

**GOVERNING BOARD**

**Vito Chiesa, Chair**  
Supervisor, Stanislaus County

**Buddy Mendes, Vice Chair**  
Supervisor, Fresno County

**Drew M. Bessinger**  
Councilmember, City of Clovis

**David Couch**  
Supervisor, Kern County

**Christina Fugazi**  
Vice Mayor, City of Stockton

**Deborah Lewis**  
Councilmember, City of Los Banos

**Tania Pacheco-Werner, PhD.**  
Appointed by Governor

**Lloyd Pareira**  
Supervisor, Merced County

**Craig Pedersen**  
Supervisor, Kings County

**Alvaro Preciado**  
Mayor, City of Avenal

**Robert Rickman**  
Supervisor, San Joaquin County

**Alexander C. Sherriffs, M.D.**  
Appointed by Governor

**Amy Shuklian**  
Supervisor, Tulare County

**Tom Wheeler**  
Supervisor, Madera County

**Vacant**  
Small City

---

**Samir Sheikh**  
Executive Director  
Air Pollution Control Officer

---

Northern Region Office  
4800 Enterprise Way  
Modesto, CA 95356-8718  
(209) 557-6400 • FAX (209) 557-6475

---


Central Region Office  
1990 East Gettysburg Avenue  
Fresno, CA 93726-0244  
(559) 230-6000 • FAX (559) 230-6061

---

Southern Region Office  
34946 Flyover Court  
Bakersfield, CA 93308-9725  
(661) 392-5500 • FAX (661) 392-5585

---

DATE: September 15, 2022

TO: SJVUAPCD Governing Board 

FROM: Samir Sheikh, Executive Director/APCO  
Project Coordinator: Brian Clements

RE: **ITEM NUMBER 22: APPROVE VOLUNTARY EMISSION REDUCTION AGREEMENT WITH MAJESTIC REALTY COMPANY TO MITIGATE AIR QUALITY IMPACTS**

**RECOMMENDATION:**

1. Approve and authorize the Chair to sign the attached Voluntary Emission Reduction Agreement (VERA) with Majestic Realty Company to receive funds in the amount of \$4,583,446 to mitigate air quality impacts from the Majestic Gateway Project (Project) located in the City of Bakersfield.
2. Authorize staff to identify, fund, and manage emission reduction projects to mitigate air quality impacts from the Project.

**BACKGROUND:**

Since 2005, the District has entered into 50 VERAs with project proponents to mitigate air quality impacts of their projects. These VERAs to date have generated over \$116 million that the District has invested in local emission reduction projects, achieving total emission reductions of over 12,300 tons of Nitrogen Oxides (NOx), 1,706 tons Volatile Organic Compounds (VOC)/Reactive Organic Gases (ROG), and 2,070 tons of Particulate Matter 10 microns or less in size (PM10).

The Project proposed by Majestic Realty Company consists of the construction and operation of 1,012,185 square-foot distribution warehouse and 187,500 square feet of retail development located on approximately 90 acres in Bakersfield, CA. The City of Bakersfield (City) is serving as Lead Agency for the Project under the California

Environmental Quality Act (CEQA), and prepared an Environmental Impact Report (EIR) for the purposes of satisfying CEQA requirements. The EIR contains a mitigation measure that requires Majestic Realty Company to enter into a VERA with the District to fully mitigate the Project's operational-related emissions of NO<sub>x</sub>, ROG, and PM<sub>10</sub> to net zero levels.

The purpose of this item is to seek your Board's approval of the emission reduction agreement with Majestic Realty Company to achieve the required mitigation. The agreement before you today is similar to previous agreements approved by your Board.

### **DISCUSSION:**

In 2005, at the urging of private developers, the District in collaboration with Kern County developed an innovative CEQA mitigation measure known as a Voluntary Emission Reduction Agreements or VERAs. These agreements are designed to provide developers with enforceable and legally defensible means to quantify and mitigate emission increases beyond emission reductions required by applicable laws and regulations. Approvals of VERAs by your Governing Board, however, do not constitute approval of the underlying development project as the decision rests with the lead agency.

A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of air emissions increases through a process that funds and implements emission reduction projects administered through the District's emission reduction incentive grant programs. A VERA can be implemented to address air quality impacts from both construction and operational phases of a project. The emission reductions secured through VERAs are "surplus" of existing regulations, achieving reductions earlier or beyond those required by regulations.

Dollars provided by the project proponent are reinvested in the Valley to reduce emissions. Utilizing the District's highly successful grant administration program, the funds generated there will be awarded to Valley businesses, residents, and municipalities to generate real quantifiable reductions in emissions, generally with funding priority for emissions reductions near the location of the emissions increases addressed by the VERA. The following are some examples of how these funds will be utilized to reduce air pollution:

- Grants to Valley businesses to electrify or replace existing diesel-powered off-road equipment and agricultural tractors
- Grants to Valley businesses to replace old trucks with new low-emission trucks
- Grants to Valley school districts to replace older and high-polluting school buses
- Grants to Valley municipalities to replace older transit buses and other vehicles
- Grants to Valley residents to purchase cleaner personal vehicles
- Grants to Valley residents to repair older high polluting vehicles

- Grants to Valley residents to replace fireplaces and non-certified wood burning stoves with natural gas inserts or clean burning EPA-certified units

Over the years, the District has built a reputation for excellence in the implementation of these programs, as highlighted in multiple audits by state agencies that commended the District's incentive programs for their efficiency and effectiveness. The District's incentive programs have invested over \$4.5 billion in public and private funding for clean air projects reducing over 222,000 tons of emissions.

