIDERATIONS

Staff is recommending adoption of a Ministerial Determination – which means no possible effect on the environment resulting from this project. The project is determined to be Exempt per Section 15061(b) (3) General Rule is proposed for project. A Notice of Exemption has been prepared and is on file at the Community Development Department. The existing non-conforming store is approximately 1,225 square feet and the proposed addition is approximately 625+/- square feet. The area is in a developed neighborhood and has no possibility of causing a significant, adverse impact to the environment.

V. AGENCIES COMMENTS:

On March 19, 2018, the application was distributed to City of Arvin departments for review and comment.

Comments noted by the various departments related to the handicap parking location and layout, compliance with building codes, submittal of a Site Development Permit identifying issues such as signs, parking layout, landscaping, and side yard setbacks.

EXHIBITS AND ATTACHMENTS

CONDITIONALLY APPROVE:

Approve Resolution of the City of Arvin Planning Commission Approving Conditional Use Permit (CUP) and Site Development Plan (SDP) 2018-240LA – Ismaili Market- Expansion of a Nonconforming Use- Regarding Storage and Patio Use and denying of expansion for a takeout kitchen, located within the R-1- Single Family Dwelling Zone at 240 Langford in Arvin, and Adopt the Notice of Exemption Per CEQA Guidelines Section 15061(B)(3);

- Attachment 1 – Site Plan,
- Attachment 1a – Elevations,
- Attachment 2 -Floor Plan of Proposed Addition 2015,
- Attachment 3 – Aerial Photo of Site;
- Attachment 4 – Photo of Existing House and Detached Garage
- Attachment 4a – Photo of Existing House and Neighborhood Grocery Store
- Attachment 5 – Photo of Street Side Yard 2018 – Patio Area Recommended to be Removed
- Attachment 6 – Photo of Street Side Yard 2012
- Attachment 7 – Photo of Street Side Yard Patio Area – Patio Area and Windows Recommended to be Removed
- Attachment 8 – Photo of Street Side and Rear Yard with Patio Area Recommended to be Removed
- Attachment 9 – Photo of Street Side and Rear Yard with Patio Area Recommended to be Removed
- Attachment 10 – Street Side Yard
- Attachment 11 - Public Hearing Notice

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ARVIN APPROVING CONDITIONAL USE PERMIT (CUP) AND SITE DEVELOPMENT PLAN (SDP) 2018-240LA – ISMAILI MARKET- EXPANSION OF A NON-CONFORMING USE- REGARDING STORAGE AND PATIO USE, AND DENIAL OF EXPANSION FOR A TAKE OUT KITCHEN, LOCATED WITHIN THE R-1-SINGLE FAMILY DWELLING ZONE AT 240 LANGFORD IN ARVIN, AND ADOPT THE NOTICE OF EXEMPTION PER CEQA GUIDELINES SECTION 15061(B)(3)

WHEREAS, the Planning Commission opened the public hearing on April 19, 2018, and has received testimony and other evidence at the meeting; and

WHEREAS, public notice for the public hearing was published in the (Newspaper on April 8, 2018 and notices were mailed to individual property owners within 300-feet of the project site on April 8, 2018; and

WHEREAS, the environmental document, Notice of Exemption is on file at the City of Arvin Community Development Department; and

WHEREAS, the Planning Commission of the City of Arvin hereby finds and adopts the following findings:

1. Notice has been given in the time and in the manner required by State Law and City Code; and
2. A Notice of Exemption, General Exemption per the California Environmental Quality Act, is on file at the City of Arvin Community Development Department and finds that the project as proposed will not result in any environmental impacts; and
3. The existing neighborhood grocery store on the property is considered a legal non-conforming use and is subject to the rules and regulations of Section 17.52.010 of the Municipal Code which address non-conforming land uses. Specifically, a non-conforming use may be maintained and continued; provided there is no physical change other than maintenance and repair.
4. The Planning Commission in accordance with Section 17.08.020 (J) additional uses may be permitted by the Planning Commission according to the provisions of Chapter 17.56, conditional use permits.
5. The addition of 490 square foot room for storage to an existing 1200 square foot neighborhood grocery store is concluded to be a nonintrusive use and the approval of a Conditional Use Permit to permit said addition has met the provisions of Chapter 17.56 conditional use permits.
6. Chapter 17.05 Uses Permitted Subject to Administrative Approval and Chapter 17.60 Site Development Permits require approval of new construction to insure compliance with City Standards. The proposed additions, additional storage area and open patio area, meet the requirements Section 17.60.040 A and B in that the additions shall meet city laws and ordinances; comply with City Policies, compliance with planning and engineering standards.
7. The proposed use or building will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working the neighborhood.
8. The proposed 490-sqaure foot storage addition storage space and modified open patio area would

not provide an intensification of land use as well as the open patio area. For instance, additional storage space would not result in an increase of the commercial sales area, and it would not generate additional parking spaces.

9. The additional storage area would not generate additional customer demand.
10. The approval of additional floor area as storage space, as opposed to a take-out kitchen, would not in of itself create an intensification of land use. For instance, additional storage space would not result in an increase of the commercial sales area, and it would not require any more parking spaces than what would otherwise already be required.
11. The additional storage area would not generate an increase in customer demand.
12. The addition when compliant with the conditions of approval the additional floor area for storage only would not create any new nonconforming setbacks.
13. The Planning Commission finds that although the property is not being used consistent with the R-1 zoning, the proposed use, as conditioned, is deemed essential or desirable to the public convenience or welfare, and is in harmony with the various elements or objectives of the comprehensive general plan.

NOW, THEREFORE, BE IT RESOLVED, by the City of Arvin Planning Commission as follows:

1. The recitals set forth above are true and correct and incorporated herein by this reference.
2. The Planning Commission finds that notice has been given in the time and in the manner required by State Law and City Code.
3. The Planning Commission finds that this project is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) in that it is not a project that has the potential for causing a significant environmental effect. The existing non-conforming store is approximately 1,225 square feet and the proposed addition is approximately 492- square feet. The area is in a developed neighborhood and has no possibility of causing a significant, adverse impact to the environment.
4. The Planning Commission finds that applicant's request to allow a 490-square foot addition that is proposed as a take-out kitchen is denied as it is an impermissible expansion of a non-conforming use, is incompatible with the surrounding uses, and is prohibited by Arvin Municipal Code section 17.52.010(a) and (b).
5. The Planning Commission finds that with the conditions imposed herein, the use proposed by Conditional Use Permit (CUP) and Site Development Plan (SDP) 2018-240LA, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood. As such, the Planning Commission approves Conditional Use Permit (CUP) and Site Development Plan (SDP) 2018-240LA subject to the following conditions:
 - a. At the street side yard setback, the proposed 490 square foot addition, including the open patio, may not encroach any closer to the property line than 10'-0" as is required by the city code;
 - b. All walk-up service windows and outside countertops shall be removed prior to approval of Conditional Use Permit and Site Development Plan (SDP) 2018-240LA taking effect.

The property shall not be used for take out dining or a take out kitchen.

- c. That the area shall be used for storage only in relationship to the existing store.
- d. All property owner(s) and business owners(s) shall submit affidavits of acceptance of the conditions of approval for this project prior to approval of Conditional Use Permit and Site Development Plan (SDP) 2018-240LA taking effect.
- e. Approval of the Site Development Plan shall be contingent upon approval of the Conditional Use Permit taking effect.
- f. Any business conducted on the premises shall maintain a business license and comply with the Arvin Municipal Code at all times.

6. This Resolution shall take effect immediately.

I hereby certify that the foregoing is a full, true and correct copy of the resolution duly and regularly adopted and passed by the Planning Commission of the City of Arvin at a special meeting held on the 19th day of April 2018 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, Secretary

ARVIN PLANNING COMMISSION

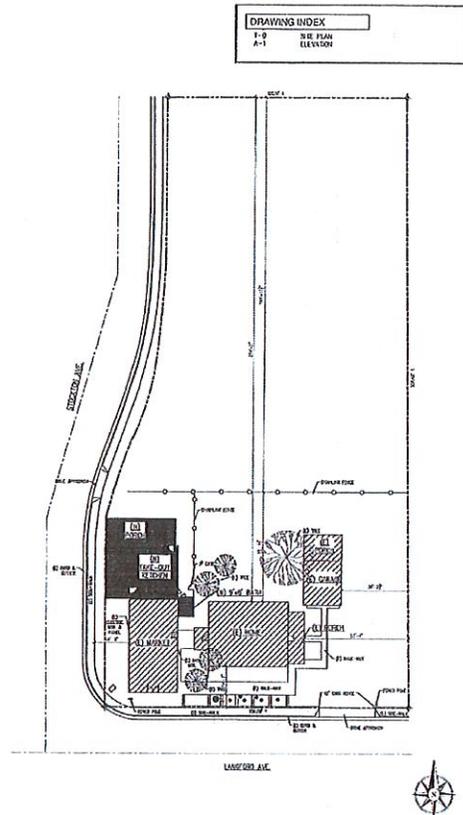
By: _____
OLIVIA TRUJILLO, Chairperson

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, Secretary of the Planning Commission of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the Planning Commission of the City of Arvin on the date and by the vote indicated herein.

<p>PROJECT DATA</p> <p>ADDRESS: 240 LANGFORD AVENUE, ARVIN CA 93203</p> <p>APN: 192-130-26</p> <p>ZONING: R-1</p> <p>CONSTRUCTION TYPE: VI</p> <p>PARCEL SIZE: 44950 S.F. (1.029 ACRES)</p> <p>COUPONITY GROUP: N</p> <p>FIVE STRIPES: 301 REPAIRS</p> <p>LEGAL DESCRIPTION: S 26 T 31 R 23</p> <p>USE TYPE: RETAIL SALES</p> <p>BUILDING COVERED AREA:</p> <p>NEW TAKE-OUT KITCHEN: 842 S.F.</p> <p>NEW PORCH: 803 S.F.</p> <p>NEW ADA RESTROOM: 72 S.F.</p> <p>EXISTING MARKET: 1,300 S.F.</p> <p>EXISTING RESERVE: 1,348 S.F.</p> <p>TOTAL AREA: 4,000 S.F.</p>	<p>VICINITY MAP</p> <p>NOTE: ALL UTILITIES (GAS, WATER, SANITARY, ELECTRIC) ARE EXISTING.</p>
<p>SCOPE OF WORK</p> <p>CONDITIONAL USE PERMIT FOR ADDITIONAL TAKE-OUT KITCHEN AND RESTROOM TO AN EXISTING BUILDING.</p>	
<p>PROJECT DESCRIPTION:</p> <p>ADDING NEW 842 S.F. TAKE-OUT KITCHEN, 72 S.F. ADA RESTROOM AND 803 S.F. PORCH TO AN EXISTING 1,300 S.F. MARKET.</p>	
<p>PROJECT DIRECTORY</p> <p>OWNER: MAHER SALEH 240 LANGFORD AVENUE ARVIN, CA 93203</p> <p>PREPARED BY: WEDDING PLANNING 370 UPRIDGE AVE ARVIN, CA 93203 CELL: 558.776.8758</p>	
<p>APPLICABLE CODES</p> <p>CALIFORNIA BUILDING CODE.....2016 EDITION (CBC)</p> <p>CALIFORNIA FIREMARSHAL CODE.....2016 EDITION (CFM)</p> <p>CALIFORNIA ELECTRICAL CODE.....2016 EDITION (CEC)</p> <p>CALIFORNIA ELECTRICAL CODE.....2016 EDITION (CEC)</p> <p>CALIFORNIA BUILDING DEPARTMENT.....2016 EDITION (BDES)</p> <p>EFFICIENCY STANDARDS.....2016 EDITION (EES)</p>	



ISMAILI MARKERT

240 LANGFORD AVENUE
ARVIN, CA 93203
APN : 192-130-26

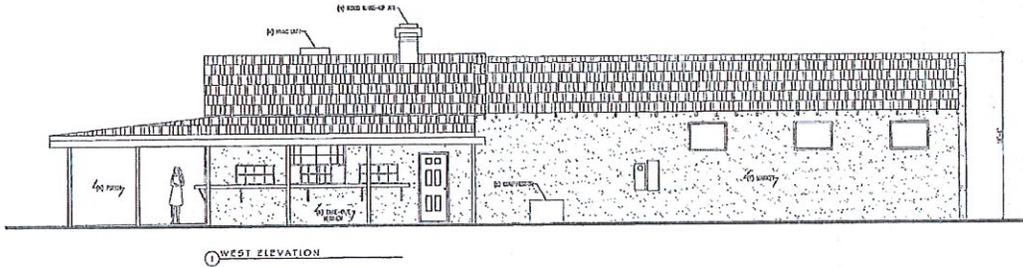
OWNER NAME : MAHER SALEH
240 LANGFORD AVENUE
ARVIN, CA 93203
APN : 192-130-26

SCALE: 1" = 30'-0"

