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Agenda Date: 11/19/2020  
Council Meeting

2020 NOV 17 A 10:00

CITY OF FRESNO  
CITY CLERK'S OFFICE

# FRESNO CITY COUNCIL



## Information Packet

### ITEM(S)

#### File ID 20-001557 (1-DD)

Approve Purchase and Sale Agreement with Fresno Economic Opportunities Commission for the sale of Pride Park (APN 467-292-05T).

### Contents of Supplement: EOC Agreement.

#### 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.

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REAL PROPERTY PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS

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THE CITY OF FRESNO, a municipal corporation (Seller or City), and the FRESNO ECONOMIC OPPORTUNITIES COMMISSION (Buyer), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the Agreement), effective as of the date of execution.

RECITALS

- A. The Seller owns certain real property within the City of Fresno commonly known as Pride Park (APN 467-292-05T), Fresno, California, and more particularly described in Exhibit A, attached, (the Property).
- B. The Successor Agency to the former Redevelopment Agency transferred several pocket parks, including Pride Park, to the City by Resolution 2012-123 on June 28, 2012.
- C. The City has agreed to transfer Pride Park to Buyer for use as a park to benefit Buyer's students, which City has determined is a public purpose.
- D. The adjacent property (APN 467-292-06T) was sold by the Successor Agency to Buyer in 2018.
- E. The Buyer has agreed to purchase the entire parcel as-is.
- F. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement, and the covenants in the grant deed.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

- 1. Purchase and Sale. Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement.
- 2. Conditions Precedent. Closing shall be conditioned upon performance of all of obligations in this Agreement, approval by the Department of Housing and Community Development, and compliance with CEQA, provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.
- 3. Purchase Price. The purchase price for the Property is ONE DOLLAR (\$1.00) (Purchase Price). The Purchase Price, subject to adjustments provided in this Agreement (if any), will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing. The purchase price takes into account the public purpose of the property proposed by Buyer.

4. Covenants. As a condition of the sale, Buyer agrees to use the Property in conjunction with the Head Start Program or consistent with Buyer's public benefit status, and to record a covenant against the property restricting the Property to such use (Covenant). If Buyer no longer has use for the Property consistent with the Covenant, City of Fresno will have the first right of refusal to purchase the Property back for One Dollar.
5. Seller's Warranties. Seller represents and warrants that: (a) Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Property from adjacent Property, encroachments from the Property onto adjacent Property, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property; (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with any code, statute, regulation, ordinance, judicial order, judicial holding, or other applicable law concerning the Property; (d) Seller has no knowledge of any material defects in the Property.
6. Feasibility Period. Buyer shall have the right to examine the feasibility of the Property for a period of thirty days after Buyer and Seller have executed this Agreement (Feasibility Period).
7. Opening Escrow/Escrow Deposit. Within ten business days after the execution of this Agreement by both parties, the parties will open an escrow (Escrow) with Fidelity Title Company, [insert address] (Title Company), Attention: Bernadette Watson.
  - 7.1 Agreement as Joint Escrow Instructions. This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.
  - 7.2 Deposits into Escrow. Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Within 30 days after the agreement is executed, Buyer will deposit the balance of the Purchase Price and Seller will deposit, or will conditionally deliver to Buyer, a recordable grant deed duly executed and acknowledged before a notary public, and accompanied by documentation reasonably necessary to establish the authority of any signatory executing such deed on behalf of Seller.
  - 7.3 Title. Seller will convey title of the Property to Buyer AS IS, without regard to all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller.

