

Agenda Item: ID 19-1971 (1-W)

Date: 07/25/2019

FRESNO CITY COUNCIL



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Late Submission Information Packet

Agenda Related Item(s) – File ID 19-1971 (1-W)

ITEM(S)

Actions pertaining to the property located on the southeast corner of Broadway and Elizabeth APN 452-114-34T

Contents of Supplement: Memorandum of Understanding (MOU) between the City of Fresno and Lowell Community Development Corporation.

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

MEMORANDUM OF UNDERSTANDING
BETWEEN CITY OF FRESNO
AND

LOWELL COMMUNITY DEVELOPMENT CORPORATION
REGARDING A PARK AT N. BROADWAY ST. AND E. ELIZABETH ST.

This Memorandum of Understanding (MOU) is entered into this 22 day of June & July, 2019, by and between the CITY OF FRESNO, a municipal corporation, (City), and LOWELL COMMUNITY DEVELOPMENT CORPORATION, a California nonprofit organization (Lowell CDC).

WITNESS

WHEREAS, City owns the property (Property), located at N. Broadway St. and E. Elizabeth St., Fresno, California, 93728, identified as Fresno County APN 452-114-34T, and more particularly described on **Exhibit A**, which is attached hereto and made a part of this MOU; and

WHEREAS, Lowell CDC was established to create positive change in the Lowell neighborhood located north of Downtown Fresno; and

WHEREAS, Lowell CDC desires to renovate and improve the Property by constructing a neighborhood park (Park) on the Property to benefit the Lowell and South Tower District neighborhoods and the broader Fresno area community; and

WHEREAS, the City will work with Lowell CDC to apply for Prop. 68 grant funds for the Statewide Park Development and Community Revitalization Program (Grant) from the State of California Department of Parks and Recreation (DPR) to construct the Park; and

WHEREAS, upon the completion of construction of the Park and approval of the transfer by DPR, the City intends to accept all of the contract obligations for the Grant agreed upon by Lowell CDC such that the Park and any and all new or ongoing improvement, maintenance or repairs will be the responsibility of the City; and

WHEREAS, the City and Lowell CDC now wish to enter into this MOU to allow Lowell CDC to construct the Park on the Property.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained, and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representative: Director,
Parks, After School, Recreation and Community
Services
1515 E. Divisadero St. Fresno, CA 93721
Tel: (559) 621-2900

Lowell CDC Representative: Kelsey McVey
Lowell Community Development Corporation

250 N. Calaveras Ave.
Fresno, CA 93701

2. ROLES, CONTRIBUTIONS, AND RESPONSIBILITIES

A. The City shall:

- (i) Designate a representative to work with Lowell CDC to ensure each stage of the project and the scope of work have been completed.
- (ii) Review each project phase of the design and construction of the Park, however, nothing in this MOU shall bind future City action which may be necessary to fund and approve future development of the Park.
- (iii) Upon completion of the Park and approval of the transfer by DPR, the Park and contract obligations of Lowell CDC shall be transferred to and assumed by the City of Fresno.
- (iv) Enter into a contract with DPR for the long term public use, operation and maintenance of the Park, as required by the Grant.

B. Lowell CDC shall:

- (i) Work with the City to complete an application for Grant funding for the construction of the Park on the Property
- (ii) Fundraise and contribute any balance of the funds necessary to complete outreach (consisting, generally, of preconstruction focus groups, follow-up with the focus groups to review a rendering of the Park, ground breaking ceremony, and ribbon-cutting) and construction related to the Park in accordance with City- approved plans for such project.
- (iii) Encourage and incorporate community involvement through outreach efforts before and during the planning and construction phase of the Park.
- (iv) Provide City with proposed notices and plans, and obtain approval by City of such notices and plans, prior to advertising or holding any program, special event, press event, community event, or other event related to the Park at the Property.
- (v) Designate a representative and Project Director to work with the City to ensure each stage of the project and the scope of work have been completed.
- (vi) Plan, manage, and implement construction of the Park, pursuant to section 4 below.
- (vii) Manage and provide to the City reports on each project phase of the design and construction of the Park.
- (viii) Seek prior approval of the City regarding the nature, text, and timing of public announcements which directly or indirectly concern the existence of or terms of this MOU, except as otherwise required by law. Lowell CDC will seek the approval of City regarding the nature, text and timing of press releases, announcements, and events related to construction or

completion of the Park. Lowell CDC and the City shall acknowledge the contributions of each other, the contractor, and all granters during any public or media event publishing the Park.

