



**9/1/2020**  
**City Council Meeting**

**Handouts received after  
agenda posted**

The contract has the Developer as "Farm Lemoore, LLC" but there is no additional information. The attorney representing the Developer is out of San Luis Obispo. In March of this year, FBI agents raided the San Luis Obispo County government offices regarding "allegations of corruption surrounding a Supervisor, several developers and a group of marijuana businessmen." Could there be a connection? We don't know. Yes, it could be a stretch but what if it isn't? Just google "FBI agents raid SLO County government offices" for a variety of articles.

There will be a new majority of Council members after the election. Perhaps the consideration to table this item until the new council is seated would be appropriate. This is a significant item for the City and the new council should be given the opportunity to approve (or not) this item as it will come before them again. Perhaps providing them the opportunity to consider this item from the start instead of inheriting it is an option.

Thank you.

Janie Venegas

Resident District B

**PROJECT DEVELOPMENT AGREEMENT**

**CITY OF LEMOORE**

**AND**

**FARM LEMOORE, LLC**

## **DEVELOPMENT AGREEMENT**

This Project Development Agreement (“Agreement”) is entered into effective August \_\_, 2020 (“Effective Date”) between the City of Lemoore, a California charter city (“City”) and FARM Lemoore, LLC, a California limited liability company (“Developer”), with respect to the following Recitals, which are a substantive part of this Agreement:

### **RECITALS**

- A. On December 4, 2019 the Lemoore City Council approved a Disposition and Development Agreement (“DDA”) with KKAL, LP (“KKAL”), whereby the City conveyed approximately 83.5 acres at the northeast corner of State Route 41 and Idaho Avenue (APN 024-051-031, and hereinafter the “Property”) (Exhibit A) to KKAL for the purpose of developing a manufacturing, distribution, and warehouse center of approximately 1,025,000 square feet of building space with related secondary economic benefit. The Property is planned Light Industrial pursuant to the Lemoore 2030 General Plan, and is zoned consistent with the designated land use.
- B. On March 17, 2020, the City Council approved an amendment to the DDA (“First Amendment”), whereby KKAL agreed to exchange 24 of the 83.5 acres to allow the City to use for storm drainage purposes, and the City agreed to convey approximately 12 acres located on the corner of Idaho Avenue and 19th Avenue (APN 024-051-30) to KKAL.
- C. City staff engaged in discussions with Developer regarding taking over the Site from KKAL, and developing the Site with a less intense commercial cannabis cultivation operation, with related uses (“Project”), in accordance with California's Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA” or the “Act”), as well as City’s Ordinance No. 2019-03 (“Ordinance”), as set forth in the City’s Municipal Code. In order to accomplish this transaction, KKAL agreed to rescind the existing DDA and First Amendment, subject to KKAL’s receipt of an option to purchase nine acres of City property on a separate site. In turn, Developer agreed pay KKAL \$1,700,000.00 as consideration for the purchase of the Site.
- D. An Initial Study pursuant to the California Environmental Quality Act (“CEQA”) had been previously prepared for a 1,000,000 sq. ft. industrial project on the Site, and a Mitigated Negative Declaration (“MND”) was adopted by the Lemoore City Council on November 6, 2018. Because the current Project is changed from the project originally identified in the MND, the City was required to determine whether an Addendum or Subsequent MND should be prepared. The City determined that the changes from the original project would not result in any new significant impacts or substantially increase the severity of impacts previously identified in the MND, and there were no previously infeasible alternatives that are now feasible. As proposed Project is substantially less intensive than the industrial project that was evaluated, the City determined that an Addendum to the MND is appropriate.
- E. This Agreement is contingent on Developer obtaining a commercial cannabis regulatory permit (“Regulatory Permit”) pursuant to the Ordinance.

F. Developer represents that its principals are experienced developers and/or operators of commercial cannabis operations or have otherwise contracted with experienced commercial developers, operators, contractors, and other professionals for the purposes of developing the Project on the Property. Developer acknowledges that it be responsible for all improvements to the Property necessary for the Project.

G. Developer represents its intention to use reasonable efforts to hire City residents to work in its commercial cannabis operations, and City encourages Developer to hire locally.

**NOW, THEREFORE**, pursuant to the authority contained in the California's Development Agreement statutes (Government Code section 65864, et seq.), enacted pursuant to Article XI, Section 2 of the California Constitution, and in consideration of the foregoing recitals of fact, all of which are expressly incorporated into this Agreement, the mutual covenants set forth in this Agreement, the City and Developer agree as follows:

**I. Development of Property.** Developer proposes to develop and operate the Property for a Commercial Cannabis Operation under MAUCRSA and the Ordinance, which includes a commercial cannabis cultivation operation, with related uses. To this end, Developer shall pay \$1,700,000.00 to KKAL as consideration for the purchase of the Property and agrees to complete the execution of all documents necessary for such purchase prior to developing the Property. Developer will allow the continued use of the Hess basin as a storm drain basin and grant necessary easements and an open ditch from the lift station or alternative water transfer option as agreed upon by the City to ensure water transfer and use of the basin for storm drain purposes. Developer shall pay the following:

- Developer to pay for all infrastructure and development costs relating to the 83.5 acres.
- Developer to install 8' chain link fence with barbed wire around complete perimeter with lighting and security cameras.
- Developer has the option to install wind screens up to 12' inside the perimeter.
- Developer must provide on-site security personnel for two weeks before crop harvest and during drying, 24 hours per day.
- Developer will allow the City continued use of the Hess Basin on south end of property.
- Developer will grant easement for transfer of storm drain lift station and transfer canal and/or line.

City must approve a Regulatory Permit prior to the development of the Property. The exact Commercial Cannabis Operation to be approved for the Property will be determined during the Regulatory Permit process but shall be consistent with the terms and conditions of this Agreement.

**II. Lawfulness of Activities.** In entering into this Agreement and processing the Regulatory Permit, the City makes no guarantees or promises as to the lawfulness of the proposed commercial cannabis operations under State or federal law, and Developer is obligated to comply with all applicable laws. To the fullest extent permitted by law, City shall not assume any liability

whatsoever with respect to approving the Ordinance, a Regulatory Permit for Developer, or any other commercial cannabis operation approved by City.

**III. Developer Representations.** Developer represents and warrants that Developer, and/or principal members of Developer, is/are an experienced developer and operator of commercial properties with experience in cannabis operations, or has otherwise contracted with experienced commercial developers, architects, and/or other professionals for the purpose of developing the Property. The qualifications and identity of Developer and Developer's contractors are of particular concern to City, and because of such qualifications and identity, the City has entered into this Agreement with Developer. City has considered and relied upon Developer's representations and warranties in entering into this Agreement.

**IV. Fees.** Developer shall pay to City the following fees: Developer agrees to pay to the City 2% of gross receipts or Spot Pricing whichever is higher within 30 days of crop sale.

The requirements of this Section shall be a recorded covenant running with the land and binding on all owners, tenants, and Regulatory Permit holders for the Property. The covenants shall expire on the expiration or earlier termination of this Agreement.

**V. Local Contractors.** To the extent practical, Developer will use reasonable efforts to hire construction/remodel contractors for the Property that are based within the City of Lemoore or whose work force is made up of a significant number (e.g. 30%) of residents of the City of Lemoore (a "Local Contractor"). Nothing in this section V. shall be construed to require Developer to accept a bid from a Local Contractor that is more than five percent (5%) higher than the lowest bid received for the same or similar work.

**VI. Compliance with Laws.** Developer shall operate the commercial cannabis operation in substantial conformity with the MAUCRSA and any implementing regulations, as they may be amended from time to time. Developer shall similarly comply with all other applicable laws, state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the Lemoore Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* with respect to the existing and any proposed improvements on the Property.

**VII. Developer's Indemnity.**

a. **Commercial Cannabis Operations.** Developer shall defend, indemnify, assume all responsibility for, and hold City and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature arising from or related to any State or federal law enforcement action against Developer, Developer's tenants, subtenants, licensees, contractors and employees ("**Developer Parties**") in connection with the commercial cannabis operation conducted on the Property after the issuance of the Regulatory

Permit (“**Cannabis Claims**”). Developer’s defense and indemnity obligations under this Agreement shall apply, regardless of intent or fault, to any allegation or claim of liability brought against the City related to the subject Project, including land use and environmental law actions or meeting notice law actions following Project approval, modification, or denial. Applicant’s duty shall arise at the first claim, petition, or allegation of liability against City. Developer’s indemnity shall not extend to any loss of revenue suffered or incurred by City in connection with any termination, cessation, restriction, seizure, or other limitation of any commercial cannabis operation on the Property.

b. Construction and Other Operations. In addition to the indemnity obligations of subsection (a), Developer shall defend, indemnify, assume all responsibility for, and hold City and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation thereof, including all construction and operation activities on the Property, and for any damages to property or injuries to persons, including accidental death (including attorneys’ fees and costs), which may be caused by any acts or omissions of Developer Parties in the performance under this Agreement, whether such damage shall accrue or be discovered before or after termination of this Agreement (“**Other Claims**”). Developer’s liability under this Subsection (b) is limited to the extent the property damage or bodily injury is caused by the sole negligence or willful misconduct of City or its agents or employees.

#### **VIII. Restrictions on Transfer**

a. City Approval Prior to Closing. Prior to acquisition of the Property, Developer shall not transfer this Agreement or any of Developer’s rights hereunder, directly or indirectly, voluntarily or by operation of law, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. In considering whether it will grant approval to any assignment by Developer of its rights hereunder, City shall consider factors such as (a) the financial strength and capability of the proposed assignee to perform Developer’s obligations hereunder; and (b) the proposed assignee’s experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

b. Assignee Obligations. In the absence of specific written agreement by City, no assignment or transfer by Developer of all or any portion of its rights shall be deemed to relieve it or any successor party from any obligations under this Agreement. In addition, no attempted assignment of any of Developer’s obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form reasonably approved by the City assuming such obligations.

**IX. Defaults and Remedies**. Failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein, following notice and failure to cure as described hereafter, constitutes a “**Default**” under this Agreement. A party claiming a Default shall give written Notice of Default (“**Notice**”) to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within fifteen (15) days from receipt of such Notice immediately, with due diligence, commences to cure,

correct or remedy such failure or delay and shall diligently complete such cure, correction or remedy.

In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Kings, California, or in the United States District Court for the Eastern District of California – Fresno Division, if allowable.

**X. General Provisions.**

a. Notices, Demands, and Communications Between the Parties. Any approval, disapproval, demand, document or other notice (“Notice”) which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: Mary Lerner  
Lozano Smith  
7404 N. Spalding  
Fresno, California 93720  
Tel: (559) 431-5600  
Fax: (559) 431-4420  
Email: mlerner@lozanosmith.com

To Developer: \_\_\_\_\_  
FARM Lemoore, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: Attn: Thomas D. Green  
P.O. Box P.O. Box 3835  
San Luis Obispo, California 93403-3835  
Tel: (805) 543-0990  
Fax: (805) 543-0980



Email: green@ammcglaw.com

Any written notice, demand or communication shall be deemed received: immediately if delivered by hand; 24 hours after delivery to a receipted, overnight delivery service such as Federal Express; 24 hours after delivery by e-mail with an acknowledgement of receipt by the intended recipient; and on the fourth (4th) day from the date it is postmarked if delivered by registered or certified mail.

b. Successors and Assigns. All of the terms, covenants, and conditions of this Agreement shall be binding upon Developer and City, and their respective successors and assigns. Whenever the term “Developer” is used in this Agreement, such term shall include any other successors and assigns as herein provided. This Agreement shall run with the land and be binding upon Developer’s successors and assigns in and to the Property.

c. Relationship Between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Except as expressly provided herein or in the Attachments hereto, City shall not have any rights, powers, duties or obligations with respect to the Project.

d. No Third-Party Beneficiaries. There shall be no third-party beneficiaries of this Agreement.

e. City Approvals and Actions. City shall maintain authority over this Agreement, and the authority to implement this Agreement through the City Manager (or his/her duly authorized representative). The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of City so long as such actions do not materially or substantially change the uses or development contemplated under this Agreement, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform if applicable. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

f. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement shall be executed in two (2) originals, each of which is deemed to be an original.

g. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party’s own independent investigation of any and all facts such party deems material. This Agreement includes all Attachments and Exhibits attached hereto, which are incorporated herein.

h. Interpretation and Applicable Law. This Agreement has been prepared with input from both parties, and shall be interpreted as though prepared jointly by both parties. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

i. No Waiver. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Nor shall a waiver by either party of a breach of any of the covenants, conditions or promises under this Agreement to be performed by the other party be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

j. Modifications. For any alteration, change or modification of or to this Agreement to become effective, it shall be made in writing and in each instance signed on behalf of each party.

k. Legal Advice. Each party represents and warrants to the other the following: They have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

l. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

m. Non-Liability of Officials and Employees of the City. No official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

n. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

o. Term. The term of this Agreement ("Term") shall be for a period of Twenty Five (25) years commencing on the Effective Date. Notwithstanding anything to the contrary herein, the Term shall be automatically be extended one (1) additional period of fifteen (15) years after the initial expiration date unless either party gives written notice of intent to terminate to the other

party. The notice of intent to terminate shall be given no more than 12 months and no less than 6 months prior to the expiration of the initial Term(the "Notice Period"). To the extent that City seeks to terminate this Agreement under the provisions of this paragraph,, such termination must be for cause, based upon a breach of this Agreement which remains uncured by Developer following thirty (30) days notice from City directed to Developer within the Notice Period.

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**IN WITNESS WHEREOF**, the City and the Developer have executed this Disposition and Development Agreement as of the date set forth above.

Dated: \_\_\_\_\_

**FARM LEMOORE, LLC**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print)

Dated: \_\_\_\_\_

**CITY OF LEMOORE**

By: \_\_\_\_\_  
Nathan Olson, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Marisa Avalos, City Clerk

J:\wdocs\01909\034\AGT\00669414.DOC

**EXHIBIT A**

**LEGAL DESCRIPTION AND DEPICTION OF PARCEL 4**

**[See Attached]**

DRAFT

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 020-054-002-000 and 020-054-014-000**

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

**PARCEL 1:**

LOTS SEVEN AND EIGHT IN BLOCK FORTY-NINE OF THE CITY OF LEMOORE, AS PER MAP RECORDED IN BOOK 1 PAGE 52 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**PARCEL 2:**

THE EAST 20 FEET OF LOT SIX IN BLOCK FORTY-NINE OF THE CITY OF LEMOORE, AS PER MAP RECORDED IN BOOK 1 PAGE 52 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 020-054-014-000

**PARCEL 3:**

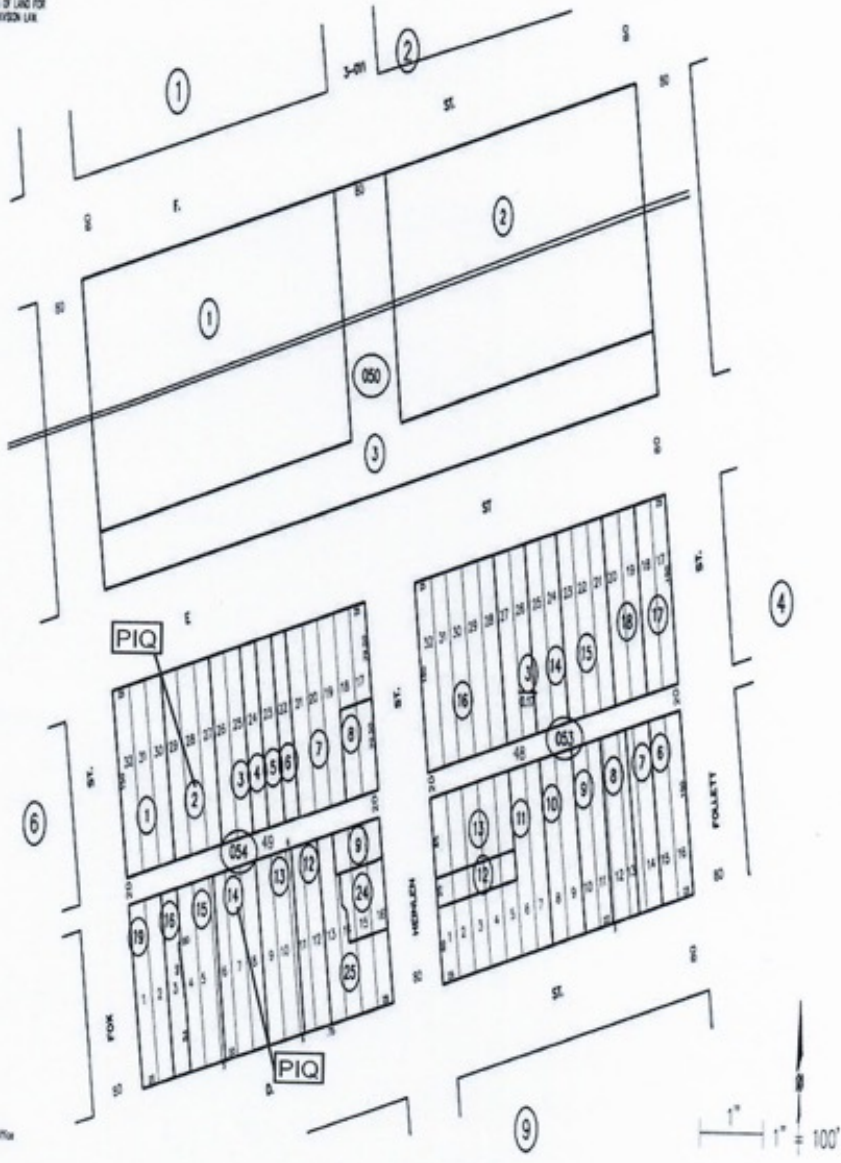
LOTS 27, 28 AND 29 IN BLOCK 49 OF LEMOORE, IN THE CITY OF LEMOORE, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 1 PAGE 52 OF LICENSED SURVEYOR PLATS.

APN: 020-054-002-000

# KINGS COUNTY ASSESSOR'S MAP

20-05

THIS MAP IS FOR ASSESSMENT PURPOSES ONLY  
 IT IS NOT TO BE CONSIDERED AS PROVIDING  
 LEGAL DETERMINATION OF BOUNDARIES OF LAND FOR  
 PURPOSES OF ZONING OR SUBDIVISION LAW  
 JANUARY 2002



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This map/plan is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.