- 7.4 Title and Closing Costs. Buyer will pay any costs of clearing and conveying title. Buyer will pay the cost of a CLTA or ALTA owner's title policy insuring Buyer's title in the condition described in Section 5. Escrow fees, costs to record the grant deed, etc., shall be split equally between Buyer and Seller.
- 7.5 Closing. The escrow will be considered closed (Closing or Close or the Closing Date) on the date that the Title Company records the grant deed. The escrow will be in condition to Close when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. Unless extended by the mutual consent of the parties, the escrow and this Agreement shall terminate if Closing does not occur within 30 days following expiration of the Feasibility Period (the Outside Closing Date). Upon termination of the escrow, the Title Company will return all funds and documents to the respective depositor and this Agreement will be of no further effect except as herein provided.
- 7.6 Recordation. At Closing, Title Company shall date the grant deed, Covenant, and all other undated documents in escrow, with the date of Closing, and the Title Company shall record the grant deed and all other documents necessary to the Closing.
- 7.7 Disbursements. At Closing, Title Company shall disburse the Purchase Price, less prorations and costs, if any, to Seller, when Title Company is committed to issue a standard CLTA or ALTA owner's title insurance policy to Buyer.
- 7.8 Risk of loss. Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
8. Delivery of Possession. Seller shall deliver exclusive possession of the Property at Closing.
9. Buyer's Right to Enter and Inspect the Property. The Property is being sold in an "As is" condition. The City has performed a Phase 1 and Phase 2 Environmental Site Assessment and has provided the reports to Buyer, without any warranty as to their accuracy. Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession. Buyer agrees to indemnify and hold Seller free and harmless from any and all liability, loss, cost, damage or expense that Seller may sustain or incur by reason of or in connection with such entry, studies, inspections, evaluations, tests or surveys conducted by Buyer during the Feasibility Period.
10. Mutual Indemnification. City shall indemnify, hold harmless and defend Buyer 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 Buyer, City or any other person, 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 from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

Buyer shall indemnify, hold harmless and defend 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 the City, Buyer or any other person, 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 from the negligent or intentional acts or omissions, or willful misconduct of Buyer or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents or volunteers, and Buyer or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

11. Miscellaneous Provisions.

11.1 Further Assurances. Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.

11.2 Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered: (a) on the date of service if served personally on the person to receive the notice, (b) on the date deposited in the U.S. mail, if delivered by depositing the notice or communication in the U.S. mail, postage prepaid, and addressed to the relevant party at the address set forth below, or (c) on the date of transmission if delivered electronically via email and showing the date and time transmitted.

To Seller:  
CITY OF FRESNO  
Attention: City Manager  
2600 Fresno Street  
Fresno, CA 93721

To Buyer:  
FRESNO ECONOMIC OPPORTUNITIES COMMISSION  
Attention:  
1920 Mariposa Mall, Suite 300  
Fresno, CA 93721  
Phone No.: 559.263.1000

- 11.3 Entire Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.
- 11.4 Amendment or Cancellation. Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.
- 11.5 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may not assign this agreement or its rights hereunder without the express written consent of Seller.
- 11.6 Time of the Essence. Time is of the essence of each term in this Agreement.
- 11.7 Attorneys' Fees. If any party to this Agreement or the Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.
- 11.8 Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed according to California law. Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California
- 11.9 Waiver. If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.

11.10 Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.

11.11 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. Facsimile or electronic copy signatures shall be deemed as valid and binding as original signatures.

11.12 Survival. All representations and warranties, indemnifications, and other provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates set forth below.

SELLER:  
CITY OF FRESNO,  
A California municipal corporation

BUYER:  
Fresno Economic Opportunities  
Commission

By: \_\_\_\_\_  
Wilma Quan Date  
City Manager

By: \_\_\_\_\_  
*Emilia Reyes*

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

Name: Emilia Reyes

Title: CEO

Date: 11 / 16 / 2020

By: \_\_\_\_\_  
Laurie Avedisian-Favini Date  
Assistant City Attorney

ATTEST:  
YVONNE SPENCE, MMC CRM  
City Clerk

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

EXHIBIT "A"

LEGAL DESCRIPTION

APN 467-292-05T

Lot 10 IN Block 37 of Kearney Boulevard Heights, according to the map thereof recorded in Book 5 of Record of Surveys at Page 59, Fresno County Records, together with that certain 20 foot wide alley lying adjacent thereto that was closed by City of Fresno Resolution Ordering Work No. 1114 on February 15, 1923, more particularly described as follows:

BEGINNING at the westerly corner of said Lot 10; thence northeasterly, on the northwesterly line of said Lot 10 and on the northeasterly prolongation thereof to the westerly corner of Lot 6 in said Block 37 of Kearney Boulevard Heights; thence southeasterly, on the southwesterly line of said Lot 6, the southeasterly prolongation thereof, and the southwesterly line of Lots 7 and 8 of said Block 37 of Kearney Boulevard Heights to the most southerly southwest corner of said Lot 8; thence westerly, on the easterly prolongation of the south line of said Lot 10 and on said south line to the POINT OF BEGINNING.

TOGETHER WITH the underlying fee title to the southeasterly half of Fresno Street adjacent to the northwest of the aforementioned property described above and the underlying fee title to the northerly half of East California Avenue adjacent to the south of the aforementioned property described above

SUBJECT TO all easements, agreements, and covenants of record.