Exhibit I

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
2010 Main Street, 8th Floor | Irvine, CA 92614-7214
Telephone: 949.553.1313 | Facsimile: 949.553.8354
www.allenmatkins.com

Paige H. Gosney
E-mail: pgosney@allenmatkins.com
Direct Dial: 949.851.5444 File Number: 394103.00005/4866-4328-4375.1

Via Email/U.S. Mail

December 21, 2023

Jennifer Clark, Director of Development
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Email: publiccommentsplanning@fresno.gov

Re: Notice of Appeal re Planning and Development Director Denial of Conditional Use Permit Application No. P21-06064 for Off-Site Alcohol Sales at 4390 W. Ashlan Avenue, Fresno (APN: 510-100-50) (Omni Development, Inc.)

Dear Ms. Clark:

This firm represents Omni Development, Inc. ("Omni") in connection with the above-referenced application for Conditional Use Permit No. P21-06064 (the "CUP") authorizing the sale of alcoholic beverages for off-site at the proposed combination Arco AM/PM convenience store with associated gasoline service station, quick-serve restaurant and car wash uses ("Project") on the above-referenced property located at 4390 W. Ashlan Avenue in the City of Fresno ("City"). The service station use and component of the Project was approved by the City via Conditional Use Permit Application No. P21-06063; however, the City Planning and Development Director denied the corresponding permit application for off-site alcohol sales.

As outlined below, the City's denial of the alcohol sales CUP was improper and without substantial justification and should therefore be vacated and overturned by the City Planning Commission. The City's denial of the CUP is **not** based upon facts and/or data substantiating its determination that the allowance of off-site alcohol sales at the Project will create or exacerbate adverse impacts to the public health and safety in the surrounding area but instead upon the "perceived" – and unfounded – "potential" for such "deleterious effects" to occur. This is not sufficient grounds to deny the CUP. A check for the appeal fee of $933.77 is enclosed herewith.

Contrary to the Planning and Development Director's December 11, 2023, denial letter, the findings necessary to grant the CUP can be made in accordance with Municipal Code section 15-5306 and the City's Responsible Neighborhood Market Act Ordinance (Mun. Code, Ch. 15-2706) ("Ordinance"). The proposed off-site alcohol sales at the Project is consistent with applicable

development standards and policies of the City's Zoning Code and General Plan, respectively, and is compatible with the existing and foreseeable land uses and development in the surrounding area. More significantly, the CUP for off-site alcohol sales satisfies and/or is excepted from the locational restrictions and other requirements for new alcohol use establishments under the City's Ordinance, including: (i) proximity to sensitive receptors and existing alcohol use establishments; (ii) proximity to high-crime and/or high alcohol sales concentration area; (iii) compliance with established "Cancel and Transfer" provisions; and (iv) site plan consistency with Specialty Food Grocer definition and alcohol sales square-footage limitations. As such, the CUP "will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements."

For the reasons outlined above and discussed more fully below, and any other grounds that may be presented to the City in connection with this appeal, Omni respectfully requests that the Planning Commission vacate and overturn the Planning and Development Director's denial of the CUP.

1. The CUP Satisfies and/or Is Excepted from the Ordinance's Locational Restrictions for New Off-Site Alcohol Sales Establishments.

The primary thrust of the City's denial of the CUP is that the Project's proposed alcohol sales does not comply with the requirements of the City's Responsible Neighborhood Market Act Ordinance (Mun. Code, Ch. 15-2706). The Ordinance requires that a new establishment seeking to sell alcohol for off-site consumption must obtain a CUP and comply with the locational restrictions set forth in Section 15-2706(F). The Ordinance allows for exceptions to the locational restrictions provided that the following criteria set forth in Section 15-2706(F)(6) can be met:

a. The proposed use is not located within an area in which the Chief of Police has determined, based upon quantifiable information, that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.

b. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

c. The proposed outlet for the off-premises sale of alcoholic beverages would act as a public convenience or necessity to an underserved portion of the community and/or enhance the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety.

d. The primary use of the establishment, based on information provided by the applicant, has been determined by the Review Authority to meet the definition of a General Market including a supermarket, neighborhood grocery store or a Healthy Food Grocer. (Ord., § 15-2706(F)(6).) The City has also established that projects meeting the definition and design criteria for a

Specialty Food Grocer, which are allowed in the same zoning districts and subject to the same general standards as a General Market, satisfy this requirement. (See Attachment B.)

As outlined below, The Project meets all of the above-referenced criteria to qualify for an exception from the locational restrictions set forth in Section 15-2706(F) of the Ordinance. The Project site is not located in an area where the proposed use would adversely impact the public health, safety and welfare and/or increase the severity of existing crime or public nuisance issues in the area. The sale of alcoholic beverages for off-site consumption is incidental to the greater Arco AM/PM market and service station operation, which would provide a public convenience and enhance the vitality of the existing commercial area without causing a significant adverse impact.

Finally, as shown on the Project site plan attached as Attachment A to this letter, the AM/PM store will dedicate greater than seventy percent (70%) of the floor area to grocery sales, with more than ten percent (10%) dedicated to the sale of fresh produce and grocery products, and less than five percent (5%) of the floor area devoted to alcohol sales. The Project will also meet all of the required design elements for a "Specialty Food Grocer", including with respect to floor area, ceiling/shelving height, lighting, window signage, fresh food display and architecture. As such, the Project qualifies as a "Specialty Food Grocer."

A. *Proximity to Sensitive Uses.*

The Ordinance provides that a new alcohol establishment "shall not be located within 1,000 feet of the following: (i) a public park, playground, recreational area including a trail that is immediately adjacent to a public park, or youth facility, including a nursery school, preschool, or day care facility; (ii) a public or private State-licensed or accredited school; or (iii) an alcohol or other drug abuse recovery or treatment facility." (Ord., § 15-2706(F)(1).)

The Project is not located within 1,000 feet of any of the above-referenced sensitive uses. The City's does not dispute this determination. Therefore, the Project complies with this locational restriction set forth in the Ordinance.

B. *Proximity to Existing Alcohol Use Establishments (*Excepted*).*

The Ordinance provides that a new alcohol use establishment "shall not be located within 1,000 feet of an existing establishment, nor may it lead to a grouping of more than four establishments within a 1,000 foot radius." (Ord., § 15-2706(F)(2).)

The Project site is situated within 1,000 feet of three existing establishments with active ABC licenses – Super Liquor IV (4430 W. Ashlan Avenue; Type 21), Johnny Quik Store (4395 W. Ashlan Avenue; Type 21) and 7-11 (4246 W. Ashlan Avenue; Type 21). However, for the reasons noted above, the Project meets all of the requisite criteria to qualify for an exception from the "Near Other

Alcoholic Beverage Establishments" locational restriction set forth in Section 15-2706(F)(2) of the Ordinance.

C. *High-Crime Area.*

The Project site is not located in a high-crime area, as defined under California Business and Professions Code section 23958.4(a)(1) (Ord., § 15-2706(F)(3). The Project site is located within Crime Reporting District No. 1847 which reported a total of 42 offenses for the year 2022. The average number of offenses per reporting district is 452.83, which is ***nearly 10 times greater*** than the reported figures for Crime Reporting District No. 1847. Therefore, the Project site is not considered to be within a high-crime area as defined under California Business and Professions Code section 23958.4(a)(1).

D. *High-Concentration Alcohol Use Establishment Area* (Excepted).

The Project site is located within Census Tract No. 38.09, which contains six (6) active ABC licenses, and therefore meets the criteria for designation as a high alcohol concentration area under California Business and Professions Code sections 23958.4(a)(3), et seq. (Ord., § 15-2706(F)(4)).

However, as stated above, the Project qualifies for an exception from this locational restriction under Section 15-2706(F)(6)(a) of the Ordinance. The Project site is not located in an area where the proposed use would adversely impact the public health, safety and welfare and/or increase the severity of existing crime or public nuisance issues in the area. The sale of alcoholic beverages for off-site consumption is incidental to the greater Arco AM/PM market and service station operation, which would provide a public convenience and enhance the vitality of the existing commercial area without causing a significant adverse impact, and the Project meets the definition of, and requisite design criteria for, a "Specialty Food Grocer."

E. *Citywide Ratio / Cancel and Transfer Provisions.*

The Project will result in an exceedance of the City's designated ratio for alcoholic beverage establishments of one ABC license per 2,500 residents (Ord., § 15-2706(F)(5)). However, because the Project will comply with the City's "Cancel and Transfer" provisions outlined in Section 15-2706(S) of the Ordinance, this locational restriction does <u>not</u> apply to the Project (Ord., §15-2706(F)(5) ["This ratio requirement shall not apply to:…(2) new establishments that utilize the Cancel and Transfer provisions stated in Section S., below."]).

The Ordinance's "Cancel and Transfer" provisions require that new alcohol use establishments of less than 10,000 square-feet "shall" transfer two (2) and cancel one (1) existing ABC licenses in good standing from a Council District identified as having an over-concentration of ABC licenses for off-site sale and use (Ord., § 15-2706(S)). The Project will be conditioned to comply with the

Ordinance's "Cancel and Transfer" provisions and therefore will be prohibited from selling alcohol for off-site consumption unless and until the requisite ABC licenses are canceled and transferred.

F. *Additional Ordinance Requirements.*

The Project does and will comply with the additional requirements set forth in the Ordinance, including those related to landscaping, lighting, video surveillance/security, signage, training, prohibited products and the other provisions set forth in Sections 15-2706(G) through 15-2706(R) of the Ordinance.

2. The City Improperly Denied the CUP Based Upon Potential Unfounded Adverse Impacts to Health and Safety and Alleged General Plan Inconsistencies.

As noted above, the City determined that the majority of findings necessary to grant the CUP could not be made because the allowance of off-site alcohol sales at the Project's convenience store has the potential to cause and/or contribute to safety problems and other "deleterious effects" on surrounding neighborhoods and businesses, such as "alcohol-related hospitalizations, drunken driving accidents, and pedestrian injuries." These hypothetical and "perceived" potential impacts are not rooted in any supportable fact, data or other information relevant to the proposed Project and therefore cannot serve as the basis for denying the CUP.

First, the Project's CUP would allow for the sale of alcohol for **off-site** consumption by consumers. There is no allowance for alcohol to be consumed on-site at the Project and any such activity would be grounds for citation and arrest by the Fresno Police Department. Thus, as customers of the Project are not consuming the alcohol on-site there is no or little risk of safety impacts to the surrounding community associated with drunk-driving or pedestrian injury. Furthermore, granting the Project CUP would not increase the risk of any such dangers because a customer that was already inebriated before coming to the Project to purchase more alcohol would already have posed a safety risk and could easily purchase the alcohol at one of the other businesses in the area.

Second, as noted above, the Project site is **not** located in a high-crime area, as defined under California Business and Professions Code section 23958.4(a)(1) (Ord., § 15-2706(F)(3). Crime Reporting District No. 1847 where the Project site is located reported a total of 42 offenses for the year 2022, which is more than 10 times less than the average number of offenses per reporting districts in California. Thus, granting the CUP would not increase the risk of potential alcohol-related impacts to the community.

Third, the sales of alcohol for off-site consumption is incidental to the greater Project and will comprise less than five percent (5%) of the Project's total floor area of products with over seventy percent (70%) dedicated to grocery sales, including more than ten percent (10%) for the sale of fresh

produce and grocery products. This is completely distinguishable from a traditional liquor store which relies upon alcohol, tobacco and unhealthy snack goods to support the business.

To that point, the City's December 11, 2023, CUP denial letter references the Public Utilities and Services section of the Fresno General Plan as standing for the proposition that "the location and prevalence of off-sale alcohol sales can have a negative effect on neighborhood health." However, the reference is misplaced and improperly lumps in the Project's specialty grocery store in with a traditional liquor store. (General Plan, Public Utilities and Services p. 6-7 ["The location and prevalence of ***liquor stores*** can have a negative effect on neighborhood health…. [City may consider] nuanced approach to controlling and abating nuisances associated with ***liquor stores and restaurants*** through Conditional Use Permit and other land use approvals that consider neighborhood needs and potential impacts"] [emphasis added].) As noted above, the nature and scope of a liquor store is completely different from the proposed Project where the alcohol sales will be purely incidental to the greater inventory of the business.

Finally, the City's claim that the Project CUP "conflicts with the Fresno General Plan goals to promote healthy communities, improve quality of life in established neighborhoods, and protect and improve public health and safety" is misplaced and inaccurate. The Healthy Communities chapter of the General Plan does not even reference the word "alcohol" and, as noted above, the "perceived" and "potential" impacts to public health and safety associated with granting the CUP for off-site alcohol sales are unfounded, speculative and inconsistent with the actual crime reporting data for area surrounding the site.

3. Conclusion.

We appreciate the Planning Commission's consideration of this Appeal. The grounds cited by the City Planning and Development Director for denying the Project CUP are improper and do not justify or support the City's actions. For the reasons noted above, the Project, as excepted, fully complies with the Ordinance's locational and other restrictions and meets the definition and requisite design criteria for designation as a "Specialty Food Grocer." Therefore, the City can – and should – issue the CUP authorizing the Project's sale of alcoholic beverages for off-site consumption.

Please contact me if you have any questions or if you wish to discuss this matter in further detail.

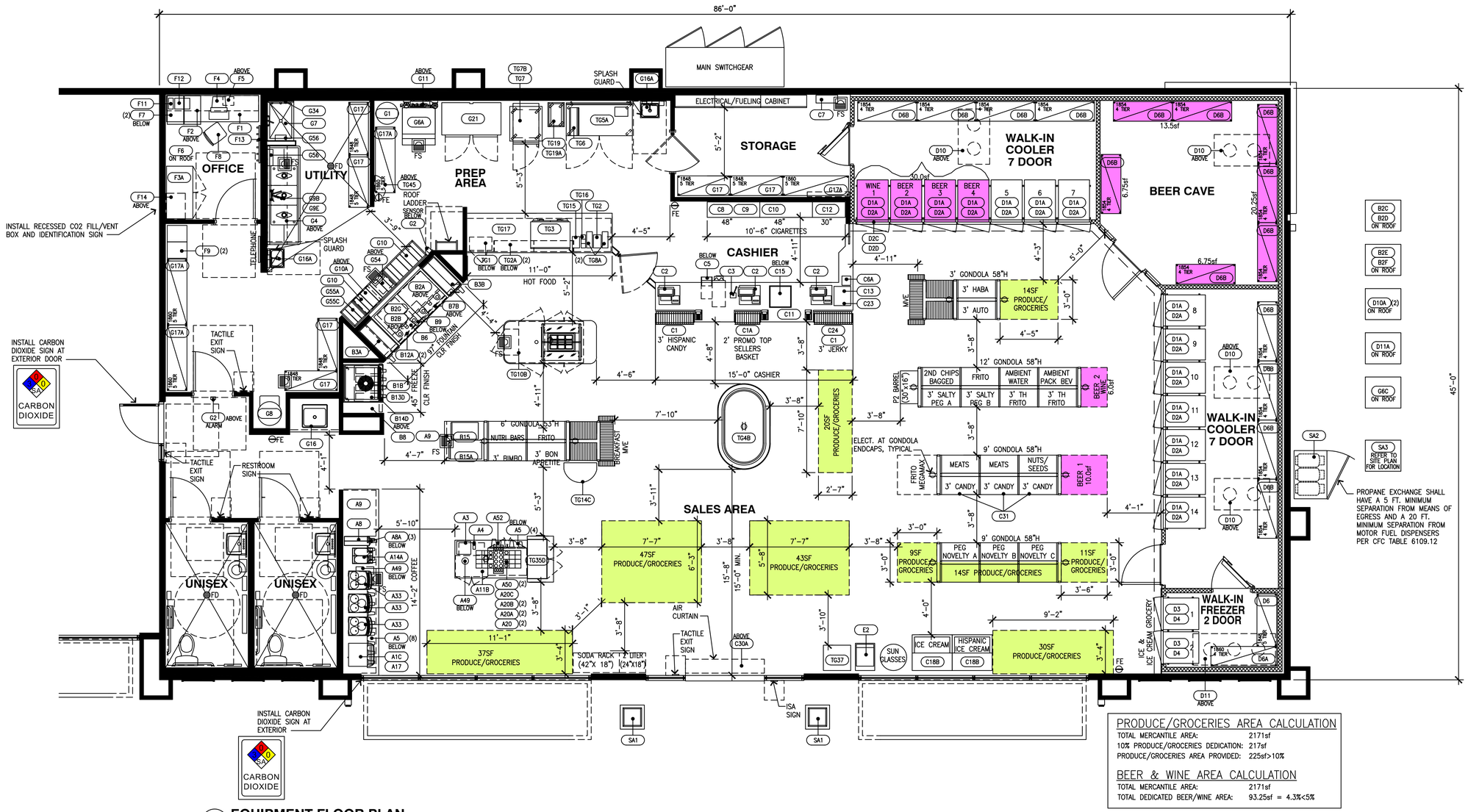
Very truly yours,

Paige H. Gosney

PHG
Enclosures

cc: Jose Valenzuela, Supervising Planner (via e-mail only w/ Encls.)
Client (via e-mail only w/ Encls.)

Exhibit A



01 EQUIPMENT FLOOR PLAN

SCALE: 1/4"=1'-0"

PRODUCE/GROCERIES AREA CALCULATION

TOTAL MERCANTILE AREA:	2171sf
10% PRODUCE/GROCERIES DEDICATION:	217sf
PRODUCE/GROCERIES AREA PROVIDED:	225sf>10%

BEER & WINE AREA CALCULATION

TOTAL MERCANTILE AREA:	2171sf
TOTAL DEDICATED BEER/WINE AREA:	93.25sf = 4.3%<5%

CLIENT:

MARATHON

ARCO

CJC DESIGN INC

CJC Design, Inc.
22485 La Palma Avenue, Suite 202
Yorba Linda, CA 92887
Tel: (714) 920-9643
www.cjccorp.com

NO.	DATE	REVISION DESCRIPTION
1	05/15/23	ADDED GROCERY/PRODUCE

SEAL:

REGISTERED PROFESSIONAL ENGINEER WAEL S. IBRAHIM No. 48336 Exp. 06/30/24 CIVIL STATE OF CALIFORNIA

DEVELOPMENT INFORMATION:

ARCO AMPM AND CAR WASH

SITE ADDRESS:

N.E. COR. ASHLAN AVE. • BLYTHE AVE.
FRESNO, CA. 93722

DESIGNED BY:	C.R.
CHECKED BY:	C.R.
DRAWN BY:	F.C.
SCALE:	PROJECT NO: 21006

DRAWING TITLE:

EQUIPMENT FLOOR PLAN

SHEET NO:

Q1.1

Exhibit B

City of FRESNO	**Specialty Grocery Store** **Development and Resource Management Department** **2600 Fresno Street, 3rd Floor, Rm 3076** **Call (559) 621-8277 for an appointment or visit www.fresno.gov for information**	Policy and Procedure No. C-005 Date

Target Audience: Planning staff and developers who wish to establish a specialty grocery store.

Purpose: Specialty grocery stores enhance neighborhoods and provide specialty products not often found in general markets. This policy is adopted to ensure that specialty grocery stores shall include elements which more closely resemble a supermarket or neighborhood grocery store versus a convenience store. Specialty stores following the prescribed design guidelines of this policy may qualify for Exception B of Fresno Municipal Code §15-2706.E.5 and be allowed to sell alcohol with a conditional use permit as incidental and appurtenant to a larger retail use.

Policy: All of the following required elements shall be depicted on the site plan/floor plan/elevations.

A. Minimum Gross Floor Area. The minimum gross floor area shall be 1,500 square feet.
B. Ceiling Height. The minimum ceiling height shall be 15 feet. Dropped ceilings are prohibited.
C. Lighting. Lighting shall be of efficient retail lighting design.
D. Shelving Height. Main grocery shelves shall be a minimum of 7 feet high.
E. Flooring Materials. The floor shall be finished concrete or other high quality, durable material.
F. Window Signage. Window signage is prohibited.
G. Fresh Food Display. Fresh foods shall be located in the front of the store and visible from the front door.
H. Architecture. The architectural style of the main building shall be carried into the design of all accessory structures (e.g. trash receptacles, canopy, lighting fixture, etc). If the specialty grocery store is a standalone building within a unified shopping center the architectural design of the specialty grocery store shall be compatible with the exterior design of the unified shopping center.

Definitions: Specialty Food Grocer: A food and beverage retail sales establishment that (1) dedicates at least 70 percent of retail space to a specialized category of food products such as foods from a specific country, ethnicity, or locality; and (2) dedicates at least 10% of retail space to fresh foods such as dairy, (excluding ice cream), produce, meat, poultry and fish. Alcohol may be sold, but may not constitute more than five percent of retail floor area.

Procedures: Specialty grocery stores shall be allowed in the same zone districts and permitted in the same manner as general markets.

Documents Referenced in this Policy/Procedure: Fresno Municipal Code §15-2706.E.5 Alcohol Sales

Review and Responsibility: Current Planning Staff will determine compliance with design guidelines. DARM Director will determine whether Exception B can be applied on a case by case basis.

Forms (attached): N/A

Signature: Jennifer K. Clark, Director

Dated: 6/21/17

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

Allen Matkins Leck Gamble Mallory & Natsis LLP
865 South Figueroa Street - Suite 2800
Los Angeles, CA 90017-2543
(213) 622-5555

Check No. 6913

Date: December 20, 2023

PAY Nine hundred thirty-three and 77/100********** $***933.77***

City National Bank
2029 Century Park East, Suite 100
Los Angeles, CA 90067

TO THE ORDER OF City of Fresno

Void After 90 Days

FORM NO. 9837B COPYBAN CAPTURE ANTI-FRAUD PROTECTION

⑈0000006913⑈ ⑆122016066⑆ 2107262 84⑈

Check #: 6913

Vendor ID: Payee: City of Fresno

Check Date: 12-20-2023

Invoice Num	Invoice Date	Reference	Invoice Description	Payment Amt
510-100-50	12-11-2023		Application Fee	$933.77
			Total Payment:	$933.77