

## AMENDED AND RESTATED AGREEMENT FOR PURCHASE OPTION AND RIGHT OF ACCESS

This Amended and Restated Agreement ("Agreement") is made by and between Cesar Chavez Foundation, a California non-profit public benefit corporation ("CCF") and the City of Fresno, a municipal corporation ("City").

### RECITALS

- A. City holds fee title to certain real property in the City of Fresno, California, commonly known as the 5100 block of E. Kings Canyon Road, Fresno, CA 93727, consisting of approximately 5.39 acres, Assessor's Parcel Numbers 472-021-58T; 472-021-60T; 472-021-61T, more specifically described in the attached **Exhibit A** ("Property").
- B. CCF desires an exclusive option to acquire the vacant undeveloped Property and a right to access the Property during the option term to complete due diligence.
- C. City desires to grant CCF an option to acquire and develop the Property, with a right to access the Property during the option term.
- D. Upon CCF's exercise of its option to acquire and close escrow with respect to the Property, CCF desires to simultaneously convey back to the City, a portion of the Property consisting of .89 acres.
- E. On or about March 5, 2015, CCF and the City entered into an Agreement for Purchase Option and Right of Access ("Existing Purchase Agreement") wherein CCF paid \$5,000 for an exclusive option to purchase the Property for Nine Hundred and Four Thousand Dollars and 00/100 (\$904,000) with an Option Period that was effective until March 5, 2016.
- F. The parties hereto desire to amend and restate the Existing Purchase Option in order to modify the Option Period, Purchase Price, and include a provision for the CCF to reconvey a portion of the Property back to the City in addition to other terms as more specifically described herein.

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged, the parties agree that as of the Effective date, the Existing Purchase Agreement shall be amended and restated as follows:

### AGREEMENT

- 1. **Grant of Option.** City grants an exclusive right to CCF to acquire and develop the Property on the terms set forth in **Exhibit B** ("Disposition and Development Agreement").
- 2. **Effective Date.** The effective date of this Agreement is the date it is signed by CCF and the City after City Council's approval of this Agreement.
- 3. **Consideration.** For the rights granted by City, CCF has paid City Five Thousand Dollars (\$5,000.00). The City Council's approval is a condition precedent to the

effectiveness of this Agreement and if this Agreement is not approved, the terms of the Existing Purchase Agreement shall be reinstated.

4. **Original Term.** This option and the right of access shall commence on the effective date of this Agreement and continue to September 30, 2016, (the "Option Period"). CCF shall have a right to extend the Option Period for ninety (90) days upon providing written notice to the City no less than fifteen (15) days prior to the expiration of the Option Period.
5. **Retention of Consideration.** The City shall retain the consideration for the grant of this option whether or not CCF exercises the option.
6. **Exercise of Option.** CCF may exercise this option by notification in writing. Within ten (10) business days after giving the notice, CCF and the City will sign a Disposition and Development Agreement, substantially in the form of **Exhibit "B,"** a copy of which is attached hereto and incorporated by reference herein and will open an escrow with a title company selected by City, subject to approval by City Council.
7. **Automatic Termination.** If CCF fails to exercise this option within the option period, this option and CCF's rights will automatically terminate without notice.
8. **Assignment.** This Agreement is personal to CCF and there shall be no assignment of its rights or obligations under this Agreement without the prior written approval of the City Manager or his designee. Any attempted assignment by CCF, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his designee.
9. **Right of Access.** City grants to CCF, its agents or assigns, access to the Property during the original term upon twenty-four (24) hours' prior notice ("Access Notice"). The City herein agrees that CCF will be allowed to provide the City with Access Notice via facsimile, email, or via telephone. City will allow access to any part of the Property. CCF's rights of access will be exclusively for environmental review and inspection of the Property. If CCF or any of its agents damage the Property, CCF will repair the Property. CCF will access the Property in a way that does not interfere with City's use of the Property. City shall make available all documents in City's custody or control concerning any environmental condition of the Property.
10. **Warranties.** City warrants that City has a marketable and insurable fee simple title to the Property.
11. **Risk of Loss.** If any improvement on the Property is damaged or destroyed, the CCF will not be entitled to any refund of moneys paid. CCF, however, will be entitled on exercise of this option to offset against the purchase price the insurance proceeds City collects or has a right to collect for the loss or damage.
12. **Miscellaneous Provisions.**

12.1 **Notice.** Unless otherwise provided in this Agreement and except for Access Notice as set forth above, any notice, tender, or delivery given by either party to the other may be by personal delivery or by United States mail, postage prepaid. Notices will be in writing. The notice, tender, or delivery will be deemed communicated or made as of delivery if personally given, or within twenty-four (24) hours after posting,



if mailed. Mailed notices must be addressed as set forth below, but each party may change its address by written notice according to this paragraph.

**Notice to the City:**

City of Fresno  
Attn: Renena Smith, Assistant City Manager  
2600 Fresno Street  
Fresno, CA 93721

**Notice to CCF:**

Cesar Chavez Foundation  
Attn: Paul S. Park, Secretary, and General Counsel  
P.O. Box 62  
29700 Woodford-Tehachapi Road  
Keene, CA 93531

12.2 Time of the Essence. Time is of the essence of this Agreement.

12.3 Exhibits; Entire Agreement. The exhibits referenced in this Agreement as attached are, by the reference, incorporated into this Agreement. This instrument and the attached Exhibits A, B and C are the entire agreement between the parties relating to the option and rights of access. This Agreement supersedes any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement. Any amendment to this Agreement must be in writing and signed by City and CCF to be effective.

12.4 Attorney's Fees. If either party brings any legal action or proceeding relating to this Agreement, the prevailing party will be entitled to recover from the other party, in addition to any other relief that may be granted, reasonable attorneys' fees, costs, and expenses.

12.5 Binding Effect. This Agreement will bind and inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns.

12.6 Further Assurance. The parties will sign any additional documents and take any additional steps that may be necessary to carry out the intent and purpose of this Agreement.

12.7 Memorandum of Option. Following the execution of this Agreement, a Memorandum of Option to Purchase in substantially the form attached to this Agreement as **Exhibit C** shall be recorded with the official records of Fresno County, California.

12.8 Survival. The terms of this Agreement shall survive the close of escrow of the Property unless there is a contradiction between the Disposition and Development Agreement and this Agreement, in which event the Disposition and Development Agreement shall control.

IN WITNESS WHEREOF, the City and CCF have signed this Agreement on the dates and in the year set forth below.

CITY OF FRESNO, a municipal corporation

By: \_\_\_\_\_  
BRUCE RUDD  
City Manager

Dated: \_\_\_\_\_, 2015

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

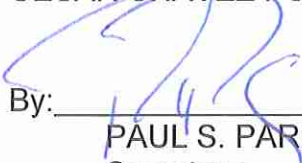
Dated: \_\_\_\_\_, 2015

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
TRACY N. PARVANIAN  
Deputy City Attorney

Dated: \_\_\_\_\_, 2015

CESAR CHAVEZ FOUNDATION:

By:  \_\_\_\_\_  
PAUL S. PARK  
Secretary

Dated: Dec. 10, 2015

Attachments:

Exhibit A – Legal Description

Exhibit B - Disposition and Development Agreement

Exhibit C - Memorandum of Option

## Exhibit A

### Legal Description

**APN: 472-021-58T**

**Previously APN: 472-021-45T (portion)**

That real property situated in the City of Fresno, County of Fresno, State of California, said real property being a portion of Lot 75 of Easterby Rancho, according to the map thereof recorded in Book 2, at Page 6 of Plats, Fresno County Records, said real property also being a portion of that parcel of land conveyed to the City of Fresno by a Grant Deed recorded August 30, 2007 as Document No. 2007-0163315, Official Records of Fresno County, hereinafter referred to as "Deeded Parcel", said real property being more particularly described as follows:

COMMENCING at the northwest corner of Lot 76 of said Easterby Rancho; thence S 89°27'54" E, along the north line of said Lots 75 and 76, a distance of 647.00 feet; thence S 0°45'49" W, parallel with the west line of said Lot 76, a distance of 29.00 feet to the northwest corner of said Deeded Parcel, said northwest corner being the TRUE POINT OF BEGINNING of this description; thence continuing S 0°45'49" W, parallel with the west line of said Lot 76 and along the west line of said Deeded Parcel, a distance of 137.00 feet; thence S 89°27'54" E, parallel with and 137.00 feet south of the north line of said Deeded Parcel, a distance of 288.59 feet to a point on the arc of a non-tangent curve concave to the south and having a radius of 45.00 feet, a radial to said point bears N 58°50'16" W; thence easterly, along the arc of said non-tangent curve, through a central angle of 118°44'43", an arc distance of 93.26 feet; thence

S 89°27'54" E, non-tangent to said curve and parallel with and 137.00 feet south of the north line of said Deeded Parcel, a distance of 255.47 feet to the east line of said Deeded Parcel; thence N 0°45'49" E, along said east line and parallel with the west line of said Lot 76, a distance of 137.00 feet to the northeast corner of said Deeded Parcel; thence N 89°27'54" W, along the north line of said Deeded Parcel, a distance of 621.50 feet to the TRUE POINT OF BEGINNING.

Contains an area of 1.93 Acres, more or less.

For the purposes of this description the north line of said Lot 76 is taken to be 30 feet south of the north line of the Northeast Quarter of Section 7, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, and the west line of said Lot 76 is taken to be 20 feet east of the west line of said Northeast Quarter.



**APN 472-021-60T**

**Previously APN 472-021-59T (portion)**

That real property situated in the City of Fresno, County of Fresno, State of California, said real property being a portion of Lot 75 of Easterby Rancho, according to the map thereof recorded in Volume 2 of Plats at Page 6, Fresno County Records, said real property also being a portion of that parcel of land conveyed to the City of Fresno by the Grant Deed recorded August 30, 2007 as Document No. 2007-0163315, Official Records of Fresno County, hereinafter referred to as "Deeded Parcel", said real property being more particularly described as follows:

COMMENCING at the Northwest corner of Lot 76 of said Easterby Rancho; thence South  $89^{\circ}27'54''$  East, 647.00 feet along the North line of said Lots 75 and 76; thence South  $00^{\circ}45'49''$  West, 29.00 feet, parallel with the West line of said Lot 76 to the Northwest corner of said Deeded Parcel; thence continuing South  $00^{\circ}45'49''$  West, 137.00 feet, parallel with the West line of said Lot 76 and along the West line of said Deeded Parcel to the TRUE POINT OF BEGINNING of this description, said point of beginning also being the Southwest corner of the land described in the Grant Deed recorded March 28, 2008 as Document No. 2008-0046264, Official Records of Fresno County; thence Easterly along the Southerly boundary of the land described in said Document No. 2008-0046264 the following two courses 1) South  $89^{\circ}27'54''$  East, 288.59 feet along a line 137.00 feet South of and parallel with the North line of said Deeded Parcel to the beginning of a non-tangent curve concave to the Southeast having a radius of 45.00 feet and to which beginning a radial lines bears North  $58^{\circ}50'16''$  West; thence 2) Northeasterly, 46.21 feet along said curve through a central angle of  $58^{\circ}49'58''$ ; thence South  $00^{\circ}45'49''$  West, 269.40 feet on a non-tangent line to last said curve and parallel with the West line of said Lot 76, to a point on the Southerly boundary of said Deeded Parcel; thence Westerly along the Southerly boundary of said Deeded Parcel the following three courses 1) North  $89^{\circ}24'52''$  West, 41.95 feet; thence 2) North  $00^{\circ}32'24''$  East, 40.00 feet; thence 3) North  $89^{\circ}29'37''$  West, 284.69 feet to the Southwest corner of said Deeded Parcel; thence North  $00^{\circ}45'49''$  East, 207.44 feet, parallel with the West line of said Lot 76 and along the West line of said Deeded Parcel to the TRUE POINT OF BEGINNING.

Contains an area of 70,040 square feet, more or less.

For the purpose of this description the North line of said Lots 75 and 76 is taken to be a line 30.00 feet South of and parallel with the North line of the Northeast quarter of Section 7, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, and the West line of said Lot 76 is taken to be a line 20.00 feet East of and parallel with the West line of the Northeast quarter of said Section 7.

2010-037A  
PLAT 2763



**APN 472-021-61T**

**Previously APN 472-021-59T (portion)**

That real property situated in the City of Fresno, County of Fresno, State of California, said real property being a portion of Lot 75 of Easterby Rancho, according to the map thereof recorded in Volume 2 of Plats at Page 6, Fresno County Records, said real property also being a portion of that parcel of land conveyed to the City of Fresno by the Grant Deed recorded August 30, 2007 as Document No. 2007-0163315, Official Records of Fresno County, hereinafter referred to as "Deeded Parcel", said real property being more particularly described as follows:

COMMENCING at the Northwest corner of Lot 76 of said Easterby Rancho; thence South  $89^{\circ}27'54''$  East, 647.00 feet along the North line of said Lots 75 and 76; thence South  $00^{\circ}45'49''$  West, 29.00 feet, parallel with the West line of said Lot 76 to the Northwest corner of said Deeded Parcel; thence continuing South  $00^{\circ}45'49''$  West, 137.00 feet, parallel with the West line of said Lot 76 and along the West line of said Deeded Parcel to the TRUE POINT OF BEGINNING of this description, said point of beginning also being the Southwest corner of the land described in the Grant Deed recorded March 28, 2008 as Document No. 2008-0046264, Official Records of Fresno County; thence Easterly along the Southerly boundary of the land described in said Document No. 2008-0046264 the following three courses 1) South  $89^{\circ}27'54''$  East, 288.59 feet along a line 137.00 feet South of and parallel with the North line of said Deeded Parcel to the beginning of a non-tangent curve concave to the South having a radius of 45.00 feet and to which beginning a radial lines bears North  $58^{\circ}50'16''$  West; thence 2) Northeasterly and Southeasterly, 93.26 feet along said curve through a central angle of  $118^{\circ}44'43''$  to a point on a line 137.00 feet South of and parallel with the North line of said Deeded Parcel; thence 3) South  $89^{\circ}27'54''$  East, 255.47 feet on a non-tangent line and along last said parallel line to a point on the East line of said Deeded Parcel; thence South  $00^{\circ}45'49''$  West, 298.20 feet, parallel with the West line of said Lot 76 and along the East line of said Deeded Parcel to the Southeast corner of said Deeded Parcel; thence Westerly along the Southerly boundary of said Deeded Parcel the following five courses 1) North  $89^{\circ}28'15''$  West, 142.15 feet; thence 2) North  $00^{\circ}31'45''$  East, 50.75 feet; thence 3) North  $89^{\circ}24'52''$  West, 194.29 feet; thence 4) North  $00^{\circ}32'24''$  East, 40.00 feet; thence 5) North  $89^{\circ}29'37''$  West, 284.69 feet to the Southwest corner of said Deeded Parcel; thence North  $00^{\circ}45'49''$  East, 207.44 feet parallel with the West line of said Lot 76 and along the West line of said Deeded Parcel to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM all that portion of the above described real property more particularly described as follows:

COMMENCING at the Northwest corner of Lot 76 of said Easterby Rancho; thence South  $89^{\circ}27'54''$  East, 647.00 feet along the North line of said Lots 75 and 76; thence South  $00^{\circ}45'49''$  West, 29.00 feet, parallel with the West line of said Lot 76 to the Northwest corner of said Deeded Parcel; thence continuing South  $00^{\circ}45'49''$  West, 137.00 feet, parallel with the West line of said Lot 76 and along the West line of said Deeded Parcel to the TRUE POINT OF BEGINNING of this description, said point of beginning also being the Southwest corner of the land described in the Grant Deed recorded March 28, 2008 as Document No. 2008-0046264, Official Records of Fresno County; thence Easterly along the Southerly boundary of the land described in said Document No. 2008-0046264 the following two courses 1) South  $89^{\circ}27'54''$  East, 288.59 feet along a line 137.00 feet South of and parallel with the North line of said

Deeded Parcel to the beginning of a non-tangent curve concave to the Southeast having a radius of 45.00 feet and to which beginning a radial lines bears North 58°50' 16" West; thence 2) Northeasterly, 46.21 feet along said curve through a central angle of 58°49'58"; thence South 00°45'49" West, 269.40 feet on a non-tangent line to last said curve and parallel with the West line of said Lot 76, to a point on the Southerly boundary of said Deeded Parcel; thence Westerly along the Southerly boundary of said Deeded Parcel the following three courses 1) North 89°24 '52" West, 41.95 feet; thence 2) North 00°32'24" East, 40.00 feet; thence 3) North 89°29'37" West, 284.69 feet to the Southwest corner of said Deeded Parcel; thence North 00°45'49" East, 207.44 feet, parallel with the West line of said Lot 76 and along the West line of said Deeded Parcel to the TRUE POINT OF BEGINNING.

Contains an area of 80,752 square feet, more or less.

For the purpose of this description the North line of said Lots 75 and 76 is taken to be a line 30.00 feet South of and parallel with the North line of the Northeast quarter of Section 7, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, and the West line of said Lot 76 is taken to be a line 20.00 feet East of and parallel with the West line of the Northeast quarter of said Section 7.

TNP:nd (67087nd/tnp) 12/8/15