### **MITIGATION OF PROJECT OPERATIONAL CRITERIA POLLUTANT EMISSIONS:**

As discussed above, the City of Bakersfield prepared an EIR that requires Majestic Realty Company to fully mitigate Project operational-related NO<sub>x</sub>, VOC/ROG, and PM<sub>10</sub> emissions to net zero. Given the District's experience in administering grants for emission reduction projects, with adequate funding, the District can bring about sufficient emission reductions from existing sources to permanently mitigate the Project NO<sub>x</sub>, VOC/ROG, and PM<sub>10</sub> operational-related emissions.

The agreement requires payment in the amount of \$4,583,446 for the District to fully mitigate 241.5 tons of NO<sub>x</sub>, 103.7 tons of VOC/ROG, and 130.9 tons of PM<sub>10</sub> emissions expected to result from Project operational-related activities. All mitigation funds collected will be used for emission reduction projects. The emission reductions will be in place contemporaneously with operational emissions of the project, providing direct air quality benefits in the San Joaquin Valley. The District will establish a separate budgetary account for these funds, and will provide tracking and status reports documenting fund expenditures and the emissions reductions achieved for the Project.

### **FISCAL IMPACT:**

Under the terms of the agreement, Majestic Realty Company is expected to pay the District \$4,583,446 in mitigation funds. The District's 2022-23 budget contains adequate revenue estimates and appropriations to facilitate the receipt of mitigation funds from Majestic Realty Company and for expenditures of those funds in accordance with the VERA.

*Attachment: Voluntary Emission Reduction Agreement No. 20220234 (20 pages)*

San Joaquin Valley Unified Air Pollution Control District  
Meeting of the Governing Board  
September 15, 2022

**APPROVE VOLUNTARY**  
**EMISSION REDUCTION AGREEMENT WITH MAJESTIC REALTY COMPANY**  
**TO MITIGATE AIR QUALITY IMPACTS**

**Attachment:**

**VOLUNTARY EMISSION REDUCTION AGREEMENT NO.20220234**

**(20 PAGES)**

1                                   **VOLUNTARY EMISSION REDUCTION AGREEMENT 20220234**

2                   This Voluntary Emission Reduction Agreement (“Agreement”) is entered into as  
3 of \_\_\_\_\_ by and between Majestic Realty Company (“Developer”), and the  
4 SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, an air  
5 pollution control district formed pursuant to California Health and Safety Code section  
6 40150, et seq. (“District”).

7   **RECITALS**

8                   **WHEREAS**, the Majestic Gateway Project (“Project”), consists of 1,012,185  
9 square feet of warehouse development and 187,500 square feet of retail development  
10 on approximately 90 acres and is located in Bakersfield, California, as more particularly  
11 described in Exhibit A attached hereto; and

12                   **WHEREAS**, the Project is subject to the California Environmental Quality Act  
13 (“CEQA”) codified at California Public Resources Code section 21000, et seq.; and

14                   **WHEREAS**, the City of Bakersfield (“City”) is the CEQA lead agency (“Lead  
15 Agency”) and has prepared an Environmental Impact Report (“Environmental  
16 Document”) for the Project; and

17                   **WHEREAS**, the Project incorporates mitigation measures and design features  
18 (“Emission Reduction Design Features”), in order to significantly reduce the air quality  
19 impacts associated with the Project; and

20                   **WHEREAS**, despite incorporation of the Emission Reduction Design Features,  
21 without certain additional reductions the Project would cause impacts on air quality within  
22 the geographical boundaries of the San Joaquin Valley Unified Air Pollution Control  
23 District, as depicted in Exhibit C attached hereto and incorporated herein (the “District  
24 Boundaries”); and

25                   **WHEREAS**, Developer has volunteered to implement additional emission  
26 reduction measures, as a means of reducing the Project’s impacts on air quality; and

27                   **WHEREAS**, pursuant to Mitigation Measure AIR-1 in the Environmental  
28 Document, this Agreement is identified as a mitigation measure to fully mitigate air quality

1 impacts to Net Zero for the Project as specified in Exhibit B; and

2       **WHEREAS**, Developer desires to fully comply with all requirements of CEQA,  
3 including all requirements relating to the mitigation of air quality impacts arising from or  
4 in connection with the Project; and

5       **WHEREAS**, District is an air pollution control district formed by the counties of  
6 Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare, pursuant to  
7 California Health and Safety Code section 40150, et seq.; and

8       **WHEREAS**, District is responsible for developing and implementing air quality  
9 control measures within the District Boundaries, including air quality control measures  
10 for stationary sources, transportation sources, and indirect sources; and

11       **WHEREAS**, the District implements and administers several, established,  
12 Governing Board-approved Incentive Programs including those listed in Exhibit E, and  
13 many others.

14       **WHEREAS** the District's Incentive Programs have been developed around  
15 several core principles, including cost-effectiveness, integrity, effective program  
16 administration, excellent customer service, the efficient use of District resources, fiscal  
17 transparency, and public accountability; and

18       **WHEREAS**, the emission reductions to be achieved pursuant to this Agreement  
19 shall be achieved through the District's Incentive Programs through a range of projects  
20 which may include involving public agencies, residents, businesses, and technologies  
21 (e.g., electrification of stationary internal combustion engines, replacing old heavy-duty  
22 trucks with new, cleaner, more efficient heavy-duty trucks, and replacement of old farm  
23 tractors) ("Emissions Reductions"); and

24       **WHEREAS**, the District's Incentive Programs are regularly audited by  
25 independent outside agencies including professional accountancy corporations on  
26 behalf of the federal government, the California Air Resources Board (ARB), the  
27 California Department of Finance and the California Bureau of State Audits; and

28       **WHEREAS**, Developer and District desire to enter into this Agreement in order to

1 fully mitigate the criteria pollutant operational emissions and result in emission reductions  
2 of oxides of nitrogen (“NOx”), volatile organic compounds (“VOC”)/reactive organic  
3 gases (“ROG”), and particulate matter 10 microns or less in diameter (“PM10”)  
4 (collectively, “Project Operational Criteria Pollutant Emissions”) of the Project to Net  
5 Zero; and

6 **WHEREAS**, the District implements a CEQA significance threshold of 10 tons per  
7 year of NOx ,10 tons per year of VOC/ROG, and 15 tons per year of PM10; and

8 **WHEREAS**, District has determined that with appropriate funding, District can  
9 achieve reductions of emissions through its Incentive Programs from certain projects in  
10 types and in sufficient quantities to fully mitigate criteria pollutant operational emissions  
11 from the Project, as presented in Section 1 below (Full Mitigation of Project Operational  
12 Criteria Pollutant Emissions); and

### 13 **AGREEMENT**

14 **NOW THEREFORE**, in exchange of the mutual covenants herein contained,  
15 Developer and District hereby agree as follows:

#### 16 **1. Full Mitigation of Project Operational Criteria Pollutant Emissions**

17 As provided in Section 2 (Mitigation of Project Emissions), Developer shall fully  
18 mitigate to Net Zero the Project Operational Criteria Pollutant Emissions for the life of  
19 the Project by achieving surplus, quantifiable and enforceable emission reductions in  
20 NOx, VOC/ROG and PM10, to the extent specified in the certified Environmental  
21 Document. Preliminary estimates for Project Operational Criteria Pollutant Emissions  
22 are specified in Exhibit D attached hereto.

23 “Surplus” emission reductions are reductions that are not otherwise required by  
24 existing laws or regulations. The determination of whether emission reductions are  
25 surplus shall be performed by District through its incentive programs.

26 For the purpose of this Agreement, full mitigation to Net Zero means the  
27 Emissions Reductions achieved is equal, or is greater than the amount of each Project  
28 Operational Criteria Pollutant Emission.





1 the determination of surplus emissions reductions for each Funding Agreement.

2 **5.2. Insufficient Emission Reductions with Funds Provided**

3 In the event the District is unable to achieve the required reductions to fully  
4 mitigate the Project Operational Criteria Pollutant Emissions with the Air Quality  
5 Mitigation Funds initially provided by Developer, District shall provide Developer a written  
6 statement of the amount of emission reductions that have been achieved to date  
7 pursuant to this Agreement. Within ninety (90) days, Developer shall submit to District  
8 additional Air Quality Mitigation Funds in accordance with Section 3 (Operational  
9 Emission Reduction Cost per Ton), thereby ensuring the required reductions to fully  
10 mitigate the Project Operational Criteria Pollutant.

11 **6. Excess Emission Reductions**

12 Developer shall be credited with all emission reductions achieved by District  
13 through this Agreement that exceed the amount of required emission reductions for the  
14 Project ("Excess Emission Reductions").

15 Developer may transfer surplus Excess Emission Reductions achieved under this  
16 Agreement for this Project to other similar voluntary emission reduction agreements  
17 entered into between the District and Developer for projects within the San Joaquin  
18 Valley. Developer must provide District written request, and be granted District approval  
19 (which approval shall not be unreasonably withheld) prior to any such transfers.

20 Developer shall have two years from the date District notifies Developer of Excess  
21 Emission Reductions to provide District with a written request for the transfer of Excess  
22 Emission Reductions, after such time Developer's transfer rights shall be deemed  
23 waived.

24 **7. Refund of Air Quality Mitigation Funds**

25 Upon verification by the District as identified in Section 9 (District's Obligations)  
26 that Project Operational Criteria Pollutant Emissions have been fully mitigated, District  
27 shall refund to Developer any unused Air Quality Funds District within sixty days of such  
28 verification.

1           **8. District Rule 9510 (Indirect Source Review)**

2           **8.1. District Rule 9510 Requirements**

3           Developer acknowledges that the Project is subject to all applicable provisions of  
4 District Rule 9510 (Indirect Source Review), that are in effect at the time of submitting  
5 an Air Impact Assessment Application in accordance with District Rule 9510  
6 requirements. District acknowledges that to the extent that mitigation provided under  
7 this Agreement equals or exceeds mitigation that would otherwise be achieved through  
8 compliance with District Rule 9510 requirements, Developer shall be considered to be in  
9 compliance with District Rule 9510.

10           **8.2. District Rule 9510 Equivalency**

11           If applicable, District shall calculate the amount of emission reductions achieved  
12 by District Rule 9510 to confirm the adequacy of the Emissions Reductions achieved  
13 under this Agreement.

14           **9. District's Obligations**

15           **9.1. Acknowledgement Regarding Full Mitigation**

16           Upon successful full mitigation of Project Operational Criteria Pollutant Emissions  
17 identified pursuant to Section 1 (Full Mitigation of Project Operational Criteria Pollutant  
18 Emissions), District shall verify in writing to Developer and to the Lead Agency that the  
19 Project related impacts on air quality have been mitigated as required under this  
20 Agreement. For purposes of this Agreement, Developer shall be deemed to have fulfilled  
21 its obligations under the Agreement when District provides Developer and Lead Agency  
22 with such written verification.

23           **9.2. Oversight of Funding Agreements**

24           District shall ensure that the owners/operators of equipment subject to Funding  
25 Agreements perform all obligations to be performed on the part of such parties under  
26 said Funding Agreements.

27           **9.3. Oversight of Air Quality Mitigation Monitoring Plan**

28           Upon request of the Lead Agency for the Project, District shall oversee that portion

1 of the mitigation monitoring plan adopted by the Lead Agency for the Project which  
2 relates to the mitigation brought about by Section 1 (Full Mitigation of Project Operational  
3 Criteria Pollutant Emissions) of this Agreement. Alternatively, upon request of the Lead  
4 Agency, District shall cooperate with the Lead Agency in the oversight of that portion of  
5 the mitigation monitoring plan adopted by the Lead Agency for the Project which  
6 corresponds to this Agreement.

7 **9.4. Documentation, Record Keeping and Monitoring**

8 District shall document, keep adequate records on, and monitor the emission  
9 reductions brought about as a result of this Agreement, and shall, upon written request  
10 by Developer or by the Lead Agency for the Project, provide Developer or Lead Agency  
11 written reports verifying achieved emission reductions and/or emission reductions being  
12 brought about to fully mitigate Project related impacts on air quality.

13 **9.5. Achievement of Emission Reductions**

14 For and in exchange of Developer's payment of Air Quality Mitigation Funds under  
15 this Agreement, District shall ensure, by way of entering into, funding and enforcing the  
16 Funding Agreements, that the Project achieves the required emission reductions to the  
17 extent specified in Section 1 (Full Mitigation of Project Operational Criteria Pollutant  
18 Emissions) of the certified Environmental Document.

19 **10. Subsequent Litigation, Legislation and/or Administrative Action /**  
20 **Credit to Developer**

21 In the event that despite this Agreement, Developer is required as a result of a  
22 final judgment or District Approved Settlement (as defined below) in any third party  
23 litigation, to pay monies in addition to the monies to be paid by Developer pursuant to  
24 Section 2 (Mitigation of Project Emissions) above, then District shall acknowledge and  
25 credit Developer with the emission reductions achieved pursuant to this Agreement and  
26 any additional emission reductions achieved to mitigate the Project related impacts on  
27 air quality that will result from Developer's payment of such additional monies. For  
28 purposes of this Section, a "District Approved Settlement" shall mean a settlement of a

1 lawsuit filed pursuant to CEQA, or other applicable environmental law which (i) provides  
2 for Developer's payment of monies in exchange for a dismissal of such lawsuit, (ii)  
3 provides for the use of such monies by the petitioner in such lawsuit in such a manner  
4 as to mitigate adverse air quality impacts of the Project, and (iii) is approved in writing by  
5 District. The District shall have no authority to commit the Developer's money in any  
6 settlement of a third party lawsuit without the Developer's consent.

7           **11. Term of Agreement**

8           This Agreement shall be effective upon the date first written above, contingent  
9 upon the later of (i) City's approval of the project with no litigation having been filed by  
10 third parties challenging the project prior to the applicable statute of limitations; or (ii) a  
11 lawsuit(s) having been filed, the lawsuit(s) have been successfully defended or settled  
12 in a manner satisfactory to Developer. This Agreement shall terminate upon District's  
13 meeting its obligation to provide Emissions Reductions to fully mitigate to Net Zero the  
14 Project operational related air impacts, as evidenced by District's issuance of the written  
15 verification described in Section 9.1 (Acknowledgement Regarding Full Mitigation) of this  
16 Agreement. Developer may, at any time by written notice to District, terminate this  
17 Agreement, whereupon, (i) District shall acknowledge in writing to the Lead Agency that  
18 Developer has mitigated air quality impacts of Project operation to the extent and in the  
19 types and quantities brought about by Funding Agreements at the time of termination,  
20 (ii) District shall refund to Developer any unused portion of Developer's Air Quality  
21 Mitigation Funds; and (iii) neither Developer nor District shall have any further rights or  
22 obligations under this Agreement except as expressly provided. District's obligations to  
23 oversee implementation of Funding Agreements and to ensure that required emission  
24 reductions are achieved, shall remain effective for as long as necessary to ensure that  
25 the anticipated emission reductions continue to be achieved to the extent specified  
26 herein.

27           **12. Representations, Covenants and Warranties**

28           **A. Developer's Representations, Covenants and Warranties.**

1 Developer represents, covenants and warrants to District, as of the date of this  
2 Agreement, as follows:

3 i. The undersigned representative of Developer is duly authorized to  
4 execute, deliver and perform this Agreement, and upon Developer's execution and  
5 delivery of this Agreement, this Agreement will have been duly authorized by Developer.

6 ii. Once the Agreement is effective as set forth above, Developer's  
7 obligations under this Agreement shall be legal, valid and binding obligations of  
8 Developer, duly enforceable at law and in equity in accordance with the terms and  
9 conditions of this Agreement.

10 iii. There is no lawsuit, legal action, arbitration, legal or administrative  
11 proceeding, legislative, quasi-legislative or administrative action or claim existing,  
12 pending, threatened or anticipated which would render all or any portion of this  
13 Agreement invalid, void or unenforceable in accordance with the terms and conditions  
14 thereof.

15 iv. Other than the execution and delivery of this Agreement by the  
16 undersigned representatives of Developer, there are no approvals, consents,  
17 confirmations, proceedings, or other actions required by Developer or any third party,  
18 entity or agency in order to enter into and carry out the terms, conditions and intent of  
19 the parties with respect to this Agreement, except as required to enter Funding  
20 Agreements.

21 **B. District's Representations, Covenants and Warranties**

22 District represents, covenants and warrants to Developer, as of the date of this  
23 Agreement, as follows:

24 i. The undersigned representatives of District are duly authorized to  
25 execute, deliver and perform this Agreement, and upon District's execution and delivery  
26 of this Agreement, this Agreement will have been duly authorized by District.

27 ii. Once the Agreement is effective as set forth above, District's  
28 obligations under this Agreement shall be legal, valid and binding obligations of District,

1 duly enforceable at law and in equity in accordance with the terms and conditions of this  
2 Agreement.

3           iii.     There is no lawsuit, legal action, arbitration, legal or administrative  
4 proceeding, legislative, quasi-legislative or administrative action or claim existing,  
5 pending, threatened or anticipated which would render all or any portion of this  
6 Agreement invalid, void or unenforceable in accordance with the terms and conditions  
7 thereof.

8           iv.     Other than the execution and delivery of this Agreement by the  
9 undersigned representatives of District, there are no approvals, consents, confirmations,  
10 proceedings, or other actions required by District or any third party, entity or agency in  
11 order to enter into and carry out the terms, conditions and intent of the parties with  
12 respect to this Agreement, except as required to enter Funding Agreements

13           v.     The monies paid by Developer under this Agreement shall be  
14 sufficient to ensure that the emission reduction contemplated by this Agreement shall  
15 occur, and District shall utilize such monies in such a manner as to ensure that such  
16 emission reduction shall occur.

17           vi.     Upon the approval of this Agreement by the District Governing  
18 Board the Air Pollution Control Officer of District, or equivalent representative, or a  
19 delegee of such officer, shall have the authority to approve, deliver, verify, enter into,  
20 acknowledge and/or accept any communication, notice, notification, verification,  
21 agreement and/or other document to be issued or entered into by District under the terms  
22 and conditions of this Agreement, without further approval of the governing board of  
23 District.

24           13.     **Indemnification**

25           Developer agrees to indemnify, defend and hold harmless District for, from and in  
26 connection with any third party claims, losses and/or liabilities arising from or in  
27 connection with District's performance of this Agreement, excluding only such claims,  
28 losses and/or liabilities which result from or are in connection with District's sole

1 negligence, act or omission.

2 **14. Inurement**

3 Unless terminated as provided in Section 11 (Term of Agreement), Developer's  
4 rights and obligations under this Agreement, or applicable portions thereof, shall run with  
5 the land encompassed by the Project, and shall inure to the benefit of and be binding  
6 upon the heirs, successors and assigns of Developer who take title to such lands or  
7 applicable portions thereof. Upon Developer's conveyance of all or any portion of the  
8 lands encompassed by the Project, the rights and obligations of Developer under this  
9 Agreement shall, to the extent applicable to the lands so conveyed, be transferred to the  
10 transferee thereof, and Developer shall thereupon be released by District from, all  
11 obligations and liabilities so assigned, except for such obligations and liabilities arising  
12 prior to such transfer.

13 **15. Assignment**

14 Developer shall have the right to assign all or part of its rights and/or obligations  
15 under this Agreement with the District's written consent, which shall not be unreasonably  
16 withheld. In the event the District does give consent to any such assignment, the District,  
17 the third party assignee and Developer shall enter into an amendment and novation of  
18 this Agreement which acknowledges the assignment and conforms the various  
19 provisions of this Agreement as may be required to be conformed in order to provide to  
20 the assignee the rights and benefits of this Agreement as if such assignee and its project  
21 were the original party and project contemplated in this Agreement.

22 **16. Recitals Incorporated**

23 The recitals set forth hereinabove are hereby incorporated into this Agreement  
24 and acknowledged, agreed to and adopted by the parties to this Agreement.

25 **17. Further Assurances**

26 Developer and District agree to execute and deliver any documents and/or  
27 perform any acts which are reasonably necessary in order to carry out the intent of the  
28 parties with respect to this Agreement.

1           **18. No Joint Venture or Partnership**

2           District and Developer agree that nothing contained in this Agreement or in any  
3 document executed in connection with this Agreement shall be construed as making  
4 District and Developer joint ventures or partners.

5           **19. Notices**

6           Any notices or communications relating to this Agreement shall be given in writing  
7 and shall be deemed sufficiently given and served for all purposes when delivered, if (a)  
8 in person, (b) by facsimile (with the original delivered by other means set forth in this  
9 Section, (c) by generally recognized overnight courier or (d) by United States Mail,  
10 certified or registered mail, return receipt requested, postage prepaid, to the respective  
11 addresses set forth below, or to such other addresses as the parties may designate from  
12 time to time by providing written notice of the change to the other party.

<p>13           <b>DEVELOPER</b> 14 Taylor Talt 15 Majestic Realty Co. 16 13191 Crossroads Parkway, North, 17 6<sup>th</sup> Floor 18 City of Industry, CA 91746-3497 19 Phone: (562) 654-2734 20 Email: <a href="mailto:ttalt@majesticrealty.com">ttalt@majesticrealty.com</a></p>	<p>          <b>DISTRICT</b>           Samir Sheikh           Executive Director/APCO           1990 E. Gettysburg Ave.           Fresno, CA 93726</p>
---	--

21           **20. Entire Agreement**

22           The terms of this Agreement, together with all attached exhibits, are intended by  
23 the parties as the complete and final expression of their agreement with respect to such  
24 terms and exhibits and may not be contradicted by evidence of any prior or  
25 contemporaneous agreement. This Agreement specifically supersedes any prior written  
26 or oral agreements between the parties with respect to the subject matter of this  
27 Agreement.

28           **21. Amendments and Waivers**

          No addition to or modification of this Agreement shall be effective unless set forth  
in writing and signed by the party against whom the addition or modification is sought to



1 be enforced. The party benefited by any condition or obligation may waive the same,  
2 but such waiver shall not be enforceable by another party unless made in writing and  
3 signed by the waiving party.

#### 4 **22. Invalidity of Provisions**

5 If any provision of this Agreement as applied to either party or to any circumstance  
6 shall be adjudged by a court of competent jurisdiction to be void or unenforceable for  
7 any reason, the same shall in no way affect (to the maximum extent permissible by law)  
8 any other provision of this Agreement, the application of any such provision under  
9 circumstances different from those adjudicated by the court, or the validity or  
10 enforceability of this Agreement as a whole. The parties further agree to replace any  
11 such invalid, illegal or unenforceable portion with a valid and enforceable provision,  
12 which will achieve, to the maximum extent legally possible, the economic, business or  
13 other purposes of the invalid, illegal or unenforceable portion.

#### 14 **23. Construction**

15 Unless otherwise indicated, all Section references are to the Section of this  
16 Agreement and all references to days are to calendar days. Whenever, under the terms  
17 of this Agreement the time for performance of a covenant or condition falls upon a  
18 Saturday, Sunday or California state holiday, the time for performance shall be extended  
19 to the next business day. The headings used in this Agreement are provided for  
20 convenience only and this Agreement shall be interpreted without reference to any  
21 headings. Wherever required by the context, the singular shall include the plural and vice  
22 versa, and the masculine gender shall include the feminine or neuter genders, or vice  
23 versa. This Agreement may be executed in one or more counterparts, each of which  
24 shall be deemed an original, but all of which together shall constitute one and the same  
25 instrument. The language in all parts of this Agreement shall be construed as a whole  
26 in accordance with its fair meaning, and shall not be construed against any party solely  
27 by virtue of the fact that such party or its counsel was primarily responsible for its  
28 preparation.

1           24.    **Governing Law**

2           24.1 The rights and obligations of the parties and the interpretation and  
3 performance of this Agreement shall be governed in all respects by the laws of the State  
4 of California.

5           24.2 Venue for any action arising out of or relating to this Agreement shall be in  
6 Fresno County, California.

7           25.    **No Third-party Beneficiaries**

8           Nothing in this Agreement, express or implied, is intended to confer any rights or  
9 remedies under or by reason of this Agreement on any person other than the parties to  
10 it and their respective permitted successors and assigns, nor is anything in this  
11 Agreement intended to relieve or discharge any obligation of any third person to any  
12 party hereto or give any third person any right of subrogation or action over or against  
13 any party to this Agreement.

14          26.    **Exhibits**

15          The exhibits attached to this Agreement shall be deemed to be a part of this  
16 Agreement and are fully incorporated herein by reference.

17          27.    **Force Majeure**

18          The time within which any party shall be required to perform under this Agreement  
19 shall be extended on a day-per-day basis for each day during which such performance  
20 is prevented or delayed by reason of events reasonably outside of the control of the  
21 performing party, including, without limitation, acts of God, events of destruction, acts of  
22 war, civil insurrection, strikes, shortages, governmental delays, moratoria, legislation,  
23 administrative agency or any pending third party challenges or litigation (including  
24 without limitation delays during the pendency of such agency challenge or judicial  
25 litigation, final judgement, and remedial measures undertaken in furtherance of this or a  
26 successor emission reduction program in response to any such challenge or litigation).

27                 IN WITNESS WHEREOF, Developer and District have executed this Agreement  
28 and agree that it shall be effective as of the date first written above.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEVELOPER**  
**Majestic Realty Company**

---

Taylor Talt  
Senior Vice President

**DISTRICT**  
**San Joaquin Valley Unified Air  
Pollution Control District**

---

Vito Chiesa  
Governing Board Chair

***Recommended for approval:***  
San Joaquin Valley Unified Air Pollution  
Control District

---

Samir Sheikh  
Executive Director/APCO

***Approved as to legal form:***  
San Joaquin Valley Unified Air Pollution  
Control District

---

Annette Ballatore  
District Counsel

***Approved as to accounting form:***

---

Ryan Buchanan  
Director of Administrative Services

***For accounting use only:***  
San Joaquin Valley Unified Air Pollution  
Control District

Program: \_\_\_\_\_  
Account No: \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**  
**DESCRIPTION OF THE PROJECT**

The Majestic Gateway project entails the construction and operation of one distribution warehouse building (maximum of 1,012,185 square feet [s.f.] of building space) along with construction and operation of 12 commercial buildings collectively having a maximum of 187,500 s.f. of building space. Improvements would be located on a ±90.6 gross-acre property located east of Highway 99, west of South H Street, north of Hosking Avenue, and south of Berkshire Road in the City of Bakersfield. Other features of the Project include an on-site detention basin, landscaping, parking areas, drive aisles, lighting, signage, and frontage improvements to Berkshire Avenue and South H Street. Off-site widening and improvements to South H Street between Berkshire Road and Hosking Avenue also are included as part of the Project.

Vehicular access to the warehouse building would be provided by two driveways connecting with Berkshire Road. Three driveways would connect with South H Street. Truck access would use the Berkshire driveways, with trucks primarily circulating counter-clockwise within the site around the warehouse building and traveling to and from SR-99 by using the Hosking/SR-99 on- and off-ramps. Passenger vehicles would primarily use the South H Street private driveways, where the employee and visitor parking lot is planned. No trucks would use the driveways connecting with South H Street.

An internal private frontage driveway is planned paralleling SR-99 internal to the site. Vehicular access from Berkshire Road is anticipated to be provided by a signalized intersection at Colony Street and vehicular access from South H Street is anticipated to be provided by a signalized intersection at a private driveway connecting to South H Street.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

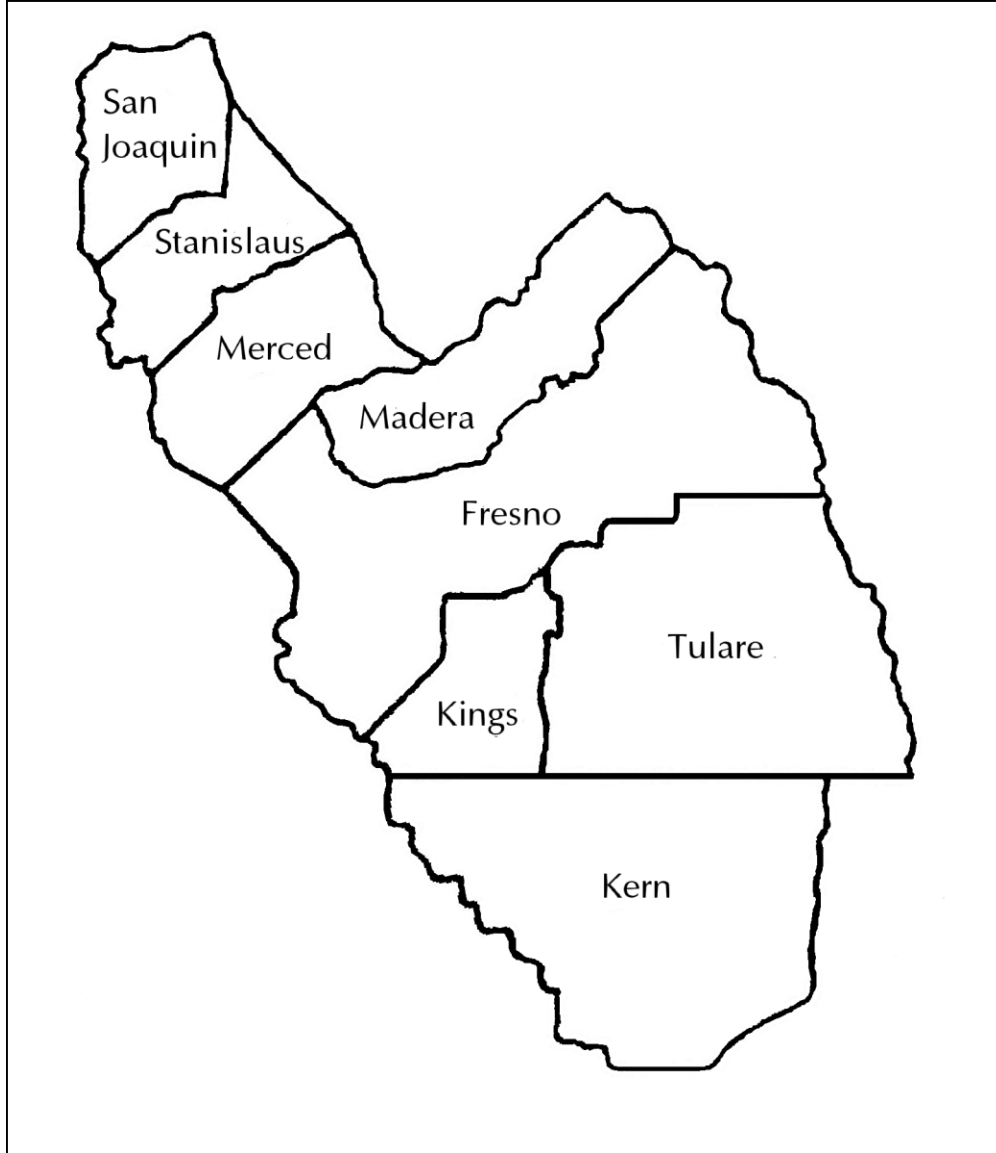
**EXHIBIT B**

**EMISSION REDUCTION DESIGN FEATURES**

**Air Quality Mitigation Measure AIR MM-1**

Prior to the issuance of occupancy permits, the Project Applicant shall enter into a Voluntary Emission Reduction Agreement (VERA) with the SJVAPCD. The VERA is an air quality mitigation measure by which a developer can voluntarily enter into a contractual agreement with the SJVAPCD to mitigate a development project’s impact on air quality. Under the agreement, the developer provides funds to the SJVAPCD to administer the implementation of the VERA. The SJVAPCD then identifies emissions reductions projects, funds those projects, and verifies that the specified emission reductions have been successfully achieved. The SJVAPCD considers implementation of a VERA to be a feasible mitigation measure under CEQA, effectively achieving emission reductions to fully offset impacts. The VERA requirements shall include specific terms to reduce the Project’s emissions of operational ROG, NOx, and PM10 to net zero levels, consistent with the assumptions that were relied upon in the Project’s Air Quality Impact Analysis to conclude that Project emissions of ROG, NOx, and PM10 would be net zero with mitigation.

EXHIBIT C  
DISTRICT BOUNDARIES



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT D**

**Preliminary Criteria Pollutant Emissions Estimates for the Life of the Project**

<b>Total Project Operaitonal Emissions</b>			
<b>Mitigated Operational Emission Sources</b>	<b>Criteria Pollutant Emissions (tons/year)</b>		
	<b>ROG</b>	<b>NOx</b>	<b>PM10</b>
Area Emissions	5.76	0.00	0.00
Energy Emissions	0.10	0.90	0.07
Mobile Emissions	4.51	23.25	13.02
<b>Total Emissions without VERA</b>	<b>10.37</b>	<b>24.15</b>	<b>13.09</b>
<b>Factor Applied for Project Life:</b>	10	10	10
<b>Cost per Ton:</b>	\$9,350	\$9,350	\$9,011
<b>Mitigation Fees:</b>	\$969,595	\$2,258,025	\$1,179,540
<b>Administrative Fee (4%):</b>	\$38,784	\$90,321	\$47,182
<b>Total Mitigation Fees:</b>	<b>\$1,008,379</b>	<b>\$2,348,346</b>	<b>\$1,226,721</b>
<b>Total Estimated Operational Mitigation Fees:</b>		<b>\$4,583,446</b>	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT E**

**District Governing Board-approved Incentive Programs**

The District will procure sufficient emissions offsets as noted in this Agreement through the funding of one or more of the District’s Incentive Programs, including but not limited to the following:

- Emergency Vehicle Replacement Program,
- Commercial and Residential Lawn and Garden Maintenance Equipment Replacement Program;
- Alternative—Fuel Vehicles and Infrastructure Grant Program
- Development of Advanced Transit and Transportation Systems;
- Zero-emission School Bus Replacement and Infrastructure Programs;
- Auto Emission Evaluation and Repair Voucher Program;
- Resident Funding for Replacement of Older Polluting Vehicles with New, Clean-Air Vehicles:
- Agricultural Equipment Replacement Programs;
- Off-road Equipment Replacement Programs
- Truck and Bus Replacement Programs; Locomotive Replacement Program; and Heavy Duty Truck Replacement Programs.

The District will determine the most appropriate program or area to obtain the emissions reductions required by the VERA. This listing is not all-inclusive or restrictive and may be modified by the District at its sole discretion.