

PLANNING COMMISSION
RESOLUTION NO. 2019-06

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE
“DEVELOPMENT AGREEMENT BETWEEN STANISLAUS FOOD PRODUCTS AND
CITY OF MODESTO”

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements; and

WHEREAS, by City Council Resolution No. 1997-492, adopted on August 26, 1997, the City Council established procedures and requirements for the consideration of development agreements; and

WHEREAS, by City Council Resolution No. 2011-075, adopted on March 8, 2011, the City Council modified said procedures and requirements for the consideration of development agreements; and

WHEREAS, by City Council Resolution No. 2017-404, adopted on October 10, 2017, the City Council approved a Land Exchange Agreement between Stanislaus Food Products (SFP) and City of Modesto (City). Under the agreement, SFP would acquire 11th Street between D Street and Morton Boulevard, 12th Street between B Street and Morton Boulevard, and B Street between 10th and 12th Streets. The City would acquire land from SFP through dedication to allow construction of 10th Street and portions of B and 9th Streets for minor widening from D Street to Morton Boulevard; and

WHEREAS, a condition of the Land Exchange Agreement is the approval of a Development Agreement; and

WHEREAS, SFP and City, have applied for a Development Agreement to address post land exchange topics where the terms of the Development Agreement include that the City will agree to provide to SFP City services that allow and facilitate ongoing operations and vest the right to further develop under existing City laws during the 15 years term of the agreement. SFP agrees to reimburse the City for processing the Development Agreement, land cost, police service, area traffic study, improvements. SFP also agrees to provide street dedication to allow 10th Street to extend to Morton Boulevard; and

WHEREAS, the Planning Commission certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2019-02, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required; and

WHEREAS, a public hearing was held by the Planning Commission on March 4, 2019, in the Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed

Development Agreement, at which hearing evidence both oral and documentary was received and considered; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. An Initial Study was prepared by the City of Modesto that analyzed whether the subsequent project may cause any significant effect on the environment that was not examined in the Master EIR and whether the subsequent project was described in the Master EIR as being within the scope of the report.
2. The subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158 of the Public Resources Code, that was not identified in the Master EIR.
3. No new or additional mitigation measures or alternatives are required.
4. The subsequent project is within the scope of the project covered by the Master EIR.
5. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.
6. No substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, and no new information, which was not known and could not have been known at the time that the Master EIR was certified as complete, has become available.

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The Development Agreement would encourage expansion of the SFP plant and job creation and therefore would be consistent with General Plan's economic development goals and policies
2. The Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 2011-075, which establishes procedures and requirements for the consideration of development agreements.

BE IT FURTHER RESOLVED by the Planning Commission that it hereby recommends to the City Council approval by ordinance of the proposed Development Agreement Between Stanislaus Food Products and City of Modesto, a copy of which is attached hereto as Exhibit "A".

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on March 4, 2019, by Commissioner Smith, who moved its adoption, which motion was seconded by Commissioner Vohra and carried by the following vote:

Ayes: Birling, Escutia-Braaton, Pollard, Smith, Vohra, Morad
Noes: None
Absent: Lucas
Recused: None

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Original, signed copy on file in CEDD

Steve Mitchell, Secretary

Attachment: Exhibit "A"
3196512.1

EXHIBIT A

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF MODESTO
D STREET PARTNERSHIP LP OF THE STANISLAUS FOOD PRODUCTS COMPANY
AND STANISLAUS FOOD PRODUCTS COMPANY**

THIS DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO, D STREET PARTNERSHIP, L.P., AND STANISLAUS FOOD PRODUCTS COMPANY, (“Agreement”), is made and entered into in the City of Modesto, County of Stanislaus, State of California, as of _____, 2019, (“Execution Date”), by and between THE CITY OF MODESTO, a municipal corporation of the State of California, (“City”), and D STREET PARTNERS, L.P., a California limited partnership (“D STREET”) which is an affiliate of the STANISLAUS FOOD PRODUCTS COMPANY, a California corporation, (together D Street and Stanislaus Food Products Company are hereinafter referred to as “SFP”). City and SFP are hereinafter collectively referred to as the “Parties” and singularly as “Party.”

The Parties hereto agree as follows:

SECTION I RECITALS

This Agreement is entered into with reference to the following facts:

1.1 AUTHORIZATION. City, as a charter city, is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certain development rights for both City and SFP in the subject property and the conduct of the SFP Operation and use and improvement of the SFP Site, to strengthen the public planning process, reduce economic risks. The Parties acknowledge and adopt the Legislature’s findings contained in Government Code Section 65864 (a) – (c) and findings contained in Ordinance XXXX approving this Agreement.

Draft Friday February 25, 2019

1.2 SFP SITE. On the Effective Date (as defined below) of this Agreement, D STREET PARTNERS and STANISLAUS FOOD PRODUCTS COMPANY own in fee title the real property located in the City of Modesto, County of Stanislaus, California, depicted as the “SFP Site” on Exhibit A-1 attached hereto and incorporated herein by this reference, and more particularly described in Exhibit A-2 attached hereto and incorporated herein by this reference. The SFP Site consists of the real property STANISLAUS FOOD PRODUCTS COMPANY and/or D STREET will own or have a long term lease over after the Exchange Escrow (as defined below) is closed under the terms and conditions of the Exchange Agreement (as defined below).

1.3 CITY/SFP REAL PROPERTY EXCHANGE. City and SFP are parties to a LAND EXCHANGE AGREEMENT dated October 23, 2017, (“Exchange Agreement”), by which City and SFP agreed to exchange certain real property under the terms and conditions more particularly set forth in the Exchange Agreement, (“Exchange”), including without limitation (i) Sections 3.2(iv) and 5.4(ix) thereof which require City and SFP to deposit a “fully executed Development Agreement” into escrow as a condition to closing the Exchange Escrow, (ii) Sections 4.1 and 5.4(iv) thereof which require SFP to deliver to City \$2,400,000.00, in cash, in addition to fee simple title to the Stanislaus Property (as defined in the Exchange Agreement), at close of the Exchange Escrow, and (iii) Section 5.4(vii) thereof which requires SFP to deliver \$150,000.00 to “the City to use for a traffic study” which traffic study the Parties agree shall focus on the traffic circulation within 1 mile of the SFP Site.

1.4 INTERESTS OF STANISLAUS FOOD PRODUCTS COMPANY AND D STREET. D STREET is an entity affiliated with STANISLAUS FOOD PRODUCTS COMPANY that holds fee title to certain portions of the SFP Site. STANISLAUS FOOD

PRODUCTS COMPANY and D STREET hereby represent that together they have an equitable or legal interest in the entire SFP Site and that all other persons holding legal or equitable interest in the SFP Site are to be bound by this Agreement, and that SFP and D STREET are authorized to enter into this Agreement.

1.5 DEVELOPMENT AGREEMENT POLICY. The Parties have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Policy of the City.

1.6 CONSISTENCY WITH GENERAL PLAN. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City in Ordinance No. ____ - 2019 found this Agreement consistent with the General Plan of the City.

1.7 PLANNING COMMISSION-COUNCIL HEARINGS. On _____, the Planning Commission, pursuant to Government Code Section 65967, held a public hearing to consider the Agreement. The Planning Commission recommended to the City Council approval of the _____ [insert title of final CEQA document] and this Agreement. On _____, the Council, after giving notice pursuant to Government Code Sections 65090, 65091, and 65867, held a public hearing to consider the [insert title of final CEQA document] and this Agreement.

1.8 ENVIRONMENTAL REVIEW. In compliance with the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. and the CEQA Guidelines, 14 California Administrative Code Section 15000 et seq., promulgated thereunder, ("CEQA"). on _____, 2019, by Resolution No. XX- 2018, City adopted the _____.

1.9 CITY COUNCIL FINDINGS AND ORDINANCE.

On _____, following the public hearing, the Council made all the required findings and adopted Ordinance No. _____, (“Enacting Ordinance”), making all the required findings and approving this Agreement, which ordinance is attached as **Exhibit B** hereto and incorporated herein by this reference. The Enacting Ordinance becomes effective on _____, thirty days after its second reading and adoption (“Effective Date”).

1.10 FUTURE DISCRETIONARY ACTIONS, INCLUDING RELOCATION OF SCALE AND FLAVOR EVALUATION STATION. Following approval of this Agreement, a Future Discretionary Approval that SFP will be seeking from the City in 2019, is for a building permit for the relocation of the SFP scale and flavor evaluation facilities from their current location on 11th Street between D Street and E Street to a location on the SFP Site south of D Street (“Evaluation Facility Relocation”). City staff have preliminarily reviewed rough concept plans for the Evaluation Facility Relocation. Based on the preliminary review as of the Effective Date, subject to building plan review, City staff presently anticipate approval of the Evaluation Facility Relocation subject to the following conditions of approval:

- (a) SFP to construct an 8 foot wall along the Tenth and D Street frontages with a 2 foot setback for vines with irrigation;
- (b) SFP will plant street trees on D Street at 30 foot intervals with associated irrigation;
- (c) SFP shall provide on-site storm water containment in compliance with applicable city storm water and water quality requirements;

(d) SFP will obtain a building permit from City prior to construction of any buildings;

(e) SFP shall pay applicable fees for any necessary water and sewer connections; and

(f) SFP shall install 3 backflow preventers on the existing water lines at locations approved by the City to make the water lines private to SFP.

SECTION II INCORPORATION OF RECITALS

2.1 **INCORPORATION OF RECITALS.** The Preamble, the Recitals, all defined terms set forth herein, and all exhibits attached hereto, are hereby incorporated into this Development Agreement as if set forth herein in full.

SECTION III DEFINITIONS

3.1 “Act of God” means an earthquake, flood, cyclone, or other cataclysmic phenomena of nature beyond the power of the Parties to make preparation in defense against, but does not include ordinary and frequently occurring inclement weather.

3.2 “Aesthetic Improvement Payment” means the payment by SFP pursuant to Section ___ of this Agreement.

3.3 “Board of Zoning Adjustment” means the Board of Zoning Adjustment of the City.

3.4 “City” means the City of Modesto, a municipal corporation organized and existing under the Modesto City Charter and the laws of the State of California.

3.5 “City Council” means the City Council of the City.

3.6 “City Manager” means the City Manager of the City or the City staff person(s) he or she designates to carry out all or part of the City’s responsibilities for implementing this Agreement.

3.7 “City Rules” means all valid ordinances, resolutions, codes, rules, regulations, and official policies of City, and licenses and permits issued to SFP by City, in effect on the Effective Date of this Agreement, including the Enacting Ordinance. The City Rules include, but are not limited to:

(a) *Zoning*. M-1 Light Industrial Zone.

(b) *General Plan*. Downtown Core General Plan Land Use designation, or if modified during the term of this Agreement, a General Plan Land Use designation compatible with the M-1 Light Industrial Zone in effect on the Effective Date.

(c) *Environmental*. The City environmental regulations.

3.8 “Development Plan Review” means the Development Plan Review process of the City.

3.9 “Effective Date” means _____, which is the date the Enacting Ordinance becomes effective.

3.10 “Enacting Ordinance” means City Ordinance No. _____ enacted by the City Council on _____, approving this Agreement. This Agreement shall constitute a part of the Enacting Ordinance as if incorporated therein in full.

3.11 “Energy Generation” means the production of electrical energy resources using biomass, wind, solar, and/or any other technology, or combination thereof, which produces electrical energy.

3.12 “Future City Rules” means valid ordinances, resolutions, codes, rules, regulations, and official policies of City, and licenses and permits issued to SFP by City adopted or amended after the Effective Date of this Agreement.

3.13 “Future Discretionary Approvals” means any subsequent land use permits or entitlements applied for by SFP, or its successors in interest, with respect to improvements within the SFP Site, which permits, or entitlements require the exercise of legislative or administrative discretion on the part of any City office, board or body having jurisdiction with respect thereto. The Future Discretionary Approvals shall include the following as applicable to the SFP Site:

(a) *Conditional Use Permits.* Conditional use permits to be approved by the Zoning Officer or Board of Zoning Adjustment, as applicable, subject to appeal.

Development Plan Review. Review of the design aspects of proposed improvements by the Community and Economic Development Department, subject to appeal to the Planning Commission.

(c) *Environmental Review.* Any required additional environmental review or procedures that may be applicable to the above-mentioned approvals.

3.14 Planning Commission” means the Planning Commission of the City.

3.15 “Safety and Security Funding” means the payment by SFP pursuant to Section ___ of this Agreement.

3.16 “SFP” means Stanislaus Food Products Company, a corporation organized and existing under the laws of the State of California. As used in this Agreement, the term “SFP” includes D Street Partners, L.P., with respect to D STREET’s interest in the SFP Site, and any successor in interest to SFP, as authorized and permitted under this Agreement.

3.17 “SFP Operation” means the operation of the tomato product packing business on the SFP Site, and Energy Generation including without limitation future

improvements and changes in use associated with SFP's orderly expansion of the SFP Operation on the SFP Site.

3.18 "SFP Site" or "Site" means that certain real property depicted in **Exhibit A-1** and described in **Exhibit A-2** which will be owned by SFP *after* the Exchange Escrow is closed under the terms and conditions of the Exchange Agreement and prior to the Effective Date.

SECTION IV EFFECTIVE DATE, TERM AND TERMINATION

4.1 EFFECTIVE DATE. The effective date of this Development Agreement ("Effective Date") is _____, 2019, which is the effective date of City Ordinance No. XX-2019, adopting this Development Agreement.

4.2 TERM. The term of this Development Agreement commences on the Effective Date and extends for a period of fifteen (15) years from the Effective Date, unless said term is terminated, modified or extended consistent with the terms of this Development Agreement. This Development Agreement automatically terminates upon expiration of the 15-year term unless otherwise extended by the Parties, and shall then be of no further force and effect. The Term of this Agreement shall not be tolled or extended for any period for any reason, including reason of third party litigation challenging the approval of this Agreement, without an amendment to this Agreement as provided in Section ____ hereof.

4.3 4.3 BINDING COVENANTS. After close of the escrow, ("Exchange Escrow"), to complete the transaction provided for in the Exchange Agreement, the provisions, benefits and burdens of this Agreement shall constitute covenants and servitudes which run with the land comprising the SFP Site; and the burdens of the Agreement shall be binding upon, and the benefits of the Agreement shall inure to the benefit of all successors in interest of transferees

of the Parties hereto, and all estates and interests in the SFP Site, or any portion thereof, and shall survive death, bankruptcy, foreclosure or other forced transfer.

SECTION V VESTED RIGHTS

5.1 APPROVALS. SFP shall have the vested right to proceed with development and of the SPF Site and the SFP Operation on the SPF Site in accordance with the City Rules, and to have Future Discretionary Approvals considered for approval or denial, based upon the terms, standards and requirements set forth in the City Rules. Except as provided in this Section V below, this Agreement does not vest SFP's rights to pay development impact fees, exactions and fees including processing fees, inspection fees, plan check fees, or other permit processing fees or charges, and utility fees (including utility related taxes, assessments, fees and charges).

5.2 PERMITTED USES, DENSITY AND INTENSITY, MAXIMUM HEIGHT AND SIZE OF STRUCTURES, AND RESERVATION OR DEDICATION OF LAND VESTED. The permitted uses of the SPF Site, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land or payment of fees in lieu of dedication for public purposes, the location and maintenance of on-site and off-site improvements, the location of public utilities, _____ and other terms and conditions of SFP's development and the SFP Operation shall be those set forth in the City Rules.

5.3 VESTED AGAINST MORATORIUM, QUOTAS, RESTRICTIONS OR OTHER GROWTH LIMITATIONS. Subject to applicable law relating to the vesting provisions of Development Agreements, City agrees that, except as otherwise provided in or limited by the provisions of this Agreement, this Development Agreement vests the City Rules against and shall preclude the application to the development of the SFP Site and the SFP Operation subsequent City

ordinances, resolutions, rules, regulations, initiatives, and official policies that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, or the density or intensity of uses, or the terms, provisions, standards or requirements for development, as set forth in the City Rules. To the extent allowed by the laws pertaining to development agreements, however, SFP will be subject to any growth limitation ordinance, resolution, rule, regulation, or policy which is adopted on a uniformly applied, Citywide basis, and is directly based on a City finding of an imminent public health or safety issue, in which case City shall treat in a uniform, equitable and proportionate manner all properties, public and private, which are impacted by that public health or safety issue.

5.4 VESTED RIGHT INCLUDE UTILITY SERVICES. City shall continue to provide municipal water, wastewater and sewer utility services, (“Utility Services”), to the SFP Operation and SFP Site, according to the City Rules. The City shall not intentionally and materially (for the purposes of this Section “materially” shall mean a reduction in Utility Services which would adversely impact the SFP Operation and/or SFP Site) diminish Utility Services to the SFP Operation and/or SFP Site. The Parties agree that the City may interrupt or adversely impact Utility Services to the SFP Operation and/or the SFP Site: (a) as the result of an Act of God; (b) if SFP fails to pay Utility Service taxes, assessments, fees or charges levied by the City in accord with its then applicable billing practice and rates (as further provided in Section __); (c) if SFP has an outstanding City Code or permit violation pertaining to the Utility Service being diminished or interrupted, which SFP fails to cure; (d) if continuation of the Utility Service would overload, surcharge or damage the City’s Utility Service facilities, including water, wastewater collection and/or treatment systems; (e) if continuation of the Utility Service would be detrimental to the health, safety, welfare, property or environment, of the City or that

of any other City resident or Utility Service customer; (f) if continuation of the Utility Service would be in conflict with State and Federal Law (as further provided in Section ____).

5.5 VESTED RIGHTS EXCLUDE DESIGN AND CONSTRUCTION OF SFP FACILITIES ON 10th STREET. All ordinances, resolutions, rules, regulations, initiatives, and official policies governing design improvement standards and specifications applicable to that portion of the SFP Site located on the east side of 10th Street between D Street and B Street to a depth of 100 feet from 10th Street centerline, shall be those in force and effect at the time the applicable permit approval is granted.

5.6 VESTED RIGHTS EXCLUDE BUILDING AND FIRE CODES. The SFP Site shall be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications reasonably necessary to comply with or implement such state standards and regulations, and Title 24 of the California Code of Regulations, related to Building Standards, in effect at the time the applicable building, grading, encroachment or other construction permit is granted. If no permits are required for infrastructure improvements, such improvements will be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, , and Title 24 of the California Code of Regulations, City standard construction specifications reasonably necessary to comply with or implement such state standards and regulations, related to Building Standards, in effect at the time of approval by City of the improvement plans for such infrastructure. If a permit that has been granted expires, the subject shall be required to be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, Title 24 of the California Code of Regulations, related to Building Standards, and City standard construction specifications

reasonably necessary to comply with or implement such state standards and regulations, in effect at the time the applicable replacement permit to the expired building, grading, encroachment or other construction permit is granted for the SFP Site.

5.7 VESTED RIGHTS EXCLUDE CHANGES IN STATE OR FEDERAL LAW. This Agreement shall not preclude the application to development of the SFP Site and the SFP Operation of changes in City Rules, including laws, regulations, plans or policies, and utility permit requirements the terms of which are specifically mandated and required by changes in state or federal law, including without limitation, state or federal regulation, order, policy, regulation, permit, enforcement or compliance order, or court order (together “State or Federal Laws”). The Parties acknowledge and agree that certain State or Federal Laws, such as regulations governing utility service and permits, are likely to change during the term of this Agreement and that both Parties will be required to comply with those new State or Federal laws. In the event that State or Federal laws enacted after the Effective Date of this Development Agreement prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement or SPF permits as needed to comply with such State or Federal Laws. Any such amendment of this Agreement shall be approved by the City Council in accordance with the Municipal Code and this Agreement.

5.8 VESTED RIGHTS EXCLUDE PROCESSING FEES AND CHARGES. SFP shall pay those valid processing, inspection, and plan check fees and charges required by City under ordinances, resolutions, rules, regulations, initiatives, and official policies which are in effect when such fees or charges are due under then-existing code or policy. Nothing in this Agreements limits SFP’s right to contest any such fees or charges.

5.9 VESTED RIGHTS EXCLUDE TAXES, ASSESSMENTS, FEES AND CHARGES FOR UTILITY SERVICES. SFP shall pay those valid taxes, assessments, fees and charges levied by the City for the provision of Utility Services to the SFP Operation and SFP Site. SFP shall pay such Utility Service taxes, assessments, fees and charges as are in effect when such fees or charges are due under then-existing code or policy. Nothing in this Agreement limits SFP's right to contest any such taxes, assessments, fees and charges.

5.10 VESTED RIGHTS LIMITED FOR DEVELOPMENT IMPACT FEES, EXACTIONS AND DEDICATIONS. SFP shall pay all valid development impact fees, connection or mitigation fees, and exactions required by City to support the construction of any public facilities and improvements or the provision of public services in relation to development of the Property (together "Exactions") authorized by City after the Effective Date, as long as said Exactions otherwise comply with applicable law, and are either (i) required on a Citywide basis, or (ii) apply uniformly to all properties within City that are zoned with density and uses similar to those of the subject properties in the City Rules. Exactions required by City to be paid by SFP that do not meet one of the preceding criteria shall be the Exactions authorized on the Effective Date. Nothing in this Agreement limits SFP's right to contest any such fees or exactions.

5.11 VESTED RIGHTS REGARDING TRAFFIC. The City Rules include certain standards regarding traffic improvements, controls, standards and routes. By vesting the City Rules in Section ____ the City vests those traffic related matters to the extent provided in the City Rules. The City Rules limit, but do not prevent, the City from adjusting or altering traffic improvements, controls, standards and routes that may impact the SFP Operation. The City acknowledges the current truck routes ("Truck Routes") identified in **Exhibit C** are critical to the SFP Site and SFP Operation, and the City agrees (i) that it will only conduct any significant road

improvement work, traffic improvements, closures or interruptions that are likely to significantly limit, interrupt or alter traffic volumes or travel times on the Truck Routes between July 15 and October 15 in any year during the term of this Agreement after exploring alternatives that could avoid or reduce such impacts on SFP; (ii) to provide SFP at least 90 days' notice of any significant road improvement work, traffic improvements, closures or interruptions that are likely to significantly limit, interrupt or alter traffic volumes or travel times on the Truck Routes; and (iii) to restore the Truck Route to their full capacity as of the Effective Date as soon as reasonably possible.

5.12 **STORMWATER.** City acknowledges and agrees that as of the Effective Date, there is no current City enforcement action regarding the existing stormwater drainage practices and facilities used by the SFP Operation under the City Rules and STORM WATER POLLUTION PREVENTION PLAN (SWPPP). If State of California and/or Federal rules regarding stormwater disposal or the SWPPP change during the term of this Agreement, such rule changes will apply only to areas of new development on the SFP Site except to the extent such rule changes apply on their express terms retroactively to all similarly situated industrial operations and facilities.

5.13 **PRIVATE WELLS.** City acknowledges and agrees the existing private wells, ("Wells"), located on the SFP Site (i) are in compliance with the City Rules; and (ii) may be pumped by SFP according to SFP's sole discretion without regulation by the City except as necessary to protect the public safety, health and/or environment or comply with a State of California and/or Federal laws and regulatory requirements to which City must conform.

SECTION VI OBLIGATIONS OF SFP

6.1 **ANNUAL FUNDING FOR SAFETY AND SECURITY.** Commencing January 5, 2025, and continuing through January 5, 2034 (the sixth through fifteenth years of the Draft Friday February 25, 2019

term of this Agreement), SFP shall annually pay the City \$50,000, which amount shall be the total sum of \$500,000 (the “Safety and Security Funding”). The Safety and Security Funding shall be deposited in the City General Fund and is intended to be, but not required, to be used to supplement or maintain police or private security in the general area between downtown Modesto and the Tuolumne River which includes the SFP Site.

6.2 AESTHETIC IMPROVEMENT PAYMENT. On the Effective Date, SFP shall pay the City the sum of \$200,000 (the “Aesthetic Improvement Payment”). The Aesthetic Improvement Payment shall be deposited in the City General Fund and is intended to be, but shall not be required to be, used to provide enhanced street scape improvements adjacent to and in the immediate vicinity of the SFP Site. As of the Effective Date, the City currently plans to expend a portion of the Aesthetic Improvement Payment in 2020 to 2022 on the area _____ near the corner of _____ and _____.

6.3 SAFETY AND SECURITY FUNDING AND AESTHETIC IMPROVEMENT PAYMENT TENTH STREET ROAD IMPROVEMENTS ARE IN ADDITION TO PAYMENTS UNDER THE EXCHANGE AGREEMENT. As set forth in Recital __, Sections 4.1 and 5.4 (iv) the Exchange Agreement requires SFP to pay the City \$2,400,000.00, in cash, in addition to fee simple title to the Stanislaus Property (as defined in the Exchange Agreement), and Section 5.4(vii) of the Exchange Agreement requires SFP to deliver \$150,000.00 to “the City to use for a traffic study” which traffic study the Parties agree shall focus on the traffic circulation within 1 mile of the SFP Site; SFP restates its agreement to deliver title to the Stanislaus Property and to pay both those sums as set forth in the Exchange Agreement, in addition to paying the amounts for Safety and Security Funding and the Aesthetic Payment set forth in Section 6.2 and Section 6.3 of this Agreement.

SECTION VII OBLIGATIONS AND ACKNOWLEDGEMENTS OF CITY

7.1 TENTH STREET IMPROVEMENTS. As of the Effective Date, the City anticipates that it will use the \$2,400,000 SFP Closing Payment to improve the 10th Street right of way from and including its intersection with D Street to and including its intersection with B Street, including without limitation, curb, gutter, sidewalk, pavement, wet and dry utilities, landscaping and street lights (“10th Street Improvements”). City agrees it shall not require any future contribution from SFP for the 10th Street Improvements at any time during this Agreement, including without limitation as a condition to any Future Discretionary Action. This provision shall survive the term of this Agreement.

7.2 EMINENT DOMAIN. As of the Effective Date, the City does not have any current plans for public uses of the SFP Site that would require the City to exercise eminent domain over any portion of the SFP Site during the term of this Agreement.

7.3 TUOLUMNE RIVER REGIONAL PARK. In the design of the Tuolumne River Regional Park (“TRRP”), City will consider SFP Operations in all major plans, including without limitation locating intensive uses within the TRRP where it is unlikely there will be conflicts between the TRRP uses and the SFP Operation related to traffic, noise, hours of operation, etc.

SECTION VIII ANNUAL REVIEW

8.1 CITY AND SFP RESPONSIBILITIES. City shall, at least every twelve (12) months from the Effective Date of this Agreement, review the extent of good faith substantial compliance by SFP within the terms of this Agreement. SFP shall initiate the annual review by submitting a written request for review at least sixty (60) days before the review date, which shall be on _____ of each year. If SFP fails to initiate review, the City may initiate review by giving at least sixty (60) days advance notice to SFP of the time, date and

place at which the matter will be considered by the City. The annual review shall be conducted by the Community Development Director. If the Planning Director determines, on the basis of substantial evidence, that SFP has not complied in good faith with the terms and conditions of this Development Agreement during the period under review, the City Council may initiate proceedings to modify or terminate the Agreement pursuant to Section ____ (Default, Termination and Legal Action). All costs reasonably and directly incurred by City in connection with the annual review, including any appeal to Council shall be paid by SFP. Pursuant to Government Code Section 65865.1, as amended, SFP shall be required to demonstrate good faith compliance with the terms of the Agreement at the periodic review. The burden of proof, by substantial evidence of compliance, is upon SFP. Either party may address any requirement of the Agreement during the foregoing review.

SECTION IX ESTOPPEL CERTIFICATE

9.1 City's failure to timely initiate the annual review is not a waiver of the right to conduct a review at a later date or otherwise enforce the provisions of this Agreement. SFP is not in default under this Agreement by virtue of a failure by City to timely initiate or conduct a review.

9.2 CERTIFICATE. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting that the other Party certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and, (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such estoppel certificate, or give a written detailed response explaining why it

will not do so, within thirty (30) days following the receipt of each such request. Each Party acknowledges that such an estoppel certificate may be relied upon by third parties acting in good faith. A certificate provided by City establishing the status of this Agreement with respect to the SFP Site and SFP Operation or any portion thereof shall be in recordable form and may be recorded at the expense of the recording Party. Should SFP so request the certificate issued under this Section may be submitted to the Planning Commission or City Council or both for their acknowledgement and approval.

SECTION X DEFAULT, TERMINATION, AND LEGAL ACTION

10.1 EVENTS OF DEFAULT. Default under this Agreement occurs upon the happening of one of the following events or conditions:

10.1.1. If a written warranty, representation, or statement made or furnished by SFP to the City is false or proves to have been false in any material respect when it was made;

10.1.2. Subject to written extensions of time by mutual consent, the failure by either party to perform any term or provision of this Agreement;

10.1.3. A finding and determination by the City made following a periodic review under the procedure provided for in Government Code Section 65865.1 that upon the basis of substantial evidence SFP has not complied in good faith with one or more of the terms or conditions of this Agreement.

10.2 PROCEDURE UPON DEFAULT.

10.2.1. Upon the occurrence of default, the Party alleging such default shall give the defaulting party ninety (90) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactory cured.

During any such ninety (90) day period, the defaulting Party shall not be considered in default

for purposes of termination or institution of legal proceedings. If, after written notice had been given and the ninety (90) day cure period has expired the default has not been cured, the non-defaulting Party may, in its sole discretion, either institute legal proceedings to specifically enforce the Agreement, or terminate the Agreement by giving the defaulting Party notice of such termination. However, if the nature of the alleged default is such that it cannot reasonably be cured within a ninety (90) day period, the commencement of the cure within such period and the diligent prosecution to completion of the cure shall be deemed a cure within such ninety (90) day period. Furthermore, if, after written notice that has been given by City as provided in this paragraph and ninety (90) day cure period has expired and the default has not been cured, the City Council, may terminate or amend this Agreement in accordance with the procedure adopted by the City.

10.2.2. City does not waive any claim of defect in performance by SFP, if on annual review pursuant to Section __ of this Agreement the City does not propose to modify or terminate this Agreement. If an occurrence of default is discovered or determined in the course of the annual review, in addition to other remedies and potential cures, City shall have the statutory authority pursuant to Government Code section 65865.1 to decide to terminate or modify the Agreement following the opportunity to cure as provided in this Section _____.

10.2.3. Non-performance shall not be excused because of a failure of a third person.

10.2.4. Adoption of a law or other governmental activity, by a government agency other than the City, making performance by SFP unprofitable or more difficult or more expensive does not excuse the performance of the obligation by SFP.

10.2.5. In no event, except as provided in Sections ____ (Attorneys' Fees) and __ (Indemnification) of this Agreement, will either Party be liable to the other Party for any monetary damage for claims arising out of this Agreement, and both Parties hereby expressly waive any such monetary damages.

SECTION XI INSTITUTION OF LEGAL ACTION

11.1 In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Stanislaus, State of California. In any such legal action, the prevailing Party shall be entitled to recover all litigation expenses, including reasonable attorney's fees and court costs as may be fixed by the Court. Upon mutual written agreement of the Parties, any such legal action shall be submitted to binding arbitration before a mutually acceptable retired Superior Court or Appellate Court judge. If the Parties cannot agree on the selection of a retired Superior Court or Appellate Court judge, then they may each select a retired Superior Court or Appellate Court judge, and the two selected judges will jointly select a third retired Superior Court or Appellate Court judge to serve as the arbitrator. The arbitrator shall issue such procedural and remedial orders as he/she may deem appropriate. The arbitrator's fees shall be shared equally between the City and SFP.

SECTION XII INDEMNIFICATION, HOLD HARMLESS AND COOPERATION IN THE EVENT OF LEGAL CHALLENGES

12.1 SFP agrees to indemnify, defend with counsel selected by the City, and hold harmless City, City's officers, agents, employees, consultants, contractors, special counsel and representatives from liability for any claim for damages, just compensation, restitution, judicial or equitable relief for personal injury, including death and for any claim for property

damage from the direct or indirect conduct of the SFP Operation and/or SFP Site contractors, subcontractors, agents, employees, consultants, contractors or other persons acting on their behalf which related to the SFP Operation and/or SFP Site or the processing and approval of this Agreement. SFP agrees to pay all reasonable costs associated with the City's defense by Counsel selected by the City. City may make all reasonable decisions with respect to its representation in any legal proceeding. Neither SFP nor City shall settle any action or proceeding on grounds that include non-monetary relief or admissions of liability without written consent of the other Party. City agrees to not settle any action based upon monetary relief without the written consent of SFP, unless City is solely liable and agrees to pay such monetary relief.

12.2 The Parties agree to fully cooperate in the defense of any claim described in this Section.

12.3 The provisions of this Section ___ shall survive the termination of this Agreement.

SECTION XIII BINDING EFFECT OF AGREEMENT

13.1 The provisions, benefits and burdens of this Agreement shall constitute covenants or servitude which shall run with the land comprising the SFP Site and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the SFP Site, or any portion thereof, and all successors in interest, purchasers or reimbursement for valuable consideration of the parties to this Agreement, and shall survive foreclosure and be binding on future title holders to the same extent it was binding on SFP.

SECTION XIV EXCUMBRANCES ON SFP OPERATION AND/OR SFP SITE

14.1 DISCRETION TO ENCUMBER. This Agreement shall not prevent or limit SFP, in any manner, at SFP's sole discretion, from encumbering the SFP Operation and/or

SFP Site, or any portion of either, or any improvement on the SFP Site by any mortgage, deed of trust or other security device securing financing with respect to the SFP Operation, SFP Site, or any improvement to either.

14.2 ENTITLEMENT TO WRITTEN NOTICE OF DEFAULT. The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the SFP Site or any part thereof and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by SFP of the performance of SFP's obligations under this Agreement which has not been cured pursuant to the provisions of this Agreement.

SECTION XV MISCELLANEOUS PROVISIONS

15.1 RULES OF CONSTRUCTION. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, their obligations are joint and several.

15.2 ENTIRE AGREEMENT. This Agreement constitutes the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiation or previous agreements between the parties respecting this Agreement.

15.3 WAIVER. Any waiver by City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by City to take action on breach or default or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to perform any obligation under this Agreement shall not operate as a waiver or release from any of the obligations under this Agreement. Consent by City to any act or omission shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for City's written consent to future waivers.

15.4 PRIVATE UNDERTAKING. It is specifically understood by the parties that: (a) the SFP Operation is a private business interest; (b) the SFP Site is a privately owned real property; and (c) SFP shall have the full power and exclusive control of the SFP Operation and SFP Site subject to the terms and conditions of this Agreement.

15.5 RELATIONSHIP OF THE PARTIES. Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and SFP or its agents, employees or contractors. This Agreement does not create any third-party beneficiary rights.

15.6 REVIEW OF APPLICATIONS. City agrees to promptly review all applications submitted to the City by SFP for new construction on the SFP Site according to the City Rules. Nothing in this Agreement shall be construed to require City to obtain funding, to hire or retain personnel for the purposes of evaluating, processing or reviewing application for permits, maps or other entitlements or for the design, engineering or construction of improvements in excess of those for which provision is made in the normal and customary budgeting process or fee schedules of City.

15.7 CAPTIONS. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction or meaning of any of the provisions of this Agreement.

15.8 CONSENT. Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approvals shall not be unreasonable withheld or delayed.

15.9 COVENANT OF COOPERATION. The parties shall cooperate with each other, deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

15.10 APPLICABLE LAW. This Agreement shall be interpreted under and be governed by the laws of the State of California.

15.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired; provided, however, that if the effect is to deprive a Party of an essential benefit of this Agreement, then the Party so deprived will have the option to terminate this Agreement upon written notice to the other Party.

15.12 LANGUAGE CONSTRUCTION. The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

15.13 FORM OF AGREEMENT; RECORDATION; EXHIBITS. City will record this Agreement and any subsequent amendment to this Agreement, with the County Recorder within ten (10) days of the effective date of the Agreement or amendment. City will also record any termination of any parts or provisions of this Agreement, except when this Development Agreement automatically terminates due to the expiration of the Term of this Agreement. Any amendment or termination of this Development Agreement that affects less than all of the Property must describe the portion of the property that is the subject of the

amendment or termination. This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement consists of XX pages and X exhibits, which constitute the entire understanding and agreement of the Parties.

15.14 ASSIGNMENT. From and after recordation of this Agreement against the SFP Site, SFP shall have the full right to assign this Agreement as to the SFP Site, or any portion thereof, in connection with any sale, transfer or conveyance thereof, provided that (i) SFP has paid City any and all fees or amounts due to City arising out of this Agreement, the processing of the Entitlements, or the development of the portion of the Property to be assigned, and (ii) upon the receipt by City Planning Director of the express written assignment by SFP and assumption by the assignee of such assignment in the form attached hereto as **Exhibit D**. Upon the payment of such fees or amounts due (which shall be acknowledged on the assignment by City Planning Director upon the request of SFP and City's receipt of the express written assignment by SFP, the assumption by the assignee of such assignment in the form attached hereto as Exhibit XX, and the conveyance of SFP's interest in the SFP Site related thereto, SFP shall be released from further liability or obligation related to the portion of the SFP Site so conveyed and the assignee will be considered SFP or the "Developer," with all rights and obligations related thereto, with respect to such conveyed property (the "Assigned Property").

15.15 NOTICES. All notices, demands and correspondence required or permitted by the Agreement, enabling legislation, or the procedure adopted pursuant to Government Code section 65865, must be in writing and must be delivered in person or sent by or certified mail, postage prepaid, or by facsimile or electronic mail, addressed as follows:

If to City, to:

Joseph P. Lopez
City of Modesto
Post Office Box 642
Modesto, California 95353
Attention: City Manager

With Copies to:

Adam U. Lindgren, Esq.
City Attorney
Post Office Box 642
Modesto, CA 95353

If to SFP, to:

Stanislaus Food Products Company
P.O. Box 3951
Modesto, CA 95352 (by mail)
1202 "D" Street
Modesto, CA 95354 (by personal delivery)
Attention: President, Executive Vice President, and Chief
Financial Officer

With Copies to:

Patrick D. Riddle, Esq.
22180 N. May Road
Acampo, CA 95220

Russell A. Newman, Esq.
1034 12th Street
Modesto, CA 95354

A party may change its address by giving notice in writing to the other party. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, five (5) business days following deposit in the United States mail.

15.16 WAIVER. Except as provided in this Agreement, in consideration of the benefits received by each of the parties pursuant to this Agreement, each Party hereby waives any and all legal, equitable or protest rights or remedies it might allege or claim in any manner whatsoever challenging the terms and conditions of this Agreement, and each Party agrees that this Agreement satisfies Sections 3.2(iv) and 5.4(ix) and all other provisions of the Exchange Agreement which require City and SFP to deposit a “fully executed Development Agreement” into escrow as a condition to closing escrow for the transaction that is the subject of the Exchange Agreement.

15.17 CITY MANAGER AUTHORIZATION. The City has authorized this Agreement to be executed in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. XX-2019 adopted by the Council of the City on the __ day of _____, 2019, and has caused this Agreement to be executed.

15.18 AMENDMENT OR TERMINATION OF AGREEMENT. This Agreement may be amended from time to time or terminated by the mutual consent of the parties as set forth in Government Code Section 65868. The term “Agreement” or “Development Agreement” as used herein shall include any amendment properly approved and executed.

[Signatures on Following Page]

IN WITNESS WHEREOF, City and SFP have executed this Agreement as of the dates indicated below.

“CITY”:

“SFP”:

CITY OF MODESTO:

STANISLAUS FOOD PRODUCTS
COMPANY, a California corporation

By: _____

Name:

Its: City Manager

Date: _____

By: _____

Name:

Its: President

Date: _____

ATTEST:

ATTEST:

By: _____

Name:

Its: City Clerk

Date: _____

By: _____

Name:

Its: Secretary

Date: _____

D STREET PARTNERS, L.P., a California
limited partnership

By: _____

Name:

Its: General Partner

Date: _____

ACKNOWLEDGEMENTS TO FOLLOW

EXHIBIT A-1

MAP DEPICTING SFP SITE

[To Be Attached]

EXHIBIT A-2

LEGAL DESCRIPTION OF SFP SITE

[To Be Attached]

EXHIBIT B

THE ENACTING ORDINANCE

[To Be Attached]

EXHIBIT C

THE TRUCK ROUTES

[To Be Attached]

EXHIBIT D

FORM OF ASSIGNMENT

[To Be Attached]

3085662.15

Draft Friday February 25, 2019