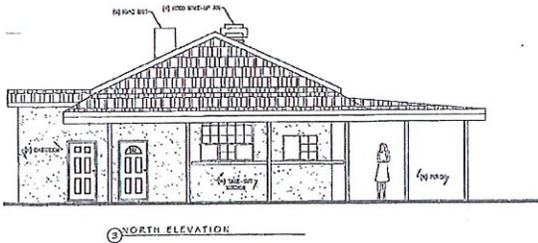
WEDDING PLANNING
11-27-17

SITE PLAN

T-0



1 WEST ELEVATION



3 NORTH ELEVATION



2 SOUTH ELEVATION



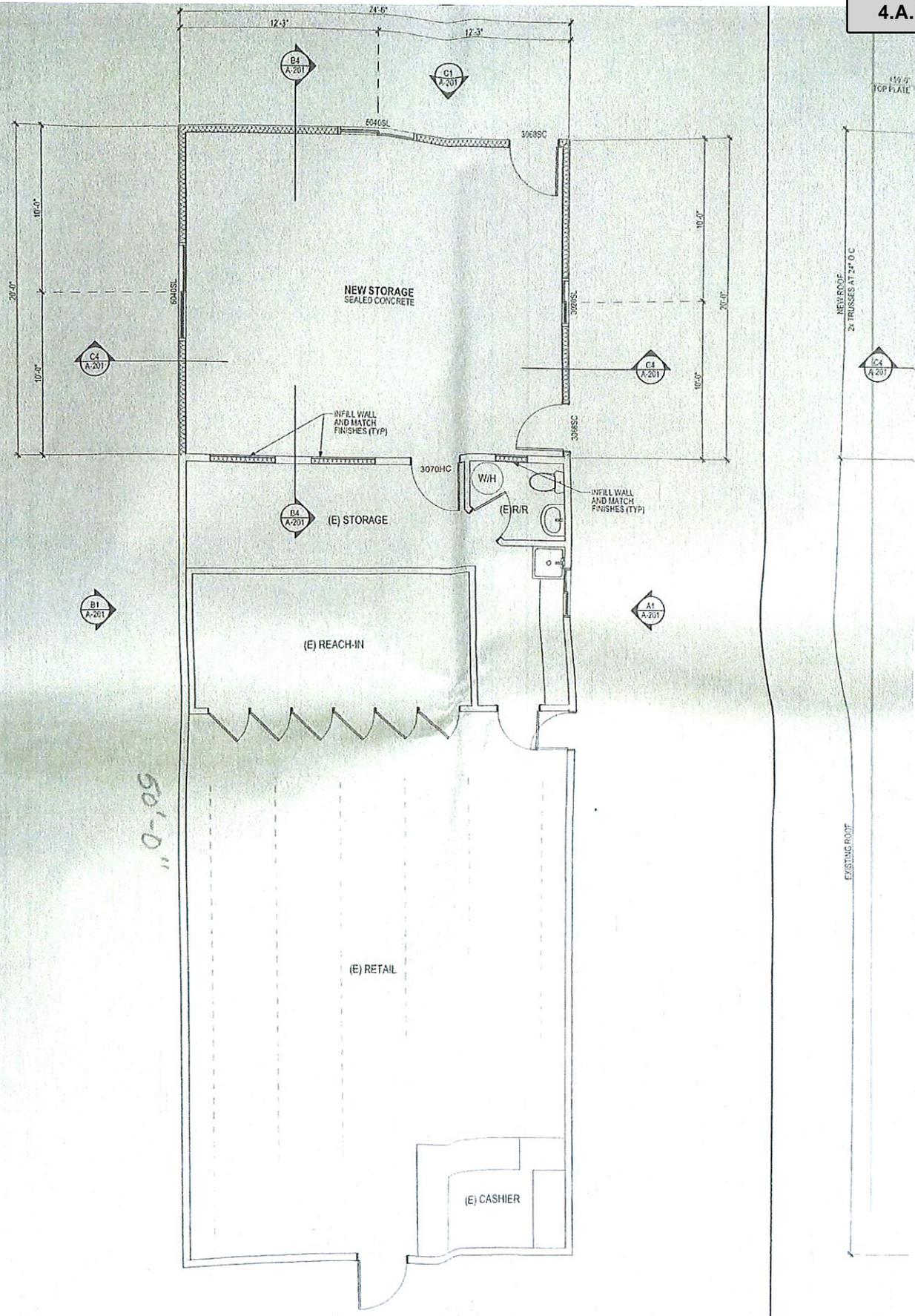
ISMAILI MARKERT
 240 LANGFORD AVENUE
 ARVIN, CA 93203

OWNER NAME: MAHER SALEH
 240 LANGFORD AVENUE
 ARVIN, CA 93203
 APN : 192-130-26
 SCALE: 1" = 6'-0"

DATE: 11-27-17
 ELEVATIONS
 A-1

ATTACH 12 ELEVATIONS

I:\WORK\2015\2015007-ISMAILI MARKET\2015007-ISMAILI MRKT.pln



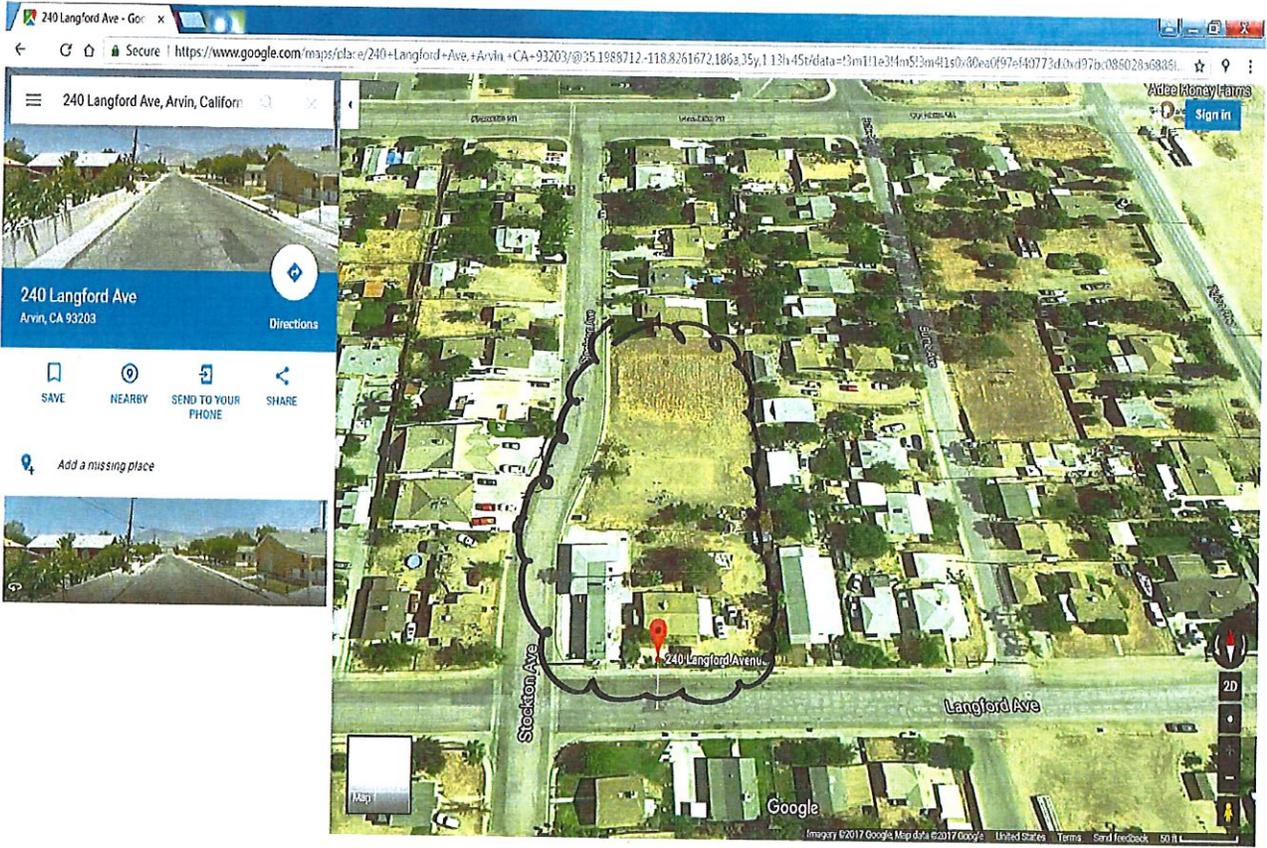
50'-0" 11-0-09

ATT #2 FLOOR PLAN 2015

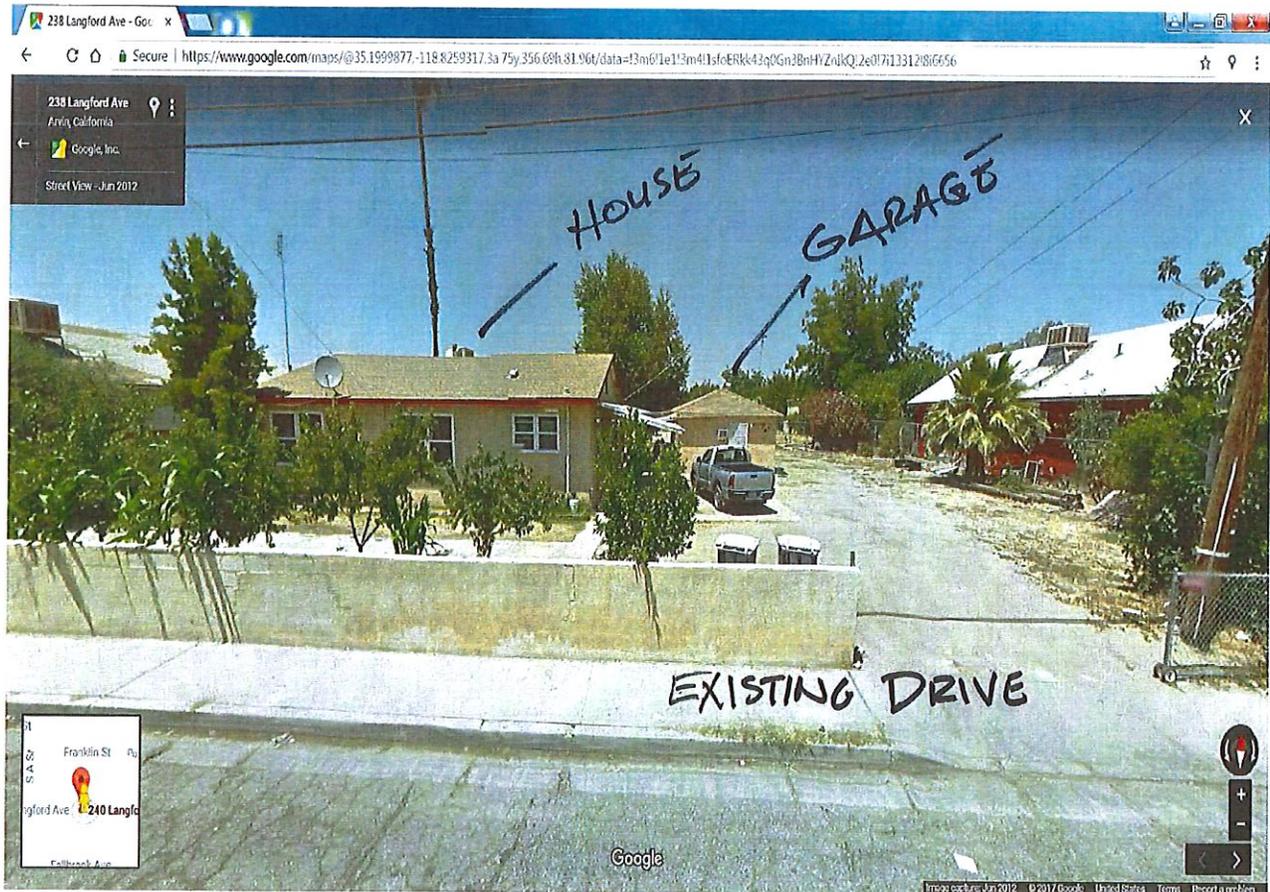
A1 FLOOR PLAN
SCALE 1/4" = 1'-0"



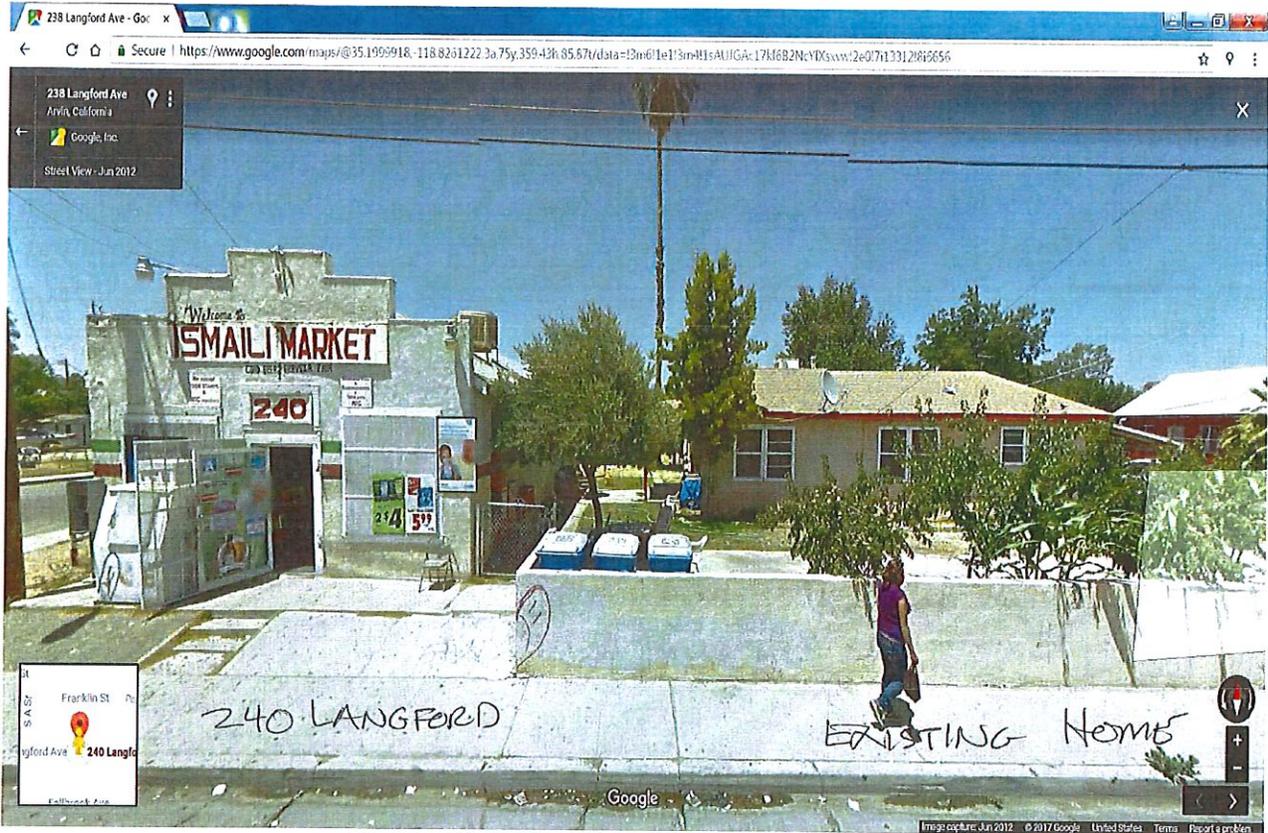
A3 ROOF P
SCALE 1/4" = 1'-0"