Similarly, any document, written report, or brochure prepared in whole or in part pursuant to installation of the Park shall acknowledge the contributions of the City, Lowell CDC, the contractor, and all granters.

- (ix) Assume financial responsibility for all costs associated with the design and construction of the Park.
- (x) Assume responsibility of working with any contractors or design/ build firms hired to complete the Park.
- (xi) Require any contractors to insure and indemnify the City as described in this MOU.
- (xii) If the Grant is awarded, Lowell CDC must comply with all contract provisions associated with the Grant through Park completion for 30 years, or until the California Department of Parks and Recreation approves the transfer of the contract obligations to the City, whichever is earlier.

3. EFFECTIVENESS, DURATION, AND TERMINATION

Construction of the Park shall be completed as set forth in a Timeline, Scope, and Budget, to be agreed upon by the parties within thirty days of the Effective Date of this MOU in a separate amendment.

Upon the City's approval and acceptance of the completed Park, title to all improvements shall pass to and vest in the City without cost or charge to it, free and clear of all liens.

Either party may terminate this MOU with cause following the other party's failure to reasonably cure an event of non-performance hereunder, following thirty days' written notice thereof. Termination shall be effective (the Effective Date of Termination) as of the date specified in the notice of termination. Upon such termination, all rights and obligations of each party under this MOU shall cease as of the Effective Date of Termination, except for those specific obligations that shall survive termination as set forth herein. The parties acknowledge terminating this MOU prior to completion of the Park may leave incomplete and unusable facilities at the Park resulting in significant liability to City. The parties therefore agree to terminate this MOU only for cause, as outlined above in this section.

4. IMPROVEMENTS, CHANGES, ALTERATIONS, DEMOLITION, AND REPLACEMENT

Any demolition activity and all improvements, changes and alterations (other than changes or alterations of movable trade fixtures and equipment, or improvements, changes or alterations involving costs less than \$10,000) shall be undertaken in all cases subject to the following additional conditions which Lowell CDC covenants to observe and perform:

- A. No improvement, change or alteration, and no demolition and replacements shall be undertaken until Lowell CDC has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction. When requested by Lowell CDC, City agrees to join in the application for such permits or authorizations whenever such action is necessary.
- B. All work done in connection with any improvement, change, alteration or demolition and replacement shall be done promptly and in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof. All such work shall be at the sole cost and expense of Lowell CDC. Any improvement or repair shall be constructed by a contractor licensed and bonded by the California Contractor's State License Board. Lowell CDC may be subject to certain planning, land use, and public actions required in connection with any Lowell CDC improvement project which are discretionary government actions. Nothing in this MOU obligates City or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. City shall not be liable, in law or equity, to Lowell CDC or any of its executors, administrators, transferees, successors-in-interest, or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval.
- C. Lowell CDC shall be solely responsible for determining whether payment of prevailing wage is required. Lowell CDC shall indemnify, hold harmless, and defend (with counsel reasonably acceptable to City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Lowell CDC, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations.
- D. Lowell CDC will notify City at least seven days prior to the commencement of any construction. The City shall have the right to post and keep posted on the Property, and record, a Notice of Non-responsibility. Lowell CDC shall keep the Property free from any and all liens and encumbrances arising out of or in any way connected with the work performed, materials furnished or obligations incurred by Lowell CDC in connection with any alteration, addition, or improvement to the Property.
- E. Lowell CDC shall prepare a work plan and cost estimate which describes in detail and with specificity the nature, scope, location, estimated costs and purpose of all of Lowell CDC's improvements and activities to be performed on the Property, including, without limitation, the specific areas in which Lowell CDC and Lowell CDC's representatives may have access

