



**CITY COUNCIL OF PARLIER
REGULAR MEETING**

DATE: Thursday, December 20, 2018

TIME: 6:30 PM

PLACE: Council Chambers
1100 East Parlier Avenue
Parlier, CA 93648

CALL TO ORDER/WELCOME:

Roll Call: Mayor Alma M. Beltran, Mayor Pro-Tem Jose Escoto, Councilwoman Diane Maldonado, Councilman Noe Rodriguez, Councilman Trinidad Pimentel, City Clerk Dorothy Garza.

FLAG SALUTE: Mayor Alma M. Beltran

ADDITIONS/DELETIONS TO THE AGENDA:

PRESENTATIONS/INFORMATIONAL: None

PUBLIC COMMENTS:

Note: State law allows the Council to briefly respond to questions on items raised by the public, which are not on the agenda. Government Code Section 54954.2(a). Alternatively, the Council may choose to direct staff to provide information at a following meeting. Any member of the public may comment on any matter within the jurisdiction of the City that is not on the agenda. Those wishing to comment should be recognized by the Mayor and approach the podium. Comments are limited to five (5) minutes.

CONSENT CALENDAR:

1. Council to adopt Resolution No. 2018-65 approving the revised subdivision agreement for tract No. 6038 to account for a modification to the provisions for release of security.

ADMINISTRATIVE REPORTS:

2. **SUBJECT:** City Council to consider approval of a variance at 13523 E. Cypress Avenue.

PUBLIC HEARING:

- a. Mayor Beltran to open Public Hearing
- b. Public input/testimony for or against.
- c. Mayor Beltran to close Public Hearing

RECOMMENDATION: Staff recommends that the City Council adopts Resolution No. 2018-66, approving the variance to the rear setback at 13523 E. Cypress Avenue.

3. **SUBJECT:** City Council to consider approval of a Zoning Text Amendment adding "Tobacco Shops".

PUBLIC HEARING:

- a. Mayor Beltran to open Public Hearing
- b. Public input/testimony for or against.
- c. Mayor Beltran to close Public Hearing

RECOMMENDATION: Staff recommends that the City Council introduce and waive the first reading of Ordinance No. 2018-06 and sets the second reading and adoption for January 03, 2019.

4. **SUBJECT:** Site Plan Review for Fox Drug Store.

RECOMMENDATION: Staff recommends that the City Council approve Resolution No. 2018-67 Approving the Site plan for Fox Drug Store.

5. **SUBJECT:** Site Plan Review for Greenbriar, LLC cannabis testing and manufacturing facility.

RECOMMENDATION: Staff recommends that the City Council approve Resolution No. 2018-68 approving the Site Plan for Greenbriar.

BRIEF COMMENTS: COUNCIL COMMUNICATIONS/COMMENTS:

CITY MANAGER

CITY ATTORNEY

CITY COUNCIL

ADJOURNMENT

ADA NOTICE

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (559) 646-3545 ext. 227. Notification 48 hours prior to the meeting will enable the City to make arrangements to ensure accessibility to this meeting.

DOCUMENTS

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the front counter at City Hall located at 1100 East Parlier Avenue, Parlier, CA during normal business hours. In addition, most documents are posted on the City's website at <http://parlier.ca.us>.

STATEMENT ON RULES OF DECORUM AND ENFORCEMENT

The Brown Act provides that members of the public have a right to attend public meetings, to provide public comment on action items and under the public forum section of the agenda, and to criticize the policies, procedures, or services of the city or of the acts or omissions of the city council. The Brown Act also provides that the City Council has the right to exclude all persons who willfully cause a disruption of a meeting so that it cannot be conducted in an orderly fashion.

During a meeting of the Parlier City Council, there is a need for civility and expedition in the carrying out of public business in order to ensure that the public has a full opportunity to be heard and that the Council has an opportunity to conduct business in an orderly manner. The following is provided to place everyone on notice of the rules of decorum and enforcement.

GENERAL RULES OF DECORUM

While any meeting of the City Council is in session, the following rules of decorum shall be observed:

1. All remarks shall be addressed to the City Council as a whole and not to any single member, unless in response to a question from a member of the City Council.
2. A person who addresses the City Council under public comment for a specific agenda item or under the Public Forum section of the agenda may not engage in speech or conduct (i) which is likely to provoke others to violent or riotous behavior, (ii) which disturbs the peace of the meeting by loud and unreasonable noise, (iii) which is irrelevant or repetitive, or (iv) which disrupts, disturbs, or otherwise impedes the orderly conduct of any City Council meeting.
3. A person, other than members of the Council and the person, who has the floor, shall not be permitted to enter into the discussion unless requested by the Mayor to speak.
4. Members of the City Council may not interrupt a person who has the floor and is

making public comments. Members of the City Council shall wait until a person completes his or her public comments before asking questions or commenting. The Mayor shall then ask Council members if they have comments or questions.

5. No person in the audience at a Council meeting shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet or other acts which disturb, disrupt or otherwise impeded the orderly conduct of any Council meeting.



AGENDA ITEM: # 1
MEETING DATE: December 20, 2018
DEPARTMENT: Planning

REPORT TO CITY COUNCIL

SUBJECT:

City Council to Consider Approval of Revised Subdivision Agreement for Tract No. 6038

RECOMMENDATION:

Staff recommends that the City Council adopts Resolution No. 2018-XX, approving the revised subdivision agreement for Tract No. 6038 to account for a modification to the provisions for release of security.

BACKGROUND & PROPOSAL:

On December 6, 2018 the City Council adopted Resolution No. 2018-XX, approving the final map and subdivision agreement for Tract No. 6038. Exhibit "B" of the subdivision agreement relates to security to ensure installation of improvements. The applicant's attorney and the City Attorney had agreed to include a provision for the release of the security following City acceptance of the improvements, but that clause was accidentally omitted from the previous version of the agreement. It reads:

*5. All remaining funds and interest in the account shall be immediately released to the **Subdivider/Owner** upon completion of the work and acceptance by the City.*

The subdivision agreement remains otherwise unchanged.

Environmental

Approval of a subdivision agreement typically accompanies approval of a final map, which itself is ministerial in nature, meaning that it does not involve exercise of discretion or judgment during consideration. The Council is required to approve the final map if it substantially conforms to the approved tentative map and is required to deny the final map if it does not substantially conform (Govt. Code Section 66474.1). Ministerial projects, expressly including approval of final maps, are exempt from environmental review under the California Environmental Quality Act (CEQA Guidelines Section 15268(b)(3)). As component of final map approval, approval of the subdivision agreement is likewise exempt from CEQA review.

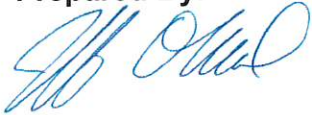
Public Notice

No public notice is required for approval of a subdivision agreement.

FISCAL IMPACT:

There would be no impact to City funds. The subdivision agreement, and by extension the bonds that it discusses, are intended to protect the City against costs associated with installation of infrastructure that is otherwise the developer's responsibility.

Prepared By:



Jeffrey O'Neal, AICP
City Planner

Approved By:

Antonio Gastelum
City Manager

RESOLUTION 2018-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PARLIER APPROVING THE
REVISED SUBDIVISION AGREEMENT FOR TRACT NO. 6038.

WHEREAS, Adobe West, Inc., a California Corporation, ("Owner") applied for approval of a final map designated as Tract No. 6038 ("Map"); and

WHEREAS, on December 6, 2018 the City Council approved Resolution No. 2018-XX, approving the final map for Tract No. 6038, accepting all dedications indicated thereon, and entering into a subdivision agreement therefor; and

WHEREAS, as a part of said subdivision agreement, the City required, and the Owner provided, bonds in amounts consistent with Parlier Municipal Code Section 16.10.060 to ensure timely and proper installation of public improvements not completed or accepted at the time of approval of the Map as well as and warranty of work to be performed; and

WHEREAS, subsequent to approval of said final map and subdivision agreement, staff was made aware of an additional clause related to the release of securities that had been previously discussed and agreed upon by the City Attorney and the Owner's attorney but that was accidentally omitted from the subdivision agreement; and

WHEREAS, to ensure timely release of securities to Owner upon City acceptance of the installed improvements, Exhibit B to the subdivision agreement must be revised; and

WHEREAS, discussion of security is an integral component of the subdivision agreement, amendments or revisions to which may only be done with the approval of the City Council; and

WHEREAS, approval of a final map is considered to be ministerial in nature, and the approval of the revised subdivision agreement is an integral component of final map approval, and is therefore exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15268(b)(3); and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Parlier that the revised subdivision agreement for Tract No. 6038 is hereby approved, and that the Mayor of the City is hereby authorized to sign the revised subdivision agreement on behalf of the City of Parlier, said revised subdivision agreement incorporated herein by reference.

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Parlier held on December 20, 2018 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

City Clerk

Hon. Mayor Alma Beltran

CONSISTING OF THREE SHEETS
SHEET ONE OF THREE

THE

CITY OF PARLIER
FRESNO COUNTY, CALIFORNIA
SURVEYED AND PLATTED IN JULY, 2016

益



LEGAL DESCRIPTION	

ALL THAT CERTAIN NEAL PROPERTY INTERESTS IN THE CITY OF PASADENA, COUNTY OF FRANKLIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE "UN-RECORDED SCHEMATIC" OF THE MAP OF TRACT NO. 8687, VOLUME 2, AS SHOWN ON THE MAP OF TRACT NO. 8687, VOLUME 2, RECORDS AS DOCUMENT NO. 8687-0047946, IN VOLUME 64 OF PLATS AT PAGES 15-16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824,

THIS PROPERTY IS SUBJECT TO THE FOLLOWING CONDITIONS
PER FIRST AMERICAN TITLE COMPANY'S SUBDIVISION
GUARANTEE NO. 1004-372548

THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED REMEDEREMENT AGREEMENT FOR TRACT 5453, SERRAVALLO, SUBDIVISION EXECUTED BY AND BETWEEN CITY OF PALER, A MUNICIPAL CORPORATION AND LEONARD PRIZING INC., A CALIFORNIA CORPORATION RECORDED NOVEMBER 24, 2008 AS INSTRUMENT NO. 2008-08747 OF OFFICIAL RECORDS OF SHERMAN COUNTY, 2008 AS INSTRUMENT NO. 2008-08747 OF OFFICIAL RECORDS OF SHERMAN COUNTY.

21. TALKS AND ASSASSINATIONS OF AFR. OF THE CONGR. WITH EDUCATION POLICY

RIGHT-TO-FARM STATEMENT

THIS MAP PROVIDES NOTICE TO EACH PURCHASER THAT THERE ARE PRE-EXISTING AGRICULTURAL OPERATIONS ON ADJACENT OR NEIGHBORING PARCELS, AND THAT THESE AGRICULTURAL OPERATIONS MAY ENTAIL NOISE, DUST, ODOR, AND MAY OCCASIONALLY USE FERTILIZERS, PESTICIDES, AND HERBICIDES IN THE NORMAL PURSUIT OF AGRICULTURAL OPERATIONS. PURCHASERS ON NEIGHBORS OF THIS SUBDIVISION SHALL NOT HAVE THE RIGHT TO LOOSE COMPLAINTS FOR DUST, NOISE, ODOR, OR OTHER OPERATIONS ASSOCIATED WITH THE TRADITIONAL AGRICULTURAL OPERATIONS SO LONG AS THOSE OPERATIONS ARE CONDUCTED IN ACCORDANCE WITH ANY APPLICABLE REGULATIONS, RULES AND/OR ORDINANCES.

THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THIS TOWNSHIP, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP, AND OFFER FOR DEDICATION FOR PUBLIC USE THE PARCELS AND EASEMENTS SPECIFIED ON THE MAP AS INTENDED FOR PUBLIC USE FOR THE PURPOSES SPECIFIED HEREIN.

MY PARLER, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

LEONEL ALVAREZ, MANAGING DIRECTOR

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES THAT THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA } 24

NO

DATE

WHO PROVIDED TO ME ON THE BASIS OF SALES ACTIVITY EVIDENCE TO BE THE PERSONS WHOSE NAMES I WAS SUBMITTED TO THE WITHIN AGREEMENT AND ACKNOWLEDGED TO ME THAT CACI/HUNT EXCLUDED THE NAME IN HAI/MEN/WHICH AUTHORIZED CAPTIVENESS, AND THAT BY HAI/MEN/NEAR SIGNATURE(S) THE MEMBERS ACTIVELY CONSIDERED, CHANGING MY OPINION AS TO WHICH OF THE MEMBERS WOULD BE REQUIRED TO PAY FOR A FURTHER PERIODICALITY OF POLICY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE CONCERN PARAGRAPH IS TRUE AND CORRECT.

THEY TALKED OUT WITH AN ORANGE

CONCLUSIONS AND RECOMMENDATIONS

NOTES FOR CONTRIBUTORS

COMMISSION NUMBER:

A SOILS REPORT WAS BEEN PREPARED FOR THIS PROPERTY AND IS ON FILE WITH THE CITY OF CHICAGO BY THE CITY OF PALER. THE SOILS REPORT WAS PREPARED BY TECHCON ENGINEERING SERVICES, INC. ON APRIL 24, 2002 AND IS REFERENCE AS REPORT T2346. 2288.00

THIS SURRENDER OF THIS TRACT IS AFFECTED BY AN AGREEMENT WITH THE CITY OF PALM BEACH, FLORIDA, AS DOCUMENT NO. _____, DATED _____, 20_____, AS DOCUMENT NO. _____, DATED _____, 20_____, AND AS DOCUMENT NO. _____, DATED _____, 20_____, ALL OF WHICH ARE ON FILE IN THE PUBLIC RECORDS OF THE COUNTY OF PALM BEACH, FLORIDA.

[illegible]

SCALE: 1"-200'



NOTE:
DISTANCES NOT MONUMENTED
HAVE BEEN CAL' C'D BY TYPED

LEGEND

- ◆ YOUNG AND ACCEPTED MOVEMENT 46 DETACHED
○ CALCULATED POSITION - NOTHING STAY OR SET
1 INFORMED AND RECORDS FROM STAFFS OF THOSE IN SHORT PHASES 2, FILED IN VOLUME 84
OF PLANTS, AT PAGES 80-81, PHOENIX COUNTY RECEIVED.
OFFICIAL RECORDS OF PHOENIX COUNTY
INVESTIGATE BUREAU OF THIS INFORMATION

BASIS OF BEARINGS

THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 22 EAST, MOUNT EMERY TOWNSHIP AND NEIGHBOR, AS SHOWN ON MAP OF TRACT NO. 5461, FILED IN VOLUME 79 OF PLATS AT PAGES 28-29, FREEMAN COUNTY RECORDS, IS TAKEN AS BEARING NORTH 30° 30' 45" WEST.

13
CONCERNING THE THREE SUBJECTS
RECEIVED AT THE OFFICE OF THE
DIRECTOR OF THE FBI



SCALE 1-80'



NOTE:
DISTANCES NOT MONUMENTED
HAVE BEEN CALCULATED

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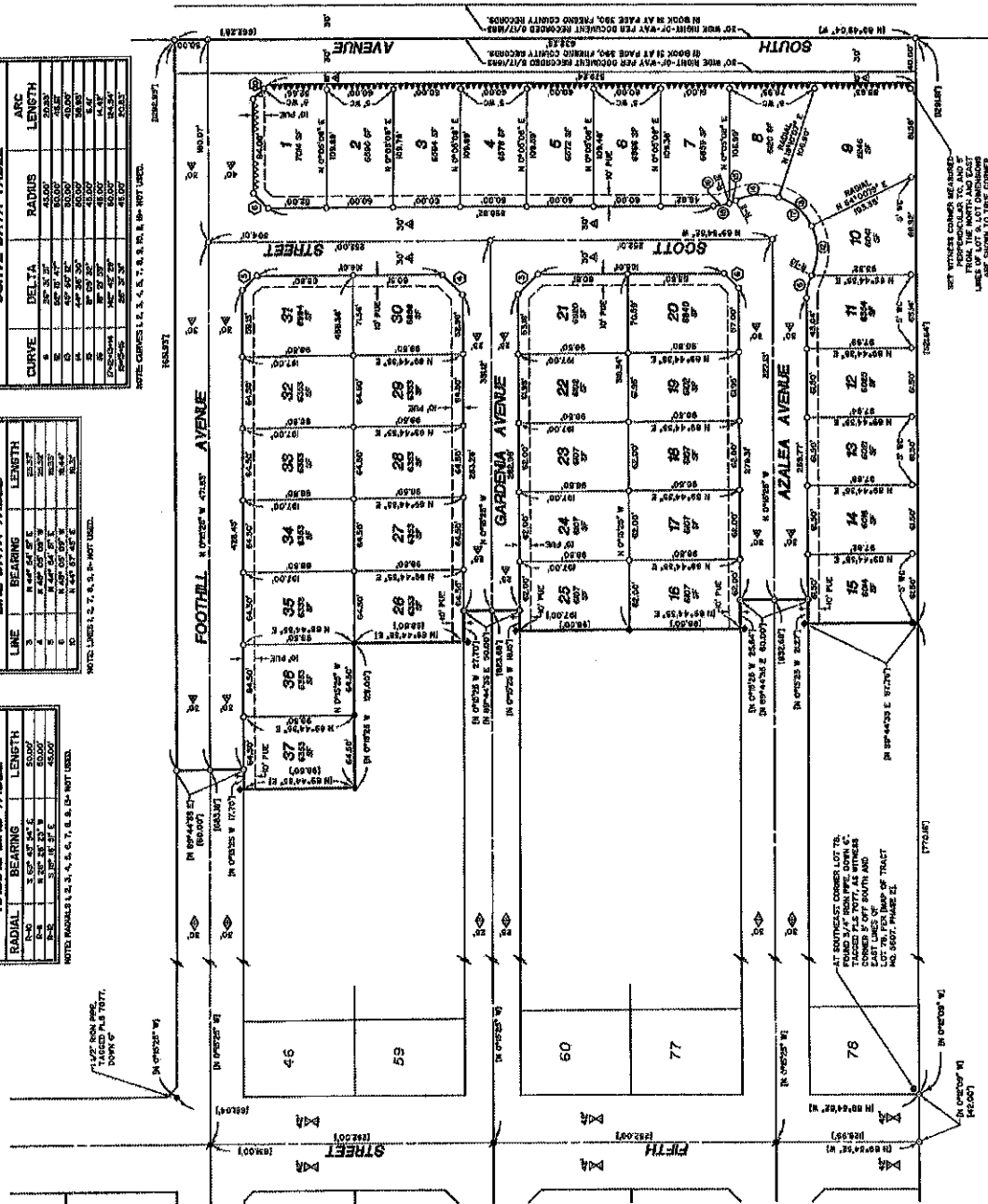
- [illegible]

CURVE	DELTA	RADIUS	ARC LENGTH
1	58° 35' 30"	44.00'	20.83'
2	58° 17' 42"	44.00'	43.82'
3	43° 00' 30"	50.00'	40.00'
4	43° 00' 30"	50.00'	40.00'
5	18° 35' 30"	44.00'	14.83'
6	18° 35' 30"	44.00'	14.83'
7	43° 00' 30"	50.00'	40.00'
8	58° 35' 30"	44.00'	20.83'
9	58° 35' 30"	44.00'	20.83'

LINE DATA TABLE		
LINE	BEARING	LENGTH
3	N 44° 54' 57" E	53.37
4	N 49° 03' 09" W	24.52
5	N 44° 54' 57" E	24.55
6	N 49° 03' 09" W	24.48
10	N 44° 57' 45" E	35

RADIAL LINE TABLE		
RADIAL	BEARING	LENGTH
R-40	3° 52' 45" S 94° E	50.00'
R-4	10° 20' 25" S 23° W	50.00'
R-32	5° 00' 18" S 2° E	45.00'

NOTE: RADIALS 1, 2, 3, 4, 5, 6, 7, 8, 13- NOT USED.



**SUBDIVISION AGREEMENT
TRACT No. 6038**

**CITY OF PARLIER
FRESNO COUNTY, CALIFORNIA**

THIS AGREEMENT is made this _____ day of _____, 2018, by and between the City of Parlier, a Municipal Corporation (herein "City"), and Adobe West, Inc., a California Corporation (herein "Owner"), the owner of record, without regard for number or gender.

RECITALS

A. Owner has filed with the City a Final Map proposing the subdivision of land owned by Owner, and referred to as Tract No. 6038, situated in the City of Parlier, along with certain Plans, Specifications and Detail Documents. Upon requesting approval by the City, Owner shall deliver all required documents and pay all fees required under the Parlier Municipal Code, and this Agreement.

B. City requires as a condition precedent to the acceptance and approval of the Final Map the dedication of such streets, highways and public places and easements as are delineated and shown on the Final Map, and deems the same as necessary for the public use, and also requires any and all streets delineated and shown on the Final Map shall be improved by the construction and the installation of the improvements hereinafter specified.

C. Section 16.10.050 of the Parlier Municipal Code requires the Owner to enter into this Agreement with City whereby Owner agrees to do, perform, and complete the work and matters required as Conditions of Approval for Vesting Tentative Tract Map No. 6038 as set forth in Exhibit "C" attached hereto, hereinafter referred to as "Conditions of Approval", within the time hereinafter specified.

D. Owner desires to construct the improvements and develop the Subject Property.

E. Owner hereby warrants that any and all parties having record title interest in the Final Map which could ripen into a fee have subordinated to this instrument and all such instruments of subordination, if any, are attached hereto and made a part hereof.

AGREEMENT

In consideration of approval by the **City** of the Final Map of Tract No. 6038 for filing and recording as provided and required by law, it is mutually agreed and understood by and between Owner and City as follows:

1. Owner shall perform the onsite and offsite work and improvements hereinafter specified to the satisfaction of the City Engineer. Owner understands and agrees that the following schedule of work is intended to provide a guideline as to diligent prosecution of the work under this agreement.

In any event, the **Owner** agrees to furnish and install the following and agrees to complete all improvements hereinafter specified to the satisfaction of the City Building Official and the City Engineer within a period not to exceed eighteen (18) months.

The Owner agrees to construct all improvements per the drawings and specifications on file with the City and the time allotted per the following schedule:

	<u>Date of Completion</u>
Onsite and Offsite Grading	Completed
Water Facilities	4-15-2019
Sewer Facilities	Completed
Storm Drainage Facilities	Completed
Gas, Electrical, and Telephone Facilities	2-1-2019
Street Improvements including Sidewalks	4-15-2019
Street Lights and Signage	4-15-2019

If the construction of the improvements shall be delayed without the fault of Owner, the time for completion thereof may be extended by the City Council for such period as the City Council may deem reasonable.

Building permits for homes within the Division may be issued once the water system has been installed, tested and accepted by City, and fire protection is available to the lots within the Division. However, all construction covered by this agreement **with the exception of the park and the major street landscaping** shall be completed prior to issuance of any Certificates of Occupancy for dwellings within the Division. **All construction of the park and major street landscaping shall be completed not later than the date of issuance of the fifteenth occupancy permit for the Division.** No model home certificates of occupancy will be allowed. Certificates of Occupancy may be issued by the Building Official at his discretion upon completion of all improvements and all building construction in accordance with applicable codes, standards and this Agreement.

2. Wherever used in this agreement, the following words and phrases shall have the meaning herein given, unless the context requires a different meaning:
 - a. "Engineer" shall mean the City Engineer of the City of Parlier, or duly authorized representative.
 - b. "Inspector" shall mean the City Engineer, and/or the City Building Official, Building Inspector, Public Works Director, and/or Public Utilities Director of the City of Parlier.
 - c. "Standard Specifications" shall mean the Standard Specifications of the City of Parlier, as amended; and State Standard Specifications, current revision, as applicable, including attached details and amendments thereto.

- d. "Division" shall mean and include the real property shown and described on the final map of Tract No. 6038, including street areas of adjacent existing public streets to the centerlines thereof.
3. All of the work and improvements and materials shall be performed, installed, and provided in strict accordance with the Standard Specifications, and all applicable Building Codes incorporated herein as though set forth in full. All said work and improvements shall also comply with the requirements of the City of Parlier Municipal Code. All of said work and improvements and materials shall be done, performed, and installed under the supervision of the Engineer and the Building Official of the City of Parlier, under whose directions the work shall be inspected as it progresses.

Notwithstanding the fact the Owner's plans and specifications, completion of the work, and other acts are subject to approval of the City, it is understood and agreed that any approval of the City hereof shall in no way relieve Owner of satisfactorily performing said work or Owner's obligations hereunder.

4. Owner agrees to perform and construct all work and improvements shown on the approved Plans on file with the Building Official of the City of Parlier,
5. Owner and City hereby agree that Owner is obligated to pay those fees and charges as set forth on Exhibit "A", attached hereto and incorporated herein by reference. Said fees and charges are due and payable upon approval of the Agreement by the City, unless agreed otherwise. City fees shall be collected per City regulations, or upon issuance of individual occupancy building permits for residences within the tract as agreed between Owner and City in accordance with applicable City ordinances and regulations.
6. Neither City nor any of its officers or agents shall be liable to Owner or its contractors for any error or omission arising out of or in connection with any work to be performed under this contract.
7. City shall not be liable to Owner or to other person, firm, or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on, or about the subdivision of said land covered by this agreement, or any part thereof.
8. Owner hereby releases and agrees to indemnify and hold City and its officers, agents, and employees harmless from and against any and all injuries to and deaths of persons and injuries to property, and all claims, demands, costs, loss, damage and liability, howsoever, the same may be caused and whensoever the same may appear, resulting directly or indirectly from the performance or non-performance of any or all work to be done in and upon the public street rights-of-way and upon the premises adjacent thereto pursuant to this agreement, and also from any and all injuries to and deaths of persons and injuries to property or other interests, and all claims, demands, costs, loss, damage, and liability, howsoever same may be caused and whensoever the same may appear, either directly or indirectly made or suffered by the Owner, the Owner's agents, employees, and subcontractors, while engaged in the performance of said work.

Prior to the commencement of any work pursuant to this contract, Owner's contractors shall furnish to City satisfactory evidence of insurance policies written upon forms and by companies which meet with the approval of the City, insuring City and its respective officers, agents, and employees against loss or liability which may arise during the work of which may result from any of the work herein required to be done, including all costs of defending any claim arising as a result thereof. The minimum limits of such policy shall be in the amount of:

- a. Comprehensive Liability (including operations, products and completed operations.) \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Auto Liability: \$1,000,000 per accident for bodily injury and property damage.
- c. Workers Compensation and Employers Liability: Worker's Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

Said policy or policies shall include coverage for underground explosion and collapse. Said policy shall be in favor of Owner or Owner's contractors and of the City, Yamabe & Horn Engineering, Inc. (City Engineer), and their respective officers, agents, and employees and shall be maintained in full force and effect during the life of this agreement. Said policy shall state by its terms and by an endorsement that said policy shall not be cancelled until City shall have had at least 30 days notice in writing of such cancellation. The Owner shall furnish the City with a copy of any and all insurance policies, along with a declarations page for each, adding the above-named entities as additional insured.

9. Upon completion of the improvements agreed to herein, Owner shall file a Notice of Completion of the improvements herein specified pursuant to Government Code Section 66499(b). This instrument shall be recorded and indexed in the Grantor Index to the names of all record owners of the property and in the Grantee Index to the City.
10. At the time Plans, Specifications, and Detail Documents for offsite and onsite improvements are approved, Owner shall submit the final documents and shall furnish to the City in a form acceptable to the City Attorney the following:
 - a. Improvement security in the amount of one-hundred percent (100%) of the total estimated cost for the faithful performance of all work and improvements required by this agreement;
 - b. Improvement security in the amount of fifty percent (50%) of the estimated cost of all required work to secure payment to the Contractor, his or her

subcontractors, and to persons renting equipment or furnishing labor or materials for such improvements;

- c. Improvement security to secure the maintenance of the improvements for a period of one (1) year after the completion and acceptance thereof against any defective work or labor done, or defective materials furnished, in the performance of the agreement with the City or the performance of the act. Said security shall not exceed an amount equal to twenty-five percent (25%) of the estimated cost of furnishing and installing said facilities. This security shall be in addition to any warranty required of the manufacturer;
 - d. Security in the amount equal to the estimated cost of placing all monuments and lot corners not set at the time the Final Map is recorded, as specified by the Subdivision Ordinance.
 - e. As a part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorney's and administration fees, incurred by the local agency in successfully enforcing the obligation secured.
 - f. Security in the estimated amount of taxes and special assessments collected as taxes which are a lien but which are not as yet payable as referred to in Government Code Section 66493, or satisfactory evidence in the form of a written receipt of prepayment of said taxes and special assessments as described herein at the time of recordation of the Final Map.
- 11. Owner and Owner's contractors and subcontractors shall pay for any materials, provisions and other supplies or terms used in, upon, for, or about the performance of the work contracted to be done, and for any work or labor thereon of any kind and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor, and shall file with City pursuant to Section 3800 of the Labor Code a Certificate of Worker's Compensation and shall maintain a valid policy of Worker's Compensation Insurance for the duration for the period of construction.
 - 12. Compaction soil tests and retests shall be paid for by Owner. Street and onsite utility trench tests shall be taken in varying locations and depths as required and directed by the Engineer.
 - 13. Owner shall comply with Street, Plumbing, Electrical, and Zoning Codes and any other Codes of the City, and Owner shall secure an Encroachment Permit before working within any City of Parlier public right-of-way.
 - 14. Owner shall coordinate all work done by Owner's contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of City be placed in the position of making decisions that are the responsibility of Owner. It shall further be the responsibility of Owner to give

the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of Owner to timely notify the City Engineer may cause delay for which Owner shall be solely responsible.

Whenever Owner varies the period during which work is carried on each day, Owner shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer will be subject to exposure, inspection, and potential rejection.

Inspection of the work shall not relieve Owner of any of Owner's obligations to fulfill the Agreement as prescribed. Defective work shall be made good by Owner and unsuitable materials will be rejected when discovered, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked by the City Engineer, Inspector and/or Building Official and accepted.

15. Any damage to the Public Water, Sewer, or Stormwater Systems, concrete work, or street paving that occurs after installation and prior to final acceptance shall be made good to the satisfaction of the City Engineer by Owner before release of bonds and final acceptance of completed work.
16. Adequate dust and mud control shall be maintained by Owner on all onsite and offsite work required to be done under this agreement from the time work is first commenced in the development until the paving is completed. "Adequate dust control" as used herein shall mean the sprinkling with water and/or the laying of a coat of dust palliative thereon with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment.

Whenever in the opinion of the City Engineer adequate dust control is not being maintained as required by this paragraph and the requirements of the SJVAPCD, the City Engineer shall give notice to Owner to comply with the provisions of the paragraph forthwith. Such notice may be personally served upon Owner or, if Owner is not an individual, upon any person who has signed this agreement on behalf of Owner, or a superintendent or foreman of Owner or Owner's subcontractor at the subdivision or, at the election of the City Engineer, such notice may be mailed to Owner or Owner's address on file with the City Engineer.

If within twenty-four (24) hours after such personal service of such notice or within forty-eight (48) hours after the mailing thereof as herein provided Owner shall not have commenced to maintain adequate dust control or shall at any time hereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such work to be completed by City forces or by others, as he may deem advisable to eliminate the scattering of dust. Owner agrees to pay to City forthwith, upon receipt of billing therefore, the entire cost to City of such work. When the surfacing on any existing street area is disturbed, this surfacing shall be replaced with temporary or permanent surfacing within fourteen (14) calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the

commencement and final completion, and adequate dust control shall be maintained during these operations.

17. Owner shall perform all work within the public rights-of-way and install all street improvements in accordance with Title 16, Chapter 16.08 of the Municipal Code of the City of Parlier, the City of Parlier Standard Specifications, and the State of California Department of Transportation Standard Specifications, current edition, and the approved construction plans.
18. Concrete curbs and gutters, the sanitary sewer system, water system, storm drainage pipeline and structures, together with water mains, gas mains, and their respective service connections, shall be completed and accepted by the City Engineer before finish pavement improvements are started.
19. Time is of the essence of this agreement, and the same shall bind and inure to the benefit of the parties hereto, their successors and assigns.
20. No assignment of this agreement nor of any duty or obligation of performance hereunder shall be made in whole or in part by Owner without the prior written consent of City.
21. This agreement includes the following Exhibits that are included herewith and made a part of this agreement:
 - a. Exhibit A — Fees and Security Requirements
 - b. Exhibit B — Security
 - c. Exhibit C — Resolution and Conditions of Approval, Vesting Tentative Map No. 6038
 - d. Exhibit D — Final Map, Tract No. 6038
22. In the event it becomes necessary for either party to bring an action with respect to enforcement of the provisions of this agreement, or the security herewith, the prevailing party in such action shall be awarded reasonable attorney's fees and court costs as may be determined by the court.
23. Owner agrees to defend, indemnify, and hold harmless the City, and its respective agents, officers, and employees from any claim, action, or proceeding against any of them to attack, set aside, void, or annul, any approval of the City or Fresno County concerning action brought within the time period provided for in Government Code Section 66499.37. The City agrees to properly notify the Owner of any claim, action or proceeding, and the City agrees to cooperate fully in the defense.
24. In the event an extension is granted to the time within which all work is to be completed, the Owner agrees that it will comply with all the applicable improvement standards in effect at the time the extension is granted.
25. It is agreed that all conditions of approval shall apply to and be included in this Agreement.
26. The City Engineer is assumed to be a just arbitrator between City, Owner, and the Contractor, and the entire work is under his jurisdiction to such end. It

is his function to interpret the drawings and specifications; and pass judgment upon merits of materials and workmanship.

27. The Owner agrees to obtain a City of Parlier Business License for the General Contractor and for each of the Sub-Contractors performing construction work on the improvements.
28. Pursuant to Government Code Section 66462 and Parlier Municipal Code Section 16.10.050, the undersigned hereby certify and acknowledge that the construction of improvements identified herein shall be completed on or before September 15, 2018 or any approved extension thereof.
29. The Owner acknowledges that the City has formed a lighting and landscaping maintenance district (the "LLMD") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act") to finance all or a portion of the cost of maintaining major street landscaping and street lights, as well any other services determined by the City which are allowed to be financed pursuant to the Act, that are in addition to those provided in the territory within the LLMD prior to the formation of the LLMD and do not supplant services already available within the territory proposed to be included in the LLMD and to levy a special tax to pay for such services. The Owner agrees to include Tract No. 6038 in the LLMD or annex Tract No. 6038 into the LLMD, and the Owner shall cooperate with the City and take any necessary actions in order to assist the City in annexing Tract No. 6038 into the LLMD. In furtherance of the foregoing, the Owner agrees to approve the levy of a special tax on any residential dwelling unit.

In the event the Owner does not cooperate with the City and Tract No. 6038 is not included in the LLMD or annexed into the LLMD, the Owner agrees to pay the City an amount equal to the present value of all future special tax that would have been levied within Tract No. 6038 using a discount rate determined by the City in its sole discretion and assuming sixty (60) years of levy, which shall be used to mitigate the impact on the City's general fund in providing funds to finance the services described above.

(Signatures on Following Page)

The parties have executed this agreement on the day and year first above written.

OWNER: ADOBE WEST, INC., a California Corporation:

Michael J. Schafer, President

CITY: CITY OF PARLIER, a Municipal Corporation

Hon. Alma Beltran, Mayor

ATTEST:

Dorothy Garza, City Clerk

APPROVED AS TO FORM:

Neal E. Costanzo, City Attorney

EXHIBIT "A"
DEVELOPMENT FEES AND BOND REQUIREMENTS
(Fees based upon 2014 City of Parlier Development Impact Fee Schedule for Low Density Development)

Fees are calculated based on the area of single-family development within Tract No. 6038. Future multifamily (or other) development of the remaining area of the project site will pay applicable fees at the time that development occurs. Fees 1 through 9 are due and payable per unit at the time the Occupancy Building Permit is issued. Tract No. 6038 is subject to the Pipeline Project Development Impact Fee Incentive Program. With the exception of the Public Safety fee, all fees will be levied at 50% of their standard amount. Pre-reduction totals are in gray; final totals are **bold underlined**. Due to rounding, various fee calculations may not add up.

1.	City Management & General Services \$319.53 <u>\$159.77</u> per acre x 14.87 acres (\$81.92 <u>\$40.96</u> per unit for Tract No. 6038 <u>only</u>)	\$4,751.41 <u>\$2,375.71</u>
2.	Public Safety \$319.53 per acre x 14.87 acres (\$81.92 per unit for Tract No. 6038 <u>only</u>)	<u>\$4,751.41</u>
3.	Storm Drainage \$2,396.47 <u>\$1,198.24</u> per acre x 14.87 acres (\$614.41 <u>\$307.20</u> per unit for Tract No. 6038 <u>only</u>)	\$35,635.31 <u>\$17,817.75 (INSTALLED)</u>
4.	Wastewater Treatment \$1,834.11 <u>\$917.06</u> per unit x 58 units	\$106,378.38 <u>\$53,189.19</u>
5.	Domestic Water \$2,156.84 <u>\$1,078.42</u> per unit x 58 units	\$125,096.72 <u>\$62,548.36</u>
6.	Fire Flow \$1,078.40 <u>\$539.20</u> per unit x 58 units	\$62,547.20 <u>\$31,273.60</u>
7.	City Parks \$559.18 <u>\$279.59</u> per unit x 58 units	\$32,432.44 <u>\$16,216.22 (Credit)</u>
8.	Water Hook-up \$400.19 <u>\$200.10</u> per unit x 58 units	\$23,211.02 <u>\$11,605.51</u>
9.	Sewer Hook-up \$615.65 <u>\$307.83</u> per unit x 58 units	\$35,707.70 <u>\$17,853.85</u>
10.	Sewer Interceptor Benefit Charge <u>Fee per 2009 Zone of Benefit Study</u>	 <u>\$73,361.58</u>
<u>TOTAL DEVELOPMENT IMPACT FEES</u>		\$503,873.17 <u>\$246,959.21</u>

11. Other (due upon approval of agreement and before construction)
- (a) Deposit estimated plan check fees \$10,000.00 PAID
(Owner will be required to pay any cost that exceeds the deposited amount shown)
 - (b) Deposit estimated inspection fees \$35,000.00 PAID
(Owner will be required to pay any cost that exceeds the deposited amount shown)
 - (c) Performance bond, lien, cash deposit, \$318,051.00
approved by the City Attorney
 - (d) Labor and material bond, lien, cash deposit \$159,026.00
approved by City Attorney
 - (e) Warranty security bond to guarantee work against \$318,051.00
defects in materials or labor for a period of one (1)
year following acceptance of improvements
 - (f) A surety bond approved by the City Attorney to \$5,000.00
guarantee payment for placing street monuments and lot corners
 - (g) A cash security in the amount of taxes which are a lien but are not yet
payable, or evidence of taxes paid (for maps filed for recordation in
November or December). Amount to be determined by Fresno County
Auditor.

EXHIBIT "B"

SECURITY

Subdivider/Owner shall provide City with a Bond or Bonds, reflecting the amounts set forth in items 10(b) through and including 10(e) of Exhibit "A".

In lieu of **Subdivider/Owner's** providing bonds or other form of improvement security, **Subdivider/Owner** may elect to provide **City** with a letter from an acceptable financial institution reflecting the amounts set forth in Exhibit "A" and terms of disbursement substantially in accordance with the following terms:

1. **Subdivider/Owner** shall deposit said funds in an interest bearing account with funds readily available in an acceptable bank with all interest earned to remain the property of the **Subdivider/Owner**.
2. Funds are to be used for payment of the off-site improvements as shown on the approved plans.
3. Progress payment requests will be reviewed and approved by the **Engineer**.
4. Disbursement of funds will require signatures of both the **City Clerk** and the **City Manager**.
5. All remaining funds and interest in the account shall be immediately released to the **Subdivider/Owner** upon completion of the work and final acceptance by the City of Parlier.

All other fees and expenses identified in Exhibit "A" shall be due and payable in accordance with the terms set out therein.

EXHIBIT "C"
CONDITIONS OF APPROVAL

Reference City of Parlier City Council Resolution No. 2014-13, dated April 2, 2014, approving the Vesting Tentative Tract Map of Tract No. 6038 (listed as Exhibit "A") and the Conditions of Approval (listed as Exhibit "B").

Exhibit "D"
Final Map

Reference FINAL MAP OF TRACT NO. 6038 as approved by City of Parlier City Council **Resolution No. 17-XX**, dated December 6, 2018.

Said final map recorded concurrently herewith, in Fresno County Records.

**SUBDIVISION AGREEMENT
TRACT No. 6038**

**CITY OF PARLIER
FRESNO COUNTY, CALIFORNIA**

THIS AGREEMENT is made this _____ day of _____, 2018, by and between the City of Parlier, a Municipal Corporation (herein "City"), and Adobe West, Inc., a California Corporation (herein "Owner"), the owner of record, without regard for number or gender.

RECITALS

A. Owner has filed with the City a Final Map proposing the subdivision of land owned by Owner, and referred to as Tract No. 6038, situated in the City of Parlier, along with certain Plans, Specifications and Detail Documents. Upon requesting approval by the City, Owner shall deliver all required documents and pay all fees required under the Parlier Municipal Code, and this Agreement.

B. City requires as a condition precedent to the acceptance and approval of the Final Map the dedication of such streets, highways and public places and easements as are delineated and shown on the Final Map, and deems the same as necessary for the public use, and also requires any and all streets delineated and shown on the Final Map shall be improved by the construction and the installation of the improvements hereinafter specified.

C. Section 16.10.050 of the Parlier Municipal Code requires the Owner to enter into this Agreement with City whereby Owner agrees to do, perform, and complete the work and matters required as Conditions of Approval for Vesting Tentative Tract Map No. 6038 as set forth in Exhibit "C" attached hereto, hereinafter referred to as "Conditions of Approval", within the time hereinafter specified.

D. Owner desires to construct the improvements and develop the Subject Property.

E. Owner hereby warrants that any and all parties having record title interest in the Final Map which could ripen into a fee have subordinated to this instrument and all such instruments of subordination, if any, are attached hereto and made a part hereof.

AGREEMENT

In consideration of approval by the **City** of the Final Map of Tract No. 6038 for filing and recording as provided and required by law, it is mutually agreed and understood by and between Owner and City as follows:

1. Owner shall perform the onsite and offsite work and improvements hereinafter specified to the satisfaction of the City Engineer. Owner understands and agrees that the following schedule of work is intended to provide a guideline as to diligent prosecution of the work under this agreement.

In any event, the **Owner** agrees to furnish and install the following and agrees to complete all improvements hereinafter specified to the satisfaction of the City Building Official and the City Engineer within a period not to exceed eighteen (18) months.

The Owner agrees to construct all improvements per the drawings and specifications on file with the City and the time allotted per the following schedule:

	<u>Date of Completion</u>
Onsite and Offsite Grading	Completed
Water Facilities	4-15-2019
Sewer Facilities	Completed
Storm Drainage Facilities	Completed
Gas, Electrical, and Telephone Facilities	2-1-2019
Street Improvements including Sidewalks	4-15-2019
Street Lights and Signage	4-15-2019

If the construction of the improvements shall be delayed without the fault of Owner, the time for completion thereof may be extended by the City Council for such period as the City Council may deem reasonable.

Building permits for homes within the Division may be issued once the water system has been installed, tested and accepted by City, and fire protection is available to the lots within the Division. However, all construction covered by this agreement **with the exception of the park and the major street landscaping** shall be completed prior to issuance of any Certificates of Occupancy for dwellings within the Division. **All construction of the park and major street landscaping shall be completed not later than the date of issuance of the fifteenth occupancy permit for the Division.** No model home certificates of occupancy will be allowed. Certificates of Occupancy may be issued by the Building Official at his discretion upon completion of all improvements and all building construction in accordance with applicable codes, standards and this Agreement.

2. Wherever used in this agreement, the following words and phrases shall have the meaning herein given, unless the context requires a different meaning:
 - a. "Engineer" shall mean the City Engineer of the City of Parlier, or duly authorized representative.
 - b. "Inspector" shall mean the City Engineer, and/or the City Building Official, Building Inspector, Public Works Director, and/or Public Utilities Director of the City of Parlier.
 - c. "Standard Specifications" shall mean the Standard Specifications of the City of Parlier, as amended; and State Standard Specifications, current revision, as applicable, including attached details and amendments thereto.

- d. "Division" shall mean and include the real property shown and described on the final map of Tract No. 6038, including street areas of adjacent existing public streets to the centerlines thereof.
3. All of the work and improvements and materials shall be performed, installed, and provided in strict accordance with the Standard Specifications, and all applicable Building Codes incorporated herein as though set forth in full. All said work and improvements shall also comply with the requirements of the City of Parlier Municipal Code. All of said work and improvements and materials shall be done, performed, and installed under the supervision of the Engineer and the Building Official of the City of Parlier, under whose directions the work shall be inspected as it progresses.
- Notwithstanding the fact the Owner's plans and specifications, completion of the work, and other acts are subject to approval of the City, it is understood and agreed that any approval of the City hereof shall in no way relieve Owner of satisfactorily performing said work or Owner's obligations hereunder.
4. Owner agrees to perform and construct all work and improvements shown on the approved Plans on file with the Building Official of the City of Parlier,
5. Owner and City hereby agree that Owner is obligated to pay those fees and charges as set forth on Exhibit "A", attached hereto and incorporated herein by reference. Said fees and charges are due and payable upon approval of the Agreement by the City, unless agreed otherwise. City fees shall be collected per City regulations, or upon issuance of individual occupancy building permits for residences within the tract as agreed between Owner and City in accordance with applicable City ordinances and regulations.
6. Neither City nor any of its officers or agents shall be liable to Owner or its contractors for any error or omission arising out of or in connection with any work to be performed under this contract.
7. City shall not be liable to Owner or to other person, firm, or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on, or about the subdivision of said land covered by this agreement, or any part thereof.
8. Owner hereby releases and agrees to indemnify and hold City and its officers, agents, and employees harmless from and against any and all injuries to and deaths of persons and injuries to property, and all claims, demands, costs, loss, damage and liability, howsoever, the same may be caused and whensoever the same may appear, resulting directly or indirectly from the performance or non-performance of any or all work to be done in and upon the public street rights-of-way and upon the premises adjacent thereto pursuant to this agreement, and also from any and all injuries to and deaths of persons and injuries to property or other interests, and all claims, demands, costs, loss, damage, and liability, howsoever same may be caused and whensoever the same may appear, either directly or indirectly made or suffered by the Owner, the Owner's agents, employees, and subcontractors, while engaged in the performance of said work.

Prior to the commencement of any work pursuant to this contract, Owner's contractors shall furnish to City satisfactory evidence of insurance policies written upon forms and by companies which meet with the approval of the City, insuring City and its respective officers, agents, and employees against loss or liability which may arise during the work of which may result from any of the work herein required to be done, including all costs of defending any claim arising as a result thereof. The minimum limits of such policy shall be in the amount of:

- a. Comprehensive Liability (including operations, products and completed operations.) \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Auto Liability: \$1,000,000 per accident for bodily injury and property damage.
- c. Workers Compensation and Employers Liability: Worker's Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

Said policy or policies shall include coverage for underground explosion and collapse. Said policy shall be in favor of Owner or Owner's contractors and of the City, Yamabe & Horn Engineering, Inc. (City Engineer), and their respective officers, agents, and employees and shall be maintained in full force and effect during the life of this agreement. Said policy shall state by its terms and by an endorsement that said policy shall not be cancelled until City shall have had at least 30 days notice in writing of such cancellation. The Owner shall furnish the City with a copy of any and all insurance policies, along with a declarations page for each, adding the above-named entities as additional insured.

9. Upon completion of the improvements agreed to herein, Owner shall file a Notice of Completion of the improvements herein specified pursuant to Government Code Section 66499(b). This instrument shall be recorded and indexed in the Grantor Index to the names of all record owners of the property and in the Grantee Index to the City.
10. At the time Plans, Specifications, and Detail Documents for offsite and onsite improvements are approved, Owner shall submit the final documents and shall furnish to the City in a form acceptable to the City Attorney the following:
 - a. Improvement security in the amount of one-hundred percent (100%) of the total estimated cost for the faithful performance of all work and improvements required by this agreement;
 - b. Improvement security in the amount of fifty percent (50%) of the estimated cost of all required work to secure payment to the Contractor, his or her

subcontractors, and to persons renting equipment or furnishing labor or materials for such improvements;

- c. Improvement security to secure the maintenance of the improvements for a period of one (1) year after the completion and acceptance thereof against any defective work or labor done, or defective materials furnished, in the performance of the agreement with the City or the performance of the act. Said security shall not exceed an amount equal to twenty-five percent (25%) of the estimated cost of furnishing and installing said facilities. This security shall be in addition to any warranty required of the manufacturer;
 - d. Security in the amount equal to the estimated cost of placing all monuments and lot corners not set at the time the Final Map is recorded, as specified by the Subdivision Ordinance.
 - e. As a part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorney's and administration fees, incurred by the local agency in successfully enforcing the obligation secured.
 - f. Security in the estimated amount of taxes and special assessments collected as taxes which are a lien but which are not as yet payable as referred to in Government Code Section 66493, or satisfactory evidence in the form of a written receipt of prepayment of said taxes and special assessments as described herein at the time of recordation of the Final Map.
- 11. Owner and Owner's contractors and subcontractors shall pay for any materials, provisions and other supplies or terms used in, upon, for, or about the performance of the work contracted to be done, and for any work or labor thereon of any kind and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor, and shall file with City pursuant to Section 3800 of the Labor Code a Certificate of Worker's Compensation and shall maintain a valid policy of Worker's Compensation Insurance for the duration for the period of construction.
 - 12. Compaction soil tests and retests shall be paid for by Owner. Street and onsite utility trench tests shall be taken in varying locations and depths as required and directed by the Engineer.
 - 13. Owner shall comply with Street, Plumbing, Electrical, and Zoning Codes and any other Codes of the City, and Owner shall secure an Encroachment Permit before working within any City of Parlier public right-of-way.
 - 14. Owner shall coordinate all work done by Owner's contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of City be placed in the position of making decisions that are the responsibility of Owner. It shall further be the responsibility of Owner to give

the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of Owner to timely notify the City Engineer may cause delay for which Owner shall be solely responsible.

Whenever Owner varies the period during which work is carried on each day, Owner shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer will be subject to exposure, inspection, and potential rejection.

Inspection of the work shall not relieve Owner of any of Owner's obligations to fulfill the Agreement as prescribed. Defective work shall be made good by Owner and unsuitable materials will be rejected when discovered, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked by the City Engineer, Inspector and/or Building Official and accepted.

15. Any damage to the Public Water, Sewer, or Stormwater Systems, concrete work, or street paving that occurs after installation and prior to final acceptance shall be made good to the satisfaction of the City Engineer by Owner before release of bonds and final acceptance of completed work.
16. Adequate dust and mud control shall be maintained by Owner on all onsite and offsite work required to be done under this agreement from the time work is first commenced in the development until the paving is completed. "Adequate dust control" as used herein shall mean the sprinkling with water and/or the laying of a coat of dust palliative thereon with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment.

Whenever in the opinion of the City Engineer adequate dust control is not being maintained as required by this paragraph and the requirements of the SJVAPCD, the City Engineer shall give notice to Owner to comply with the provisions of the paragraph forthwith. Such notice may be personally served upon Owner or, if Owner is not an individual, upon any person who has signed this agreement on behalf of Owner, or a superintendent or foreman of Owner or Owner's subcontractor at the subdivision or, at the election of the City Engineer, such notice may be mailed to Owner or Owner's address on file with the City Engineer.

If within twenty-four (24) hours after such personal service of such notice or within forty-eight (48) hours after the mailing thereof as herein provided Owner shall not have commenced to maintain adequate dust control or shall at any time hereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such work to be completed by City forces or by others, as he may deem advisable to eliminate the scattering of dust. Owner agrees to pay to City forthwith, upon receipt of billing therefore, the entire cost to City of such work. When the surfacing on any existing street area is disturbed, this surfacing shall be replaced with temporary or permanent surfacing within fourteen (14) calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the

commencement and final completion, and adequate dust control shall be maintained during these operations.

17. Owner shall perform all work within the public rights-of-way and install all street improvements in accordance with Title 16, Chapter 16.08 of the Municipal Code of the City of Parlier, the City of Parlier Standard Specifications, and the State of California Department of Transportation Standard Specifications, current edition, and the approved construction plans.
18. Concrete curbs and gutters, the sanitary sewer system, water system, storm drainage pipeline and structures, together with water mains, gas mains, and their respective service connections, shall be completed and accepted by the City Engineer before finish pavement improvements are started.
19. Time is of the essence of this agreement, and the same shall bind and inure to the benefit of the parties hereto, their successors and assigns.
20. No assignment of this agreement nor of any duty or obligation of performance hereunder shall be made in whole or in part by Owner without the prior written consent of City.
21. This agreement includes the following Exhibits that are included herewith and made a part of this agreement:
 - a. Exhibit A — Fees and Security Requirements
 - b. Exhibit B — Security
 - c. Exhibit C — Resolution and Conditions of Approval, Vesting Tentative Map No. 6038
 - d. Exhibit D — Final Map, Tract No. 6038
22. In the event it becomes necessary for either party to bring an action with respect to enforcement of the provisions of this agreement, or the security herewith, the prevailing party in such action shall be awarded reasonable attorney's fees and court costs as may be determined by the court.
23. Owner agrees to defend, indemnify, and hold harmless the City, and its respective agents, officers, and employees from any claim, action, or proceeding against any of them to attack, set aside, void, or annul, any approval of the City or Fresno County concerning action brought within the time period provided for in Government Code Section 66499.37. The City agrees to properly notify the Owner of any claim, action or proceeding, and the City agrees to cooperate fully in the defense.
24. In the event an extension is granted to the time within which all work is to be completed, the Owner agrees that it will comply with all the applicable improvement standards in effect at the time the extension is granted.
25. It is agreed that all conditions of approval shall apply to and be included in this Agreement.
26. The City Engineer is assumed to be a just arbitrator between City, Owner, and the Contractor, and the entire work is under his jurisdiction to such end. It

is his function to interpret the drawings and specifications; and pass judgment upon merits of materials and workmanship.

27. The Owner agrees to obtain a City of Parlier Business License for the General Contractor and for each of the Sub-Contractors performing construction work on the improvements.
28. Pursuant to Government Code Section 66462 and Parlier Municipal Code Section 16.10.050, the undersigned hereby certify and acknowledge that the construction of improvements identified herein shall be completed on or before September 15, 2018 or any approved extension thereof.
29. The Owner acknowledges that the City has formed a lighting and landscaping maintenance district (the "LLMD") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act") to finance all or a portion of the cost of maintaining major street landscaping and street lights, as well any other services determined by the City which are allowed to be financed pursuant to the Act, that are in addition to those provided in the territory within the LLMD prior to the formation of the LLMD and do not supplant services already available within the territory proposed to be included in the LLMD and to levy a special tax to pay for such services. The Owner agrees to include Tract No. 6038 in the LLMD or annex Tract No. 6038 into the LLMD, and the Owner shall cooperate with the City and take any necessary actions in order to assist the City in annexing Tract No. 6038 into the LLMD. In furtherance of the foregoing, the Owner agrees to approve the levy of a special tax on any residential dwelling unit.

In the event the Owner does not cooperate with the City and Tract No. 6038 is not included in the LLMD or annexed into the LLMD, the Owner agrees to pay the City an amount equal to the present value of all future special tax that would have been levied within Tract No. 6038 using a discount rate determined by the City in its sole discretion and assuming sixty (60) years of levy, which shall be used to mitigate the impact on the City's general fund in providing funds to finance the services described above.

(Signatures on Following Page)

The parties have executed this agreement on the day and year first above written.

OWNER: ADOBE WEST, INC., a California Corporation:

Michael J. Schafer, President

CITY: CITY OF PARLIER, a Municipal Corporation

Hon. Alma Beltran, Mayor

ATTEST:

Dorothy Garza, City Clerk

APPROVED AS TO FORM:

Neal E. Costanzo, City Attorney

EXHIBIT "A"
DEVELOPMENT FEES AND BOND REQUIREMENTS
(Fees based upon 2014 City of Parlier Development Impact Fee Schedule for Low Density Development)

Fees are calculated based on the area of single-family development within Tract No. 6038. Future multifamily (or other) development of the remaining area of the project site will pay applicable fees at the time that development occurs. Fees 1 through 9 are due and payable per unit at the time the **Occupancy Building Permit** is issued. Tract No. 6038 is subject to the Pipeline Project Development Impact Fee Incentive Program. With the exception of the Public Safety fee, all fees will be levied at 50% of their standard amount. Pre-reduction totals are in gray; final totals are **bold underlined**. Due to rounding, various fee calculations may not add up.

1.	City Management & General Services \$319.53 <u>\$159.77</u> per acre x 14.87 acres (\$81.92 <u>\$40.96</u> per unit for Tract No. 6038 <u>only</u>)	\$4,751.41 <u>\$2,375.71</u>
2.	Public Safety \$319.53 per acre x 14.87 acres <u>(\$81.92)</u> per unit for Tract No. 6038 <u>only</u>)	<u>\$4,751.41</u>
3.	Storm Drainage \$2,396.47 <u>\$1,198.24</u> per acre x 14.87 acres (\$614.41 <u>\$307.20</u> per unit for Tract No. 6038 <u>only</u>)	\$35,635.31 <u>\$17,817.75 (INSTALLED)</u>
4.	Wastewater Treatment \$1,834.11 <u>\$917.06</u> per unit x 58 units	\$106,378.38 <u>\$53,189.19</u>
5.	Domestic Water \$2,156.84 <u>\$1,078.42</u> per unit x 58 units	\$125,096.72 <u>\$62,548.36</u>
6.	Fire Flow \$1,078.40 <u>\$539.20</u> per unit x 58 units	\$62,547.20 <u>\$31,273.60</u>
7.	City Parks \$559.18 <u>\$279.59</u> per unit x 58 units	\$32,432.44 <u>\$16,216.22 (Credit)</u>
8.	Water Hook-up \$400.19 <u>\$200.10</u> per unit x 58 units	\$23,211.02 <u>\$11,605.51</u>
9.	Sewer Hook-up \$615.65 <u>\$307.83</u> per unit x 58 units	\$35,707.70 <u>\$17,853.85</u>
10.	Sewer Interceptor Benefit Charge <u>Fee per 2009 Zone of Benefit Study</u>	<u>\$73,361.58</u>
	<u>TOTAL DEVELOPMENT IMPACT FEES</u>	\$503,873.17 <u>\$246,959.21</u>

11. Other (due upon approval of agreement and before construction)
- (a) Deposit estimated plan check fees \$10,000.00 PAID
(Owner will be required to pay any cost that exceeds the deposited amount shown)
 - (b) Deposit estimated inspection fees \$35,000.00 PAID
(Owner will be required to pay any cost that exceeds the deposited amount shown)
 - (c) Performance bond, lien, cash deposit, \$318,051.00
approved by the City Attorney
 - (d) Labor and material bond, lien, cash deposit \$159,026.00
approved by City Attorney
 - (e) Warranty security bond to guarantee work against \$318,051.00
defects in materials or labor for a period of one (1)
year following acceptance of improvements
 - (f) A surety bond approved by the City Attorney to \$5,000.00
guarantee payment for placing street monuments and lot corners
 - (g) A cash security in the amount of taxes which are a lien but are not yet
payable, or evidence of taxes paid (for maps filed for recordation in
November or December). Amount to be determined by Fresno County
Auditor.

EXHIBIT "B"

SECURITY

Subdivider/Owner shall provide City with a Bond or Bonds, reflecting the amounts set forth in items 10(b) through and including 10(e) of Exhibit "A".

In lieu of **Subdivider/Owner's** providing bonds or other form of improvement security, **Subdivider/Owner** may elect to provide **City** with a letter from an acceptable financial institution reflecting the amounts set forth in Exhibit "A" and terms of disbursement substantially in accordance with the following terms:

1. **Subdivider/Owner** shall deposit said funds in an interest bearing account with funds readily available in an acceptable bank with all interest earned to remain the property of the **Subdivider/Owner**.
2. Funds are to be used for payment of the off-site improvements as shown on the approved plans.
3. Progress payment requests will be reviewed and approved by the **Engineer**.
4. Disbursement of funds will require signatures of both the **City Clerk** and the **City Manager**.
5. All remaining funds and interest in the account shall be immediately released to the **Subdivider/Owner** upon completion of the work and final acceptance by the City of Parlier.

All other fees and expenses identified in Exhibit "A" shall be due and payable in accordance with the terms set out therein.

EXHIBIT "C"
CONDITIONS OF APPROVAL

Reference City of Parlier City Council Resolution No. 2014-13, dated April 2, 2014, approving the Vesting Tentative Tract Map of Tract No. 6038 (listed as Exhibit "A") and the Conditions of Approval (listed as Exhibit "B").

Exhibit "D"
Final Map

Reference FINAL MAP OF TRACT NO. 6038 as approved by City of Parlier City Council **Resolution No. 17-XX**, dated December 6, 2018.

Said final map recorded concurrently herewith, in Fresno County Records.



AGENDA ITEM: #2
MEETING DATE: December 20, 2018
DEPARTMENT: Planning

REPORT TO CITY COUNCIL

SUBJECT:

City Council to Consider Approval of a Variance at 13523 E. Cypress Avenue

RECOMMENDATION:

Staff recommends that the City Council adopts Resolution No. 18-XX, approving the variance to the rear yard setback at 13523 E. Cypress Avenue.

BACKGROUND:

<u>Owner:</u>	Antonio Aleman
<u>Location:</u>	13523 E. Cypress Avenue; APN 355-124-03S; south side of E. Cypress Avenue east of S. Mendocino Avenue See attached map and photo
<u>Site Size:</u>	9,575 SF (approximately)
<u>General Plan:</u>	Medium Density Residential
<u>Zoning:</u>	R-1, Single Family Residential
<u>Existing Use:</u>	Single-family dwelling
<u>Surrounding Uses:</u>	North – Single-family dwellings, automotive repair uses; R-1, C-5 East – Single-family dwellings; R-1 South – Parlier Police Department; P-F West – Single-family dwellings, nonconforming multifamily dwellings; R-1
<u>Street Access:</u>	E. Cypress Avenue

On May 9, 2018 the City approved a building permit to allow construction of a 1,200-square-foot accessory dwelling unit (ADU) at 13523 E. Cypress Avenue. ADUs are permitted by right provided that they meet certain provisions of California law and are consistent with underlying zoning standards. As pertinent in the instant case, the rear setback in the R-1 zone is 20 feet. As is typical, during construction the new dwelling was inspected at various stages; however, well into construction the project designer noticed that the structure had been placed within five feet of the rear property line. The City initially stopped work on the site until the situation could be resolved.

Generally, the City can require that a structure built in violation of setback requirements (or other provisions of the Zoning Ordinance) be removed at the owner's expense. However, because in this situation the City is effectively at fault for allowing the unlawful construction to commence and continue through repeated inspections, a different approach may be appropriate.

PROPOSAL & DISCUSSION:

Rather than require the owner to remove the structure and rebuild it at the 20-foot setback, staff proposes that the City Council consider approving a variance. The variance process allows the City to reduce or waive development standards when unusual circumstances apply to the property. Situations may include but are not limited to odd parcel shape, topography, location, or surroundings, or cases where strict application of zoning requirements would deprive the owner of a property right possessed by other owners of property in the vicinity with the same zoning.

Setbacks are usually intended to preserve some level of separation between uses such that occupants can enjoy the benefits of the property they occupy without infringing on others' respective enjoyment. The subject property is immediately north of the Parlier Police Department, which somewhat reduces the need for a substantial rear yard setback. Further, there is substantial extra space available on the property outside of the setback area, so the exterior area of the property can still be utilized.

The City is required by law to provide for building inspection services. Each property owner has a right to expect that the City, as the sole provider of those services, will perform its duties as required by law.

FINDINGS:

Variance

Prior to approving a variance, the City Council must make findings as prescribed by Parlier Municipal Code Section 18.46.020:

- A. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or the intended use of the property which do not apply generally to other property in the same district.

The City's inspector failed to notice during numerous onsite inspections that the accessory dwelling unit was not constructed in accordance with the provisions of the R-1 Single Family Residential zone district, in particular the required 20-foot rear yard setback. Since the primary function of the inspection process is to ensure compliance with all applicable codes and regulations, this omission qualifies as an exceptional or extraordinary circumstance.

- B. Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the same district.

Every property owner is required to rely upon City inspection services to determine whether construction complies with applicable codes and regulations. In relying upon that determination, the owner proceeded with construction under the impression that all regulations were being met. A reversal of that determination would result in the owner being required to remove the structure and rebuild in the

appropriate location at substantial cost. It would violate the owner's right (and obligation) to rely on the City to provide an accurate assessment of the building process.

- C. The granting of the variance will not be materially detrimental to the public welfare or injurious to property and improvement in the district in which the property is located.

The rear yard of the subject site abuts the Parlier Police Department headquarters. The granting of the variance will not be detrimental to the public welfare or injurious to property and improvement because the Police Department site is the only property that could be affected by approval of the variance, and operation of the Department is not reliant upon or even affected by the proximity of other buildings or uses.

- D. The granting of such a variance will not be contrary to the objectives of the general plan.

Because the Parlier Police Department site is the only property that could be affected by approval of the variance and the operation of the Department is not reliant upon or even affected by the proximity of other buildings or uses, approval of the variance is not contrary to the objectives of the General Plan.

Public Notice

On December 10, 2018 notice of this public hearing was:

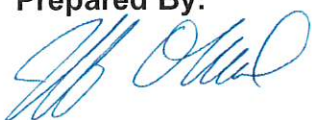
1. Individually mailed to owners of property within 300 feet of the subject site;
2. Published in *The Fresno Bee*; and
3. Posted at City Hall.

Environmental

The first step in complying with CEQA is to determine whether the activity in question constitutes a "project" as defined by CEQA, Public Resources Code Section 21000, *et seq.* and the CEQA Guidelines, California Code of Regulations Section 15000, *et seq.* A "project" consists of the whole of an action (i.e. not the individual pieces or components) that may have a direct or reasonably foreseeable indirect effect on the environment. The second step is to determine whether the project is subject to or exempt from the statute. This proposal qualifies as a project under CEQA because it involves the issuance to a person of a "lease, permit, license, certificate, or other entitlement for use" as described in CEQA Guidelines Section 15378. However, the City has determined that the project is exempt from CEQA under CEQA Guidelines Section 15303, New Construction or Conversion of Small Structure. This category includes projects that propose to construct a structure of 2,500 square feet or less that does not involve the use of significant amounts of hazardous materials.

As described herein, the project meets the required criteria.

Prepared By:



Jeffrey O'Neal, AICP
Contract City Planner

for
Antonio Gastelum
City Manager

RESOLUTION 2018-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PARLIER APPROVING A VARIANCE AT 13523 E. CYPRESS AVENUE

WHEREAS, on or around May 9, 2018 the City of Parlier (“City”) issued a building permit authorizing the construction of an accessory dwelling unit (“ADU”) at 13523 E. Cypress Avenue, Fresno County Assessor’s Parcel No. 354-124-03S (“Site”); and

WHEREAS, the Site is zoned R-1 Single Family Residential, which requires a minimum 20-foot rear yard setback; and

WHEREAS, during the construction process, City inspectors visited the site on several occasions to assess the status of construction and the owner’s compliance with applicable codes and regulations; and

WHEREAS, during the construction inspections, the City inspectors failed to notice that the ADU was being constructed within five (5) feet of the rear property line in violation of the R-1 setback requirement; and

WHEREAS, through no fault of his own, the owner of the Site has been placed in a circumstance under which he cannot continue to construct or, ultimately, occupy the ADU due to violation of City ordinance; and

WHEREAS, pursuant to Parlier Municipal Code (“PMC”) Section 18.46.020, approval of a variance is appropriate to authorize the continued construction and use of the ADU; and

WHEREAS, on December 10, 2018 a notice of public hearing was individually mailed to owners of property within 300 feet of the Site, published in *The Fresno Bee*, and posted at City Hall; and

WHEREAS, at a regular meeting on December 20, 2018 the Parlier City Council did conduct a public hearing to consider testimony in favor of, opposed to, or otherwise concerning the proposed variance; and

WHEREAS, approval of a variance consists of a “lease, permit, license, certificate, or other entitlement for use”, and is therefore a “project” pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (“CEQA”) and the CEQA Guidelines, California Code of Regulations Section 15000, *et seq.*; and

WHEREAS, the City Council finds that the Project meets the criteria described in CEQA Guidelines Section 15303, and is therefore exempt from CEQA as New Construction or Conversion of a Small Structure; and

WHEREAS, pursuant to PMC Section 18.46.020, the City Council has made the following findings, the evidence for said finding substantiated within the record:

- A. There are exceptional or extraordinary circumstances or conditions applicable to the property involved or the intended use of the property which do not apply generally to other property in the same district;
- B. Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the same district;
- C. The granting of the variance will not be materially detrimental to the public welfare or injurious to property and improvement in the district in which the property is located;
- D. The granting of the variance will not be contrary to the objectives of the General Plan.

NOW, THEREFORE BE IT RESOLVED that the Parlier City Council approves the variance to the rear yard setback at 13523 E. Cypress Avenue, reducing said required rear yard setback from a minimum of 20 feet to 5 feet.

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Parlier held on December 20, 2018 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

City Clerk

Hon. Mayor Alma Beltran



Torres Variance
APNs 355-124-03S

13523 E. Cypress Avenue

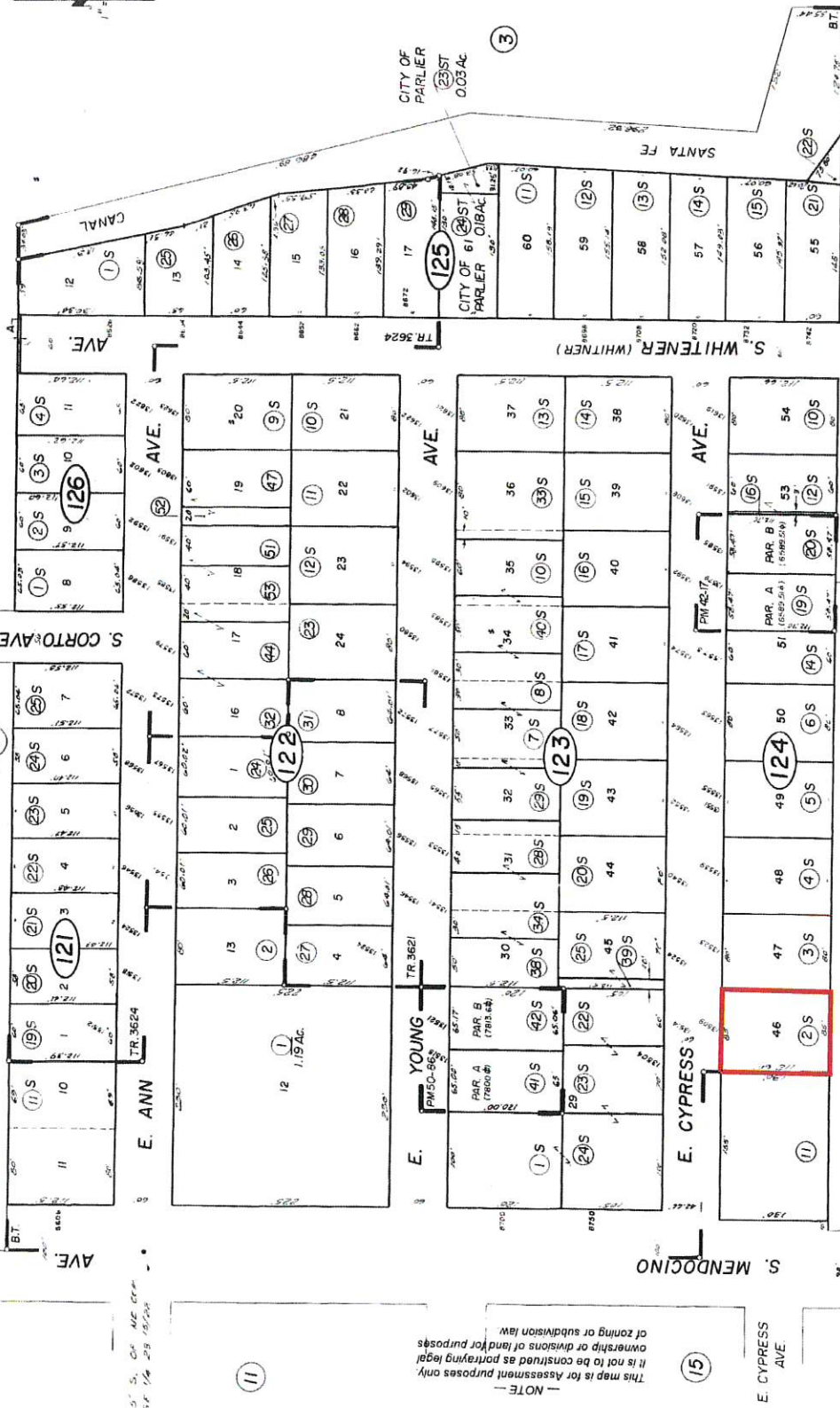


Project

SUBDIVIDED LAND & POR. SEC. 23, T.15 S., R.22 E., M.D.B.8M.

355-12

Tax Area
7-013



Bise Tract Tract No. 1501 - Plat Bk. 19, Pg. 5
Tract No. 3621 - Plat Bk. 41, Pg. 26
Parcel Map No. P-84-01, Bk. 42, Pg. 17
Tract No. 3624 - Plat Bk. 42, Pg. 25
Parcel Map No. 89-04 - Bk. 50, Pg. 86

Assessor's Map Bk. 355-Pg. 12

County of Fresno, Calif.

NOTE-Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles

Torres Variance

APNs 355-124-03S

13523 E. Cypress Avenue



Project



AGENDA ITEM: #3
MEETING DATE: December 20, 2018
DEPARTMENT: Planning

REPORT TO CITY COUNCIL

SUBJECT:

City Council to Consider Approval of a Zoning Text Amendment Adding "Tobacco Shops" as a Permitted Use in the C-4 Central Trading Zone District

RECOMMENDATION:

Staff recommends that the City Council introduces and waives the first reading of Ordinance No. 18-XX and sets the second reading and adoption for January 3, 2019.

BACKGROUND:

Several persons have inquired about the possibility of opening up a "smoke shop" in Parlier. Such a facility could sell tobacco products including cigarettes, cigars, and loose tobacco (including flavored tobacco); smoking paraphernalia such as pipes and hookahs; electronic tobacco paraphernalia such as e-cigarettes, vaping devices, and cartridges and liquids; and related or ancillary items like magazines, novelty clothing, sodas/energy drinks, and snack foods.

Although there are historical examples of such facilities existing in Parlier, there is no discussion of smoke shops or any related type of use in any zone district, effectively prohibiting their establishment. On October 24, 2018, Abdul Kader Khazma submitted an application to amend the text of the C-4 zone district to include this type of use.

PROPOSAL & DISCUSSION:

There are multiple ways to administer permitting and licensing for tobacco shops. The Council may:

1. Add the use as "permitted," meaning that:
 - a. A use going into a new structure would require site plan review and a business license;
 - b. A use going into an existing structure would require only a business license.
2. Add the use as "conditional," meaning that:
 - a. A use going into a new structure would require a conditional use permit, site plan review, and a business license;
 - b. A use going into an existing structure would require a conditional use permit and a business license.

3. Prohibit the use, meaning that it is not allowed. Tobacco and some related products would still be allowed to be sold in some capacity at certain establishments like grocery stores, markets, etc.

Each city and county is allowed to regulate uses as it sees fit. For example, the City of Kingsburg allows "tobacco shops" by right (permitted) in its Central Commercial zone, while the City of Mendota requires that "significant tobacco retailers" acquire a conditional use permit in its Central Business and Shopping zone. These zones from other cities are effectively the equivalent of Parlier's C-4 Central Trading district and the reference to them is intended to illustrate that there is no prevalent manner by which cities allow or prohibit this type of use.

Adoption of this ordinance is a two-step process. Staff has requested that the City Council introduce the ordinance and waive its first reading, followed by a second consideration of the ordinance proposed to occur on January 3, 2019. If enacted, the ordinance would become effective 30 days later. After taking effect, the ordinance would not authorize establishment of a tobacco shop at any specific location. Rather, it would allow entities to apply for a business license (and/or a conditional use permit as determined by the Council) to establish a tobacco shop.

Public Notice

On December 10, 2018 notice of this public hearing was:

1. Published in *The Fresno Bee*; and
2. Posted at City Hall.

Environmental

The first step in complying with CEQA is to determine whether the activity in question constitutes a "project" as defined by CEQA, Public Resources Code Section 21000, *et seq.* and the CEQA Guidelines, California Code of Regulations Section 15000, *et seq.* A "project" consists of the whole of an action (i.e. not the individual pieces or components) that may have a direct or reasonably foreseeable indirect effect on the environment. The second step is to determine whether the project is subject to or exempt from the statute. This proposal qualifies as a project under CEQA because it involves an amendment to the zoning ordinance as described in CEQA Guidelines Section 15378. However, the proposed ordinance amendment does not approve or otherwise authorize any specific activity that could result in a physical change to the environment; it is solely an amendment to regulations. In cases where it can be shown with certainty that the project being considered has no possibility of causing a significant impact to the environment, the project is not subject to CEQA as indicated in Guidelines Section 15061(b)(3).

Prepared By:


Jeffrey O'Neal, AICP
City Planner

for
Antonio Gastelum
City Manager

ORDINANCE NO. 18-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
PARLIER AMENDING SECTION 18.24.020 OF THE PARLIER
MUNICIPAL CODE RELATED TO TOBACCO SHOPS IN THE
C-4 CENTRAL TRADING ZONE DISTRICT

THE CITY COUNCIL OF THE CITY OF PARLIER DOES ORDAIN AS FOLLOWS:

Section 1. Section 18.24.020 of Chapter 18.24 of Title 18 of the Parlier Municipal Code is hereby amended to read as follows:

18.24.020 - Uses permitted—Generally.

The following uses shall be permitted in the C-4 district, plus such other uses as the commission may deem to be similar and not more obnoxious or detrimental to the public health, safety and welfare. All uses shall be subject to the property development standards in Sections 18.24.060 through 18.24.170.

A. Retail:

Appliance store;
Antique shop;
Bakery;
Clothing;
Confectionery (candy) with some manufacturing;
Dress shop;
Drug store;
Department store;
Furniture store, new and used;
Food store;
Food markets;
Hobby shop;
Hardware store;
Jewelry store;
Liquor store;
Musical instruments;
Notions;
Pet shop;
Pool hall;
Plants;
Stationery stores;
Tobacco shops;
Variety store.

B. Services

Accounting office;
Bank and financial institution;

Barber and beauty shops;
Building and loan shops;
Bus depot;
Communication equipment building;
Employment agency or halls;
Garden supply;
Insurance office;
Libraries and reading rooms;
Medical offices;
Medical, dental and optical laboratories;
Newspaper printing;
Post office;
Printing shop (blueprint, lithographing, publishing);
Photographic supplies;
Professional officials;
Reducing salons;
Real estate offices;
Restaurants (provided that no alcoholic beverages shall be consumed on the premises);
Self-service laundries;
Shoe shine parlor;
Shoe stores (including repair);
Super drugs;
Supermarkets;
Taxi stand;
Television and Radio sales and repair;
Tire sale;
Toy store;
Upholstery shop.

C. Others:

Adult uses;
Apartments (four unit minimum, no duplexes);
Apartment-hotels;
Auto motels;
Bowling alleys;
Hotels;
Lodges;
Meeting halls;
Motels;
Movie theaters;
Signs.

Section 2.

The City Council of the City of Parlier hereby finds that the zoning text amendments contained herein solely constitute changes to regulations and do not authorize or approve any development or physical changes. As such, they have no potential to significantly affect the environment, and are therefore not subject to the

California Environmental Quality Act (CEQA) as indicated in CEQA Guidelines §15061(b)(3).

Section 3. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Parlier City Council hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

Section 4. Within fifteen (15) days of the adoption of this Ordinance, a summary thereof, including the names of the City Council Members voting for and against it, shall be prepared by the City Attorney for publication in *The Fresno Bee*, and a certified copy of the Ordinance shall be posted in the office of the City Clerk.

Section 5. This ordinance shall become effective and in full force at 12:00 midnight on the 31st day following its adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Parlier on the 20th day of December 2018 and was passed and adopted at a regular meeting of the City Council on the 3rd day of January 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Mayor Alma Beltran
City of Parlier

ATTEST:

City Clerk
City of Parlier