1-#2



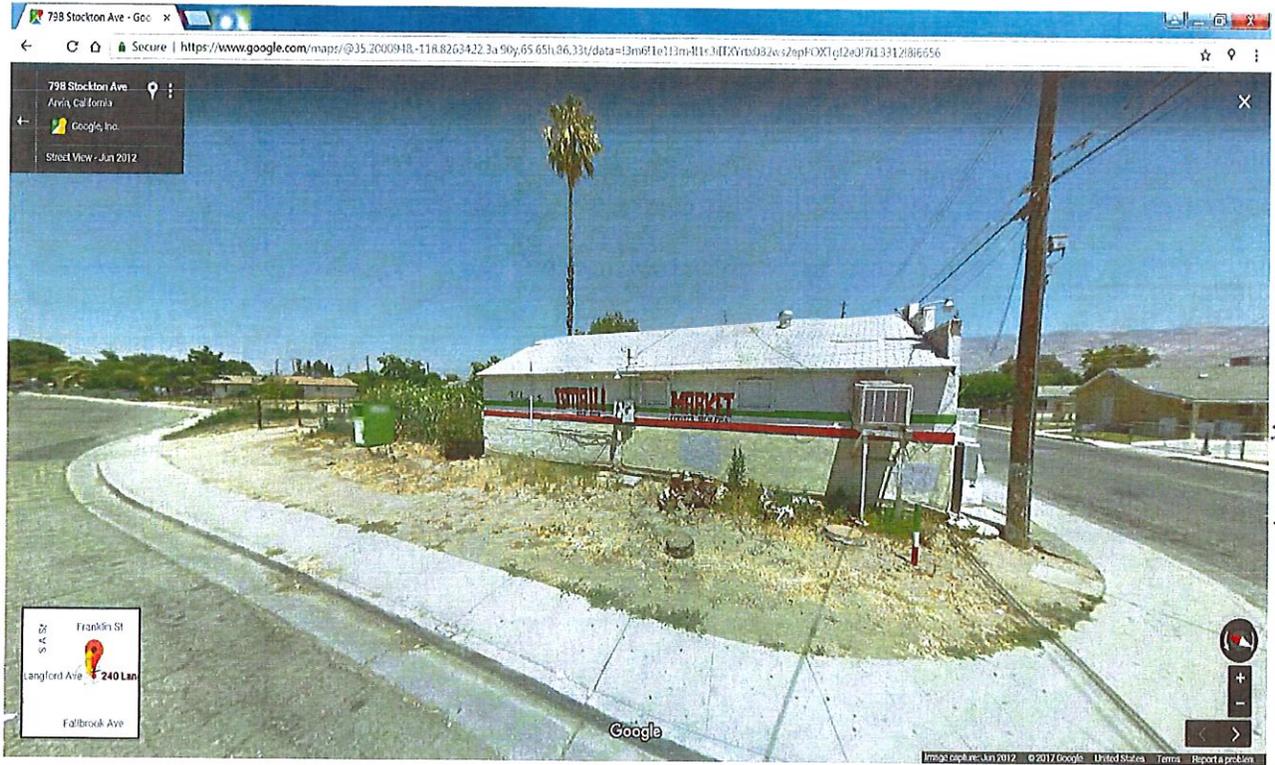
ATTACH 4



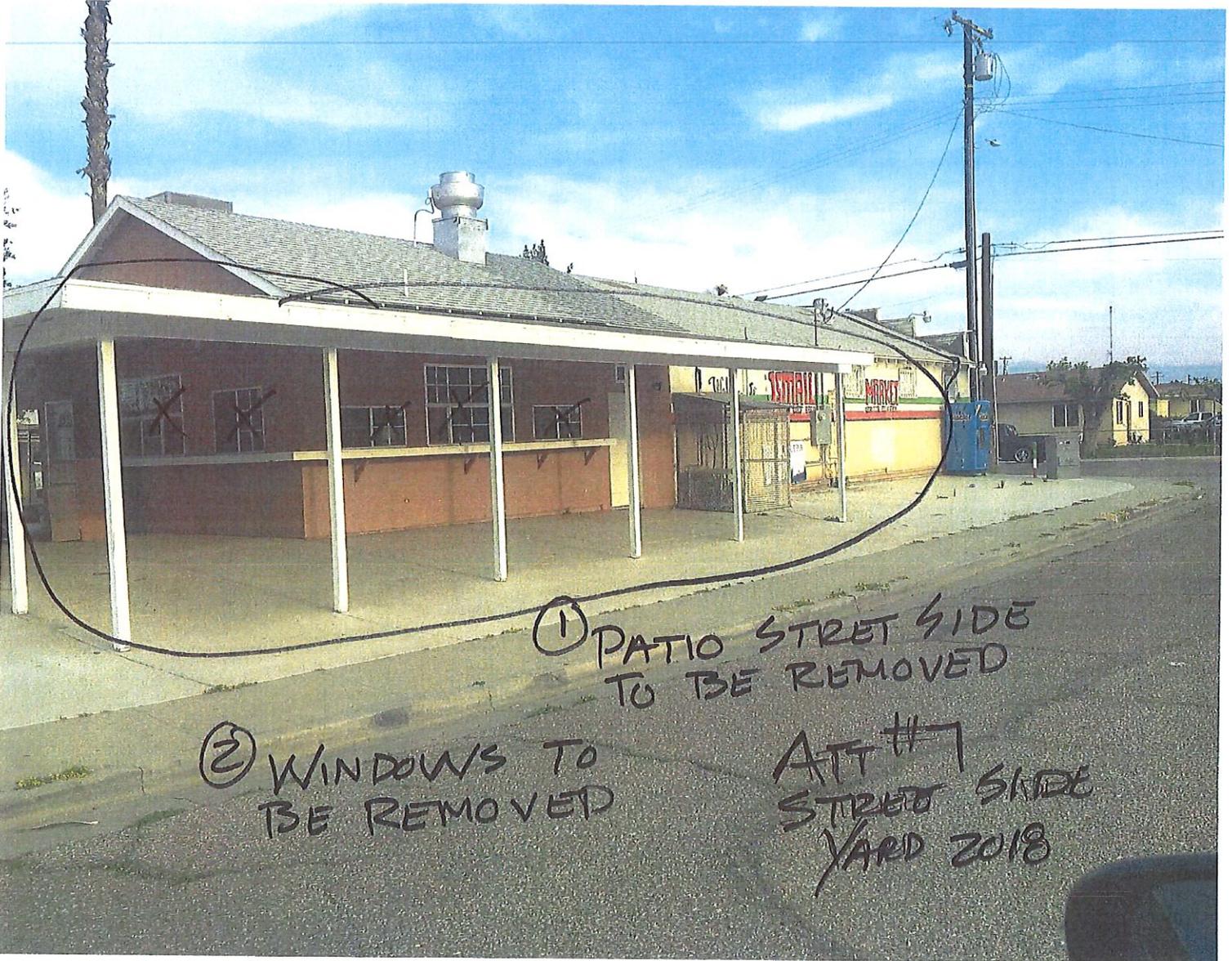
Att # 4a



Attachment: Att 2a Photos of the site 240 Langford Ave (Public Hearing - CUP and SDP 2018-240 LA - 240 Langford Ave - Ismaili Market)



Att #6



Attachment: Att 2a Photos of the site 240 Langford Ave (Public Hearing - CUP and SDP 2018-240 LA - 240 Langford Ave - Ismaili Market)



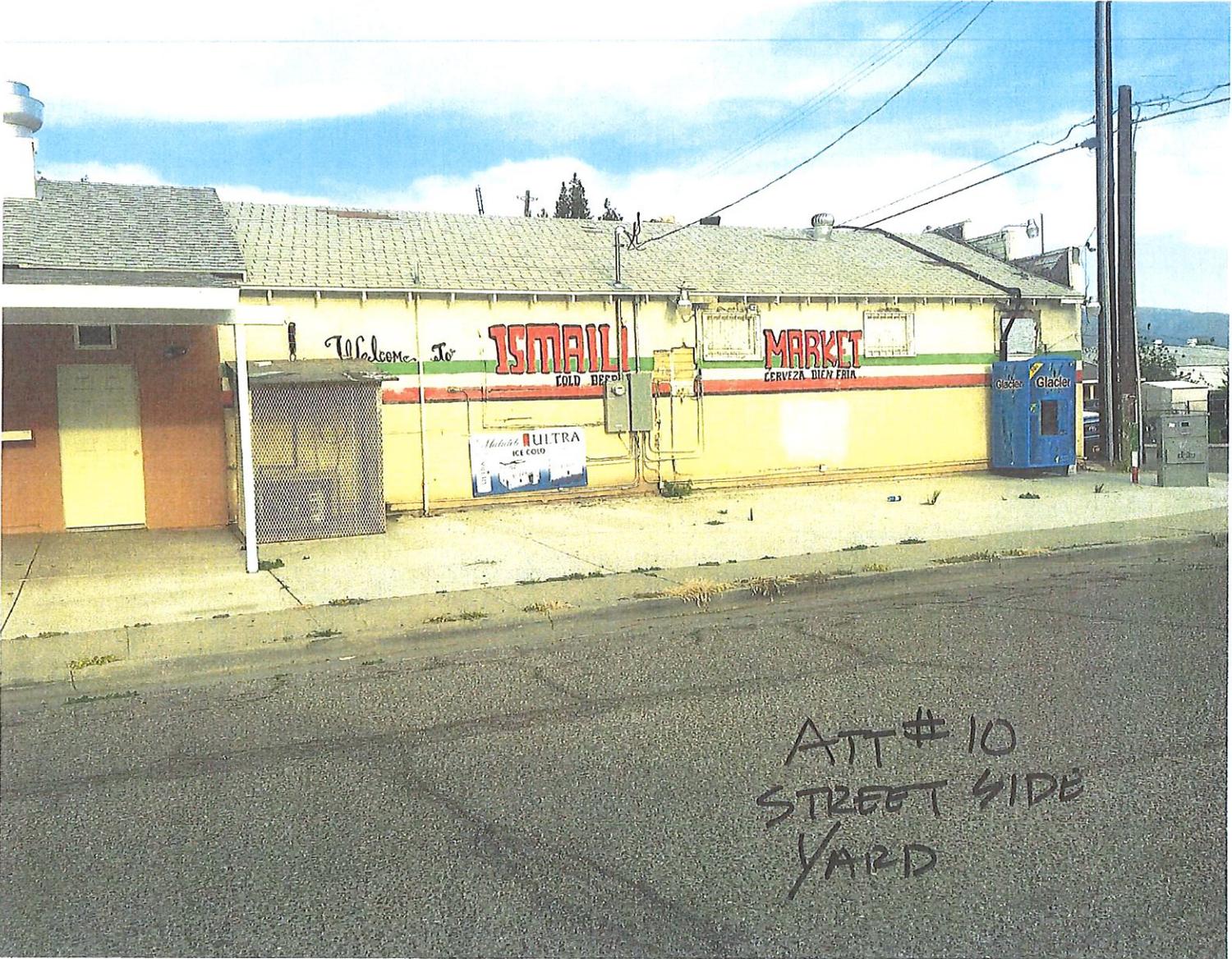
Attachment: Att 2a Photos of the site 240 Langford Ave (Public Hearing - CUP and SDP 2018-240 LA - 240 Langford Ave - Ismaili Market)



① PATIO STREET SIDE TO BE
REMOVED

② WINDOWS TO BE
REMOVED

ATT #9



Attachment: Att 2a Photos of the site 240 Langford Ave (Public Hearing - CUP and SDP 2018-240 LA - 240 Langford Ave - Ismaili Market)

NOTICE OF PUBLIC HEARING
CONDITIONAL USE PERMIT AND SITE DEVELOPMENT PLAN (SDP) 2018-240LA –
EXPANSION OF A NON-CONFORMING USE – ISMAILI MARKET LOCATED AT 240
LANGFORD AVENUE, ARVIN

NOTICE IS GIVEN that the Planning Commission of the City of Arvin will conduct a public hearing on the following date, time, and place set forth below:

Meeting Date: April 19, 2018

Time: 6:00 PM

Place: City Hall Council Chambers, 200 Campus Drive, Arvin, CA 93203

Subject:

1. Determination there is no possibility that this project may have a significant effect under CEQA Guidelines Section 15061(b)(3).
2. Conditional Use Permit (CUP) 2018-240LA, 240 Langford Avenue, Arvin– to expand an existing legal non-conforming commercial use located within the R-1-Single Family Dwelling Zone.

The Planning Commission of the City of Arvin, California, will conduct a Public Hearing at which time you may be present and be heard concerning CUP 2018-240LA – Ismaili Market- A request to expand an existing legal non-conforming commercial use located within the R-1-Single Family Dwelling Zone.

Description of the Project: The proposed project is a request to expand an existing legal non-conforming commercial use located within the R-1-Single Family Dwelling Zone. The Existing Non-Conforming grocery store has approximately 24'-6" X 50'-0" or 1,225 square feet and the proposed addition is 24'-6" X 20'-0" 490 square feet. The proposed patio cover is approximately 10'-0" X 24'6", 245 Square feet.



The project received an initial review under the requirements of the California Environmental Quality Act. Staff determined that the project is exempt from CEQA pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this project is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which

has the potential for causing a significant effect on the environment. The existing non-conforming store is approximately 1,225 square feet and the proposed addition is approximately 625 square feet. The area is in a developed neighborhood and has no possibility of causing a significant, adverse impact to the environment.

Additional information may be obtained through the Arvin Community Development Department, or telephone Jake Raper at (661) 854-2822, or jraper@arvin.org. Additional review may be reviewed at the City's Web Site – www.arvin.org

The CUP 2018-240LA is exempt from CEQA. If you challenge the approval or denial of this application in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission, at or prior to, the public hearing.

Upon conclusion of the hearing, the Planning Commission may approve, conditionally approve or disapprove the adoption there is no possibility that this project may have a significant effect under CEQA Guidelines Section 15061(b)(3) and the proposed Conditional Use Permit (CUP 2018-240LA) to expand an existing legal non-conforming commercial use located within the R-1-Single Family Dwelling Zone located at 240 Langford Avenue – Ismaili Market.

/s/

 Cecilia Vela, Secretary to the Planning Commission
 of the City of Arvin

/s/

 Jake Raper, City Planner

Published April 08, 2018, Bakersfield Californian

RESOLUTION NO. APC 2018-06

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ARVIN APPROVING CONDITIONAL USE PERMIT (CUP) AND SITE DEVELOPMENT PLAN (SDP) 2018-240LA – ISMAILI MARKET- EXPANSION OF A NON-CONFORMING USE- REGARDING STORAGE AND PATIO USE, AND DENIAL OF EXPANSION FOR A TAKE OUT KITCHEN, LOCATED WITHIN THE R-1-SINGLE FAMILY DWELLING ZONE AT 240 LANGFORD IN ARVIN, AND ADOPT THE NOTICE OF EXEMPTION PER CEQA GUIDELINES SECTION 15061(B)(3)

WHEREAS, the Planning Commission opened the public hearing on April 19, 2018, and has received testimony and other evidence at the meeting; and

WHEREAS, public notice for the public hearing was published in the (Newspaper on April 8, 2018 and notices were mailed to individual property owners within 300-feet of the project site on April 8, 2018; and

WHEREAS, the environmental document, Notice of Exemption is on file at the City of Arvin Community Development Department; and

WHEREAS, the Planning Commission of the City of Arvin hereby finds and adopts the following findings:

1. Notice has been given in the time and in the manner required by State Law and City Code; and
2. A Notice of Exemption, General Exemption per the California Environmental Quality Act, is on file at the City of Arvin Community Development Department and finds that the project as proposed will not result in any environmental impacts; and
3. The existing neighborhood grocery store on the property is considered a legal non-conforming use and is subject to the rules and regulations of Section 17.52.010 of the Municipal Code which address non-conforming land uses. Specifically, a non-conforming use may be maintained and continued; provided there is no physical change other than maintenance and repair.
4. The Planning Commission in accordance with Section 17.08.020 (J) additional uses may be permitted by the Planning Commission according to the provisions of Chapter 17.56, conditional use permits.
5. The addition of 490 square foot room for storage to an existing 1200 square foot neighborhood grocery store is concluded to be a nonintrusive use and the approval of a Conditional Use Permit to permit said addition has met the provisions of Chapter 17.56 conditional use permits.
6. Chapter 17.05 Uses Permitted Subject to Administrative Approval and Chapter 17.60 Site Development Permits require approval of new construction to insure compliance with City Standards. The proposed additions, additional storage area and open patio area, meet the requirements Section 17.60.040 A and B in that the additions shall meet city laws and ordinances; comply with City Policies, compliance with planning and engineering standards.
7. The proposed use or building will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working the neighborhood.
8. The proposed 490-square foot storage addition storage space and modified open patio area would

not provide an intensification of land use as well as the open patio area. For instance, additional storage space would not result in an increase of the commercial sales area, and it would not generate additional parking spaces.