and may conduct Lowell CDC's activities and a schedule of Lowell CDC's activities (the "Work Plan"). The Work Plan will be submitted to the City for preliminary approval, care of the City Manager, 2600 Fresno Street, Fresno, California 93721. Lowell CDC acknowledges and agrees City's review of the Work Plan is solely for the purpose of protecting City's interests, and shall not be deemed to create any liability of any kind on the part of City, or to constitute a representation on the part of City that the Work Plan is adequate or appropriate for any purpose, or complies with applicable legal requirements. Lowell CDC and Lowell CDC's representatives shall not commence activities associated with Lowell CDC's improvements on the Property without the prior written consent of City to the Work Plan as set forth above, which consent shall not be unreasonably withheld. Lowell CDC agrees and covenants all of Lowell CDC's activities shall be performed in strict compliance to the approved Work Plan. Lowell CDC shall not modify the Work Plan without the prior written approval of City.

- F. Lowell CDC covenants and agrees Lowell CDC shall use its best efforts to conduct its activities in reasonable compliance with the Work Plan approved by City and in such a manner so as to protect the Property, the Park, and the public. Except as may be expressly provided in an approved Work Plan, Lowell CDC shall not cause or permit any hazardous substances, as defined herein, to be brought upon, produced, stored, used, discharged or disposed of on, or in the vicinity of, the Property. In the event City determines Lowell CDC's activities in any way endanger the Property, the Park, or the public, City may, at City's sole discretion, require Lowell CDC halt its activities until appropriate protective measures may be taken to eliminate such endangerment to City's satisfaction. Lowell CDC shall hold City harmless for any claims resulting from any delay under this section. City's right to halt activities under this section shall not in any way alter or affect Lowell CDC's insurance or indemnity obligations under this MOU, nor shall it relieve Lowell CDC from any of its obligations hereunder that pertain to health, safety, or the protection of the public.
- G. Lowell CDC covenants and agrees Lowell CDC shall use its best efforts to conduct its activities such that the Property and all improvements related to this MOU remain free of liens.
- H. City reserves the right to restrict access to the Property in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with City's response thereto, or if emergency repairs or maintenance are required to the City facilities within or in the vicinity of the Property, or otherwise when the City deems it advisable to do so.

5. COMPLIANCE WITH GOVERNING LAW

- A. General. Each party shall comply with all federal, state, and local laws, rules and regulations in its pursuit hereof. No party in its performance of this MOU shall employ discriminatory practices on the basis of race,

religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, gender identification, or status as a disabled veteran or veteran of the Vietnam era.

- B. Accounting. Notwithstanding that this MOU does not obligate the City to contribute to the construction of the Park, Lowell CDC shall maintain any contribution from the City in a separate fund designated solely for the Park. The entirety of any City contribution shall be spent on direct expenses for the construction of the Park. Lowell CDC shall maintain financial records for the entirety of Park construction pursuant to generally accepted accounting principles through the life of the project, and such records shall be made available to the City upon request. Such records shall be maintained for five years after termination of the MOU. Any portion of any City financial contribution unspent upon completion of the Park or termination of this MOU shall be returned to the City within fifteen days.

6. CAPACITY OF THE PARTIES

Each party is acting in an independent contractor capacity. Nothing in this MOU and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency, or employment relationship, jointly and severally.

In addition, and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, workers' compensation insurance, benefits, and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of Lowell CDC. The City assumes full responsibility for the actions of such personnel while they are performing services pursuant to this MOU, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits, and the like, as applicable. Conversely, personnel supplied by Lowell CDC or its contractors hired to construct the Park will not for any purpose be considered employees or agents of the City. Lowell CDC (or any contractor) assumes full responsibility for the actions of such personnel while they are performing services pursuant to this MOU, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable.

The parties further agree and acknowledge each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder. Each shall be solely responsible for payment of all sales, use, or other taxes assessed against or associated with the performance of each party's respective obligations, or on the exercise of their rights under this MOU, including without limitation income, payroll or employment-related taxes and payments.

No party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other without the prior consent of both parties.

7. INDEMNIFICATION

To the furthest extent allowed by law, Lowell CDC shall indemnify, hold harmless, and defend the City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by City or Lowell CDC, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this MOU. Lowell CDC's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents, or volunteers are contributorily negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the sole negligence or gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

If Lowell CDC should contract all or any portion of the work to be performed under this MOU, Lowell CDC shall require each contractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this MOU.

8. INSURANCE REQUIREMENTS

Throughout the life of this MOU, Lowell CDC or its subcontractors shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) as may be authorized in writing by the City's Risk Manager or designee at any time in his/her sole discretion. The required policies of insurance shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insured, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to be the named insured.

Coverage shall be at least as broad as:

- A. **COMMERCIAL GENERAL LIABILITY (CGL):** Insurance Services Office (ISO) form CG 00 01 covering CGL on an "occurrence" basis and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$2,000,000 aggregate for products and completed operations, and \$2,000,000 general aggregate.
- B. **COMMERCIAL AUTOMOBILE LIABILITY:** Insurance Services Office (ISO) form CA 00 01 covering Code 1, and shall include coverage for "any

auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage.

- C. WORKERS' COMPENSATION insurance as required by the State of California Labor, with statutory limits, and EMPLOYERS' LIABILITY insurance with minimum limits of no less than \$1,000,000 per accident for bodily injury or disease.
- D. COMMERCIAL CRIME insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Crime and Fidelity Form CR 00 20 with limits of insurance of not less than \$200,000.

Umbrella or Excess Insurance: In the event Lowell CDC or its subcontractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such umbrella or excess insurance policy(ies) shall also apply on a primary and noncontributory basis for the benefit of City, its officers, officials, employees, agents, and volunteers.

Deductibles & Self-Insured Retentions: Lowell CDC or its subcontractors shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Lowell CDC shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or (ii) Lowell CDC or its subcontractors shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Endorsements: The above described policies of insurance shall be endorsed to provide an unrestricted thirty day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this MOU, a new certificate evidencing renewal of such policy shall be provided not less than fifteen days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change, or reduction in coverage, Lowell CDC shall file with the City a certified copy of the new or renewal policy and certificates for such policy.

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1. The City, its officers, officials, agents, employees, and volunteers are to be covered as an additional insured. Lowell CDC or its subcontractors shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, or by an executed manuscript insurance

company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this MOU, Lowell CDC's or its subcontractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Lowell CDC's or its subcontractor's insurance and shall not contribute with it. Lowell CDC or its subcontractors shall establish primary and noncontributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and noncontributory status as broad as that contained in ISO Form CG 20 01 014 13.

The Crime insurance policy shall name the City as a joint loss payee.

The Workers' Compensation insurance policy is to contain or be endorsed to contain, the following provision: Lowell CDC and its insurer shall waive any right of subrogation against City and each of its officers, officials, employees, agents, and volunteers.

Lowell CDC or its subcontractors shall furnish the City with the certificate(s) and applicable endorsements for ALL required insurance prior to the City's execution of this MOU.

Maintenance of Insurance: If at any time during the life of this MOU or any extension, Lowell CDC (or its subcontractors) fails to maintain any required insurance in full force and effect, all of Lowell CDC's activities under this MOU shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this MOU. No action taken by City pursuant to this section shall in any way relieve Lowell CDC or its subcontractors of their responsibilities under this MOU.

Verification of Coverage: Upon request of City, Lowell CDC or its subcontractors shall immediately furnish City with a complete copy of any insurance policy required under this MOU, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this MOU.

Duty to Indemnify: The fact that insurance is obtained by Lowell CDC or its subcontractors shall not be deemed to release or diminish the liability of Lowell CDC or its subcontractors, including, without limitation, liability under the indemnification provisions of this MOU. The duty to indemnify City and its officials, officers, employees, agents, and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the

amount of indemnification to be provided by Lowell CDC or its subcontractors. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lowell CDC or its subcontractors, or any of their officers, board members, employees, agents, volunteers, invitees, caterers, concessionaires, suppliers, vendors, consultants, or other contractors.

Subcontractors: If Lowell CDC should subcontract all or any portion of the services to be performed under this MOU, Lowell CDC shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents, and authorized volunteers in accordance with the terms of this section. All required certificates and applicable endorsements shall be on file with Lowell CDC and City prior to the commencement of any services by the subcontractor.

9. ATTORNEY'S FEES

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this MOU, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

10. NOTICES; RESPONSE TO REQUESTS

Any notice required or intended to be given to a party under the terms of this MOU shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express, DHL, or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the Lowell CDC Representative, or (c) three (3) business days after the date of mailing (postage pre- paid return receipt requested). Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other.

The parties shall respond to requests from each other for the review of any documents regarding this MOU or the Park within five business days so as to accomplish the Grant approval process in a timely manner.

11. BINDING

Once this MOU is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives. The terms and conditions of this MOU, express or implied, exist only for the benefit of the parties to this MOU and their respective successors and assigns. No other person or entity will be deemed to be a third party beneficiary of this MOU.

12. ASSIGNMENT

There shall be no assignment by either party of its rights or obligations under this MOU without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

13. WAIVER

The waiver by any party of a breach by the other of any provision of this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this MOU. No provisions of this MOU may be waived unless in writing and approved by and signed by all parties to this MOU. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

No action or omission by either party shall constitute a breach of this MOU unless the injured party first notifies the other party of the purported breach in writing setting forth the alleged breach or default and said party does not cure the same within a reasonable period of time. The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the MOU shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

14. GOVERNING LAW AND VENUE

This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this MOU and any rights and duties hereunder shall be Fresno, California.

15. HEADINGS

The section headings in this MOU are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this MOU.

16. SEVERABILITY

The provisions of this MOU are severable. The invalidity or unenforceability of any one provision in this MOU shall not affect the other provisions.

17. INTERPRETATION

The parties acknowledge that this MOU in its final form is the result of the combined efforts of the parties and that, should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

18. REPRESENTATIONS AND WARRANTIES

Lowell CDC represents and warrants that it is a duly authorized and existing nonprofit unincorporated association in good standing, and shall remain in good standing during the term of this MOU. Each party hereby represents, and warrants to the other party, and agrees that it has the full power and authority to enter into this MOU and perform each of its obligations hereunder, and it is legally authorized and has obtained all

necessary regulatory approvals for the execution, delivery, and performance of this MOU.

19. ENTIRE MOU

It is mutually understood and agreed that the foregoing constitutes the entire MOU between the parties. Any modifications or amendments to this MOU must be in writing signed by an authorized agent of each party.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

EXHIBIT A

All of that real property situated in the City of Fresno, County of Fresno, State of California, more particularly described as follow:

Lot 18 and the East 46.68 feet of Lot 17 of map of Burlingame Villa Park as recorded in Book 4 of record of Surveys, at Page 11, Fresno County Records.

APN: 452-114-34T

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

By: _____
Wilma Quan-Schechter,
City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: John Hastrup 7-22-2019
John Hastrup Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Deputy Date

Attachment:
Exhibit A

LOWELL COMMUNITY DEVELOPMENT
CORPORATION,
a California non-profit public benefit
corporation

By: Kelsey McVey

Name: Kelsey McVey

Title: Board chair
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: Esther Delahay

Name: Esther Delahay

Title: Executive Director
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

REVIEWED BY:
