

Meeting Date: 12/15/2015

Report Type: Consent

Report ID: 2015-01105

Title: (City Council/Redevelopment Agency Successor Agency) Establish Capital Improvement Program for Cesar Chavez Plaza Park Improvement and Restaurant Lease

Location: District 1

Recommendation: 1) Pass a City Council Resolution: a) establishing a new capital improvement project (CIP) for the Cesar Chavez Plaza Improvement Project; b) approving the Merged Downtown Excess Bond Proceeds Expenditure Agreement to accept \$107,000 in Redevelopment Agency Successor Agency funds; c) appropriating \$156,000 from Quimby In-Lieu Park Fees, \$107,000 in Merged Downtown TAB and Master Lease bond proceeds, and \$222,400 from the Cal EPA Fund to the Chavez Plaza Park Improvement Project; d) finding that it is in the best interests of the City to lease the Plaza Building for less than fair market value; e) approving the Lease Agreement with La Cosecha by Mayahuel LLC to for the Plaza Building for the La Cosecha Restaurant; and f) appropriating the restaurant lease revenues for Cesar Chavez Plaza maintenance and improvements; and 2) pass a Redevelopment Agency Successor Agency Resolution: a) authorizing the transfer of \$107,000 in Merged Downtown TAB and Master Lease bond proceeds; and b) approving the Merged Downtown Excess Bond Proceeds Expenditure Agreement.

Contact: Leslie Fritzsche, Senior Project Manager, (916) 808-5450, Economic Development Department; Gary Hyden, Park Planning and Development Manager, (916) 808-1949, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Park Development Services

Dept ID: 19001121

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Restaurant Site Plan
- 4-City Resolution
- 5-Lease Agreement
- 6-RASA Resolution
- 7-Exhibit A (Merged Downtown Excess Bond Proceeds Expenditure Agreement)

City Attorney Review

Approved as to Form
Sheryl Patterson
12/8/2015 8:28:05 AM

Approvals/Acknowledgements

Department Director or Designee: Shannon Brown - 11/30/2015 3:38:35 PM

Description/Analysis

Issue Detail: The Parks and Recreation Department and the Economic Development Department recommend that City Council authorize funding to make substantial improvements to Cesar Chavez Plaza Park to reposition this park as a safe and attractive amenity in downtown Sacramento. The main improvement is the renovation and expansion of the existing café building and the creation of two outdoor patios to allow for a full-service restaurant operation. Additional enhancements include upgrading the park electrical service, improving and expanding the landscaping improvements, and updating the park lighting. The total project cost is \$916,000. The City investment for park and building improvements is \$485,400, of which \$156,000 are park improvement costs and \$329,400 would fund the expansion of the café building which the City will continue to own. The remaining cost of the project is \$430,600 which would be paid for by the restaurant operator. The lease provides for a one year no rent period, and sets the rent at \$1.35 per sq. ft. for the expanded 1,955 sq. ft. building with a 2% escalation rate. The rent proceeds at \$2,639.25 monthly and \$31,671 annually are to be dedicated for improved park maintenance.

To accomplish this park improvement and restaurant project, a new capital improvement project (CIP) for the Cesar Chavez Plaza Park Improvement Project needs to be established and funding transfers authorized to meet the City's commitments as set forth in the Lease Agreement with La Cosecha LLC by Mayahuel for the La Cosecha (The Harvest) restaurant. The Background provided as Attachment 2 to the staff report provides more detail on the planned park and building improvements and costs, the restaurant operations, lease terms, and the improved park maintenance program.

Policy Considerations: City Council approval is required to establish CIP projects and make the budget appropriations. Utilizing Quimby in-lieu fees for park improvements is consistent with City Code Section 16.64.060. Providing improved park facilities is consistent with the City's strategic plan to enhance livability in Sacramento's neighborhoods. Allocation of redevelopment funds and the Cal EPA fund to facilitate the renovation and expansion of the café building for the establishment of a full-service restaurant will help activate Cesar Chavez Plaza and improve the park's use and appeal.

Economic Impacts: The economic impact estimates are calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). The total estimated cost of new construction, and rehabilitation of the building and park is \$485,400, which is projected to create 4 direct jobs and 2 indirect jobs. Additionally, according to the CSER calculation over \$284,819 in direct output and over \$159,498 in indirect or induced activities will be generated by the construction of the expanded restaurant building. Actual impacts could differ significantly from the estimates and neither the City of Sacramento nor CSER shall be held responsible for consequences resulting from such differences.

Environmental Considerations: The proposed actions to make improvements to Cesar Chavez Plaza park and expand the existing café building park are exempt from environmental review under the CEQA Guidelines Sections 15302, 15303, and 15304, reconstruction and expansion of existing facilities and alterations to land.

Sustainability: The renovation of the café building will improve energy efficiency and the plantings will be drought tolerant.

Commission/Committee Action: None

Rationale for Recommendation: Cesar Chavez Plaza is a 3.05 acre park located on the block between 9th and 10th and I and J Streets in downtown Sacramento across from Historic City Hall. It contains a central fountain, a large stage for concerts, benches, and the existing café building. The building is approximately 1,200 square feet of which 400 sq. ft. is taken up by two restrooms and only 800 sq. ft. is indoor café space. The café building was constructed in 1992 and operated as Café Solei from 1993 until December 2014. The new lease rate is \$1,200 more per month than the prior Café Solei rental rate, and the lessee is investing half of the total project cost.

With the closure of the café, the park has been frequented by vagrants and the homeless who use the park as a place to loiter during the day, resulting in a reduction in use by office workers and others. Last July, the City had to close the bathrooms due to health and safety concerns because of trash dumping, vandalism, and criminal activity. A comprehensive approach to the park is needed to change its current composition and to reclaim the park for increased public use. A new full service restaurant that will attract patrons after hours along with enhanced landscaping and lighting are intended to activate and restore the park as a vibrant asset to the City. To ensure the availability of funds for the enhanced improvements, the rent revenues generated from the lease will be dedicated to ongoing to maintenance and operations of the park.

Financial Considerations: The proposed actions are to create the Cesar Chavez Park Improvement CIP as L19207100, accept the \$107,000 in redevelopment bond funds and transfer these funds and \$156,000 from Quimby (Fund 2508) to L19207100, and transfer \$222,400 from the Cal EPA Fund (Fund 2801) to L19207100 for a total of \$485,400 for the City's investment in the project. A commitment of \$379,400 will be used to fund lessee's construction costs as set forth in the Lease Agreement. The balance of the City's investment of \$106,000 will be used for the new plantings, SMUD electric upgrade, and lighting improvements and allocate \$8,000 to SMAC to meet the Art in Public Places requirement for the construction project subsidy. The annual rent (\$31,671 starting in year two) is to be dedicated for improved park planting, maintenance and other improvements to the park.

Local Business Enterprise (LBE): The Lease Agreement requires the lessee to use its best efforts to purchase food and supplies from stores and vendors within the City boundaries. The lessee plans to use only locally sourced food as part of the farm-to-fork effort.

Background

Current Conditions - Cesar Chavez Plaza is a 3.05 acre park located on the block between 9th and 10th and I and J Streets in downtown Sacramento across from Historic City Hall. It contains a central fountain, a large stage for concerts, benches, and the existing café building. The existing 1,200 square foot building was constructed in 1992 and began operations in 1993. The kitchen in the existing space is limited and not up to current operating standards.

The café was previously rented to the IX family that operated Café Solei. The business closed in December of 2014 because the operator was unable to meet their rent obligations. During inclement weather, the café revenues dropped by 50% due to the lack of indoor seating.

With the closure of the café, the park has been frequented by the homeless and persons living in the downtown SROs who use the park as a place to loiter during the day, resulting in a reduction in use by office workers and others. Last July, the City had to close the bathrooms due to health and safety concerns because of trash dumping, vandalism, and criminal activity. A new full service restaurant that will attract patrons after hours and the park improvements as described below are intended to activate and reclaim the park for increased public use.

Solicitation for New Operator - Last February, the City in partnership with the Downtown Sacramento Partnership (DSP) issued a solicitation for a new cafe operator. The City and DSP also asked the public to comment on the type of food that is desired at this park and the overwhelming response was to serve Mexican food at Cesar Chavez Plaza. Four letters of interest were received. Two proposed use of the existing café space for another Subway outlet or a mobile Hawaiian BBQ operation. Two restaurant proposals were received and both requested a subsidy and rent concessions in order to allow for expansion of the café space to function as a restaurant. The existing café space is inadequate for a commercial kitchen needed for a restaurant operation.

La Cosecha by Mayahuel - The City entered into negotiations with Ernesto Delgado who is the managing member of EFIRE Group LLC which owns Tequila Museo Mayahuel. His restaurant manager Raul Mandujano currently oversees the Mayahuel restaurant and has prior experience operating Zocalo, Centro Cocina and Paseanos. Mr. Delgado proposes to establish La Cosecha (“the Harvest”) by Mayahuel to offer market-to-table, farm fresh and locally sourced cuisine for this Mexican themed restaurant. He also wants to sponsor special events at the park, including a Cinco del Mayo celebration. The planned menu would serve breakfast, lunch, happy hour small plates, and nightly dinner specials. The restaurant would have a taco bar, a “grab and go” section, and table service. The planned hours of operation are as follows:

Monday through Wednesday	7:30 A.M. to 8:00 P.M.
Thursday	7:30 A.M. to 10:00 P.M.
Friday	7:30 A.M. to 12:00 P.M.
Saturday	11:00 A.M. to 12:00 P.M.
Sunday	11:00 A.M. to 4:00 P.M.

DSP's retail recruiter assisted in reviewing Mr. Delgado's business plan, menu pricing, projected revenues, and hours of operation. Between May and October, Mr. Delgado hired architects to evaluate the building condition and prepare improvement plans, which were reviewed by staff and the Community Development Department building officials to verify code compliance and cost estimates. The Police and Fire Department staff also reviewed and approved the plans for outdoor patios with alcohol service and fire pits in the patios.

Mr. Delgado has expended \$70,700 in architect fees and licenses and permits and has committed investing a total of \$200,000 in personal equity towards this project. He is in the process of securing approximately \$230,000 in private financing for the tenant improvements, supplies and equipment, and other expenses to open the restaurant. His total costs for this restaurant are approximately \$431,000. Even with the one year no rent lease concession, the restaurant is not expected to generate a measurable profit until the end of year four.

Building Costs – The cost to enlarge the building, convert a portion of the existing bathroom space as kitchen space, replace the HVAC system, improve the exterior lighting, and build two outdoor patios along with the building permit will cost \$379,400. An additional \$70,700 in architectural costs, license and other permit fees brings a total building cost to \$450,100. The total City contribution for the building costs is \$379,400. The City's investment will be used for the creation of approximately 700 sq. ft. of conditioned space created by enclosing the covered outdoor patio space and moving out the exterior glass walls to create interior seating spaces. The new storefront walls will be within the roofline to avoid the need for a new roof to minimize costs. Approximately 486 sq. ft. in new storage space will be also be added. The existing restrooms will be reconfigured and be available for restaurant patrons only.

The Site Plan includes creating two large outdoor patios facing 9th Street and the park fountain with fire pits and decks to create a comfortable space and increase the seating capacity. In order to extend the hours of operation in the evening and serve alcohol, the patios will need to be fenced. The plans include improved exterior lighting on the building and along the fencing. The existing patio on the south of the building will be improved and available for use by both restaurant patrons and park users. The Site Plan is provided as Attachment 3 to the staff report.

Park Improvement Costs – The project involves a number of upgrades and enhancements to the park which are proposed to enhance overall operations and the park's aesthetics. The current electrical service for the park is inadequate for operations. The 250 amp service needs to be upgraded to 600 amps, at a cost of \$40,000. The Police Department requires plantings abutting the patio fencing for improved patio separation and the new plantings and irrigation system improvements will cost \$38,000. The exterior lighting both on the building and the fencing is part of the park lighting in the evening for security purposes and these improvements cost \$50,000. The Police Department and Parks and Recreation Department believe that the overall park lighting needs to be improved for security by changing out the light pole lighting to LEDs at a cost of \$20,000. Because the City will fund a portion of the building improvement costs, the Art in Public Places ordinance requires an \$8,000 payment to SMAC for future park artwork. The total park fund allocation is \$156,000, of which the

\$50,000 in lighting the building exterior and fencing lighting will be allocated to the lessee as part of the \$379,400 to undertake those improvements. As part of the annual park tree maintenance in the spring, the tree canopy is to be lifted up by about 10 feet to provide a clear sightline between the streets to improve safety monitoring. These improvements are to be completed before the restaurant opens on April 1, 2016.

City Building Cost Contribution – Because the café building is substandard for a restaurant operation and the revenues of the proposed full-service restaurant cannot support the total building costs, the remaining Merged Downtown redevelopment bond funds in the total amount of \$107,000 and City resources generated from the administration of the Cal EPA building in the amount of \$222,400, for a total of \$329,400, plus \$50,000 in park funds for the exterior lighting, are needed to subsidize the building construction costs. All of the City funds will be invested in the permanent building improvements that the City will own. Due to the City subsidy for the construction work and the rent concession, payment of prevailing wages will be required thus increasing the project's cost.

Lease Terms - The lease would extend for 10 years with two five-year extension options. After the 90 day build-out period, a one-year rent concession would be granted to allow for recoupment of the lessee's opening cost expenditures of \$274,000 and allow time for patronage to increase, hopefully with the expanded hours of operation.

As of April 1, 2017, rent in the amount of \$1.35 per sq. ft. for the building space or \$2,639.25 per month and \$31,671 annually would commence. The rent would increase annually by 2%. This lease rate is \$1,200 more per month than the prior Café Solei rental rate and would return the City's investment at the end of the initial lease term. The rental rate for the extension periods would be "market rent" based on the average retail rent the City receives at the three nearby parking garages, along with the 2% escalation rate. The City will also provide some storage space at the I Street garage. The Lease is provided as Attachment 7 to the staff report.

Park Maintenance and Operations – In order to improve the park to attract more patrons to use this centrally located amenity, it will be important to keep the park in good condition. Staff is proposing that the City Council allocate the lease revenues for maintenance and improvement of this park. With these additional funds, the Parks and Recreation Department plans to maintain the new plantings, replace the turf around the stage, and improve the plantings at the four park entrances.

Because the City does not power wash the concrete areas in this park unless needed to address a health and safety condition, DSP has agreed to regularly power wash the walkways leading into the restaurant to keep the area in an attractive condition. Also, the lessee will be required to remove trash from around the premises and to not place trash in the City park receptacles.

To minimize use of the outdoor patios by the homeless in the evenings after the restaurant closes, the fire pits will be covered and locked and all of the patio furniture will be stored within the fenced service area. Also, having an operator in the park for extended hours will allow for reporting any nuisance and criminal activity to Park Rangers and the downtown Police patrol units through the 311 system. With the

expanded restaurant building and patios with “eyes on the park,” improved lighting, and tree trimming, the park should feel safer for the public to use and attract more park patrons during the day and to frequent the restaurant during evenings and on weekends.

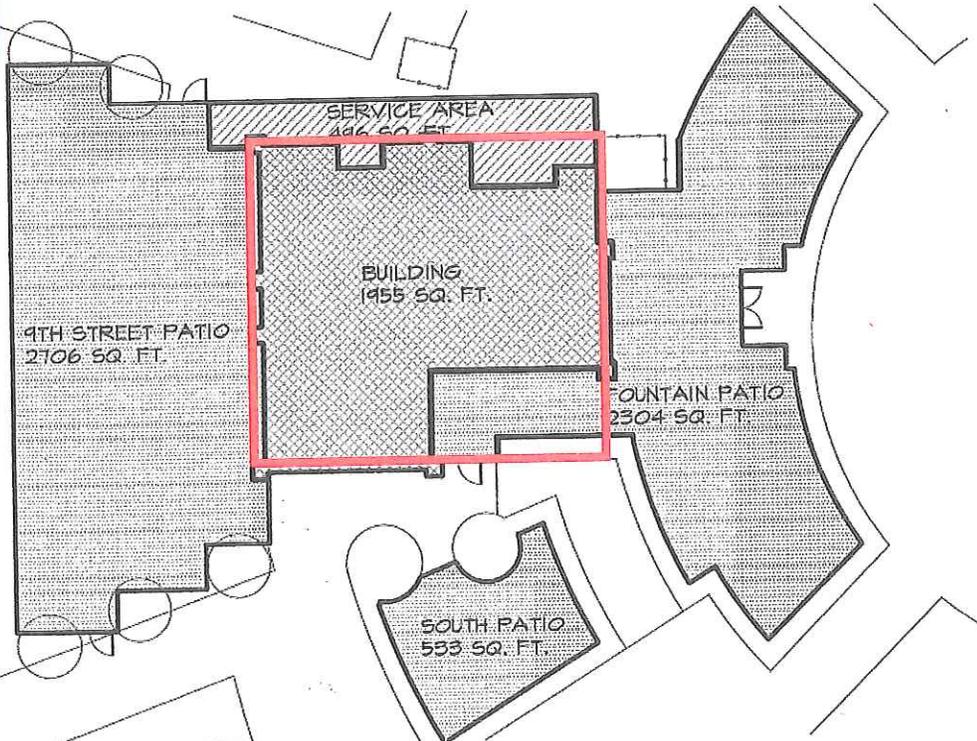
SITE PLAN



EXHIBIT A

FLOOR PLAN

asily open all your files
cross devices.



HM³ ARCHITECTURE, Inc.
ARCHITECTURE PLANNING CONSULTING

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AREA BREAKDOWN
SCALE: N.T.S.

RESOLUTION NO. 2015-

Adopted by the Sacramento City Council

APPROVING ESTABLISHING THE CESAR CHAVEZ PLAZA CAPITAL IMPROVEMENT PROJECT, APPROVING THE MERGED DOWNTOWN EXCESS BOND PROCEEDS EXPENDITURE AGREEMENT, APPROPRIATE FUNDING, AND APPROVING LEASE AGREEMENT WITH LA COSECHA BY MAYAHUEL LLC FOR THE PLAZA BUILDING

BACKGROUND

- A. City Council approval is required to establish new capital improvement projects, fund transfers of \$100,000 or more, and City subsidies for development projects.
- B. Pursuant to City Code Chapter 3.68, leases of City-Owned Real Property, in coordination with the Downtown Sacramento Partnership (DSP), bids for renting the existing café building in Cesar Chavez Plaza were solicited. Four proposals were received and staff commenced negotiations with the La Cosecha by Mayahuel LLC (“Lessee”) to establish the La Cosecha (The Harvest) by Mayahuel restaurant.
- C. Due the substandard condition of the existing café building, the Lessee prepared plans and cost estimates to enlarge and renovate the building and add two new outdoor patios, and requested the City to undertake some park improvements to improve the electrical service, lighting, and plantings.
- D. Because the cost of the building improvements necessary for operation of a full-service restaurant exceed the capacity of the Lessee to fully fund such cost and the City will benefit from an expanded restaurant within the park, the project requires a City investment in the amount of \$379,400 towards the \$450,100 building improvement cost. An additional City investment of \$106,000 in park improvements are required by the proposed project. The total cost for the building and park improvements, along with the costs for supplies, equipment and other opening costs for a restaurant, is \$916,000. The Lessee will contribute \$200,000 in equity and an additional \$231,000 in private loan financing.
- E. The Redevelopment Agency Successor Agency (RASA) has allocated \$107,000 in Merged Downtown unspent bond proceeds for the Cesar Chavez Plaza Improvement Project and approved the Merged Downtown Excess Bond Proceeds Expenditure Agreement with the City of Sacramento.
- F. The City has Quimby in-lieu park fees available in the amount of \$156,000 to undertake the park improvements and the remaining \$222,400 is recommended to be funded with available resources from the administration California Environmental Protection Agency (Cal EPA) building maintenance contract.

- G. Under the terms of the Lease Agreement, the City will grant a one year rent concession to allow time for sufficient patronage for the restaurant to generate revenues to pay rent. Rent in the amount of \$1.35 per sq. ft. for the building and escalated at the rate of 2% per year will be required for the remaining nine years of the initial lease term. The term of the lease includes two five-year extension options.
- H. The rent concession and lease rate slightly below market requires the City Council to make a finding that it is in the best interests of the City to lease the building for this new restaurant, which have extended hours to help activate use of this park.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. A new capital improvement project for the Cesar Chavez Plaza Improvement Project is established as L19207100. The park improvement plans for the Cesar Chavez Plaza Improvement Project are approved.
- Section 2. In accordance with Health and Safety Code Section 33445, the City Council finds and determines that:
 - (a) The Cesar Chavez Plaza Improvement Project will benefit the Merged Downtown Redevelopment Project Area eliminate blighting conditions by improving the Cesar Chavez Plaza to provide amenities in the Project Area.
 - (b) No other reasonable means of financing the Project is available to the community.
 - (c) The payment for the cost of the Project with Merged Downtown Redevelopment Bond funds is consistent with the bond covenants and Merged Downtown Redevelopment Plan and Implementation Plan.
- Section 3. The City hereby accepts \$107,000 in Merged Downtown Redevelopment Bond funds from RASA and the City Manager or his designee is authorized to execute the Merged Downtown Excess Bond Proceeds Expenditure Agreement. The \$107,000 shall be allocated to the Cesar Chavez Plaza Improvement Project L19207100.
- Section 4. An appropriation of \$156,000 from Quimby in-lieu fees available fund balance (Fund 2508) to Cesar Chavez Plaza Improvement Project L19207100 is hereby approved.
- Section 5. An appropriation of \$222,400 from the Cal EPA available fund balance (Fund 2801) to Cesar Chavez Plaza Improvement Project L19207100, is hereby approved.
- Section 6. The City Council finds that per City Code Section 3.68.110, it is in the best

interests of City to lease the café building in Cesar Chavez Plaza to La Cosecha by Mayahuel LLC to establish the La Cosecha by Mayhuel restaurant at a lease rate which is less than market value.

Section 7. The Lease Agreement for Cesar Chavez Plaza Café Building with La Cosecha by Mayahuel LLC, which requires the City to pay \$379,400 of Lessee's costs to renovate and expand the Café Building, is hereby approved. The City Manager or his designee is authorized to execute the Lease Agreement.

Section 8. The lease revenues from the Cesar Chavez Plaza Café Building are hereby allocated to the Parks and Recreation Operations for ongoing maintenance at Cesar Chavez Plaza.

Table of Contents:

Exhibit A - Merged Downtown Excess Bond Proceeds Expenditure Agreement

Exhibit B - Lease Agreement for Cesar Chavez Plaza Café Building

LEASE AGREEMENT

CESAR CHAVEZ PLAZA CAFÉ BUILDING

917 9th Street

Lessee: La Cosecha by Mayahuel, LLC

Restaurant: La Cosecha by Mayahuel

THIS LEASE AGREEMENT ("Lease") is executed at Sacramento, California, on DECEMBER 2ND, 2015 (the "Execution Date") between the CITY OF SACRAMENTO, a municipal corporation ("Landlord" or "City"), and LA COSECHA BY MAYAHUEL, LLC, a California limited liability company, ("Lessee"), which are individually referred to as "party" and collectively as "parties."

Background

- A. Cesar Chavez Plaza is a three acre City park located in downtown Sacramento between J and I Streets and 9th and 10th Streets. Located within the park is a building (the "Plaza Building") which contains bathrooms and a small café space.
- B. As a public park, Cesar Chavez Plaza is used by the public during the day for rest and relaxation. The City allows special events to be held at the park, such as the Wednesday Farmers Market and the Friday Night concerts during the summer, free speech assemblies throughout the year, and commercial events such as the Grape Escape. At special events, vendors are permitted to sell food to the public.
- C. The City coordinates with the Downtown Sacramento Partnership (DSP) in arranging special events at Cesar Chavez Plaza. It is the goal of the City and DSP to increase the number of special events at this park to activate its use for the benefit of the public and to attract patrons to downtown businesses. DSP provides guides who assist the City in monitoring the park to report activities that are not permitted.
- D. Cesar Chavez Plaza, like all City parks, is open to the public from dawn to dusk and is closed at night, although the public may still walk thru the park as a short-cut between the City streets. The City has developed plans for improvements to the park to improve visibility and lighting and to add plantings which will benefit the public and improve park operations. These improvements will allow for patrons to access the Plaza Building through the park after dark.
- E. City, with assistance from DSP, conducted outreach to solicit bids for lease of the Plaza Building. The parties have evaluated the need and benefits of enlarging the Plaza Building and incorporating outdoor patio spaces to allow for a commercial restaurant operation, with the intent that it would remain open in the evenings and on weekends based on patronage to activate the park.
- F. The costs of the improvements to the Plaza Building and the park exceed the financial capacity of the Lessee based on projected revenues. The City has agreed to fund a portion of the building and park improvement costs that are permanent improvements which the City will own and which will benefit the park operations.

Understanding the challenges and opportunities to operate a restaurant in Cesar Chavez Plaza, Lessee desires to lease from City the Plaza Building and abutting outdoor spaces to establish the La Cosecha restaurant on the terms and conditions set forth in this Lease.

Agreement

In consideration of the mutual benefits to be derived from this Lease and the representations, warranties, covenants and conditions set forth in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. DESCRIPTION OF PREMISES. Landlord leases to Lessee, and Lessee leases from Landlord, on the terms and conditions set forth below, the "Premises" situated in the City of Sacramento, County of Sacramento, State of California, described as encompassing: (a) a 1,955 sq. ft. expanded Plaza Building, (b) a 486 sq. ft. outdoor service area at the rear of the Plaza Building, (c) two exclusive outdoor patio areas containing 2,706 sq. ft. along 9th Street and 2,304 sq. ft. fronting the fountain, and (d) the nonexclusive right to use the 533 sq. ft. outdoor south patio as shown on the diagram attached as Exhibit "A." The parties acknowledge that improvements to the Premises are needed in order to operate a food service establishment. Lessee has inspected the Premises and accepts the Premises in its "as is" condition as of the Lease Commencement Date, subject to Landlord's financial commitments and improvements to Cesar Chavez Plaza as set forth in this Lease. As part of this Lease, Landlord also will provide Lessee with a fenced storage space at the 10th and I Street garage of approximately 250 sq. ft. for use for storing Lessee's furniture and equipment for the Plaza Building restaurant operation.

2. TERM. This Lease shall be effective as of January 1, 2016, which date shall be known as the "Lease Commencement Date." The length of this Lease (the "Term") shall be as follows:

- (a) **Build-Out Period** - Following the Lease Commencement Date, Lessee shall have a period of up to ninety (90) days, referred to as the "Build-Out Period," to undertake Lessee's Tenant Improvements as defined in Section 14 and depicted in Exhibit B to expand the Plaza Building, make improvements to the Premises, and install Lessee's Fixtures, Furniture and Equipment (FF&E).
- (b) **Early Opening** - Lessee may open for business prior to expiration of the Build-Out Period if Lessee has obtained all required permits and approvals as required by City in its regulatory capacity regarding building and safety inspections and as required by other agencies (e.g., County Health Department permit) without the obligation to pay Rent. Lessee shall notify Landlord at least three (3) days before opening the Premises to the public to conduct business.
- (c) **Initial Term** - The "Initial Term" of this Lease shall be for 10 years or 120 calendar months commencing on April 1, 2016 and terminating at 5:00 p.m. on the last day of the one hundred and twentieth (120) calendar month or March 31, 2026.

- (d) First Extension Option - Lessee is granted an option to extend the Term of the Lease by five (5) years (the "First Extension Term") following expiration of the Initial Term, by giving written notice to Landlord at least One Hundred and Twenty (120) days before the expiration of the Initial Term, but not more than one (1) year in advance.
- (e) Second Extension Option - Lessee is granted an option to extend the Term of the Lease by an additional five (5) years (the "Second Extension Term") following expiration of the First Extension Term, by giving written notice to Landlord at least One Hundred and Twenty (120) days before the expiration of the Initial Term, but not more than one (1) year in advance.
- (f) First Extension Term - If Landlord determines that Lessee has been in full compliance with the terms and conditions of this Lease during the Initial Term, then Landlord shall approve Lessee's request for the First Extension Term by no later than thirty (30) days before the expiration of the Initial Term. If Landlord approves Lessee's request, the Term of the Lease shall continue through the end of the First Extension Term or March 31, 2031.
- (g) Second Extension Term - If Landlord determines that Lessee has been in full compliance with the terms and conditions of this Lease during the First Extension Term, then Landlord shall approve Lessee's request for the Second Extension Term by no later than thirty (30) days before the expiration of the First Extension Term. If Landlord approves Lessee's request, the Term of the Lease shall continue through the end of the Second Extension Term or March 31, 2036.
- (h) Extension Denial - If Lessee has been in default in the payment of Rent, its obligation to maintain the Premises, or has violated any other provision of this Lease during the Initial Term or the First Extension Term, as set forth in one or more written notices issued by Landlord, even if such defaults were waived by Landlord or later remedied by Lessee; Landlord, in its sole discretion, may deny the Extension Term request or may grant a shorter Extension Term period. The Lease Term shall expire as of the date set forth in Landlord's written notice to approve, deny, or conditionally approve the Extension Term request.
- (i) Further Extensions - Prior to the end of the Second Extension Term, the parties may agree to amend this Lease to provide a further extension of the Term if Lessee has been in full compliance with the terms and conditions of this Lease and the parties can reach mutual agreement on the amount of Rent and any other changes or additions to the terms and conditions set forth in this Lease that may be desired by either party. Lessee shall submit a written request to Landlord by no later than One Hundred and Twenty (120) days before the expiration of the Second Extension Term if Lessee desires that the Landlord consider amending the Lease to further extend the Term. If Landlord, in its sole and absolute discretion, agrees to consider a further extension of this Lease, then the parties shall negotiate in good faith the changes to this Lease for a maximum sixty (60) day period. If Landlord instead decides to issue a solicitation for a new lessee or

the parties are unable to reach a mutual agreement on the changes to this Lease to extend the Term, then Landlord shall have no further obligation to Lessee and the Lease shall expire at the end of the Second Extension Term.

3. OCCUPANCY. By signing this Lease, Lessee accepts the Premises as being in good and sanitary order, condition and repair, and in the size and condition represented by Landlord. Lessee will take possession of the Premises as of the Lease Commencement Date and shall become liable for the protection and maintenance of the Premises as of that date.

Lessee shall commence work to undertake the improvements to the Premises no later than fifteen (15) days following issuance of a building permit by the City Community Development Department, unless Lessee is prevented from starting construction work due to causes beyond its control (e.g., inclement weather), which excludes financial considerations. If Lessee does not commence work to undertake the improvements to the Premises by April 1, 2016, then Landlord may terminate this Lease for its convenience without liability to Lessee.

4. RENT AND DEPOSIT. The following provisions specify Lessee’s obligation to make payments to Landlord during the Lease Term:

- (a) Rent Concession - Landlord grants Lessee a one year “no rent” period in consideration of Lessee’s costs to improve the Premises and the time needed to open a new restaurant and increase patronage. No rent shall be due for the outdoor service area, the two exclusive 9th Street and fountain outdoor patio areas, or use of the non-exclusive south patio area.
- (b) Rent Commencement Date - Rent charges shall commence on April 1, 2017, which is the “Rent Commencement Date.” Rent shall be based solely on the Plaza Building sq. ft. after expansion to 1,955 sq. ft.
- (c) Initial Term Rent Schedule -The minimum monthly charges for lease of the Premises (“Rent”) for the first year of the Initial Term shall be \$1.35 per sq. ft. or \$2,639.25 per month. Rent for the second and subsequent years of the Initial Term shall be adjusted by 2% per year compounded annually, as shown below:

<u>Year</u>	<u>Months</u>	<u>Monthly Rent Amount</u>
2	13-24	\$2,639.25
3	25-36	\$2,692.04
4	37-48	\$2,745.87
5	49-60	\$2,800.79
6	61-72	\$2,865.81
7	73-84	\$2,923.13
8	85-96	\$2,981.59
9	97-108	\$3,041.22
10	109-120	\$3,102.04

- (d) Rent Payment Address - Rent shall be paid in lawful money of the United States of America. Rent shall be due and payable on the first day of each month in advance. Lessee shall pay Landlord, without deduction or offset, at:

City of Sacramento
Revenue Division
915 I Street, 1st Floor
Sacramento, CA 95814

or such place as may be designated from time to time by Landlord in writing to the Lessee.

- (e) Other Provisions - Rent for any partial month shall be prorated based on a thirty (30) day month and paid with the next month's Rent payment. Lessee shall pay all Rent owed under this Lease at the times and in the manner provided in this Lease, without demand, set-off or counterclaim, except as may otherwise be expressly set forth in this Lease. Lessee shall pay Landlord \$100.00 for each check dishonored by Lessee's bank. All Rent payments received by Landlord shall be applied to the oldest payment obligation of Lessee. No designation by Lessee, either on the check or money order, or by separate writing, shall modify this clause or have any force or effect.
- (f) Security Deposit - Lessee shall pay Landlord a security deposit (the "Deposit") in the amount of the first month's rent of \$2,639.25, which amount shall be due and payable within thirty (30) days from the Lease Commencement Date. No interest shall be paid on the Deposit and Landlord shall have no obligation to keep the Deposit segregated from Landlord's general funds. After Lessee vacates the Premises at the end of the Lease Term, Landlord will remit to Lessee the amount of the security deposit paid by Lessee minus deductions for (i) necessary repairs to the Premises, excluding normal wear and tear, for damage caused by Lessee, and (ii) the amount of Rent that is owed and remains unpaid, if any. Payment of the security deposit shall be made by Landlord within thirty (30) days after Lessee has vacated the Premises, and Landlord shall detail in writing the basis for any deductions or off-sets.

5. RENT FOR EXTENDED TERM. Rent for the First Extension Term and the Second Extension Term shall be based on fair market rate rent as of the date of each extension term commences. "Fair market rate rent" shall be determined by averaging the amount of rent per sq. ft. that Landlord receives from the retail tenants in its parking garages located at 10th and L Street, 10th and I Street, and 14th and H Street as of the date that Lessee provides written notice to Landlord of its exercise of the extension option. Notwithstanding the foregoing, the parties may mutually agree to a different rent rate. Rent for the First Extension Term and the Second Extension Term shall be adjusted by 2% per year compounded annually unless the parties mutually agree to a different escalation rate.

6. DELINQUENT RENT. In the event that Lessee fails to pay Rent to Landlord by the tenth (10th) day of each month, based on the date of receipt by Landlord of Lessee's Rent payment, a late payment penalty of ten (10%) percent multiplied by the

amount of Rent due for that month (the "Late Fee") shall be owed. The Late Fee shall be paid no later than when the following month's Rent payment is due. The Late Fee shall be in addition to, and not in lieu of, all other remedies of Landlord for Lessee's failure pay Rent when due.

7. UTILITIES AND SERVICES. Lessee shall arrange for and pay SMUD for electrical services and PG&E for gas services for the Premises. Landlord shall undertake electrical service improvements to Cesar Chavez Park to upgrade the service from 250 amps to a minimum 600 amps to allow Lessee to use 350 amps. If the new service is not available by April 1, 2016, then the Rent Commencement Date shall be extended by the number of days of delay to when such service becomes available and the Rent Schedule for year two shall be adjusted accordingly, but the length of the Initial Term shall remain unchanged. Lessee shall arrange for all other utilities and services required for operation of Lessee's food service establishment at the Premises, including, without limitation, trash removal by a commercial waste hauler, janitorial services, pest control, security services, and telephone services.

8. SERVICE AREA AND GARBAGE REMOVAL. At the rear of the Plaza Building facing I Street is a small area to be fenced in to allow for secured storage of trash containers and outdoor furniture (the "Service Area"). The Service Area shall be considered part of the Premises that Lessee controls and is for Lessee's exclusive use. Lessee shall comply with all applicable provisions of the Sacramento City Code related to refuse garbage storage, removal and collection. Lessee shall tie all trash bags prior to placing them in garbage receptacles in this Service Area. Lessee shall ensure that the lid on the garbage receptacles is closed at all times. Lessee shall ensure that trash is not dragged on any surfaces within the Premises or the park. Lessee agrees to arrange and pay for commercial trash removal services on a regular schedule of at least once every three (3) days. Lessee shall arrange for trash to be removed more frequently if, in Landlord's reasonable discretion, odor, health, or safety problems have been caused by Lessee's garbage storage and removal practices.

9. POWER WASHING PARK SIDEWALKS AND CONCRETE AREAS. The Plaza Building is surrounded by concrete sidewalks and the concrete fountain area leading into the restaurant entrances. As part of the park maintenance, Landlord only power washes the sidewalks and concrete areas if there is debris that presents a human health hazard. Even though the sidewalks and concrete areas extend beyond the boundaries of the Premises, Lessee may remove any trash and debris and may power wash the areas abutting the Premises, generally within fifteen (15) feet from the Plaza building and the outdoor patio spaces.

10. TAXES. Lessee shall pay to the County of Sacramento all personal property taxes which may be levied against the personal property of the Lessee. Lessee is also responsible for the payment of possessory interest tax. Pursuant to Section 107.6 of the California Revenue and Taxation Code, there may be a possessory interest tax levied by virtue of this Lease. Lessee shall be billed and shall pay the possessory interest tax directly to the County Assessor's Office.

11. PREMISES USE AND PARK SPECIAL EVENTS. The Premises are leased to the Lessee for the purpose of operation of a food service establishment. Lessee shall not use the Premises for any other purpose. In particular, Lessee may not sell any non-food merchandise as an ancillary use without Landlord's written consent.

This Lease does not grant Lessee exclusive rights to provide food services at Cesar Chavez Plaza park. Lessee acknowledges that Landlord issues permit for special events at this park, and such events may include food vendors. Landlord will provide Lessee with information regarding upcoming special events to allow Lessee to determine if it desires to be open for business during such events. Landlord will make arrangements to insure that access is provided to Lessee's business from within the park, and that amplified sound is not used within the fountain area facing the Premises without Lessee's permission.

Landlord will also allow Lessee to operate special events at the park subject to compliance with the provisions of City Code Chapter 12.48. Landlord will reserve the park on May 5 each year ("Cinco de Mayo") to allow for Lessee to hold a special event to celebrate this Mexican holiday at Cesar Chavez Plaza.

12. OPERATIONS. Lessee shall comply with all of the following obligations while operating a food service establishment at the Premises:

- (a) Hours and Food Type - Lessee shall operate a restaurant and bar in the Plaza Building and the two exclusive outdoor patios to be known as "La Cosecha by Mayahuel," offering Mexican cuisine and beverage services to the public in accordance with the business model and menu submitted by Lessee, which was the inducement for Landlord to grant this Lease.

Notwithstanding any deviations set forth in Lessee's business model, at a minimum, Lessee shall operate its food service establishment between the following hours of the week, but closed on Holidays:

Monday	9:00 A.M. - 7:00 P.M.
Tuesday	9:00 A.M. - 7:00 P.M.
Wednesday	9:00 A.M. - 7:00 P.M.
Thursday	9:00 A.M. - 7:00 P.M.
Friday	9:00 A.M. - 10:00 P.M.
Saturday	11:00 A.M. - 10:00 P.M.

The Lessee plans on operating its food service establishment between the following hours of the week:

Monday	7:30 A.M. to 8:00 P.M.
Tuesday	7:30 A.M. to 8:00 P.M.
Wednesday	7:30 A.M. to 8:00 P.M.
Thursday	7:30 A.M. to 10:00 P.M.
Friday	7:30 A.M. to 12:00 P.M.
Saturday	11:00 A.M. to 12:00 P.M.
Sunday	11:00 A.M. to 4:00 P.M.

After the first year of operation, the parties shall review the restaurant patronage levels to determine if the minimum hours of operation should be shortened to insure the financial viability of the restaurant. Notwithstanding the minimum hours set forth above, Lessee may operate earlier in the morning and later in the afternoon and evenings, as well as on holidays, at Lessee's election. Lessee may also offer catering services to local businesses, as well as to groups with a City permit to hold special events at Cesar Chavez Plaza park.

- (b) Food Packaging - Lessee shall use packaging for prepared food to be consumed off of the Premises which is recyclable or compostable, and shall not use any Styrofoam or non-recyclable plastic materials other than cutlery. Lessee shall not use plastic bags for packing prepared food. Lessee shall use its best efforts to purchase food supplies and products from stores and vendors located within the City's boundaries.
- (c) Food Safety Laws and Regulations - Lessee shall conduct its operations in a safe and professional manner and in accordance with all applicable laws, codes, orders, regulations and ordinances of all governmental authorities having jurisdiction over the Premises and the Lessee's operations. In particular, Lessee shall comply with all federal, state and the Sacramento County Environmental Health Division's food protection and safety laws and regulations. Lessee shall immediately remedy any food protection and safety violation as set forth in a County Food Facility Inspection Report as directed by the County, and Lessee shall maintain a "Pass" rating for its business during the Term of this Lease.
- (d) Trash and Debris - Lessee shall conduct its operations to prevent its customers' trash and debris from overflowing the trash receptacles at the park, being left on the ground outside of the Premises, or escaping beyond the outdoor patio areas. Lessee shall comply with written reasonable orders that may be issued from time to time by Landlord as to matters concerning the operation of the Premises as it may affect the best interests of the public using the Cesar Chavez Plaza park.

13. INSURANCE HAZARDS. Other than use of a commercial gas stove for cooking, Lessee shall not use or store any equipment or materials which could create a fire hazard, which use or storage would be prohibited under standard fire insurance policies. Lessee shall, at its sole cost and expense, comply with any and all requirements under the All Risks insurance policy required to be maintained under this Lease which covers the Plaza Building and all appurtenances.

14. LESSEE'S INITIAL IMPROVEMENTS TO PREMISES. Subject to Landlord's financial commitments as set forth in Section 15, below, Lessee shall bear the cost of the architecture and engineering consultants to prepare plans, to obtain City permits, and to construct improvements to expand the Plaza Building and to build the two exclusive outdoor patio areas and improve the shared patio area as shown in Exhibit B, which are necessary to make the Premises suitable for Lessee's operations (the "Tenant Improvements"). All Tenant Improvements are to be completed within the Build-Out Period. No delay in completion of the Tenant Improvements shall change or extend the

Rent Commencement Date or the Initial Term of this Lease, unless such delay is caused solely by delays in SMUD completing the park utility upgrade and/or Landlord's acts or omissions, which excludes the time required by the City's Community Development Department for plan review, permit issuance and inspections. The following provisions apply to the scope and construction of the of Tenant Improvements:

- (a) Building Condition - Landlord has determined that at the time of delivery of the Premises to Lessee, the Plaza Building is substandard in that it needs to be expanded to allow for installation of a commercial kitchen and indoor seating and the mechanical, electrical, plumbing, heating, ventilation and air conditioning, life-safety and other systems of the building need upgrades or replacements. The structure, roof, and the existing exterior of the building are satisfactory, but Lessee desires to expand the building walls to increase the interior space. Lessee has undertaken studies and prepared improvement plans based solely on Lessee's inspections and Landlord shall have no liability or responsibility for repairs to, changes to, or code upgrades for the Plaza Building required in connection with the construction of the Lessee's Tenant Improvements unless expressly set forth in this Lease.
- (b) Disability Access - Landlord shall have no responsibility to make any improvements to the Plaza Building, including those required by federal and state disability access laws. Any of Lessee's changes to the Plaza Building, and the outdoor patio areas that triggers additional requirements under federal and state disability access laws shall be undertaken by Lessee and Landlord's cost shall be limited to the financial contribution for the Tenant Improvements as set forth in Section 15.
- (c) Improvement Plans - Lessee has provided Landlord with a set of floor plans and detailed drawings showing Lessee's proposed Tenant Improvements. Landlord has approved the Tenant Improvements, but subject to any changes that may be required by the City before issuance of a building permit. Landlord may post a notice of non-responsibility prior to the start of the construction work.
- (d) Security Devices - Lessee may provide at its own expense any legal device, installations, or equipment designed for the purpose of protecting the Premises from theft, burglary, or vandalism; provided, however, that Lessee complies with the City's building and fire codes and obtains all required permits.
- (e) Quality of Work - All construction work required or permitted by this Lease shall be done in a good and workmanlike manner, and in compliance with all applicable laws and ordinances, regulations, and orders of governmental authority and insurers of the Premises. Landlord may inspect the Lessee's work at reasonable times and shall promptly give notice of observed defects.
- (f) Construction Preconditions - Before starting any work on the Premises, Lessee shall:
 - (i) Obtain all required governmental approvals and permits required to start construction;

- (ii) Satisfy all requirements regarding insurance imposed by this Lease;
 - (iii) Deliver to Landlord a statement of the names of all contractors and subcontractors and the estimated cost of all labor and material to be furnished by them; and
 - (iv) Cause Lessee's contractors to carry worker's compensation insurance covering all the contractors' and subcontractors' employees, and public liability insurance with limits of One Million Dollars (\$1,000,000) and property damage insurance with limits of One Million Dollars (\$1,000,000), both general and vehicular liability (all insurance to be written by companies licensed to do business in the State of California, and insuring Landlord and Lessee as well as the contractors).
- (g) Mechanics Liens - Lessee shall pay, when due, all sums of money for all labor, services, materials, supplies, and equipment that was furnished to or for Lessee in, at, upon or about the Premises. If payment for any labor, services, materials, supplies, or equipment is or may be secured by any mechanics', material men's or other lien against the Premises or Landlord's interest in the Premises, Lessee shall cause each such lien to be fully discharged and released by making payment when due. Alternatively, Lessee shall have the right to contest the correctness or the validity of any such lien if Lessee procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half times the amount of the claim of lien. The bond shall meet the requirements of California Civil Code Section 3143 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if it recovers in the action).
- (h) Lien Releases - With the exception of liens that are in dispute and covered by a lien release bond, after completion of the Tenant Improvement work, Lessee shall submit to Landlord all invoices and unconditional lien releases from all persons performing labor or providing materials on or to the Premises, and providing copies of the lien releases, dated and with original signatures, to the Landlord from Lessee's contractor(s).

15. LANDLORD'S FINANCIAL CONTRIBUTION FOR TENANT IMPROVEMENTS AND PARK IMPROVEMENTS. (a) Landlord will contribute a "Premises Improvement Allowance" in an amount not to exceed \$379,400. This funding shall be paid to Lessee during construction to fund the following costs based on Lessee's budget for the Tenant Improvements:

Hard Cost Construction:	\$290,000*
Interior Fixtures:	
- Interior Lighting	\$ 16,000
- Toilet Room Fixtures	\$ 11,500
Exterior Fixtures:	
- Exterior Lighting	\$ 20,000

- Patio Fencing including lighting	\$ 30,000
Building Permits	<u>\$ 11,900</u>
TOTAL:	\$379,400

* Cost increased to include payment of prevailing wages

In addition to the forgoing costs, Landlord shall pay the following costs required for the Tenant Improvements with Landlord funding:

- Planting Around Patio Fencing:	\$ 38,000
- SMUD Park Electrical Upgrade:	\$ 40,000
- SMAC Art in Public Places:	<u>\$ 8,000</u>
TOTAL:	\$ 86,000

TOTAL COMMITMENT: \$465,400

(b) SMUD - Landlord has paid SMUD the \$5,000 deposit required for SMUD to commence design of the park electrical upgrade. Landlord shall pay SMUD all of its fees to design and construct the electrical upgrade work.

(c) SMAC - Landlord shall pay the Sacramento Metropolitan Arts Commission (SMAC) the Art in Public Places fee due under the City Code at the rate of 2% of the Landlord's subsidy for the Tenant Improvements, which is estimated at \$8,000. Lessee may desire that the Art in Public Places allowance be used for artwork on the Plaza Building. Landlord will cooperate with Lessee in working with SMAC to obtain an allocation of the Art in Public Places fund for artwork that is consistent with Lessee's "Farm to Fork" theme and Mexican cuisine. Prior to execution of this Lease, SMAC has agreed to decommission the stain glass and weather vane artwork affixed to the building. Landlord and Lessee will work with SMAC to schedule the removal of the existing artwork after the Plaza Building has been secured for commencement of the construction of the Tenant Improvements.

(d) Landlord's Payment - Landlord will pay Lessee the Premises Improvement Allowance as construction proceeds based on submittal of contractor invoices and Landlord's inspections to verify the work completed. Payment shall be due within thirty (30) days from receipt of each approved invoice.

(e) Park Improvements - Landlord agrees to make the following improvements to Cesar Chavez Plaza park prior to the restaurant opening date of April 1, 2016:

- Replace park lighting with LED
- Trim tree branches to allow for a 8 - 10 foot unobstructed sight line

Landlord also intends to make improvements to the park to replace the turf around the stage and improve plantings at the four park entrances as funding becomes available.

(f) Lessee's Equity and Loan - Lessee has committed to fund \$200,000 in cash contributions to fund the soft costs and remaining costs for the Tenant Improvements,

Lessee's FF&E, kitchen equipment, product inventories and supplies, advertising and opening expenses. Lessee will need to secure a minimum \$200,000 loan to fund the remaining costs, its working capital and contingencies. Lessee shall provide Landlord with evidence of Lessee's equity contribution and loan prior to commencement of construction of the Tenant Improvements.

16. LESSEE SUBSEQUENT ALTERATIONS. During the Term of this Lease, after Lessee has completed the Tenant Improvements as described in Section 14, Lessee shall not make any further alterations of the Premises, or any part thereof, without the prior written consent of Landlord. Lessee shall comply with all of the provisions set forth in Section 14 to perform any subsequent alterations to the Plaza Building, and all of Lessee's further improvements shall be funded solely by Lessee.

17. OWNERSHIP OF TENANT IMPROVEMENTS. All alterations, improvements, additions, or fixtures which are permanently affixed to realty, which may be made or installed on the Premises by Lessee and that in any manner are attached to the floors, walls, or ceilings of the Plaza Building, shall be the property of the Landlord at the termination or expiration of this Lease. Lessee shall insure that all of the permanent improvements remain on the Premises during the Term and be surrendered with the Premises at the termination or expiration of this Lease without disturbance, molestation, or injury; provided, however, Lessee may remove its FF&E which were not paid for by Landlord if Lessee repairs any damage to the Premises caused by such removal.

(a) Improvements Funded by Landlord – As provided in Section 15, all of the funding provided by Landlord to Lessee to fund the Tenant Improvements shall be used solely for expansion and improvement of the Plaza Building and the outdoor patios and shall not be used to purchase Lessee's FF&E.

(b) Artwork – If Lessee affixes artwork to the interior or exterior walls of the Plaza Building and such artwork is paid for by Lessee and not by Landlord or SMAC, Lessee shall either (i) insure that the artwork can be removed from the walls without damage, (ii) arrange for the artists to remove their artwork from the Premises at the expiration or termination of this Lease, or (iii) obtain a written release from the artist to permit Landlord to remove or paint over the artwork without any liability to artist.

18. SIGNAGE. Lessee shall not place or permit to be placed any sign, advertisement, decoration, marquee or awning on the exterior of the Plaza Building or on the interior windows of the Premises without the prior written consent of Landlord. Lessee desires to install a new fixture on top of the building where the weather vane currently exists, which fixture may be either decorative art or a restaurant advertising sign. If the new weather vane fixture is signage, then it must meet the City's Sign Code. All signage must be made of durable material and not more than two (2) signs with the name of the business may be erected. Landlord's approval of Lessee's signs shall not be unreasonably withheld. Lessee's signage must meet all applicable governmental codes and regulations, including the City's Sign Code.

19. SURRENDER OF PREMISES AT END OF TERM. Lessee agrees on the last day of the Term, or sooner termination of this Lease, to surrender the Premises with appurtenances to the Landlord in "broom clean" condition, reasonable use and wear excepted, and to remove all of Lessee's FF&E, signs, and any personal property not affixed to the Plaza Building from the Premises. If Lessee fails to remove its FF&E, signs or other personal property from the Premises, at the option of Landlord, title to such property shall transfer to Landlord and Landlord may use or dispose of such property at its sole discretion without any liability to Lessee. On the last day of this Lease, Lessee shall surrender to Landlord all keys to any locks on exterior and interior doors within the Premises.

20. HOLDOVER. If Lessee shall for any reason holdover beyond the Term with Landlord's consent, express or implied, such holding over shall not be a renewal of this Lease but shall be a month-to-month tenancy subject to the terms and conditions of this Lease or subject to such other terms as Landlord may specify. Upon the expiration of the Term of the Lease, to the extent authorized under California law, Landlord may, without formal demand or notice of any kind, reenter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law, or by force or otherwise to remove Lessee and any other person or subtenant therefrom without being liable for any damages from such action.

21. WASTE/NUISANCE. Lessee shall, at its sole cost, keep and maintain the Premises in a safe, clean, sanitary, orderly and attractive condition. Lessee shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of the Cesar Chavez Plaza park by the public.

22. QUIET ENJOYMENT. Landlord covenants and represents that it has full right and lawful authority to enter into and perform the Landlord's obligations under this Lease and that it has a fee simple title in the Plaza Building of which the Premises is a part, free and clear of all conditions, covenants, restrictions, mortgages and other liens or defects in title of any nature whatsoever affecting the Premises, or the rights granted Lessee in this Lease. Landlord further covenants that if Lessee discharges its obligations set forth in this Lease to be performed by Lessee, Lessee shall have and enjoy during the Term the quiet and undisturbed possession of the Premises.

23. NONDISCRIMINATION. Lessee agrees that in its operation of the Premises, no discrimination, distinction, or restriction shall be made on account of the sex, color, race, religion, disability, ancestry, sexual orientation, medical condition, marital status, or national origin of a person or group contrary to the provisions of Section 51 of the Civil Code of the State of California, which is incorporated in this Lease by this reference, or any other applicable federal, state, or local law prohibiting discrimination.

24. NON-DISCRIMINATION IN EMPLOYEE BENEFITS. This Lease is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit C. Lessee is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance) in Exhibit C to assure compliance with these requirements.

25. MAINTENANCE OF THE PREMISES. In addition to the maintenance provisions set forth in other sections of this Lease, Lessee shall maintain the Premises, in the same order and condition after completion of the Tenant Improvements, except for wear and tear in the usual and ordinary operation of Lessee's business.

(a) Lessee shall be solely responsible for maintenance of the Premises as follows:

- (i) The "structural portions" of the Plaza Building, which term shall mean the foundations, exterior walls, concrete slabs, the beams and columns bearing the main load of the roof, and the roof;
- (ii) The exterior and interior doors, door hardware, windows, and caulking;
- (iii) Plumbing and sewage systems. The plumbing facilities serving the Premises shall not be used by Lessee for any other purpose than that for disposal of wastewater;
- (iv) Heating and air conditioning equipment;
- (v) Ventilation equipment, in particular the stove exhaust hood, and the kitchen fire suppression system and Lessee shall regularly remove the accumulated grease from the stove hood. Lessee shall have the stove hood and fire suppression system inspected annually and provide Landlord with a copy of the inspection report and findings;
- (vi) Roof leaks and replacements;
- (vii) Lighting bulbs and fixtures, both interior and exterior and including the patio fence lighting;
- (viii) All interior improvements including interior walls and partitions, counters, sinks, ceiling tiles, flooring and window coverings; and
- (ix) The two exclusive outdoor patios facing 9th Street and the fountain.

(b) Lessee shall be responsible for all costs for repairs to the Premises caused by graffiti or vandalism. Lessee shall promptly remove any graffiti in the Premises, on any of the patio furniture, and on the exterior walls of the Plaza Building. Lessee shall routinely paint the interior of the Plaza Building so that the Premises remain in an attractive condition. Lessee shall complete all repairs in a responsible and timely manner. Lessee shall complete emergency repairs in not to exceed five (5) working days. An "emergency repair" is a condition potentially affecting the health, safety or security of Lessee and its employees and patrons.

(c) If Lessee fails to properly maintain or repair the Premises, Landlord may do so at Lessee's cost as long as either Landlord has provided advance written notice to Lessee, or

by mutual agreement of the parties. If Lessee allows Landlord to perform such work, such right shall not be construed as constituting a duty upon Landlord to perform such work. Prior to Landlord performing such work, Landlord shall give written notice of its intention to perform the work and the estimated cost to Lessee. If Lessee declines to perform the work, Lessee shall reimburse Landlord for costs of the work within thirty (30) days after receipt of the invoice from Landlord which details the work performed and costs incurred.

26. ABANDONMENT OF PREMISES. Lessee shall not vacate or abandon the Premises at any time during the Term. If Lessee abandons, vacates, or surrenders the Premises, or be dispossessed of occupancy by process of law or otherwise, prior to expiration of the Term, Lessee shall forfeit the Deposit, and Landlord may pursue other remedies as set forth in Section 35. Any Lessee FF&E, signs, or other personal property belonging to Lessee which is left on or at the Premises shall be deemed, at the option of Landlord, to be the property of Landlord and Landlord may use or dispose of such FF&E and other personal property at its sole discretion without any liability to Lessee.

27. COMPLIANCE WITH LAWS. Lessee shall, at its sole cost and expense, comply with all of the requirements of all local, state and federal laws and regulations currently in effect and as such requirements may change in the future which pertain to Lessee's use and occupancy of the Premises. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Landlord is a party thereto or not, that Lessee has violated any federal, state or local statute, ordinance or regulation in its use or operation of the Premises shall be conclusive of the fact as between Landlord and Lessee.

Lessee represents, warrants, and covenants that Lessee will remain in compliance with all applicable local, state and federal laws, ordinances and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment (collectively the "Environmental Laws"), and that Lessee will not permit to occur any release, generation, storage, disposal or treatment of any hazardous material as that term is defined in any of the Environmental Laws. Lessee shall immediately notify Landlord of any release, generation, storage, disposal or treatment in violation of the Environmental Laws and Lessee shall take such necessary remediation measures at Lessee's sole cost and expense to the complete satisfaction of Landlord. Lessee shall immediately notify Landlord of any complaints, citations, inquires or notices from any governmental entity relating to compliance with Environmental Laws. Lessee represents, warrants and covenants that it has or will obtain all governmental permits relating to its use and operation of the Premises as required by applicable Environmental Laws, and that such permits will remain in effect and Lessee will comply with all of the permit requirements during the Term.

28. INDEMNITY. This Lease is made upon the express condition that Lessee shall defend, indemnify and hold harmless Landlord and its officers, employees and agents from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the Landlord's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities

arise out of or are in any way connected with Lessee's and its employees, agents, invitees, and contractors use and occupancy of the Premises and performance of its rights and obligations under this Lease, whether or not such Liabilities are caused in part by Landlord or its officers, employees or agents; provided, however, that the foregoing indemnity does not apply to (a) Liabilities arising from the sole negligence or willful misconduct of Landlord and its officers, employees or agents, and (b) Liabilities resulting solely from a structural defect of the Plaza Building in which the Premises are situated which defect was not known when this Lease was executed and which was not caused in whole or in part by the negligence or intentional act of Lessee, or its employees, agents, invitees or contractors. This indemnity provision shall survive the termination or expiration of this Lease.

29. INSURANCE REQUIREMENTS. During the Term of this Lease, Lessee shall purchase, at its sole cost and expense, and maintain in full force the following insurance coverages:

- (a) General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 covering liability arising from premises, operations, independent contractors, personal injury, products completed, operations and liability assumed under any insured contract.
 - (i) The amount of the policy shall not be less than One Million Dollars (\$1,000,000), Single Limit Per Occurrence, issued by an admitted insurer, or insurers, as defined by the California Insurance Code.
 - (ii) The policy shall include coverage for premises, operations, products and completed operations and contractual liability and liquor liability for the term of the policy.
 - (iii) The policy shall also include a fire legal liability limit of \$250,000 per occurrence.
 - (iv) The policy shall provide that the City of Sacramento, its officers, employees, and agents are to be named as "additional insureds."
 - (v) The policy shall stipulate that this insurance will operate as primary insurance and that no other insurance held by Landlord or other named insured will be called on to contribute to a loss covered thereunder.
 - (vi) The policy shall be placed with an insurer with a Bests' rating of not less than A.V.
 - (vii) Landlord shall be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.
- (b) Worker's Compensation and Employer's Liability Insurance for all employees of Lessee shall be maintained in strict compliance with State laws, and include a waiver of subrogation in favor of Landlord. The Employer's Liability Insurance limit shall be not less than One Million Dollars (\$1,000,000).

- (c) For all of Lessee's FF&E and personal property at the Premises, including the Tenant Improvements, a policy of standard fire and all risk extended coverage for damages from special perils, including fire, flood, acts of nature, vandalism and malicious endorsements, shall be maintained in the amount of one hundred percent (100%) of the full replacement value. The proceeds from this policy shall be used by Lessee for the replacement of Lessee's FF&E, personal property, and restoration of the Premises with Lessee's Tenant Improvements.
- (d) Except for Landlord's retain liability set forth in Section 28, Lessee agrees to waive all rights against Landlord and its officers, employees and agents for recovery of damages to the extent Lessee's damages are covered by the insurance required under this Section 29. Neither Landlord nor its officers, directors, employees, or agents shall be liable to Lessee or to any insurance company (by way of subrogation or otherwise) insuring Lessee for any loss or damage to any building, structure or other tangible item, when such loss is caused by any of the perils that are or could be insured against under a standard policy of full Replacement Cost insurance for fire, theft and all risk coverage, or losses under workers' compensation laws and benefits (including, without limitation, consequential damages, business interruption or loss of profits in connection therewith); even though such loss or damage might have been occasioned by the negligence, gross negligence or willful misconduct of Landlord, its officers, directors, employees, or agents. Lessee shall notify its respective insurance carriers of this provision and shall obtain all necessary endorsements to the insurance policies of Lessee to give effect to this waiver of subrogation.
- (e) Lessee shall furnish Landlord with certificate(s) of insurance and with original endorsements effecting coverage required by this Section 29 prior to the Lease Commencement Date. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Lessee shall furnish Landlord with insurance certificates annually to verify continued coverage during the Term. The certificates and endorsements are to be forwarded to:

EBIX
PO Box 257
Portland, MI, 48875-0257
Phone: (800) 763- 9687
Fax: (770) 325-3340
Email: CertsOnly-Portland@ebix.com

- (f) Failure of Lessee to maintain the required insurance coverages will be considered a material breach of this Lease. It is understood and agreed that approval of the insurance certificates and policies by Landlord shall in no way affect the terms and conditions of the indemnity provision in Section 28 of this Lease, which shall remain in full force and effect. By specifying the minimum insurance coverages in this Section, Landlord does not represent that the coverage and limits will necessarily be adequate to protect Lessee and such coverage and limits shall not

be deemed as a limitation on Lessee's liability under the indemnity provision in Section 28 of this Lease.

- (g) The insurance requirements in this Section are subject to review and revision every five years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards.

30. ENTRY BY OWNER. Lessee shall permit Landlord and its officers, employees, agents and contractors to enter the Premises at all reasonable times with a minimum of 24 hours' advance notice from Landlord, (except in the case of emergency, in which case Landlord may enter as reasonably necessary) for the purpose of: (a) inspecting the Premises to verify Lessee's compliance with the provisions of this Lease, (b) making repairs, alterations, or additions to portions of the Premises in compliance with the provisions of this Lease, and (c) posting notices of non-liability for Tenant's Improvements; without any rebate of Rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises. Landlord shall use its best efforts to not interfere with the operation of Lessee's business during such entry. If Landlord's repairs or alterations of the Premises interrupt Lessee's operations for longer than five (5) consecutive business days, Rent shall be abated until the repairs or alterations are completed.

31. NOTICE OF PREMISES FOR RENT. Landlord shall have the right, at any time within sixty (60) days prior to the expiration or termination of this Lease, to place on the exterior of the Plaza Building a "for lease" sign.

32. DAMAGE OR DESTRUCTION OF PLAZA BUILDING. In the event of a partial or complete destruction of the Plaza Building where the Premises is located during the Term, from any cause for which Landlord is responsible, Lessee shall be entitled to abatement of Rent based on the number of days required for Landlord to undertake and complete the repairs if the work interferes with the use and occupancy of the Premises by Lessee for more than five (5) consecutive business days. The provisions of Civil Code Section 1929 which require Landlord to make repairs to the Plaza Building to address damages caused by Landlord's failure to properly maintain the building is hereby waived by Lessee. If Landlord elects not to make repairs to the Plaza Building which are required for Lessee to continue its use and occupancy of the Premises, or the repairs cannot be completed within one hundred twenty (120) calendar days, this Lease may be terminated at the option of either party by giving thirty (30) days advance written notice to other party. A total destruction of the Plaza Building, or damages which require the complete replacement of the building, shall result in the termination of this Lease as of the date that the building was destroyed or damaged beyond repair.

33. NO ASSIGNMENT OR SUBLETTING. Landlord selected Lessee to Lease the Premises based on Lessee's experience in operating a food establishment, its financial capacity, and its Business Plan, among other factors. Lessee shall not assign this Lease, or any interest, right or obligation under this Lease to any person or entity. Lessee shall not sublet the Premises or any part of the Premises. Any such assignment or subletting without the Landlord's express written consent shall be void and Landlord shall have the right to terminate this Lease without any liability to Lessee. This Lease shall not be assignable to Lessee's lender or anyone holding a security interest in Lessee's FF&E and personal

property located at the Premises, or by operation of law, without the prior written consent of Landlord. Landlord may withhold its approval of any assignment or subletting of this Lease by Lessee in Landlord's sole and absolute discretion.

34. INSOLVENCY/RECEIVER. In the event of (a) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act, shall constitute a breach of this Lease by Lessee.

35. REMEDIES OF LANDLORD. The following rights and remedies shall be available to Landlord in the event Lessee commits any default of its obligations under his Lease. Lessee shall be deemed to be in breach of this Lease after Landlord issues written notice to Lessee which specifies the nature of the violation and Lessee has not cured the breach within the period set forth in the notice. The cure period established by Landlord shall be a reasonable period of time for Lessee to cure a non-monetary breach. The Landlord's rights and remedies listed below shall not be exclusive and shall be in addition to any and all rights and remedies now or hereafter allowed by law:

- (a) Failure to pay Rent - All monetary obligations of Lessee to Landlord under the terms of this Lease, including, without limitation, Late Fees and returned check charges are deemed to be "Rent" for the purposes of collection.
- (b) Abandoning the Premises - The Lease shall continue in full force and effect for so long as Landlord does not issue written notice terminating Lessee's right to possession of the Premises. Landlord shall be entitled to enforce all of its rights and remedies under this Lease, including the right to collect Rent as the charges becomes due. It is hereby specifically agreed between the parties that Landlord's acts of maintenance, efforts to relet the Premises, and/or the appointment of a receiver on initiative of Landlord to protect its interest under this Lease will not constitute a termination of Lessee's right to possession of the Premises.
- (c) Additional Damages - If Landlord elects to terminate this Lease and Lessee's right to possession of the Premises, Landlord may recover additional damages from Lessee as follows:
 - (i) The worth at the time of the damage award of the amount of unpaid Rent for the balance of the Term;
 - (ii) The worth at the time of the damage award of the amount of market rate rent for the Premises in excess of the Rent rate in this Lease which could have been earned after the date of termination of this Lease until the date of the damage award;
 - (iii) The amount owed to repair the damages to the Premises caused by Lessee and to make it suitable to relet;
 - (iv) Any other amount necessary to compensate Landlord for all detriment

proximately caused by Lessee's default; and

- (v) The monetary damages shall accrue interest until the debt is paid at the rate of ten (10) percent compounded annually.
- (d) Waiver - Efforts by Landlord to mitigate the damages caused by Lessee's breach of this Lease shall not waive Landlord's right to recover damages under this Section. Nothing in this Section 35 shall affect the right of Landlord to also recover from Lessee any costs, expenses or damages under Landlord's right to indemnification against liability arising from or related to Lessee's acts or omissions occurring prior to termination of this Lease, the costs for removal of mechanic's liens or other liens, and the failure of Lessee to comply with other obligations and requirements as set forth in this Lease.

36. JOINT AND SEVERAL OBLIGATIONS. If more than one individual or entity comprises Lessee, the obligations imposed on Lessee under this Lease shall be joint and severable as to each individual or entity that comprises Lessee.

37. NOTICES. Any and all notices or demands by or from either party shall be in writing and served either personally or by mail. If served personally, service shall be conclusively deemed made at the time of service. If served by mail, service of notices or demands shall be conclusively deemed made as of the time of deposit in the United States mail, postage paid, or if by certified mail, return receipt requested.

Any notice or demand to Landlord or Lessee may be given to:

LANDLORD:

City of Sacramento
Department of Parks and Recreation
Attn: Support Services Manager
915 I Street, 3rd Floor
Sacramento, CA 95814
(916) 808-5172

LESSEE:

Ernesto Delgado
La Cosecha by Mayahuel, LLC
1200 K Street, Ste 3
Sacramento CA 95814
(916) 441-7200

Any party may change the address for notice by giving written notice to the other party as set forth above.

38. WAIVER. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of any delinquent payment of Rent by Landlord shall not be deemed to be a waiver of the breach by Lessee of its obligation to make timely payment or its obligation to comply with any other term, covenant, or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of the Rent payment.

39. BINDING ON SUCCESSORS. The covenants and conditions in this Lease shall apply to and bind the heirs, successors, executors, administrators and assigns of Lessee.

40. NO JOINT VENTURE. The parties to this Lease do not constitute a joint venture, partnership or association other than that of landlord and tenant pursuant to this Lease.

41. TIME. Time is of the essence in the performance of Lessee's obligations under this Lease.

42. EXCUSABLE DELAYS. If the performance of any act required by this Lease to be performed by either party is prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials or permits, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the party required to perform the act; the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. If any of the foregoing delays or restrictions occur during the Build-Out Period and prevent Lessee from opening its business by the commencement of the Initial Term, Lessee has the option to terminate this Lease. However, nothing contained in this Section 42 shall excuse the prompt payment of Rent by Lessee as required by this Lease or the performance of any act rendered difficult solely because of Lessee's financial condition or capacity.

43. NO WARRANTIES BY LANDLORD. Landlord makes no representation or warranty of any kind, express or implied, as to the suitability of the Premises for Lessee's specified use. Lessee represents and warrants that it has independently made a full and thorough investigation and examination of the Premises and that it is entering this Lease relying only upon facts ascertained from said independent investigation.

44. MEASUREMENT OF FLOOR SPACE OF BUILDING. Prior to execution of this Lease, Lessee had determined, at its sole cost and expense, the net interior floor space of the Plaza Building after expansion. After completion of the Tenant Improvements and prior to the Rent Commencement Date, the interior floor space may be measured by a licensed architect to verify the size that is the basis for the Rent amount. If Lessee does not exercise its right to measure the floor space, Lessee hereby acknowledges and agrees that it accepted the floor space calculation as set forth in Section 1 and releases and waives any rights against Landlord if the actual floor space calculation differs from the floor spaces set forth in Section 1. If during the Term the Premises are altered by Lessee as permitted in this Lease to expand or contract the interior spaces, then Landlord will re-measure the spaces and an Addendum shall be attached to this Lease this to reflect the recalculated floor spaces and the adjustment of Rent based on the per square foot rental rates set forth in Section 4.

45. RULES AND REGULATIONS. Landlord shall have the right from time to time to promulgate reasonable rules and regulations for the safety, maintenance

and cleanliness of Cesar Chavez Plaza park in which the Premises is located. Upon delivery of a copy of such rules and regulations, Lessee shall comply with the rules and regulations and any violation shall constitute a breach and default of this Lease. If there is a conflict between the Lease and any rule or regulation, the Lease shall prevail. No such rules and regulations shall require Lessee to pay any additional Rent under this Lease.

46. **CAPTIONS.** The title or headings to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

47. **ENTIRE AGREEMENT; MODIFICATION.** The parties have each carefully reviewed this Lease and have agreed to each term in this Lease. No ambiguity shall be presumed to be construed against either party. This Lease contains all of the terms and conditions as agreed upon by the parties, and supersedes any and all oral or written communications by and between the parties. No waiver, alteration, modification, or amendment of this Lease shall be valid unless made in writing and signed by the parties.

IN WITNESS WHEREOF, Landlord and Lessee have executed this Lease on the date herein above first written.

LESSEE:

LANDLORD:

LA COSECHA BY MAYAHUEL, LLC
a California limited liability company

CITY OF SACRAMENTO
a municipal corporation

BY:


Ernesto Delgado
Managing Member
RESTAURANT BAR
OWNER & OPERATOR

BY:

Pamela Sloan, Interim Director
Parks and Recreation Department
For: John F. Shirey, City Manager

Approved as to Form:

Date:

12/02/15

BY:

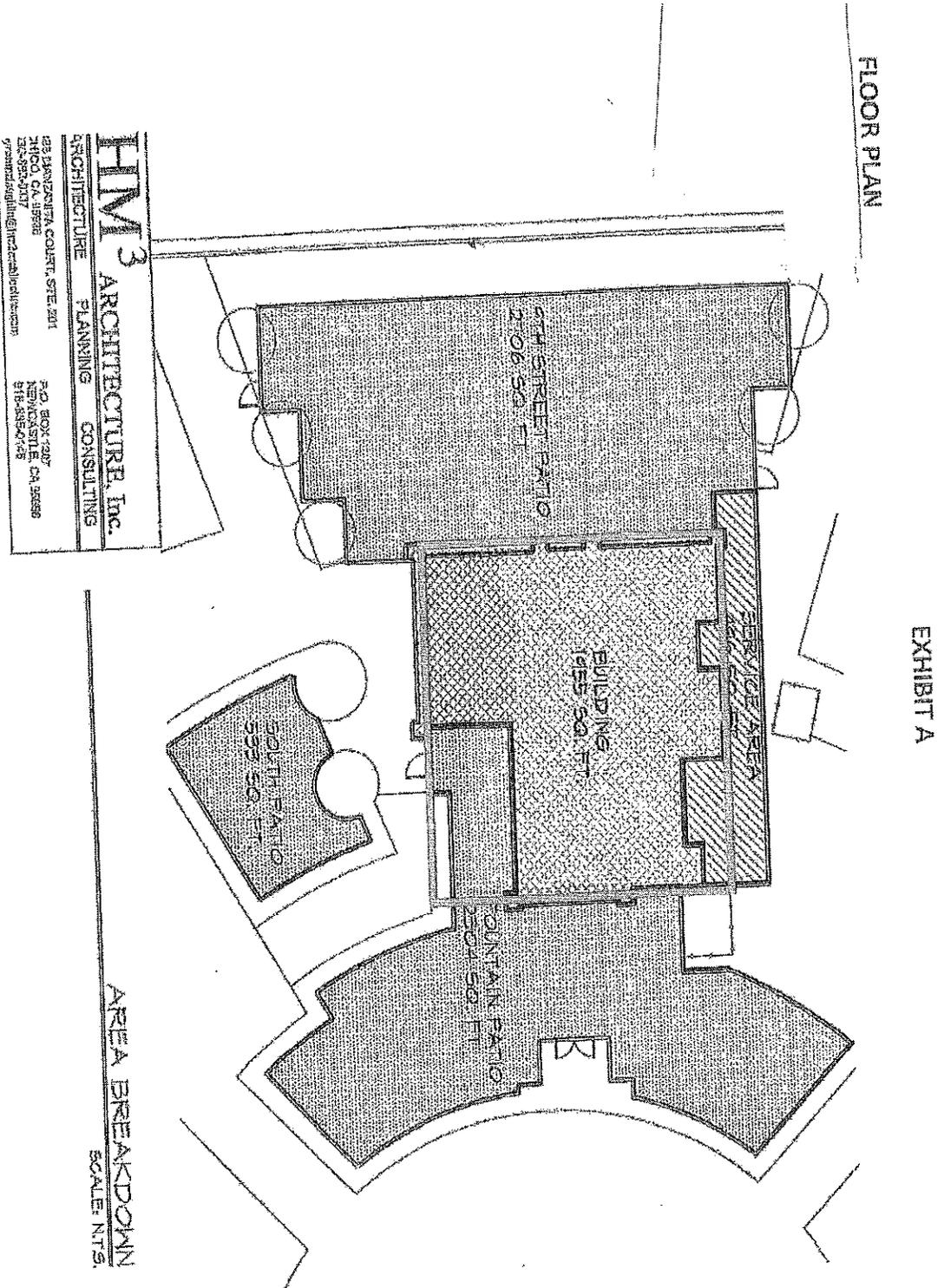
Senior Deputy City Attorney

Attest:

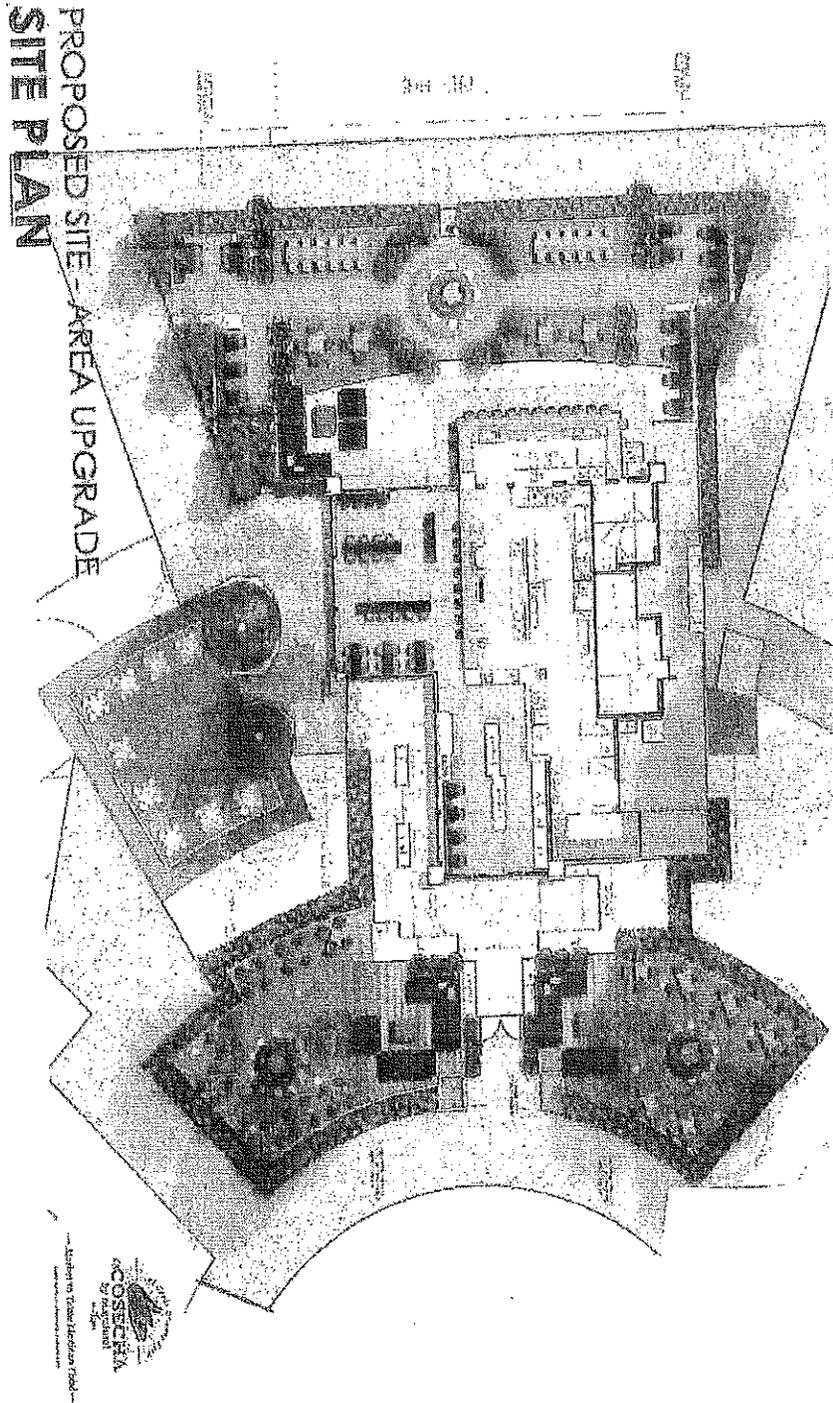
BY:

Assistant City Clerk

**Exhibit A
Premises Diagram**



**Exhibit B
Premises Improvement Plan**



SITE PLAN

Handwritten signature or initials in the bottom right corner of the page.

Exhibit C

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Lessee:

Address: 1013 L Street, Sacramento, CA 95814

The above named Lessee ("Lessee") hereby declares and agrees as follows:

1. I have read and understand the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") provided to me by the City of Sacramento ("City") and attached to my City contract or agreement ("Contract").
2. As a condition of receiving the City Contract, I agree to fully comply with the Requirements, as well as any additional requirements that may be specified in the City's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. I understand, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance, are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

I agree that should I offer any of the above listed employee benefits, that I will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. In the event that the actual cost of providing a benefit to a domestic partner or spouse, exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, I will not be required to provide the benefit, nor shall it be deemed discriminatory, if I require the employee to pay the monetary

difference in order to provide the benefit to the domestic partner or to the spouse.

- b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.
- c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.
- d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner status.
- e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate, in the infrastructure, nondiscrimination in employee benefits.

The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date the Contract is executed with the City.

- g. Until the expiration of a current collective bargaining agreement(s) where, in fact, employee benefits are governed by a collective bargaining agreement(s).
- h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the agreement(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
- i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the

collective bargaining agreement(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

5. I understand that failure to comply with the provisions of Section 4. (a) through 4. (i), above, will subject me to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full; deemed ineligible for future contracts for up to two (2) years; the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.
7. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one lessee is available to enter into a contract or agreement to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the Ordinance requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

9. In consideration of the foregoing, I shall defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.



12/02/15

Signature of Authorized Representative

Date

RESTAURANTEUR,

ERNESTO DELGADO

Print Name OWNER & OPERATOR

MANAGING MEMBER

Title

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit;

excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as attachment "B."

Attachment A

**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION
IN EMPLOYEE BENEFITS CODE**

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Contract Services Unit
915 I St., 2nd Floor

Sacramento, CA 95814

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B

**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION
IN EMPLOYEE BENEFITS CODE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Contract Services Unit
915 I St., 2nd Floor
Sacramento, CA 95814
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

RESOLUTION NO. 2015-___

Adopted by Sacramento Redevelopment Agency Successor Agency

**AUTHORIZE TRANSFER OF \$107,000 IN MERGED DOWNTOWN BOND FUNDS
AND APPROVING THE MERGED DOWNTOWN EXCESS BOND
PROCEEDS EXPENDITURE AGREEMENT**

BACKGROUND:

- A. Pursuant to Health and Safety Code Section 34191.4, because the Redevelopment Agency Successor Agency (RASA) has obtained a Finding of Completion from the State Department of Finance (DOF), the unspent redevelopment bond proceeds can be used for capital improvement projects within the redevelopment project area.
- B. At the August 17, 2015 meeting of the Oversight Board for RASA, authorization to transfer all of the unspent bond proceeds within six redevelopment project areas to the City of Sacramento was approved. On October 6, 2015, DOF approved this Oversight Board. These bond payments are listed on the Recognized Obligation Payment Schedule (ROPS) for the January through June 2016 period, and DOF is to approve this ROPS before the end of November.
- C. Cesar Chavez Plaza is located within the Merged Downtown Redevelopment Project Area. The following non-housing bond funds are now available for expenditure and with interest totals \$107,000:

2002 Master Lease Downtown Tax Exempt:	\$ 1,597
2005 TAB Downtown CIP Tax Exempt:	\$26,989
2005 TAB Downtown CIP Taxable:	\$73,529
- D. RASA desires to transfer the Merged Downtown excess bond proceeds to the City of Sacramento to invest in improvements to Cesar Chavez Plaza (the "Project") in accordance with the provision in the Excess Bond Proceed Expenditure Agreement.
- E. The transfer of the RASA proceeds to the City is an administrative fiscal activity that is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(4).

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE
REDEVELOPMENT AGENCY SUCCESSOR AGENCY RESOLVES AS FOLLOWS:**

- Section 1. The above findings are true and correct.
- Section 2. In accordance with Health and Safety Code Section 33445, RASA finds and determines that:

- (a) The Cesar Chavez Plaza Improvement Project will benefit the Merged Downtown Redevelopment Project Area eliminate blighting conditions by improving the Cesar Chavez Plaza to provide amenities in the Project Area.
- (b) No other reasonable means of financing the Project is available to the community.
- (c) The payment for the cost of the Project with Merged Downtown Redevelopment Bond funds is consistent with the bond covenants and Merged Downtown Redevelopment Plan and Implementation Plan.

Section 3. RASA hereby appropriates \$107,000 in Merged Downtown Redevelopment Bond funds as listed above for the Cesar Chavez Park Improvement Project. The funds are to be transferred to the City of Sacramento in accordance with the approved ROPS 15-16B.

Section 4. The City Manager, on behalf of RASA, is authorized to execute the Merged Downtown Excess Bond Proceeds Expenditure Agreement with the City of Sacramento to allocate the \$107,000 for construction of the Cesar Chavez Park Improvement Project.

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Exhibit A - Merged Downtown Excess Bond Proceeds Expenditure Agreement

MERGED DOWNTOWN EXCESS BOND PROCEEDS EXPENDITURE AGREEMENT

Regarding Allocation of Agency Bond Funds

Cesar Chavez Plaza Improvement Project

Background

- A. On January 31, 2012, the City of Sacramento ("City") elected to serve as the successor to the Redevelopment Agency of the City of Sacramento ("Agency") for the Agency's non-housing assets and liabilities pursuant to the provisions of AB 1x 26 (Chapter 5, Statutes of 2011). The Agency was dissolved as of February 1, 2012, and all of its non-housing assets were transferred to the City in its capacity as the Redevelopment Agency Successor Agency (RASA).
- B. Under AB 1484 (Chapter 16, Statutes of 2012; Health and Safety Code section 34173, subd. (g)), the dissolution law was clarified to provide that RASA is a separate legal entity from the City. Also, AB 1484 provided that the Agency's bond fund assets can be expended in a manner consistent with the bonds covenants after compliance with certain requirements. On September 20, 2013, RASA received its Finding of Completion from the State Department of Finance (DOF) and is now able to spend the Agency's unencumbered bond funds in a manner consistent with the original bond covenants.
- C. AB 1484 (Health and Safety Code section 34180, subd. (b)) requires approval of the Oversight Board for RASA to allocate the Agency bond funds in a manner consistent with the original bond covenants and the payment of these bond funds must be included on a Recognized Obligations Payment Schedule (ROPS) as an excess bond proceeds obligation that is subject to approval by both the Oversight Board and DOF.
- D. On August 17, 2015, the Oversight Board for RASA approved transfer of all unspent non-housing Agency bond proceeds to the City of Sacramento pursuant to Health and Safety Code section 34191.4(c) and on October 6, 2015 DOF approved that funding allocation. Prior to the Effective Date (defined below), the City Council, acting as the board of directors for RASA, and the City approved the transfer of the Merged Downtown non-housing unspent bond funds for the Cesar Chavez Plaza Improvement Project and authorized RASA and the City to enter into this Excess Bond Proceeds Expenditure Agreement ("Agreement").

Agreement

NOW, THEREFORE, RASA and the City agree as follows:

1. The "Effective Date" of this Agreement is as follows:

Effective Date:	January 1, 2016
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2. RASA and City hereby agree that RASA will pay City the Agency bond funds in the amount as set out below, and City will use the funds to for the Project as defined below, consistent with the bond indenture pursuant to Health and Safety Code section 34191.4(c), and subject to the terms and conditions set out in this Agreement.

Source of Funds:	2002 Master Lease Downtown Tax Exempt:	\$ 1,597
	2005 TAB Downtown CIP Tax Exempt:	\$26,989
	2005 TAB Downtown CIP Taxable:	\$73,529, plus interest

Amount of Funds:	\$107,000
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Project Description:	Improvements to Cesar Chavez Plaza park, including renovation of the existing café/bathroom building for a restaurant
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Project Location:	901 I Street
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Project Area:	Merged Downtown
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3. RASA shall transfer to the City the Agency bond funds as defined in Section 2, above, in the amount and in accordance with the ROPS 15-16B, by no later than February 1, 2016. City shall use these funds for the Project as described above.
4. Neither RASA, nor any of its officers or employees, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by City under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, City shall fully indemnify, defend and hold RASA harmless from any liability imposed for injury to persons or property occurring by reason of anything done or omitted to be done by City under or in connection with RASA's funding of work undertaken by City pursuant to this Agreement.
5. This Agreement shall terminate upon the completion of all obligations of the Parties.

The Parties have entered into this Agreement as of the Effective Date.

CITY OF SACRAMENTO

REDEVELOPMENT AGENCY SUCCESSOR AGENCY

By:

By:

John F. Shirey, City Manager

John F. Shirey, City Manager

Approved as to Form:

Approved as to Form:

Senior Deputy City Attorney

Senior Deputy City Attorney

Attest:

Attest:

Assistant City Clerk

Assistant City Clerk