9. The additional storage area would not generate additional customer demand.
10. The approval of additional floor area as storage space, as opposed to a take-out kitchen, would not in of itself create an intensification of land use. For instance, additional storage space would not result in an increase of the commercial sales area, and it would not require any more parking spaces than what would otherwise already be required.
11. The additional storage area would not generate an increase in customer demand.
12. The addition when compliant with the conditions of approval the additional floor area for storage only would not create any new nonconforming setbacks.
13. The Planning Commission finds that although the property is not being used consistent with the R-1 zoning, the proposed use, as conditioned, is deemed essential or desirable to the public convenience or welfare, and is in harmony with the various elements or objectives of the comprehensive general plan.

NOW, THEREFORE, BE IT RESOLVED, by the City of Arvin Planning Commission as follows:

1. The recitals set forth above are true and correct and incorporated herein by this reference.
2. The Planning Commission finds that notice has been given in the time and in the manner required by State Law and City Code.
3. The Planning Commission finds that this project is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) in that it is not a project that has the potential for causing a significant environmental effect. The existing non-conforming store is approximately 1,225 square feet and the proposed addition is approximately 492- square feet. The area is in a developed neighborhood and has no possibility of causing a significant, adverse impact to the environment.
4. The Planning Commission finds that applicant's request to allow a 490-square foot addition that is proposed as a take-out kitchen is denied as it is an impermissible expansion of a non-conforming use, is incompatible with the surrounding uses, and is prohibited by Arvin Municipal Code section 17.52.010(a) and (b).
5. The Planning Commission finds that with the conditions imposed herein, the use proposed by Conditional Use Permit (CUP) and Site Development Plan (SDP) 2018-240LA, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood. As such, the Planning Commission approves Conditional Use Permit (CUP) and Site Development Plan (SDP) 2018-240LA subject to the following conditions:
 - a. At the street side yard setback, the proposed 490 square foot addition, including the open patio, may not encroach any closer to the property line than 10'-0" as is required by the city code;
 - b. All walk-up service windows and outside countertops shall be removed prior to approval of Conditional Use Permit and Site Development Plan (SDP) 2018-240LA taking effect.

The property shall not be used for take out dining or a take out kitchen.

- c. That the area shall be used for storage only in relationship to the existing store.
- d. All property owner(s) and business owners(s) shall submit affidavits of acceptance of the conditions of approval for this project prior to approval of Conditional Use Permit and Site Development Plan (SDP) 2018-240LA taking effect.
- e. Approval of the Site Development Plan shall be contingent upon approval of the Conditional Use Permit taking effect.
- f. Any business conducted on the premises shall maintain a business license and comply with the Arvin Municipal Code at all times.

6. This Resolution shall take effect immediately.

I hereby certify that the foregoing is a full, true and correct copy of the resolution duly and regularly adopted and passed by the Planning Commission of the City of Arvin at a special meeting held on the 19th day of April 2018 by the following vote:

AYES: PC Tinoco, PC Rivera, PC Martinez, VC Zavala

NOES: _____

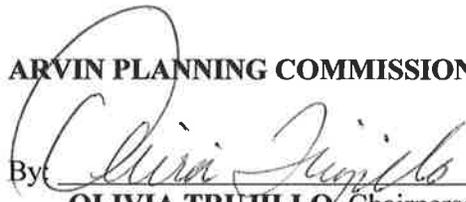
ABSTAIN: _____

ABSENT: Chair Trujillo

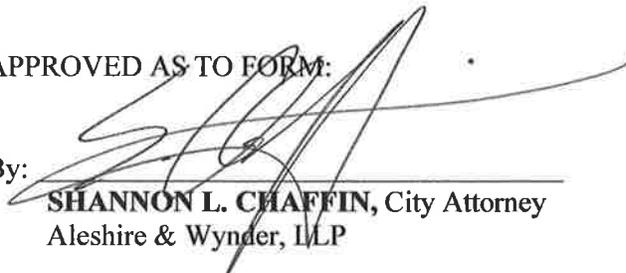
ATTEST


 CECILIA VELA, Secretary

ARVIN PLANNING COMMISSION

By: 

 OLIVIA TRUJILLO, Chairperson

APPROVED AS TO FORM:
 By: 

 SHANNON L. CHAFFIN, City Attorney
 Aleshire & Wynder, LLP

I, _____, Secretary of the Planning Commission of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the Planning Commission of the City of Arvin on the date and by the vote indicated herein.

Chapter 17.52 - NONCONFORMING BUILDINGS AND USES

Sections:

17.52.010 - Nonconformance regulations.

The following regulations shall apply to all nonconforming buildings and structures or parts thereof and uses existing on the effective date of the ordinance codified in this title:

- A. Any such nonconforming building or structure may be continued and maintained; provided, that there is no physical change other than necessary maintenance and repair in such building or structure except as permitted in other sections of this title;
- B. Any such nonconforming use may be maintained and continued, provided there is no increase or enlargement of the area, space or volume, occupied or devoted to such nonconforming use, except as otherwise provided in this title;
- C. Any part of a building, or land occupied by such a nonconforming use which is changed to or replaced by a use conforming to the provisions of this title shall not thereafter be used or occupied by a nonconforming use;
- D. Any part of a building, structure or land occupied by such a nonconforming use, which use is abandoned, shall not again be used or occupied for a nonconforming use. Any part of a building, structure or land occupied by such a nonconforming use which use has ceased for a period of one (1) year or more, shall not again be used or occupied for a nonconforming use.
- E. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of a more restrictive classification;
- F. Every nonconforming use of land (where no main building is involved) existing on the effective date of the ordinance codified in this title shall be discontinued within three (3) years from such effective date except that this provision shall not apply to public utility structures of companies under the jurisdiction of the Public Utilities Commission of the state;
- G. Any sign, billboard, commercial advertising structure or statuary which is lawfully existing and maintained on the effective date of the ordinance codified in this title may be continued, although such use does not conform with the provisions of this title; provided, however, that no structural alterations are made thereto; and provided further, that all such nonconforming signs, billboards, commercial advertising structures or statuary and their supporting members, shall be completely removed from the premises not later than three (3) years from the effective date of the ordinance codified in this title;
- H. Anything in this title to the contrary notwithstanding, land which is being used or heretofore has been used, for the drilling for, production of or handling of oil, gas and other hydrocarbons, may continue in such use regardless of the land use zone in which it is located, and such use shall not be considered a nonconforming use in such zone; provided, that this exception to the nonconforming use provisions of this title shall not apply to oil wells, oil well structures, appurtenances or equipment which have been abandoned and the use thereof discontinued for a period of twelve (12) successive months.

(Ord. 51 §2905, 1965).

17.52.020 - Subsequent nonconformance—Provisions to apply.

The provisions of Section 17.52.010 shall also apply to buildings, structures, land or uses which after the effective date of the ordinance codified in this title become nonconforming due to any reclassification or zones under this title or any subsequent change in the regulations of this title; provided, however, that where a period of years is specified in Section 17.52.010 for the removal of nonconforming buildings, structures or uses, such period shall be computed from the date of such reclassification or change.

(Ord. 51 §2906, 1965).

17.52.030 - Buildings under construction.

Any building or structure for which the effective date of the ordinance codified in this title may be completed and used in accordance with the plans, specifications and permits on which such building permit was granted, if construction is commenced within sixty (60) days after the issuance of such permit and diligently prosecuted to completion.

(Ord. 51 §2907, 1965).

17.52.040 - Reconstruction of damaged nonconforming building.

Nothing in this title shall prevent the reconstruction, repairing or rebuilding and continued use of any nonconforming building or structure partially damaged by fire, collapse, explosion or acts of God, subsequent to the effective date of the ordinance codified in this title, wherein the expense of such reconstruction does not exceed one hundred fifty percent (150%) of the assessed value of the building or structure at the time such damage occurred. All such reconstruction shall be performed under one (1) building permit, started within a period of one (1), year from date of damage and diligently prosecuted to completion.

(Ord. 51 §2908, 1965).

17.52.050 - Nonconformity caused by amendment—Provisions to apply.

The provisions of this title shall apply to uses which become nonconforming by reason of any such amendments to this title, as of the effective date of such amendment.

(Ord. 51 §2609, 1965).

NOTICE OF PUBLIC HEARING

Arvin City Council

Conditional Use Permit and Site Plan Review 018-240LA Expansion of Non-Conforming Use

NOTICE IS GIVEN that the City Council of the City of Arvin will conduct a public hearing considering appeals of the Planning Commission decision in which the City Council may affirm the Planning Commission decision unless reversed by a vote of not less than a majority of all members of the city council, at which time the public may be present and be heard, to consider the following:

- Affirm the decision of the Planning Commission approval unless reversed City of Arvin CUP and SPR 2018-240LA – 240 Langford Avenue – APN 192-130-26, northeast corner of Langford Avenue and Stockton Avenue - – Ismaili Market – Expansion of a Non-Conforming Use – Regarding Storage and Patio Use, and Denial of Expansion for a Take-Out Kitchen, and
- Adoption of a Class 3 Categorical Exemption (New Construction Conversion of Small Structures) under CEQA Guidelines section 15303 pursuant to the requirements of the California Environmental Quality Act (CEQA) for the above project.

Arvin City Council Hearing Information

Date: September 18, 2018
 Time: 6:00 PM or as the Agenda permits
 Place: City of Arvin Council Chambers
 200 Campus Drive, Arvin, CA 93203



Description of the Project: The purpose of the hearing is to consider the appeal received regarding the Planning Commission approval, APC 2018-240LA permitting a expansion of storage area not to exceed 490 square feet and Patio Area and disapproval of a take-out kitchen.

Staff has performed a preliminary environmental assessment of this project and have determined that it falls within the Categorical Exemption set forth in section 15303 (New Construction or Conversion of Small Structures) as the project consist of construction of a small patio addition and storage area.

Additional information on the proposed project and supporting documentation, may be obtained from the City of Arvin. Address any communications or comments regarding the project to Cecilia Vela, City Clerk, at 200 Campus Drive, Arvin, CA 93203, (661) 854-3134, cvela@arvin.org.

All persons interested in this topic who have questions, would like to provide feedback, or ask questions are invited to attend. If you challenge the approval or denial of these matters in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Clerk, at or prior to the public hearing. Address any communications or comments regarding the project to Cecilia Vela, City Clerk, at 200 Campus Drive, Arvin, CA 93203, (661) 854-3134, cvela@arvin.org.

/s/

Cecilia Vela, Secretary to the Planning Commission
of the City of Arvin

/s/

Jake Raper, Planner

Publish September 7, 2018, Bakersfield Californian



CITY OF ARVIN Staff Report

Meeting Date: September 18, 2018

TO: City Council

FROM: Jake Raper, City Planner
Jerry Breckinridge, Interim City Manager

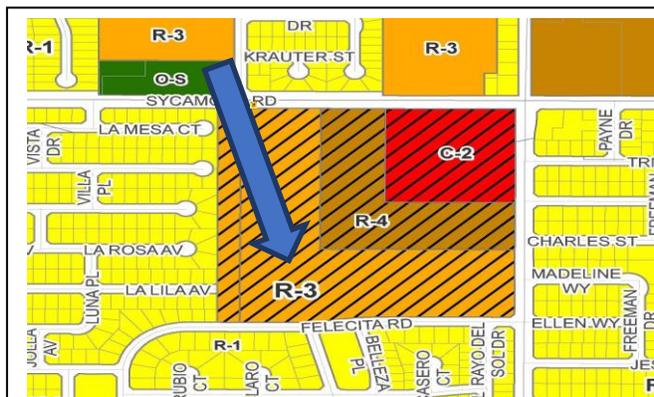
SUBJECT: AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN FOR A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH AUBURN OAK DEVELOPERS, LLC, AND CEQA DETERMINATION

RECOMMENDATION:

Staff recommends that the City Council adopting the Ordinance to be read by title only, open the hearing, allow for public testimony, close the hearing, waive first reading of the Ordinance, and approve introduction of the Ordinance. The Ordinance was previously introduced by the City Council on September 4, 2018.

BACKGROUND:

The City of Arvin City Council introduced the Ordinance on September 4, 2018. The City Council report of September 4, 2018 is on file at the City Clerk's office located at 200 Campus Drive. The City previously entered into a Development Agreement with Sycamore Villas, LLC, in July 3, 2003. The Development Agreement was amended, and Auburn Oaks Developers LLC ("Developer") subsequently acquired Sycamore Villa LLC's remaining portion of the property subject to the Development Agreement. The remaining portion of the property includes the areas referred to as Phase 11 consisting of APN 189-351-58 – 21.33 acres, and APN 189-351-67 – 3.40



acres. A total of 24.73+/- Acres which is zoned R-3-MUO. The property is located in the southwest portion of the city, and depiction of the location of the property is shown herein.

With a new property owner in place, City Staff and the Developer assessed the project and its requirements. As a result, the Developer requested an amendment to the Development agreement related to its property (“Third Amendment”). The proposed Third amendment would:

- Confirm the fee of \$2,300.00 per single family lot as was previously approved and set by prior amendments to the Development Agreement.
- Provide for mutual release of all past claims related to the property, and acknowledgement the City and Developer are not currently in default of the Development Agreement as amended.
- Extends the Development Agreement to the year 2026.
- Require the Developer to comply with its Annual Review and other requires of the Development Agreement as amended.
- Established a subsequent phasing agreement for the 140 single family lots

The proposed Third Amendment complies with the policies of the City’s General Plan and is consistent with all applicable provisions of the General Plan. The proposed Third Amendment also complies with the requirements of California Government Code Sections 65865 through 65869.5. Staff have reviewed the Third Amendment, and found it will not be detrimental, or cause adverse effects, to the adjacent property owners, residents, or the general public, since the project will be substantially constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended. Finally, the proposed Third Amendment does not alter the clear and substantial benefit to the residents of the City of the project, since the proposed amendment makes not substantive changes to the project or to the Development Agreement.

ENVIRONMENTAL DETERMINATION:

The City has environmentally assessed the Third Amendment, and determined that there is not possibility that the Third Amendment may have a significant physical effect on the environment, and is not subject to the California Environmental Quality Act (“CEQA”).

The Third Amendment is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party’s status under the previously adopted Development Agreement as amended.

ATTACHMENT(S)/EXHIBIT(S):

Attachment 1. Uncodified Ordinance of the City Council of the City of Arvin For A Third Amendment To The Development Agreement with Auburn Oak Developers LLC.

Attachment 2 – Notice of Intent to Adopt Ordinance – Published on September 8, 2018

Attachment 3 – City Council September 4, 2018 Reports and Documents on file at the City Clerk's Office Located at 200 Campus Drive, Arvin, CA 93203

ORDINANCE

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN FOR A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH AUBURN OAK DEVELOPERS, LLC, AND CEQA DETERMINATION

WHEREAS, California Government Code Section 65864 *et seq.* authorizes cities to enter into development agreements with private property owners; and

WHEREAS, the City of Arvin City Council (the "City Council") previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5, which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement"); and

WHEREAS, under the Development Agreement, Sycamore Villas, LLC, had the right to sell, assign or transfer the Development Agreement, and all of its rights, duties and obligation thereunder, to any person, including a portion thereof; and

WHEREAS, Sycamore Villas, LLC, sold a portion of the property subject to the Development Agreement to K. Hovnanian at Cielo, LLC, and transferred its obligations and rights to K. Hovnanian at Cielo, LLC, thereunder, and K. Hovnanian at Cielo, LLC, is a successor in interest to that portion of the property; and

WHEREAS, pursuant to Government Code Section 65868, development agreements may be amended; and

WHEREAS, the Development Agreement was subsequently amended, some amendments with Sycamore Villas, LLC, or K. Hovnanian at Cielo, LLC as a party (including a Third Amendment to Development Agreement referred to herein as the "Hovnanian Third Amendment"), and some without, depending on the portion of the property subject to the Development Agreement being affected; and

WHEREAS, LeOra LLC obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, Phases 5, 9 and 10 along with the rights and obligations as established by the Development Agreement established for Tract 5816; and

WHEREAS, the City and LeOra LLC amended the Development Agreement ("LeOra Third Amendment"); and

WHEREAS, Westminster Capital, Inc. ("Westminster"), obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, which is a

portion of the property previously owned by Sycamore Villas, LLC that was not was not at any time owned by LeOra, LLC or K. Hovnanian at Cielo, LLC; and

WHEREAS, the City and Westminster amended the Development Agreement (“Westminster Third Amendment”) and the City Council approved said Westminster Third Amendment on May 15, 2018; and

WHEREAS, prior to the effectiveness of said amendment, Westminster transferred a portion of its land, approximately 24.73 acres of property consisting of 140 lots in Tract 5816, Phase 11, also known as Assessor Parcel Numbers 189-350-58 and-67, generally located South of Sycamore Drive on the West Side of Meyer, to Auburn Oak Developers, LLC (“Auburn”); and

WHEREAS, Auburn desires to clarify its status as a successor in interest as to its portion of the former Sycamore Villas, LLC, property by entering into a Third Amendment to the Development Agreement as amended; and

WHEREAS, the City and Auburn desire to establish mutually beneficial obligations and benefits subject to the Third Amendment to the Development Agreement, and to do so by an amendment of the Development Agreement; and

WHEREAS, for the purposes of reference only, this amendment to the Development Agreement has been identified as the "Third Amendment to Development Agreement" ("Third Amendment") relating solely to Auburn; and

WHEREAS, neither the LeOra Third Amendment, nor the Hovnanian Third Amendment, nor the Westminster Third Amendment are subject to this Third Amendment, nor does this Third Amendment affect either the LeOra Third Amendment or the Hovnanian Third Amendment, or the Westminster Third Amendment, as each involves separate property subject to the Development Agreement; and

WHEREAS, the City has environmentally assessed this proposed Third Amendment, and determined that there is no possibility that the Third Amendment may have a significant physical effect on the environment, and is not subject to the California Environmental Quality Act (“CEQA”); and

WHEREAS, the City properly noticed the July 31, 2018 Planning Commission special meeting to consider the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Planning Commission conducted a duly noticed public hearing on July 31, 2018, at which time all interested parties were given an opportunity to be heard and

present evidence regarding the proposed Third Amendment, and after which the Planning Commission adopted Resolution 2018-12, recommending the City Council adopt this Ordinance; and

WHEREAS, the City properly noticed the September 4, 2018 hearing before the City Council for the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Council conducted a duly noticed public hearing on September 4, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which this Ordinance was introduced by the City Council; and

WHEREAS, the City Council considered this matter on September 4, 2018, at which time all interested parties were given another opportunity to be heard and present evidence regarding the proposed Third Amendment.

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

Section 1. The City Council determines pursuant to CEQA Guidelines Section 15061(b)(3) that that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment, and is not subject to the California Environmental Quality Act (CEQA), as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party's status under the previously adopted Development Agreement as amended.

Section 2. The City Council finds the proposed Third Amendment to the Development Agreement complies with the policies of the City's General Plan. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan. The proposed land uses and the density are also compliant per this requirement.

Section 3. The City Council finds the proposed Third Amendment to the Development Agreement establishes mutual beneficial obligations and benefits for Auburn Oak Developers, LLC, and the City.

Section 4. The City Council finds the proposed Third Amendment to the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.

Section 5. The City Council finds proposed the Third Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners,

residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.

Section 6. The City Council finds the proposed Third Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.

Section 7. For the foregoing reasons, and based on the information contained in any staff report, supporting documentation, minutes and other records of the proceedings, all of which are incorporated herein by this reference, the City Council hereby adopts this Ordinance and approves the proposed Third Amendment to the Development Agreement, which amendment is attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 8. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.

Section 9. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading except by Title, at a Regular meeting thereof held on 4th day of September, 2018 and adopted the Ordinance after second reading at a regular meeting held on the 18th day of September, 2018, by the following vote:

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO
(Document exempt from recording fees
pursuant to Cal. Gov. Code §27383)

CITY OF ARVIN
Attn: City Clerk
200 Campus Drive
Arvin, CA 93203

(Space Above This Line for Recorder’s Office Use Only)

AGREEMENT NO. 2018-_____

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement (“Third Amendment”) is made and entered into effective as of _____, 2018, and entered into by or between AUBURN OAK DEVELOPERS, LLC, a California Limited Liability Company (“Developer”), and the CITY OF ARVIN, a municipal corporation (“the City”). Developer and the City are collectively referred to herein as (“Parties”).

RECITALS

A. The City previously entered into a Development Agreement with Sycamore Villas, LLC, (“Sycamore”) pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, (“Development Agreement”).

B. Thereafter, K. Hovnanian at Cielo LLC represented it acquired title for a certain portion of the property from Sycamore Villas, LLC that was subject to the Development Agreement on November 11, 2005 (“KHAC Property”). The KHAC Property is not subject to this Third Amendment.

C. The Development Agreement was subsequently amended effective July 24th, 2007, by document entitled “Amendment To The Development Agreement,” Agreement No. 2007-18, which was recorded on October 9, 2007, in the Kern County Official Records as Document Number 0207204984 (“First Amendment”).

D. The Development Agreement was again subsequently amended and entered into as the June 12, 2009, by document entitled “Second Amendment To Development Agreement,” Agreement No. 2009-26, which was recorded on December 18, 2009, in the Kern County Official Records as Document Number 0209185187 (“Second Amendment”).

E. Thereafter, and as set forth below, Developer subsequently obtained the rights and obligations under the Development Agreement for Phase 11 of Tract 5816 of the property legally described in Exhibit “A” attached hereto (“Property”), which is a portion of the property previously owned by Sycamore Villas, and then Westminster Capital, Inc. (Westminster), and that was not was not at any time KHAC Property.

F. Effective November 1, 2016, the City and K. Hovnanian at Cielo LLC amended the Development Agreement by document entitled for the sake of reference “Third Amendment to Development Agreement,” (Agreement No. 2016-42), which was recorded on December 8, 2016, in the Kern County Official Records as Document Number 0216176492 (“Hovnanian Third Amendment”). The Hovnanian Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

Attachment: Att 1a Third Amendment to Development Agreement - Auburn Oak (Public Hearing - 2nd Reading - Third Amend to Dev Agmt -

G. Effective May 5, 2017, the City and LeOra LLC amended the Development Agreement by document entitled for the sake of reference “Third Amendment to Development Agreement,” (Agreement No. 2017-06), which was recorded by the City on May 25, 2017, in the Kern County Official Records as Document Number 217066767, and recorded by LeOra LLC on June 13, 2017, in the Kern County Official Records as Document Number 217075798, (“LeOra Third Amendment”). The LeOra Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the either the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

H. On May 15, 2018 the Arvin City Council approved amendment of the Development Agreement between the City of Arvin and Westminster by document entitled for the sake of reference “Third Amendment to Development Agreement,” (Agreement No. 2018-12), which was recorded by the City on May 23, 2018, in the Kern County Official Records as Document Number 000218063885 (“Westminster Third Amendment”). The Westminster Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the either the Hovnanian Third Amendment or the LeOra Third Amendment, as each involves separate property subject to the Development Agreement.

I. Although approved on May 15, 2018, the uncodified ordinance enacting the Third Amendment did not become effective until the 31st day after approval. Prior to the effective date of June 15, 2018 Westminster transferred a portion of its land, approximately 24.73 acres of property consisting of 140 lots in Tract 5816, Phase 11, also known as Assessor Parcel Numbers 189-351-58 and -67, generally located South of Sycamore Drive on the West Side of Meyer Street, to Developer. As a result, Developer is not subject to, and has no rights or remedies under, the Westminster Third Amendment.

J. The Parties now desire to enter into this Third Amendment to the Development Agreement. For reference purposes only, the Parties have identified this amendment as the “Third Amendment to Development Agreement” (“Third Amendment” or “Auburn Third Amendment”).

K. This Third Amendment specifically applies only to the real property legally described in Exhibit A to this Third Amendment.

L. The City has determined that this Third Amendment furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the General Plan. For the reasons recited herein, the City and Developer have determined that the project is a development for which an amendment to the Development Agreement is appropriate. It is also the intent of the Parties to clarify obligations for the Property and to resolve any potential claims against the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are incorporated into this Third Agreement as if set forth in full herein.

2. Fees. The total cost for all permits, inspections, checks, fees and other charges associated in any way with the development of real property or the construction of improvements on lots thereon (collectively, “Fees”) for single family residential lots within the Property shall remain capped at \$2,300 per lot in accordance with Section 5 of the First Amendment and shall not be affected by this Third Amendment. To the extent fees have not been addressed by the First Amendment, such as those related to non-single family residential lots, the Fees shall remain as set forth in the Development Agreement, Paragraph 3.6 (Exactions).

3. Term. Section 2.2 of the Development Agreement shall be amended to extend the term to July 3, 2026. Should a moratorium or any similar restriction on the issuance of building permits be imposed by any municipal or government agency that is applicable to the Property, the term of the Development Agreement shall be extended for a period equal to the length of the moratorium or restriction.

4. Subsequent Phasing. Phase 11 of Tract 5816 has already been phased. Notwithstanding any other term of the Development Agreement, Developer may further divide the property encompassed by Phase 11 into further Phases. Developer shall pay \$0.00 to City for processing the first additional final

map and first phase including processing, recording, annexation to the Landscape and Lighting District, master utility plans, CEQA, etc. Thereafter, for each phase that is then processed, Developer shall pay the fee rate then in effect, including any additional final map review and processing, final map improvement plans, annexation to the Landscape and Lighting District, master utility plans, CEQA, etc., in an amount not to exceed \$10,000 per additional phase. Fees for subsequent development of each lot within each of the phases remain capped at \$2,300 per lot as noted above. Nothing in this Third Amendment waives any requirement mandated by state law, such as performance and payment bonds, etc.

5. Remainder Unchanged. Except as specifically modified and amended in this Third Amendment, the Development Agreement as amended by the Parties remains in full force and effect and is binding upon the Parties.

6. Release. Parties, individually, and on behalf of its successors, trustees, creditors, and assigns, completely releases, acquits, and forever discharges the other Party, its agents, officers, employees, attorneys, successors, predecessors, insurers, and members of the governing board or council, from any and all claims, rights, demands, obligations, liabilities, claims or causes of action of any and every kind, nature and character, whether known or unknown, whether in law or in equity, which it may have had, or ever had, or could in the future have against the other Party for any act or omission that occurred prior to entering into the Third Amendment, and which are in any way related to the Development Agreement as amended. This release contained herein is made notwithstanding Section 1542 of the California Civil Code which provides:

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

The Parties expressly acknowledge that this release is intended to include without limitation, all claims and causes of action that a Party does not know or suspect to exist in his favor and that this release contemplates the extinguishment of all such claims and causes of action for any acts, omissions or events which are in any way related to the Development Agreement as previously amended and occurred prior to the effective date of the Third Amendment. To be clear, and notwithstanding any other language in this Third Amendment, this release only applies to claims, etc., related to i) the Development Agreement as amended; and ii) the Property. Further, no claims arising after the date of this Third Amendment (i.e., future claims) are being released by either Party.

7. No Default. The Parties each represent and warrant to the other that, as of the date of this Third Amendment, neither Party is aware of any breach or default (or with the giving of notice or the passage of time, of any event that could constitute a breach or default) of the other Party under the Development Agreement as amended. Nothing in this Paragraph shall constitute a waiver of Developer's obligations to comply with the Development Agreement as amended, including obligations to install any improvements that may be required by the Development Agreement as amended by the Parties, notwithstanding the passage of time.

8. Continuing Obligations. Developer shall comply with its Annual Review and other requirements of the Development Agreement as amended by the Parties.

9. No Admission of Liability. This Third Amendment and compliance with it, shall not operate or be construed as an admission by the City of any liability, misconduct, or wrongdoing whatsoever.

10. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

///

11. Successors. This Third Amendment shall be binding upon and inure to the benefit of the heirs, executors, successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties have duly executed this Third Amendment on the day and year first above written.

CITY OF ARVIN,
a municipal corporation

AUBURN OAK DEVELOPERS, LLC,
a California Limited Liability Company

By: _____
Jose Gurrola, Mayor
_____, 2018

By: _____
Victor Baldivia, Manager
_____, 2018

ATTEST:

Note: Developer’s signature shall be notarized, and appropriate attestations shall be included as may be required by the bylaws, articles of incorporation, or other rules or regulations applicable to developer’s business entity.

Cecilia Vela, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Name:
Title:

By: _____
Shannon L. Chaffin, City Attorney

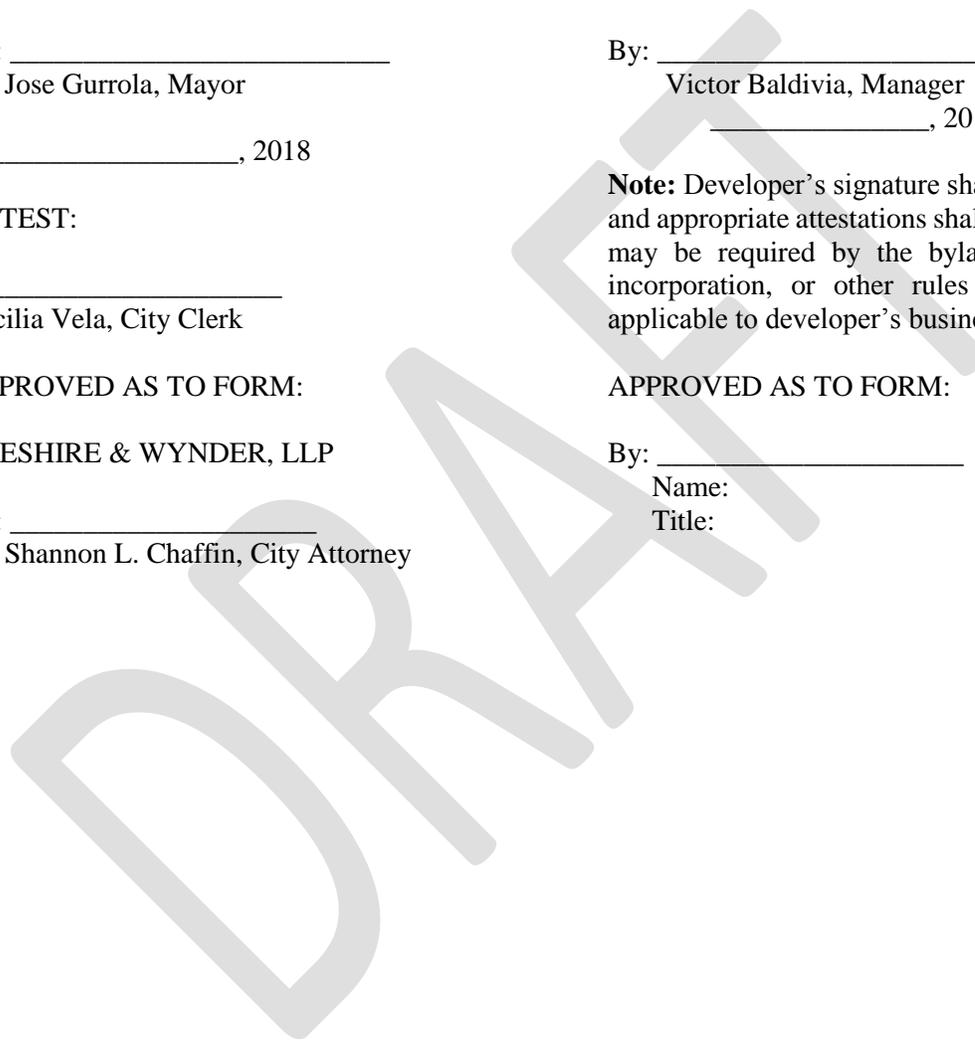


Exhibit A

Legal Description of Developer Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A: APN 189-351-58 & 67 [CONSISTING OF 140 LOTS IN TRACT 5816, PHASE 11]

PARCEL 1 OF PARCEL MAP 11401 IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED MAY 16, 2006 IN BOOK 54, PAGES 192 THROUGH 194, INCLUSIVE, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

DRAFT

**NOTICE BY THE ARVIN CITY COUNCIL
OF ITS INTENT TO ADOPT AN ORDINANCE**

NOTICE IS HEREBY GIVEN that on September 18, 2018, at 6:00 pm, or as soon after as the matter may be heard, the City Council of the City of Arvin intends to adopt an Ordinance, entitled:

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ARVIN FOR A THIRD AMENDMENT TO THE
DEVELOPMENT AGREEMENT WITH AUBURN OAK
DEVELOPERS, LLC**

SUMMARY

The proposed uncodified Ordinance would approve an amendment to a Development Agreement that will clarify obligations under the Development Agreement as to certain property in Tract 5816. The property is located in the southwest portion of the city, and generally located South of Sycamore Drive on the West Side of Meyer Street. The proposed Ordinance extends the term of the original Development Agreement and clarifies the status and obligations of Auburn Oaks Developers under the Development Agreement. Any portions of the original Development Agreement, as amended, which are not affected by the Third Amendment, will remain in full force and effect.

A copy of the full text of the Ordinance is available for review in the Office of the City Clerk, City of Arvin, 200 Campus Drive, Arvin, CA 93203. A copy is also available on the City's website at Arvin.org. Anyone having questions may contact the City Clerk at (661) 854-3134.

/s/ _____
Cecilia Vela, City Clerk
City of Arvin

PUBLISHED: Bakersfield Californian, September 7, 2018



**CITY OF ARVIN
Staff Report**

Meeting Date: September 18, 2018

TO:	City Council
FROM:	Pawan Gill, Human Resources Administrator
SUBJECT:	A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, APPROVING AN EMPLOYMENT AGREEMENT WITH RICHARD GERALD "JERRY" BRECKINRIDGE AS CITY MANAGER

BACKGROUND: This matter is before the Council for consideration of approval of an employment Agreement for the services of City Manager. On September 4th, 2018 the City Council announced their selection of Richard Gerald Breckinridge as City Manager. The proposed update will ensure continued City Manager services and the performance of the duties of the office in a manner which serves the best interests of City, subject to the direction of the City Council. The agreement proposes the following:

- **Term:** Expires September 18th, 2022.
- **Compensation:** Annual Salary of \$149,000 annually. At the conclusion of one year in the position and an evaluation rating of "Satisfactory" (or equivalent) or better, an increase of not lower than three percent (3%) of Employee's then-current salary. The City Council may, at its discretion, grant an increase higher than three percent. At the conclusion of two years and continuing until completion of the term of the agreement, the Council, in its sole discretion, may grant employee an annual merit increase in compensation based upon satisfactory or above performance.
- Employee shall simultaneously service in the temporary assignment of Acting Chief of Police for a period not to exceed 6 months **at no additional compensation**
- **COLA:** Effective at the conclusion of year 2 and year 3 of the agreement, automatic 3% COLA based upon the prior years' salary.
- **Management Leave:** Employee shall accrue Management Leave each year during the term of the agreement at the rate of 40 hours during the first year, 60 hours during the second year, 80 hours during the third year and 90 hours during the fourth year.
- **Severance:** 6 months (termination without cause) with a waiver of claims, etc.
- **Mutual Non-Disparagement:** Mutual statements in the event of separation from service.
- **Prior Agreements:** All prior employment agreements are rescinded.

FISCAL IMPACT: The City Manager position is fully funded in the Fiscal Year 2018-19 budget. The City's general fund will benefit from salary savings while Mr. Breckenridge serves a dual role as City Manager and Police Chief until a new Police Chief is hired.

RECOMMENDATION: Staff recommends approval of the Resolution and Employment Agreement between the City of Arvin and Richard G. Breckinridge with an effective date of September 18th, 2018 and authorize the Mayor to execute the agreement on behalf of the City.

Attachment: Resolution of the City Council of the City of Arvin, California, Approving an Employment Agreement Between the City of Arvin and Richard Gerry Breckinridge for City Manager Services.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN,
CALIFORNIA, APPROVING AN EMPLOYMENT AGREEMENT WITH
RICHARD GERALD “JERRY” BRECKINRIDGE AS CITY MANAGER**

WHEREAS, Arvin Municipal Code section 2.06.010 creates and establishes the office of the City Manager and provides that the City Manager shall be appointed by the City Council wholly on the basis of his administrative and executive ability and qualifications, and shall hold office for and during the pleasure of the City Council of the City of Arvin; and

WHEREAS, under Municipal Code section 2.06.210 the City Council and its members do hereby express the desire to deal with the administrative services of the City through the City Manager; and

WHEREAS, under the Powers and Duties of Arvin Municipal Code section 2.06.070 the City Manager is the administrative head of the government of the City under the direction and control of the City Council, responsible for the efficient administration of all affairs of the City which are under his control; and

WHEREAS, the City Manager position in the City of Arvin has been vacant since March 9, 2018, and through its professional services recruitment firm Bob Murray & Associates, the Council has been actively recruiting for the position since the prior City Manager’s departure; and

WHEREAS, Richard Gerald “Jerry” Breckinridge (“Mr. Breckinridge”) has served as the Chief of Police of the City of Arvin since April, 2016; and

WHEREAS, during the vacancy of the City Manager position, Mr. Breckinridge served as the Acting City Manager and currently serves as the Interim City Manager pursuant to Resolution 2018-06; and

WHEREAS, during the time Mr. Breckinridge has served as the Acting and Interim City Manager he has also simultaneously continued to serve as Chief of Police; and

WHEREAS, Mr. Breckinridge possesses the experience, qualifications, knowledge, skills and abilities to serve as the permanent City Manager; and;

WHEREAS, the City Council wishes to hire Mr. Breckinridge as the permanent City Manager; and

WHEREAS, hiring Police Chief Breckinridge as the City Manager will create a vacancy in the position of the Chief of Police; and

WHEREAS, during the recruitment of a new Chief of Police, Mr. Breckinridge has agreed to serve simultaneously as the City Manager and Acting Chief of Police without additional compensation; and

WHEREAS, according to Arvin Municipal Code Section 206.060-Compensation, the City Manager shall receive such compensation and expense allowance as the City Council shall from time to time determine, and the compensation and expenses shall be a proper charge against such funds of the City as the City Council shall designate; and

WHEREAS, the Employment Agreement attached as Exhibit "A" sets forth the terms and conditions of employment with Mr. Breckinridge to perform the duties of City Manager effective September 18, 2018, while simultaneously acting as the Chief of Police for a period not to exceed six months during the recruitment of the Chief of Police position; and

WHEREAS, the City Council desires to set the terms and conditions of Mr. Breckinridge's services as City Manager and Acting Chief of Police, subject always to the direction of the City Council.

NOW THEREFORE, be it resolved by the City Council of the City of Arvin as follows:

1. The recitals above are true and correct and incorporated herein by this reference.
2. The City Council hereby approves and adopts the Employment Agreement with Mr. Breckinridge, attached hereto as Exhibit "A," and authorizes the Mayor to execute the same on behalf of the City of Arvin.

I HEREBY CERTIFY that the foregoing Resolution was passed and adopted by the Arvin City Council at a regular meeting held on the 18th day of September, 2018, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST:

CECILIA VELA, City Clerk

ARVIN City COUNCIL

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

EXHIBIT "A"

EMPLOYMENT AGREEMENT

AGREEMENT NO. _____
EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (“Agreement) is made and entered into on September 18, 2018, and effective September 18, 2018, by and between the **CITY OF ARVIN**, a municipal corporation (“City” herein), and **RICHARD GERALD BRECKINRIDGE** (“Employee” herein) for the position of City Manager. Once effective, this Agreement shall replace and supersede any prior employment contracts or agreements between Employee and City, which are hereby deemed rescinded and of no further effect.

RECITALS

WHEREAS, Employee has served as the Chief of Police for the City of Arvin since April 4, 2016; and

WHEREAS, Employee has served as acting, and interim City Manager of the City of Arvin since March 9, 2018 under Resolution/Agreement Number 2018-06; and

WHEREAS, during the period March 9, 2018 to the present, Employee continued to serve as the Chief of Police of the City of Arvin while serving as Interim City Manager; and

WHEREAS, Employee has demonstrated the knowledge, skills and abilities to serve as City Manager, and possesses the qualifications of a permanent City Manager under the criteria established by the City Council during City Manager recruitment; and

WHEREAS, the City Council now wishes to hire Employee as the City Manager, and, further to employ Employee as Acting Chief of Police on a temporary and provisional basis during the period of recruitment for a new Chief of Police, for a period not to exceed six months from the effective date of this Agreement; and

WHEREAS, the City Council recognizes that Employee has made a positive contribution to the citizens of Arvin during his tenure as Chief of Police, and therefore wishes to ensure he receives all the rights and benefits resulting from an honorable conclusion of his career as a public safety officer; and

WHEREAS, the position of City Manager is an “at will” position, not subject to the City’s personnel rules; and

WHEREAS, it is in the City’s best interests to permanently employ Employee as City Manager, and additionally as Acting Chief of Police, subject always to the direction of the City Council.

NOW, THEREFORE, be it resolved that the City Council of the City of Arvin and Richard Gerald Breckinridge, incorporating the foregoing recitals, mutually agree as follows:

1. SCOPE OF WORK AND OTHER REQUIREMENTS. As City Manager, Employee agrees to exercise all powers and perform all duties set forth in Arvin Municipal Code

Attachment: Employment Agreement City Manager_Richard Gerald "Jerry" Breckinridge (Employment Agreement with Richard Gerald "Jerry"

Chapter 2.06 (City Administration/City Manager), including subsequent amendments, which include, but are not limited to, the following duties:

- a. Advise City on all issues and activities related to City management;
- b. Perform all duties typical of a City manager in a general law City manager run government;
- c. Enforce and faithfully observe all franchises, contracts, privileges, and permits granted by the City Council;
- d. Exercise authority over heads of departments, subordinate officers and Employees, except the City Attorney and other positions specified by state or local law;
- e. Conduct studies and recommend to the City Council administrative reorganization as needed;
- f. Recommend ordinances and the adoption of measures for the benefit of the City to the City Council;
- g. Attend all meetings of the City Council;
- h. Prepare and submit the proposed annual budget and the proposed annual salary plan to the City Council;
- i. Provide reports to City Council relating to City expenditures;
- j. Make investigations into the affairs of the City and any department or division thereof, ensure proper performance of City contracts, and investigate all complaints relating to City administration;
- k. Exercise general supervision over all public places and public property under the control and jurisdiction of the City Council;
- l. Cooperate with all City Agencies, Boards and Commissions and attend meetings as necessary;
- m. Be available to the City Council Members, City Attorney, Department Heads, and staff members, by email and telephone, during normal business hours five (5) days per week (Monday-Friday), and in emergency situations;
- n. Perform all tasks and duties as deemed necessary by the City Council.

2. ACTING CHIEF OF POLICE. For a period not to exceed six (6) months from the effective date of this Agreement or 960 hours, whichever comes first, Employee shall simultaneously serve in the temporary assignment of Acting Chief of Police, and shall faithfully perform such duties until appointment of a new Police Chief.

- a. During the period Employee shall act as Police Chief, he is required to meet the requirements of the Peace Officers Standards and Training guidelines set forth in Title 8 of the California Code of Regulations throughout his assignment.
- b. From and after the date of execution of this Agreement and while he serves in the dual roles of City Manager and Acting Chief of Police, Employee shall continue to receive the benefits set forth in Salary Resolution No. 2017-29: "Resolution Of The City Council Of The City Of Arvin, California, Repealing And Replacing Previously Adopted Resolution No. 2016-16 Setting Salary Ranges And Benefits For Directors/Department Heads" which includes:
 - i) City shall pay for or reimburse Employee for reasonable uniform and equipment costs that are required for the performance of duties as the Acting Chief of Police.
 - ii) Employee shall continue to have the use of a Police take-home vehicle.
 - iii) City agrees to provide and to pay 100% of the premiums for health, hospitalization, dental and vision insurance benefits for Employee and a maximum of \$199.00 per month for dependents.
 - iv) Employee shall continue his retirement through City's contract with CalPERS in which he receives 100% of his share of retirement paid by the City, and continues to be enrolled in the 2% at 55 program.
 - v) While acting as Chief of Police, Employee retains all rights granted under the Public Safety Officers Procedural Bill of Rights Act California Government Code sections 3300-3313.
- c. Upon conclusion of service as Acting Chief of Police, the City will adopt a Resolution of Honorable Retirement substantially in the form attached to this Agreement as Exhibit "B," acknowledging the Employee's honorable conclusion of his career as a peace officer and Chief of Police.

3. NATURE OF EMPLOYMENT. Employee acknowledges that he is an at-will Employee of City who shall serve at the pleasure of the City Council at all times during the period of employment. The terms of City's personnel rules, policies procedures, ordinances, or resolutions (collectively "Personnel Policies") shall not apply to Employee unless made expressly applicable, except that all polices and regulations on the prevention of harassment, discrimination and retaliation shall apply to Employee.

This Agreement is not intended to, or does it confer any right to any property interest in continued employment, or any due process property right to a hearing before or after a decision by the City Council to terminate Employee's employment. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of City to terminate the

services of Employee subject only to the provisions in Section 13 of this Agreement and Arvin Municipal Code, section 2.06.280. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with City, subject only to the provisions in Section 13 of this Agreement.

4. PERMANENT RESIDENCE. While City acknowledges that it cannot require Employee to live in Arvin, emergency situations and public relations issues may arise wherein the City Manager will need to respond quickly and be available within the City of Arvin. Therefore, it is imperative that Employee's permanent residence be situated within forty five (45) linear miles of Arvin's City Hall (200 Campus Drive). Permanent residence is defined as a place where a person lives more than six (6) months out of any calendar year. Employee has previously acknowledged that he in fact resides in the Arvin City limits. Should employee move out of the area, he shall have ninety (90) days from the date of the actual move, to meet this residency qualification. Failure to meet this requirement within the requisite amount of time shall be cause for termination. This residence shall be known as "the Local Residence."

5. COMPENSATION. Compensation for all work or services called for under this Agreement shall equal a total of One Hundred Forty Nine Thousand Dollars (\$149,000.00) annually, which shall be earned on a pro-rata basis and paid every two weeks on the City's regular payroll dates beginning the effective date of this Agreement. Employee shall be eligible for increases in compensation as follows:

- a. At the conclusion of one year in the position and an evaluation rating of "Satisfactory" (or equivalent) or better as provided for in paragraph 13 below, Employee shall receive an increase of not lower than three percent (3%) of Employee's then-current salary. The Council may in its discretion grant an increase higher than three percent (3%).
- b. At the conclusion of two years and continuing until completion of the term of this agreement (i.e., years 3 and 4), the Council, in its sole discretion, may grant Employee an annual merit increase in compensation based upon satisfactory or above performance. If an evaluation required by paragraph 13 is delayed or not completed until after Employee's anniversary date, any subsequent annual increase shall be retroactively effective to the anniversary of the effective date of this Agreement for the applicable evaluation period.
- c. At the conclusion of year 2, commencing in the third year of this Agreement, Employee shall receive a three per cent (3%) cost-of-living increase in compensation based upon the prior years' salary.
- d. At the conclusion of year 3, commencing in the fourth and final year of this Agreement, Employee shall receive a three percent (3%) cost of living increase in compensation based upon the prior years' salary.

The compensation set forth in this section shall be Employee's total cash compensation under this Agreement.

Except as set forth in this Agreement, Employee shall not be eligible for any other benefits or compensation not specifically provided for, and the parties agree that in exchange for the compensation set forth herein no additional cash or salary shall be granted for the temporary assignment of Acting Chief of Police.

The positions of City Manager and Acting Chief of Police are exempt under the Fair Labor Standards Act and, therefore, no overtime pay will be paid to Employee.

6. EMPLOYEE BENEFITS. City agrees to provide and to pay 100% of the premiums for health, hospitalization, dental and vision insurance benefits for Employee and a maximum of one hundred and ninety nine dollars (\$199.00) per month for dependents.

City shall cover and make premium payments for short and long term disability for Employee.

City shall pay the premium due for a term life insurance policy in the amount of \$300,000. Employee shall name the beneficiary of the life insurance policy. This amount shall be included in Employee's regular payroll check.

7. VEHICLE ALLOWANCE. Upon cessation of the services of Acting Chief of Police, City shall pay to Employee, during the term of this Agreement, the total sum of Four Hundred Dollars (\$400.00) per month as a vehicle allowance to be used to lease, own, operate and maintain a vehicle. Upon termination of employment or resignation, the vehicle allowance shall be pro-rated to reflect the number of days during the last month employment that the Employee is employed with the City. Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall be responsible for all expenses relating to the ownership, operation, maintenance, repair, and regular replacement of said vehicle.

All employees are required to adhere to all City policies and procedures regarding use of City vehicles.

8. EXPENSES. City shall reimburse Employee for all reasonable out-of-pocket expenses incurred while performing the duties described in this Agreement, which may include travel, meals, lodging expenses, and parking fees. City shall reimburse Employee for mileage for Employee travel outside the County of Kern necessary to perform the duties described in this Agreement. Employee shall submit a receipt and a description of the expenses to the City's Finance Director within thirty (30) days of the date each expense is incurred as a condition of obtaining reimbursement. In addition, City agrees to pay for Employee's membership in the International City Management Association ("ICMA") and the California City Management Foundation (CCMF,) and for Employee's attendance at the ICMA's annual conference and the annual CCMF conference.

9. CELL PHONE. City shall pay Employee one hundred and fifty dollars (\$150.00) per month to be used to purchase and pay the monthly premium for a cell phone, which shall be used to conduct official City business.

10. PAID TIME OFF (“PTO”) AND MANAGEMENT LEAVE.

- a. Employee shall accrue 280 hours of Paid Time Off (“PTO”) each year during the term of this Agreement. PTO shall be used for all absences including sick leave, vacation, and personal business. In taking time off, Employee shall be first required to use and exhaust the oldest existing PTO balances. PTO will accrue each pay period on a pro-rata basis. PTO may accrue to a maximum of two times Employee’s current annual maximum (or 560 hours), at which point accrual will cease until the balance reaches 520 hours, or PTO is either used or cashed out pursuant to Section 10b, below. Accrued but unused PTO shall be paid to Employee upon termination of Employee’s employment.
- b. Cash-Out Of Paid Time Off: The maximum amount of PTO time Employee may accrue is 560 hours, at which time accrual shall cease until the balance of PTO falls below 520 hours. Leave balances earned while employed as Interim and Acting City Manager are excluded from this limitation, and may be cashed out at any time and are payable at the time of termination of employment. Employee shall be eligible to cash out up to 40 hours of PTO on any given pay period if Employee has accrued a PTO balance of at least 240 hours. All PTO hours purchased shall be compensated at the Employee’s then-current rate of pay and will be permanently removed from the Employee’s accumulated PTO leave balance. In no event shall Employee cash outs result in a PTO balance of less than 200 hours. Such requests for cash-out of PTO hours shall be submitted in writing by the Employee to the City Clerk whom shall then submit to the Finance Department. All PTO pay requests submitted by the timesheet due date of the current pay period will be paid to Employee at the next available payroll.
- c. Management Leave: Employee shall accrue Management Leave each year during the term of this Agreement at the following rate: forty (40) hours during the first year; sixty (60) hours during for the second year; eighty (80) hours during the third year; and ninety (90) hours during the fourth year. Leave balances may not be cashed out at any time, and must be used within twelve (12) months of accrual. Management Leave may be used for all absences including sick leave, vacation, and personal business.

11. BEREAVEMENT LEAVE.

Employee may, after informing the Council President, take up to three (3) days of Bereavement Leave not to be chargeable against the employee’s paid time off but to be paid by the City to employee at his regular salary to attend the funeral or memorial service of immediate family. If travel is in excess of 500 miles, the employee shall be paid by the City his regular salary for up to two (2) additional working days. Additional time off for bereavement leave is at the discretion of the Council after written request. “Immediate family” is a spouse, child, stepchild, mother, stepmother, father, stepfather, mother-in-law, father-in-law, brother, stepbrother, sister, stepsister, brother-in-law, sister-in-law, grandmother, grandfather, spouse’s grandmother, spouse’s grandfather, son-in-law, daughter-in-law, grandchild, immediate uncle &

aunt (defined as brother or sister of employee's mother or father, or brother or sister of employee's guardian or employee's stepmother or stepfather), registered domestic partner or anyone living in the immediate household of the employee.

12. PUBLIC EMPLOYEES' RETIREMENT SYSTEM ("PERS").

- a. Employee is considered a "Classic" employee under CalPERS rules and regulations and shall continue to be enrolled in the CalPERS retirement system, and subject to such rules and regulations, City shall pay City's share of the payment due to CalPERS for Employee, and City shall pay one hundred percent (100%) of Employee's share (EPMC) of his retirement contribution during the term of this Agreement.
- b. Employee shall be entitled to participate in any 457/Deferred Compensation plan currently in place.

13. PERFORMANCE EVALUATION. At least one time per year, not later than Employee's anniversary date as calculated from the first day of employment under this Agreement, the City Council shall conduct a performance evaluation of Employee. If Employee has performed "satisfactorily" (or equivalent) during the evaluation period, Employee shall be eligible for a compensation increase pursuant to the terms specified in paragraph 5 above.

14. TERM AND TERMINATION. This Agreement shall be in effect from its effective date, and run for four (4) consecutive years.

- a. **Resignation.** If Employee elects to resign at any time during the term of this Agreement, he may do so upon giving City thirty (30) days' written notice.
- b. **Retirement.** If Employee elects to retire, he shall inform City, in writing, at least thirty (30) days prior to the effective date of such retirement. City shall cooperate fully with Employee and CalPERS to provide all information in a timely manner.
- c. **Termination "Without Cause."** City reserves the right to terminate this Agreement and Employee's employment at any time, "without cause" or advance notice, except as limited by Arvin Municipal Code, section 2.06.280 which states:

Notwithstanding the provisions of this article, proceedings for removal of the city manager shall not be instituted other than for cause, during or within a period of ninety (90) days next succeeding any general municipal election held in the city at which election a member of the city council is elected. The purpose of this provision is to allow any newly elected member of the city council or a reorganized city council to observe the actions and ability of the city manager in the performance of the powers and duties of his office. After the expiration of the ninety (90) day

period aforementioned, the provisions of Article IV as to the removal of the city manager shall apply and be effective.

In the event that Employee is terminated “without cause,” he shall be entitled to severance pay of six (6) months of Employee’s base monthly compensation as adjusted from time to time as set forth in paragraph 4, above. The severance pay will be in addition to pay accrued, but not remitted, prior to the notice of termination. The severance rights provided in this paragraph 13(c) shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination other than for cause or by expiration of this Agreement. Employee expressly waives any and all other rights with respect to severance pay except as provided herein, including any and all rights he may have to a separation payment pursuant to any joint powers insurance authority memorandum of liability coverage then in effect. Any and all severance rights are conditioned upon and in consideration for execution of the standard “Agreement of Separation, Severance, and General Release” attached hereto in form only as Exhibit “A.”

Notwithstanding the foregoing, should such severance payment exceed the amount authorized to be paid under Government Code, Section 53260, the amount paid to Employee shall be reduced in the amount necessary to comply with said statute.

Pursuant to Government Code section 53243.2, regardless of the term of the Agreement, if the Agreement is terminated, any cash settlement, such as severance payments, related to the termination that Employee may receive from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position with the City.

- d. **Termination “With Cause.”** The City reserves the right to terminate this Agreement and Employee’s employment at any time, “with Cause.” If this Agreement and Employee’s employment are terminated “for Cause,” Employee shall not be entitled to any severance benefits. “Cause” shall include, but not be limited to:
- i) Theft, or attempted theft, financial mismanagement, material dishonesty, willful or persistent breach of duties, engaging in conduct tending to bring embarrassment or disrepute to the City, unauthorized or excessive absences.
 - ii) A formal investigation commissioned by the City Council and conducted by a third party investigator hired by the City Council in which the City Council has determined that the Employee has engaged in unlawful discrimination or harassment of Employees or any third party while on City premises or on City time. City is not required to wait until Employee has exhausted any appeal rights prior to terminating this Agreement “for cause.”

iii) Conviction of any felony, or for any misdemeanor involving moral turpitude, corruption or dishonesty. "Conviction" shall include any guilty plea, plea of nolo contendere, or any other disposition other than a dismissal of charges or acquittal. City is not required to wait until Employee has exhausted any appeal rights prior to terminating this Agreement "for cause."

iv) Employee's death.

v) Employee's permanent disability if such disability precludes Employee from performing his essential job duties for more than six (6) cumulative months after attempts at reasonable accommodation pursuant to the Americans with Disabilities Act and/or California's Fair Employment & Housing Act.

- e. **Mutual Cooperation and Non-Disparagement.** Employee and City agree to do all things and deliver all instruments necessary to fulfill and effect the provisions of this Agreement and to protect the respective rights of the Employee and City. As a material inducement for the parties to enter into this Agreement, the parties agree that (i) in the event that there is a separation from employment, the City and Employee agree that no member of the City Council, the City Executive Staff or the Employee will make any written, oral or electronic statement on behalf of the City or Employee to any member of the public, the press, or any other City Employee concerning the Employee's separation from employment except in the form of a joint press release or statement, the content of which is mutually agreed to by the City and Employee; and (ii) that the joint press release or statement shall not contain any text or information that either party considers negative or neither party will directly disclose, disseminate, or use confidential information concerning the other party. The parties agree the following joint press release or a statement that is mutually agreed to and fully complies with the following:

"Richard Gerald Breckinridge has served as the City Manager for the City of Arvin since ____ of 2018. Effective [date], Mr. Breckinridge will no longer be serving as the City Manager. The City of Arvin thanks Mr. Breckinridge for his service and wishes him the best on his new endeavors."

The parties further agree that the following statement by the Employee is mutually agreed to and fully complies with the requirements of this section:

"I have served as the City Manager for the City of Arvin since ____ of 2018. Effective [date], I will no longer be serving as the City Manager. I thank the City for allowing me to be of service, and wish it the best as it continues forward with new endeavors."

Notwithstanding anything else in this paragraph 14(e), nothing in this Agreement will prevent or prohibit Employee or City, or its Employees, officers or consultants, from testifying in any legal proceeding, defending or prosecuting any litigation or any action, from cooperating in good faith in any governmental investigation or action, from making any report required by law, from effectuating separation or termination, conducting any internal investigation, or taking actions otherwise required by law. This provision may be enforced only by a party to this Agreement seeking equitable or specific performance in any court of competent jurisdiction in the County of Kern. Prior to taking enforcement action, the moving party/petitioner must give the other party thirty (30) business days' notice and the opportunity to settle, mediate or cure any defect or dispute arising from this Agreement.

15. NO WAIVER OF DEFAULT. The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

16. GOVERNING LAW. The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Kern County, California.

17. FURTHER ASSURANCES. Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

18. NOTICES. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

City: **City of Arvin**
City Hall
200 Campus Drive
Arvin, California 93203

Employee: **Richard Gerald Breckinridge**
Address in Employee's Personnel File

19. ASSIGNMENT. Neither this Agreement, nor any interest in it, may be assigned or transferred by any party without the prior written consent of all the parties. Any such assignment will be subject to such terms and conditions as City may choose to impose.

20. BINDING EFFECT. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the contract and their heirs, administrators, executors, personal representatives, successors and assigns, and whenever the context so requires, the masculine gender and includes the feminine and neuter, and the singular number includes the plural. This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.

21. EXHIBITS. In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail.

22. MERGER AND MODIFICATION. This contract sets forth the entire Agreement between the parties and supersedes all other oral or written representations. This contract may be modified only in a writing approved by the City Council and signed by all the parties.

23. EXECUTION. This Agreement is effective September 18, 2018. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

24. NON-INTEREST. With the exception of Employee, no officer or Employee of City shall hold any interest in this Agreement (California Government Code section 1090).

25. ACKNOWLEDGEMENT OF STATUTES THAT MAY AFFECT EMPLOYMENT RELATIONSHIP. City and Employee acknowledge that, in addition to the statutes previously referenced in this Agreement, the following statutes shall govern this employment relationship under the circumstances described in the statutes:

Government Code, section 53243 states that on or after January 1, 2012, any contract executed or renewed between a local agency, such as the City, and an officer or Employee of a local agency, such as Employee, that provides paid leave salary offered by the local agency to the officer or Employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or Employee is convicted of a crime involving an abuse of his or her office or position.

Government Code, section 53243.1 states that on or after January 1, 2012, any contract executed or renewed between a local agency, such as the City, and an officer or Employee of a local agency, such as Employee that provides funds for the legal criminal defense of an officer or Employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or Employee is convicted of a crime involving an abuse of his or her office or position.

Government Code, section 53243.3 states that on or after January 1, 2012, if a local agency, such as the City, provides, in the absence of a contractual obligation, for any of the payments described in the corresponding article of the Government Code, then the Employee or officer, such as Employee, receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the Employee or officer is convicted of a crime involving the abuse of his or her office or position.

Government Code sections 87100 et seq., section 1090 and section 1126, and all other similar statutory and administrative rules, prohibit conflicts of interest. During the term of this Agreement, Employee shall comply with all those requirements of law, and shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement.

Employee represents that Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including that Employee agrees that any cash settlement or severance related to a termination that Employee may receive from City shall be fully reimbursed to the local agency if Employee is convicted of a crime involving an abuse of Employee’s office or position.

26. PARTIAL INVALIDITY. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

27. INDEPENDENT LEGAL ADVICE. City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, or had the opportunity to do so, and City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

“CITY”

“EMPLOYEE”

By: _____
JOSE GURROLA
Mayor

By: _____
RICHARD GERALD BRECKINRIDGE

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
SHANNON CHAFFIN, ESQ.
Aleshire & Wynder, LLP
City Attorney

Attachment:

- Exhibit A: Agreement Of Separation, Severance And General Release
- Exhibit B: Resolution of Honorable Retirement from Police Department

EXHIBIT A

AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

1. PARTIES

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "Agreement ") is entered into effective this _____ day of _____, _____ by and between the City of Arvin, a municipal corporation ("City" herein), and Richard Gerald Breckinridge ("Employee" herein).

2. RECITALS

2.1. Employee was hired by the City as an at-will City Manager effective on or about _____*, 2018, serving at the pleasure of the of the City Council of the City pursuant to a written Employment Agreement, a copy of which is attached hereto as Exhibit "A" ("Employment Agreement"). Employee is currently _____ years old.

2.2. The City and Employee desire that Employee separate from employment with the City and enter into this Agreement whereby Employee receives severance compensation in exchange for executing a general release and waiver of any and all claims that Employee may have against the City, including but not limited to, its elected and non-elected officials, Employees, attorneys, and agents. Accordingly, the parties hereto intend by this Agreement to mutually conclude any and all employment relationships between the City and Employee by means of Employee's separation _____ as of _____, _____. This Agreement sets forth the full and complete terms and conditions concluding Employee's employment relationship with the City and any obligations related thereto, including any provided under the Employment Agreement.

2.3 In accordance with this Agreement and with applicable state and federal laws, Employee acknowledges that Employee has been advised of Employee's post-employment rights, including but not limited to, Employee's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and of his rights under the Age Discrimination in Employment Act, and the Older Workers Benefit Protection Act.

3. CONSIDERATION

3.1 Employee shall receive payment to him at the time of his voluntary separation all earned salary, accrued fringe benefits as detailed in the Employment Agreement, and/or all other wage compensation/benefits owed to Employee upon separation of employment, as required by state, federal or municipal law or any other Agreement with the City.

3.2. In exchange for the waivers and releases set forth herein, the City shall cause to be paid to Employee an additional compensatory payment as severance pay by means of a lump sum payment of _____ and _____ cents (\$_____.00), as set forth in in the form of a check made payable to Employee to be mailed to Employee at Employee's home address via certified mail return receipt requested within thirty (30) business days after the Effective Date

(as defined below) of this Agreement. The lump sum payment shall be subject to applicable state and federal withholdings as determined appropriate by the City.

3.3 In exchange for the severance payment provided for herein, Employee, and on behalf of Employee’s spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges the City, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as “the City Parties”), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, Agreement s, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which Employee now has or may acquire in the future, or which Employee ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at anytime from the beginning of time up to and including [REDACTED], [REDACTED] (hereinafter referred to collectively as “Claims”), without regard to whether such Claims arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. Employee expressly acknowledges that the Claims forever barred by this Agreement specifically include, but are not limited to, claims based upon any alleged breach of the contract or any other Agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§ 12, 900 et seq., the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or Employee rights statute, rule, or regulation. Nothing herein shall be interpreted as a release or waiver of any workers’ compensation claims or in any way prohibit or prevent Employee from participating in any claims or administrative action brought by a state or federal agency. Furthermore, nothing herein shall be interpreted as a release or waiver of the City’s statutory obligations relative to providing defense and indemnification of public Employees, if any, including but not limited to Government Code Sections 825-825.6 and Sections 995-996.6.

4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the “ADEA”) makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual’s employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the “OWBPA,” 29 U.S.C. § 626, et. seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA,

unless the waiver is knowing and voluntary. By entering into this Agreement, Employee acknowledges that Employee knowingly and voluntarily, for just compensation in addition to anything of value to which Employee was already entitled, waives and releases any rights he may have under the ADEA and/or OWBPA. Employee further acknowledges that Employee has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- (a) This waiver/release is written in a manner understood by Employee;
- (b) Employee is aware of, and/or has been advised of, Employee's rights under the ADEA and OWBPA, and of the legal significance of Employee's waiver of any possible claims Employee currently may have under the ADEA, OWBPA and/or similar age discrimination laws;
- (c) Employee is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this Agreement and the waiver and release of any rights Employee may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of Employee's own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) days;
- (d) The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA **after** the Effective Date of this Agreement;
- (e) Employee has been advised by this writing that Employee should consult with an attorney prior to executing this Agreement;
- (f) Employee has discussed this waiver and release with, and been advised with respect thereto by, Employee's counsel of choice or at least had the opportunity to do so, and Employee represents by signing this Agreement that Employee does not need any additional time within which to review and consider this Agreement;
- (g) Employee has **seven (7) days following Employee's execution** of this Agreement to revoke the Agreement;
- (h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to the City pursuant to Paragraph 8.9 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release"; and
- (i) This Agreement shall not be effective until all parties have signed the Agreement and ten (10) days have passed since Employee's execution of same ("Effective Date").

5. UNKNOWN CLAIMS

In relation to the release provisions of Paragraphs 3 and 4 above, Employee understands that California Civil Code section 1542 reads as follows:

“General Release--Claims Extinguished”

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

Employee hereby waives the protection of California Civil Code section 1542.

6. WAIVER OF ADDITIONAL CLAIMS

Employee hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

7. REPRESENTATIONS AND WARRANTIES

Each of the parties to this Agreement represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this Agreement or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this Agreement, that they have read this Agreement; that they have had this Agreement fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this Agreement and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and neither party relies upon any statement, representation, omission or promise of any other party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

7.3. Independent Investigation: Each party to this Agreement has made such investigation of the facts pertaining to this settlement and this Agreement and all the matters pertaining thereto, as it deems necessary.

7.4. Mistake Waived: In entering into this Agreement, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that Employee fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against the City or the City Parties. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: Employee agrees to indemnify and hold harmless the City or the City Parties from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this Agreement. Employee understands and agrees that Employee shall be exclusively liable for the payment of all taxes for which Employee is responsible, if any, as a result of Employee's receipt of the consideration referred to in Paragraph 3 of this Agreement. In addition, Employee agrees fully to indemnify and hold the City Parties harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this Agreement.

7.7. Future Cooperation & Consultation Fees: Employee shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement. Employee shall provide the City with consultation services (including deposition or trial testimony) in any litigation involving the City which is reasonably related to acts or occurrences transpiring during Employee's employment. Said services shall be provided as needed by the City at the rate of Employee's annual base compensation at the time of separation divided by 2,500. For example, if the annual base compensation at time of separation was \$150,000, then the services would be provided by Employee at the rate of \$60 per hour.

7.8. Return of Confidential Information and Property: Prior to the separation all City keys, equipment, passwords, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by Employee during the course of Employee's employment with the City shall be provided by Employee to the Finance Director or designee.

7.9. No Pending Claims and/or Actions: Employee represents that Employee has not filed any complaints or charges against the City or the City Parties with any local, state or federal agency or court; that Employee will not do so at any time hereafter for any claim arising up to and including the Effective Date of this Agreement; and that if any such agency or court assumes jurisdiction of any such complaint or charge against the City or the City Parties on behalf of Employee, whenever or where ever filed, Employee will request such agency or court to withdraw from the matter forthwith. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent Employee from participating in any claims or administrative action brought by a state or federal agency.

7.10. Ownership of Claims: Employee represents and warrants as a material term of this Agreement that Employee has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the Claims disposed of by this Agreement. In executing this Agreement, Employee further warrants and represents that none of the Claims

released by Employee thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12 Authority: Each party represents to the other that it has the right to enter into this Agreement, and that it is not violating the terms or conditions of any other Agreement to which they are a party or by which they are bound by entering into this Agreement. The parties represent that they will obtain all necessary approvals to execute this Agreement. It is further represented and agreed that the individuals signing this Agreement on behalf of the respective parties have actual authority to execute this Agreement and, by doing so, bind the party on whose behalf this Agreement has been signed.

7.13 Unemployment: Nothing in this Agreement shall limit Employee's ability to apply for unemployment benefits, and the City will not contest such an application by the Employee.

8. MISCELLANEOUS

8.1. No Admission: Nothing contained herein shall be construed as an admission by the City of any liability of any kind. The City denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This Agreement has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written Agreements and discussions. This Agreement may be amended only by a further Agreement in writing, signed by the parties hereto.

8.4. Continuing Benefit: This Agreement is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

8.5. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the parties agree that same shall not be construed against any party.

8.6. Severability: In the event that any term, covenant, condition, provision or Agreement contained in this Agreement is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or Agreement shall in no way affect any other term, covenant, condition, provision or Agreement and the remainder of this Agreement shall still be in full force and effect.

8.7. Titles: The titles included in this Agreement are for reference only and are not part of its terms, nor do they in any way modify the terms of this Agreement.

8.8. Counterparts: This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties. Delivery of executed originals of this Agreement, as well as any instrument contemplated in connection with this Agreement, may be effected by facsimile and/or electronic transmission, and in such event, copies of executed originals so delivered may be used in place of, and shall have the same force and effect as, the executed originals.

8.9. Notice: Any and all notices given to any party under this Agreement shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party’s discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given and/or received on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

City: CITY OF ARVIN
City HALL
200 Campus Drive
Arvin, California 93203

Employee: RICHARD GERALD BRECKINRIDGE
Address set forth in Employee’s Personnel File. If no address is in the Personnel File, notice may be sent to Employee’s business or home.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

“City”

“Employee”

By: _____
JOSE GURROLA
Mayor

By: _____
RICHARD GERALD BRECKINRIDGE

Date: _____

Date: _____

APPROVED AS TO FORM:

For City

For Employee (if represented)

By: _____
SHANNON CHAFFIN, ESQ.
Aleshire & Wynder, LLP
City Attorney

By: _____
Name:
Title:

EXHIBIT B

RESOLUTION OF HONORABLE RETIREMENT FROM POLICE DEPARTMENT

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN
RESOLUTION HONORING POLICE CHIEF RICHARD GERALD
"JERRY" BRECKINRIDGE UPON HIS RETIREMENT FROM THE
SWORN SERVICE**

WHEREAS, RICHARD GERALD "JERRY" BRECKINRIDGE has served as Police Chief for the City Of Arvin since April of 2016, and, as of September, 2018, accepted the position of City Manager of the City of Arvin; and

WHEREAS, Chief Breckinridge has served as a police officer beginning in 1989, with the City of Tulare, California Police Department, and where he was promoted to Sergeant in 1994; and

WHEREAS, after serving as Sergeant, Chief Breckinridge was promoted to Police Lieutenant with the City of Tulare where he served from 2001 through 2005; and

WHEREAS, Chief Breckinridge was promoted from Lieutenant to Police Captain with the City of Tulare in 2005 where he served until 2009; and

WHEREAS, Chief Breckinridge served as the Chief of Police for the City of Tulare, from December 2009 to November 2015; and

WHEREAS, while serving as Chief of Police, in 2012 Chief Breckinridge served simultaneously as the Interim Assistant City Manger for the City of Tulare; and

WHEREAS, in 2018 while serving as Chief of Police of the City of Arvin, Chief Breckinridge simultaneously served as Acting City Manager without additional compensation; and

WHEREAS, during his career in law enforcement, Chief Breckinridge has expanded his educational horizons by receiving his Bachelor of Arts Degree in Organizational Leadership from Fresno Pacific University, and a Master’s Degree in Leadership and Organizational Studies at Fresno Pacific University, which required him to commute regularly to Fresno while maintaining his position(s) in law enforcement; and

WHEREAS, Chief Breckinridge is qualified as a peace officer and has obtained certifications through the California POST, and has earned Advanced, Intermediate, Basic, Executive, Management and Supervisory certificates; and

WHEREAS, Chief Breckinridge has attended and qualified as a peace officer through the FBI National Academy at Quantico, Virginia in 2004; and

WHEREAS, prior to his retirement from Arvin Police Department, Chief Breckinridge was within the last 12 months, qualified under the State of California’s standards for training and qualification for active law enforcement officers to carry firearms.

NOW, THEREFORE, BE IT RESOLVED THAT: The City Council of the City of Arvin hereby commends and thanks Richard Gerald “Jerry” Breckinridge for his dedicated service to the Citizens of Arvin during the time he has served as Chief of Police and Acting Chief of Police, for his long and distinguished career in law enforcement, and especially for the positive contributions he has made to the community; and

BE IT FURTHER RESOLVED that Chief Breckinridge has honorably retired from over 29 continuous years in police service with all attendant rights and privileges of a Peace Officer in California; and

BE IT FINALLY RESOLVED that the City Council of the City of Arvin conveys its gratitude to Chief Breckinridge in his retirement from his position as Chief of Police and wishes him a healthy and enjoyable retirement from law enforcement and the sworn service.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a [special or regular] meeting thereof held on the _____ day of _____, 20__ by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, **DO HEREBY CERTIFY** that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein